



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus interim response to the consultation on 'Empowering and Protecting Consumers'

July 2011

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

Summary

This is Consumer Focus's interim response to the consultation on 'Empowering and Protecting Consumers' (<http://bit.ly/qFjuhR>) which proposes the abolition of Consumer Focus and the transfer of some of our functions to the Citizens Advice service. We will produce a more detailed response in September.

We fully support:

- the consolidation of a wide range of advice functions into the Citizens Advice service
- the establishment of an industry funded Regulated Industries Unit (RIU) with appropriate powers, accountabilities and governance to represent the consumer interest in complex regulated markets

In addition, we urge the Government to ensure:

- consumer representation in Scotland and Wales reflects the needs of consumers in those nations, and is supported by Scottish and Welsh Governments
- representation of the 'collective consumer interest' in private and public markets, using appropriate legal powers
- the retention of consumer expertise on international issues and a strong voice for UK consumers in Europe
- consumer empowerment is facilitated across all markets and services

Introduction

Consumer Focus supports changes to the institutional landscape for consumer protection, advocacy, advice, information and empowerment in the interests of providing a better deal for consumers. We support the Government's objectives to streamline the current landscape and maximise value for money from public funding.

We wish to make a constructive contribution to the important debate about how consumers can be empowered, how their voices can be heard and how their interests can be represented in any future arrangements. Our focus is not on which organisation does what work, but draws on 36 years of experience on what work needs to be done, and how it can best be delivered in the future.

The debate is important because it provides an opportunity to reshape advice, representation and enforcement for consumers in ways which can best meet the challenges of changing markets and public services. It is important now because of the fundamental transformation in many private and public markets and the nature of the challenges faced by consumers. It is a vital chance to rethink what is done, and not just in terms of shifting functions between organisations or providing them at a lower cost, important though that is. We need to think creatively about how we can empower today's and tomorrow's consumers, how to use the insights of behavioural economics and the opportunities offered by new technology.

While we support the need for changes in the institutional landscape, we are concerned that if the debate is simply about which organisation carries out which function, the greater prize – what works best for consumers and supports economic growth – may be overlooked.

We welcome the UK Government's willingness to consider how the consumer landscape in Scotland and Wales can best meet the needs of consumers in those nations. Appropriate arrangements will need active engagement with the devolved governments.

In our final response in September we will be building on these points and drawing on three pieces of work we have underway:

- **An Regulated Industries Unit (RIU) prospectus** – a detailed forward look to identify the common issues facing economic regulators in relevant markets over the next five years or so, where bringing consumer representation together would enable more effective advocacy to be provided
- **Consumer insights** – our experience of interventions across the economy provides valuable insights into the issues that face consumers, the policy approaches that work and the empowerment initiatives that engage consumers. It also highlights those stubborn areas of detriment that require further intervention. We will apply this learning to the key issues facing consumers today
- **Empowering consumers** – we are looking beyond conventional approaches to consumer empowerment to identify ways to make the demand side of markets more effective. These include making information work for consumers; empowering vulnerable consumers (a joint study with the Citizens Advice service); harnessing the power of mass consumer responses; and showing how today's consumers could use technologies and social behaviours to overcome detriment

The components of the landscape

There should be three components of the landscape to empower, protect and represent consumers. Firstly, advice services to individual consumers. Secondly, effective enforcement through the work of Trading Standards, the proposed Competition and Markets Authority, and sectoral regulators. Thirdly, representation of the collective consumer interest. An empowerment philosophy should underpin all three. The future landscape will need to ensure that all three key connected, but distinct, functions are effectively carried out. It is important that in pursuing streamlining we do not lose critical capacity to represent the collective interests of consumers. We look forward to close engagement with Citizens Advice, Citizens Advice Scotland and others to ensure this risk is mitigated.

Advice

There will be a continuing and growing need for advice for individual consumers. We welcome the consolidation of consumer advice services within the Citizens Advice service in England and Wales, Citizens Advice Scotland and the General Consumer Council for Northern Ireland. This should generate efficiency savings and enable the development of a comprehensive database on consumer queries and complaints. As only 6 per cent of current Citizen Advice Bureau contacts and 10 per cent of online contacts are defined as covering consumer matters, there will be a need for good linkages between a range of public, private and voluntary bodies.

Data from complaints is a valuable input to effective consumer representation. It needs to be collected and structured in a way that enables investigation and analysis by providers of private and public services and other consumer bodies. As a consumer community we have not been as successful in this respect as we should have been to date; our successors now have an opportunity to do better.

We welcome the Citizens Advice service taking on Consumer Direct and recommend wider consolidation of advice services. For example, Government is currently tendering for an agency to run the Green Deal Advice services. This will be an important source of advice to help consumers avoid the worst of the energy price rises we are likely to see. Having two bodies providing advice on energy matters would not achieve the Government's ambition for Citizens Advice to be the 'go to' place for consumers in this vital and changing market. Government should be alert to missing such opportunities to simplify the consumer landscape.

We are in discussion with the Citizens Advice service on the transfer our advice service for vulnerable energy and post consumers (the Extra Help Unit) ahead of any legislative change. It is vital to ensure the smooth transition of existing EHU referral pathways during and after the transition of Consumer Direct to the Citizens Advice service.

Enforcement

Proper enforcement is a critical part of the consumer landscape and we welcome the Government's aim of creating a stronger and more coherent regime. The consultation document rightly identifies that the current arrangements are insufficiently joined-up and are coming under increased pressure as a result of reductions in public spending. It also notes the lack of alignment between the local organisation of much of the enforcement regime and the increasingly national and international nature of the threats to consumers. The recent National Audit Office (NAO) report (<http://bit.ly/nPDHpU>) on the system for enforcing consumer law described the enforcement regime as 'fragmented and significantly under-equipped'. There is a pressing need for change and the Government's plans need to tackle the concerns raised by the NAO.

The consultation document does not sufficiently develop an overall vision for dealing with the different types of consumer detriment or consider the delivery of appropriate enforcement. Rather than making some institutional adjustments which might support the existing arrangements, we would like Government to take the opportunity for a more radical restructure to modernise the enforcement regime. We are concerned that a narrow consideration of the issues will limit the long-term value of potential changes. We would, for example, like to see a vision which makes the connection between Trading Standards and the Government's empowerment agenda.

It is wholly appropriate at this stage that Government does not have all the details about how proposed arrangements might work but, before final decisions are made, we would expect there to be much greater clarity on practical implementation.

Representation

A strong, expert and responsible consumer voice benefits consumers, business and third and public sector service providers. Government is creating new competition and consumer enforcement regimes and driving major change in key areas such as financial and public services which will have considerable impact on consumers. We believe there would be benefit in giving further consideration to the need for effective consumer advocacy in these sectors, in view of the proposed changes to both the financial services regulatory regime, and the reform of public services set out in the Government's recent White Paper and also under discussion in Scotland.

The UK has an internationally admired reputation for strong consumer representation. In order to maintain this advocacy in fast changing markets the following activities and functions will need to be fulfilled in the new landscape:

- Promoting the interests of current and future consumers
- Understanding and having regard to the interests of all consumers including those with disabilities, people on low incomes, older people and consumers living in remote rural areas
- Representing the interests of consumers to governments, local authorities and public service providers
- Representing the interests of consumers to economic regulators in the discharge of regulatory functions that effect consumers – including revisions to licences, price reviews, enforcement and codes of practice (see later section on a RIU)
- Representing the interests of consumers to firms and encouraging voluntary market-based solutions as an alternative to regulation
- Promoting the interests of UK consumers within European Union institutions and influencing European Union legislation
- Engaging with international inter-governmental and consumer organisations, and others making decisions which could impact UK consumers
- Representing the concerns of consumers in the devolved nations in the development of UK wide policy, as well as in policies which are devolved to Scotland, Wales and Northern Ireland

A raft of public policy developments will require effective consumer representation and advocacy over the next few years. Outside the sectors covered by a potential RIU these include:

- Modernisation of the post office network
- UK and EU reform of the regulatory and consumer protection frameworks in financial services
- Reform of consumer law, redress and enforcement including the Consumer Rights Bill, the European optional instrument for contract law, European and UK proposals for Alternative Dispute Resolution
- Public services reform for schools; further and higher education; public health; and health services in England
- The Welsh Government's proposals for a national trading standards service
- The Welsh Government's food law review

A Regulated Industries Unit

It is vital that there is effective representation of consumer interests in large complex markets for essential services. These markets are characterised by complex regulatory frameworks; imperfect competition; dominant market participants; competing public policy agendas; and significant structural elements which can determine the experience of consumers, whether domestic or small business, in retail markets.

In these markets, effective consumer advocacy early on, and behind the scenes, on policy issues can make markets and services work better, and reduce problems for consumers later on. Such work is often invisible to consumers and often does not flow from consumer complaints. However, not doing it can lead to the build up of problems for consumers, firms, regulators and governments later on which then need to be put right at greater cost. While the same can be said for consumer advocacy outside the regulated industries, the challenges, skills and disciplines required in these markets are particularly closely related and provide a great opportunity to achieve coherent consumer advocacy within a single and efficient body.

In that context we particularly welcome the Government's endorsement of a Regulated Industries Unit (see attached paper produced by Consumer Focus – <http://bit.ly/pvShaR>) to ensure the effective representation of consumer interests in regulated markets. David Gray's recent review of water regulation suggests there is merit in the concept of an RIU, representing consumers in regulated utilities (<http://bit.ly/oua6XX>). The Scottish Government has shown it recognises the benefits for consumers of cross-sectoral consumer advocacy and has transferred the consumer advocacy functions of Waterwatch Scotland to Consumer Focus.

Such a Unit must have the statutory powers, status, skills and culture necessary to engage with regulators, regulated firms and Government on complex and sensitive issues such as cost burdens across sectors from major market transformation programmes and infrastructure investment. It must also have proper governance and accountability, as it will be discharging public functions and spending regulated industry levies. There are a range of options for how this could be delivered in the public or charitable sector although, as the consultation document recognises, the use of the legal powers currently possessed by Consumer Focus poses particular challenges in the charitable sector.

The best synergies and efficiencies would be achieved by bringing consumer advocacy in regulated industries together into a single Unit. The Unit would focus largely on structural, behind the scenes issues, inputting to regulatory decisions that impact consumers and contributing to relevant public policy developments at UK and EU levels.

It will be important to ensure there will be flexibility and commitment to work in partnership with relevant consumer bodies in Northern Ireland, Scotland and Wales in order to develop a co-ordinated UK wide view where appropriate and to reflect particular needs and conditions in the nations.

The Unit would work closely with other consumer bodies on consumer empowerment and engagement. It would be funded entirely by industry levies and make no calls on the public purse. Many issues are common across regulated sectors. These include:

- billing and charging structures
- inappropriate marketing and poor selling practices
- product complexity
- problems with switching
- support for disadvantaged consumers
- effective complaint and redress systems
- balancing the needs of current and future consumers
- addressing the market power of incumbent companies
- the need for structural remedies to promote more effective competition
- the form and price of access to an incumbent's network by competitors
- price regulation, especially price cap controls
- the definition and funding of universal service

The current agenda for regulated markets is very substantial. An RIU would need to engage on a large number of policy issues over the next few years including:

- Price reviews across a number of sectors
- Electricity Market Reform, to decarbonise electricity generation and provide security of supply generation
- Roll out of smarter metering in every home
- Implementation of measures following the Ofgem Retail Market Review and the third energy package
- Development of European Energy Regulators Group (CEER) and Agency (ACER) guidance documents
- Review of fuel poverty and the implementation of fuel poverty strategies
- Implementation of the Green Deal, development of European Energy Efficiency legislation, and Scotland's renewable energy target
- Roll out of compulsory water metering programmes
- Introduction of social tariffs in water
- Modernisation and privatisation of the Royal Mail
- Review of the European Postal Services Directive and the universal service obligation for post
- A Communications Bill to modernise regulatory priorities for electronic communications
- Release of spectrum for 4G mobile services and service roll-out across the UK
- Implementation of plans to increase availability of current- and next-generation broadband
- Performance of rail operating companies and review of rail franchise policy

Public services

The White Paper on Open Public Services in England, published in July 2011, contains many positive steps from a consumer perspective. We have long argued for a greater focus on responding to consumers' needs in public services provision, drawing on our research into consumers' experiences of how well the different sectors deliver public services. We therefore welcome the emphasis on putting powers in the hands of consumers and making services accountable to communities, and to recognising that the '*scars of disadvantage*' require extra efforts so that everyone has fairer chances. In Scotland, the report of the Commission on the Future Delivery of Public Services (the 'Christie Commission'), recognises the need to empower individuals and communities by involving them in service design and delivery.

The White Paper essentially recognises four roles:

- Individual consumers able to make choices for themselves
- Communities able to run services
- Elected authorities able to control services
- Regulators to ensure quality and provide redress

Only the first of these engages with the particular consumer interests in public services. This is different from other areas of the economy, such as regulated industries, where the consumer voice is separate from the provider or regulator.

To make the Government's ambitions on public services a reality, there needs to be the capability to represent the collective consumer interest. We recognise that the Department for Business Innovation and Skills (BIS) consultation document was published before the government White Paper on public service reform. However, we now see an opportunity to join up consumer advocacy thinking across government. We note that the Government is factoring consumer representation into English health service reform by establishing Healthwatch England and local Healthwatch. In Scotland and Wales, national governments see consumer advocacy in public services as a priority.

Empowerment

As consumers become better connected through social networks, they grow more powerful and behaviours change – changing the dynamics of markets and the economy in the process. Networks facilitate sharing and mutual support in ways that can drive empowerment. Consumers share information within and across networks about the products they are buying and about the companies behind those products and services. Beyond reviews and recommendations, consumers are supporting each other with advice on using products and pursuing complaints. They are working with companies to co-produce the products they want, and creating influential communities of interest around particular products and services. The barriers to consumers participating in networks that pursue a collective course of action when a product or service has caused them detriment have also collapsed, making it much easier for consumers to express their combined poor experience in ways that cannot be ignored by the provider or producer in question; and to leverage their buying power to achieve common aims much more easily.

One result of this interplay of forces is radical transparency. If a product or service is underperforming, unethical, unsustainable or unhealthy, then dissatisfied and/or concerned consumers and campaigning organisations now have the tools to generate and distribute content in new ways. These ensure the product or service's actual and potential customers are aware of those shortcomings faster than the producer or provider's public relations department can hit overdrive.

In a world where consumers are connected and vocal, a customer backlash can imperil a carefully constructed reputation overnight. If the freeing of regulatory data on performance metrics is properly realised, this will drive transparency and accountability in a number of sectors even further.

We are also seeing the development of intermediary tools that have the potential to give consumers greater control over their data and put it to work in their interest and on their terms. There are also ‘apps’ that can bring greater convenience to the customer experience by cutting through the confusion of choice and simplifying pathways to redress, for example.

Taken together, this all points to innovative approaches to consumer empowerment; and even to changes in the way we consume certain products and services.

There will of course be new detriment in this new world, including problems with a shape we cannot yet be sure of. In addition, we need to remain alive to the facts that not everyone will benefit immediately or directly; and that these new developments by no means hold the solutions to every consumer problem. It is clear though that they do provide exciting opportunities to strengthen the consumer interest and rebalance where power lies between providers and consumers. Similarly, they will also change and challenge the role of consumer bodies. If consumers now have the means to speak out in powerful ways, then what is the role of an ‘institutional voice’ that speaks on their behalf?

Consumer Focus has identified three inter-linking levels of empowerment in the emerging landscape:

- **Individual:** where new, consumer oriented tools make it much more straightforward for consumers to act in their own interests, sometimes doing so through services where – once a critical mass is reached – a collective benefit is secured (Streetcar, for example)
- **Collective and collaborative:** where new platforms could enable powerful expressions of aggregated demand; and through tools and services where consumers can share experiences, advice and support with one another
- **Strategic:** where regulators and consumer bodies address barriers that stand in the way of individual and collective empowerment and, wherever appropriate, create the conditions for this to thrive. And where regulators, consumer bodies and producers and service providers are able to collaborate with consumers and their networks in mutually beneficial ways

As its strategy on consumer empowerment (*Better Choices, Better Deals*) demonstrated, the Government is already attuned to much of this. The aspirations in this paper need to be crystallised and embedded in the regulatory and consumer landscape. We are concerned that aspects of the current proposals might quickly become outdated. Advice will remain critically important, especially for vulnerable consumers, but we would urge much greater consideration of the place for the kind of empowerment approaches discussed here, at all three levels. A modern, forward-looking strategy for the consumer landscape should have such issues at its heart.

Advocacy in Scotland and Wales

The consultation document states that, in respect of Scotland and Wales, Government wishes to create a structure which recognises national differences and ‘even where policy issue are reserved, the Government recognises and respects the need for a distinctive consumer voice from the devolved nations’. Identifying the appropriate consumer advocacy arrangements for consumers in Scotland, Wales and Northern Ireland will need the active agreement and support of devolved Governments, if those arrangements are to represent the interests of consumers effectively.

Consumer advocacy arrangements in the nations will need to ensure that:

- the consumer voice is heard in relation to consumer issues that are within the competence of the devolved Governments
- issues arising for consumers in the devolved nations are adequately heard and reflected in the development of UK-wide policy

In any future arrangements it will be equally important to ensure the continued representation of all UK consumers in markets that are UK-wide and to represent UK-wide consumer interests in Europe to ensure appropriate EU legislation. It will also be essential to ensure there will be flexibility and commitment of publicly funded consumer bodies across the UK to work in partnership to develop a co-ordinated UK-wide view.

Consumer policy is not devolved to Scotland, or Wales and we note the Government's aim to ensure consistency and effectiveness of consumer and national enforcement services across the UK, while recognising the local differences which may exist and respecting devolution settlements.

It would be beneficial for consumers in Scotland and Wales if the primary responsibility for the delivery of consumer advocacy in those nations were to lie with the Scottish and Welsh Governments, supported by an appropriate share of available funds. While consumer protection, consumer law and competition law remain a reserved matter, many of the issues affecting Scottish and Welsh consumers are affected by the different economic, geographic and demographic makeup of these nations. Scotland and Wales also have their own distinct institutional and political landscapes. Scotland has its own legal system, while in Wales the changing devolution settlement means that policy and legislation will continue to become increasingly distinct. These differences require local understanding and expertise to advocate most effectively for consumers. Publicly funded consumer advocacy in Wales and Scotland on behalf of Welsh and Scottish consumers should be able to have a proportionate voice in UK policy matters as well as within the Scottish and Welsh context. It should be accountable to the Scottish Parliament and the National Assembly for Wales for its performance.

Consumer education and advice are viewed as reserved matters, while some aspects of financial inclusion and ensuring financial capability are seen to be devolved in both nations (even though financial services are also a reserved matter). In Wales, for example, the Welsh Government has its own financial inclusion strategy and associated programme. In addition in Scotland, advice and education on legal matters are within the competence of the Scottish Parliament. In Wales and Scotland advice and education on housing is within the competence of the respective governments. Yet in individuals' lives these matters are closely intertwined, as well as in administrative and policy terms. It would therefore be in the interests of consumers in Scotland and Wales if responsibility and funding for delivery of consumer education and advice were to lie with the Scottish and Welsh Governments respectively, allowing greater co-ordination and integration of the delivery of education, information and advice.

The arrangement for a new consumer landscape in Scotland should reflect recent developments there, and the opportunity that now exists for creating a strong, truly cross-sectoral consumer voice that will advocate for the collective consumer interest across all markets.

The transfer of the functions of Waterwatch Scotland to Consumer Focus means that from August this year, the consumer voice in the regulated utility markets of water, energy and post in Scotland is already brought together in one body.

In addition, we believe there is an opportunity now for the UK and Scottish Governments to ensure for the first time that advocacy for public transport users in Scotland is joined up and powerful. Reducing the current plethora of bodies and committees that have a role in public transport advocacy on behalf of Scottish consumers would also make it easier for consumers to understand who advocates on their behalf in areas that encompasses both reserved and devolved issues. Public transport should be added to the cross-sectoral remit of a consumer advocacy body in Scotland.

Similarly there is an opportunity now in Wales for the Welsh and UK Governments to brigade advocacy bodies together for the benefit of consumers and to develop collaborative and national service delivery.

Any publicly-funded consumer advocacy body acting in the collective consumer interest should be publicly accountable. In the Scottish and Welsh context, that means accountability to the Scottish Parliament and the National Assembly for Wales, respectively, in particular when its activities impinge on the social or environmental wellbeing of consumers in Scotland and Wales.



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