



**Consumer  
Focus**  
Campaigning for a fair deal

# **Consumer Focus response to DCLG's consultation on the 'community right to buy'**

**May 2011**

# About Consumer Focus

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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. Contents

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# DCLG consultation on the 'community right to buy'

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## Overview

Consumer Focus welcomes this consultation on the Government's proposals to introduce a 'community right to buy' in England. We strongly support the Government's commitment to ensuring that community organisations have a fair chance to bid to take over assets and facilities that are important to them.

However, as the statutory watchdog for post office services, we have specific concerns that the measures may have unintended consequences. There is a risk that communities could confuse the post office service with the physical location from which that service is provided. Our experience suggests that communities may not opt to recognise, or act in such a way that recognises, the discrete difference between the physical location of a service and the service itself.

Consumer Focus is keen to ensure the 'community right to buy' measures deliver necessary and consistent support for community groups who wish to protect and take over the running of assets that are important to them. However, in doing so, the proposals must balance providing appropriate additional support for communities, alongside the wider impacts on the viability of post offices and other essential services which rely on third party operators to host and run them.

It is unclear whether, in many instances, the 'community right to buy' proposals will apply to post office services, and if they do, what protection this will meaningfully provide to communities who wish to nominate, as an asset of community value, the building from which these services are offered.

It may be appropriate to explore whether conjoined steps should be taken to empower and better equip communities who wish to safeguard post office provision: for example, the introduction of additional support and guidance for community-led post offices, in conjunction with the commencement of the 'right to buy' measures.

Such measures should be sensitive to the wider range of factors which can frustrate or impede communities who wish to protect and take over the running of local community assets. These should be geared towards communities being able to maximise the proposed interim and full windows of opportunity. In respect of post office provision, Consumer Focus would be pleased to discuss with CLG how we can assist in the implementation and consumer education associated with usage of these measures.

## The importance of essential community services, and measures to protect them

Consumer Focus welcomes the Government's agenda to empower communities to take over assets and facilities that are important to them. The loss of essential community facilities, such as pubs, post offices and community centres can have a debilitating effect on communities, particularly in rural areas<sup>1</sup>.

Over recent years, communities have seen the systematic withdrawal of a range of basic services, including but not limited to the closure of the last critical retail premises, post offices, libraries and pubs. For example, the number of public libraries has fallen significantly, from 3,066 in 1998 to 2,820<sup>2</sup>. The post office network has been subject to widespread closures, with the branch network across the UK having fallen from 17,846 in 2000 to 11,847 in spring 2011<sup>3</sup>.

With spending cuts starting to take effect, it is likely that further community services will be threatened in the next few years. Consumers typically react strongly to the loss or potential loss of local services: for example, according to recent Consumer Focus research, 3.5 million people signed petitions to protest against the closure of their local post office during the last managed closure programme<sup>4</sup>.

Our research also shows that the potential or actualised risk to local services is frequently a primary catalyst for communities to become actively involved in, or take over the running of, services in their area<sup>5</sup>. This has particularly been the case in respect of post offices and community shops: our research reveals that, following the last post office closure programme, there was a spike in community-operated or hosted post offices, with over 140 examples already in operation<sup>6</sup>.

As the statutory body representing post office consumers, we have specific concerns in respect of how the proposals will affect consumers who seek to maintain or take over post office services in their area. Consumer Focus also has concerns that the proposals may result in unintended negative impacts for the viability and sustainability of the wider post office network.

In preparing this response, Consumer Focus hosted a roundtable of operators of community-run or hosted post offices, which typically operate out of a community shop and are run either a social enterprise or charitable basis. Our response is informed by the views expressed during this workshop, and more broadly, by Consumer Focus's work and experience.

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<sup>1</sup> See for example, Consumer Focus Wales (2010) *Post Office Closures: The Impact of the Network Change Programme*; Consumer Focus (2010) *Sink or swim: PO Outreach services in the long-term*

<sup>2</sup> Valuation Office Agency rating data

<sup>3</sup> Data from Postcomm and Post Office Ltd

<sup>4</sup> Consumer Focus (2010) *How was it for you? Consumer experiences of the PO closure programme*

<sup>5</sup> Deliberative research undertaken by Optimisa (March 2010) for Consumer Focus

<sup>6</sup> Consumer Focus (2010) *Taking charge: a report on the directory of public post offices operated or hosted by communities*

## Will 'right to buy' benefit consumers of post office services?

Consumer Focus is concerned that, as the proposals stand, it is unclear whether and in which circumstances community groups may be able to successfully nominate, as an asset of community value, a building offering post office services. Even if the community group is able to list the asset successfully, it remains unclear what the practical benefit of proceeding with such a listing will actually be.

The proposals suggest that the 'community right to buy' will apply to assets (that is, land and buildings), not the services that are offered from them. In effect, this means that there are a number of instances, including post offices and libraries, where safeguarding and buying the asset will not necessarily secure the actual service that operates from that location.

As a result, the proposals as drafted could lead to instances where communities are empowered to and able to purchase the assets from which a service is offered, but are unable to restore the service that the asset is associated with. This is because any service provider, in this case Post Office Ltd (POL), is not bound to maintain the service from a given premises.

In deciding whether to maintain a post office, or to move it to a different location, POL is obliged to consider a range of factors, including the costs of providing that service; the contractual relationship and suitability of the prospective new operator; and whether a relocation of the post office could better meet the needs of users than if the branch were to remain in situ. The proposals as they stand will not necessarily impact upon POL's assessment in any way, and it is therefore difficult to assess what if any protection the 'community right to buy' measures will provide, unless further supplementary guidance or support is developed.

In our experience, communities may not opt or act in such a way that recognises the discrete difference between the physical location of a service and the service itself. Communities may therefore seek to secure the listing of an asset offering post office services, but in the event that the premises is put up for sale, could be left uncertain whether an attempt to take over the running of the asset will secure its long-term future as a post office branch.

This risk is likely to be exacerbated if the application and criteria for listing an asset is left to individual local authorities, and may therefore vary from one local authority to the next. This will make it far more difficult for community groups to seek guidance from POL, or expert organisations such as Consumer Focus, on how to proceed with the wider challenges associated with setting up a community-owned branch. Such challenges are not limited to the purchasing of an asset, but also include issues associated with engaging and communicating with POL; securing access to necessary expertise on best practice, HR, legal and procurement matters; and understanding how a model for post office provision that most effectively meets their needs can be developed.

In support of the rollout of the 'right to buy' scheme, Consumer Focus would be pleased to work with CLG, BIS and other stakeholders to develop best practice guidelines, designed to allow communities to better understand how the 'right to buy' proposals sit alongside the wider arsenal of measures and support routes available to them.

We would be pleased to discuss with CLG how best such guidance could be presented to consumers who may be considering looking to nominate an asset with a view to securing post office services that operate from it.

Consumer Focus already provides practical support to communities in a number of ways, for example through direct representation, advice and support; and recently through the introduction of online materials designed to assist community post offices already in operation, or to inform communities who may be looking to establish such a model.

Our experience suggests that a detailed understanding of how communities mobilise and react to the potential for PO closures will be crucial to ensuring the successful execution of the 'right to buy' scheme. The experience of recent closure programmes, coupled with ongoing examples of communities who seek to respond to threats to the provision of post office and other service types, suggest that the 'right to buy' proposals will need to be developed with a rigorous and nuanced understanding of consumer behaviour.

## **Impact of 'right to buy' on changes to the PO network**

We have extensive experience as the statutory watchdog for post office consumers, and had specific consumer scrutiny functions in our predecessor organisation Postwatch. We consider it is highly likely that in a significant number of cases consumers will seek to nominate post offices for listing, on the grounds such a move will delay or frustrate proposals to close, change or relocate post office services.

While in some cases, this may be driven by a genuine interest for the community to seek to take over the running of the post office service, it seems likely that many consumers will opt to nominate their local branch in order to 'future proof' against any planned or potential changes – the logic being that this will leave communities better placed to respond to, and likely frustrate, a range of circumstances that may lead to the closure or relocation of the branch in future.

In the event such changes are proposed, Consumer Focus strongly supports steps to empower communities that are considering taking over the ownership and running of their local post office. However, Consumer Focus is also conscious that the introduction of the 'right to buy', unless it is implemented in a strategic and sensitive form, could seriously restrict POL's ability to quickly relocate services where this is necessary to ensure post office services are maintained in a given community.

For example, there is a clear tension between the period a retailer operating PO services is obliged to serve notice, and the likely timescales associated with the interim or full windows of opportunity proposed in the consultation. There is a consequential risk that, without appropriate support and guidance being made available to community groups, their efforts to purchase assets and take over the running of the local PO, drawing on the 'right to buy' measures, could result in extended breaks in service provision and the 'temporary closure' of a local branch. This could lead to localised detriment for vulnerable consumers, for example elderly customers and those without access to public transport who may find it difficult to access alternative branches.

In these circumstances, POL would need to assess whether it was in the wider interest of service users to allow the community group sufficient time to develop its proposal, or whether it was necessary to proceed with an alternative proposal in order to seek to avoid or minimise the service interruption.

## Impact on a sustainable network

The 'right to buy' proposals are likely to be implemented at the start of another significant PO restructure programme; 2,000 subpostoffices are set to be converted into 'Post Office Locals'. Recent research for Consumer Focus<sup>7</sup> suggests that, in many areas, the proposed conversion may be negatively received by consumers, with the opening of the PO Local meaning that the existing subpostoffices that consumers know and trust will close.

In this context, it is highly likely that communities may seek to register their local post office, as an asset of community value, in order to frustrate the proposed conversion exercise. In a significant number of locations, this could make it more difficult for POL to implement these changes, which in turn may increase the timescales and costs associated with the restructure programme.

The introduction of PO Locals is in part an attempt to maintain the viability of the PO network, at its current size, by reducing POL's operating costs. It is possible delays associated with these changes could extend the overall costs and timings for the delivery of the programme. In that situation, both POL and Government could be required to revisit the size and scope of the restructure exercise, to ensure that POL is able to secure the necessary cost savings required.

The consultation does not set out the range of PO premises which will be covered by the proposals. However Consumer Focus encourages the implementation of a consistent set of requirements, in order to provide certainty to PO operators. It should be no more or less burdensome to operate PO services, hosted within and as part a wider retail offer, in any single part of the country.

Particular consideration is required as to whether a community group will be able to nominate, as an asset of community value, a building offering post office services where this is not the primary building use. For example, it is unclear whether a community could seek to nominate a multiple convenience store, such as a Co-op, because post office services were offered from the premises; and if such an application could be made, whether this would apply to all or only the relevant part of the building from which PO services are provided.

The majority of post office branches are operated by third party providers, and in many instances, operate on a secondary basis to the wider retail offer. In implementing the 'right to buy' measures, we therefore caution CLG to be highly mindful of the active disincentives that could apply in respect of large, multiple convenience stores, who may be covered by this scheme, and who as a result could be less minded to operate PO services in certain locations or indeed at all.

Before determining which circumstances and branch types should be included as part of the 'right to buy' measures, we strongly encourage CLG to engage with BIS, POL and relevant consumer and operator interests. Proposals should provide the intended consumer empowerment benefits, but must not unnecessarily constrain POL and Government attempts to secure a more viable network.

Securing this balance is of particular importance when the network faces unprecedented challenges in the next few years. These challenges include: the restructure exercise associated with PO Locals; risks to critical revenue streams, such as the contract with Royal Mail that ensures access to its letter and parcel services through post offices; wider changes in consumer behaviour, which will make it challenging for POL to return to profitability; and the uncertainty associated with the separation of POL and Royal Mail.

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<sup>7</sup> Consumer Focus (2011) *Local but Limited? Will PO Locals meet consumers' needs?*

In some instances, these circumstances may combine to lead some operators to consider whether it is in their wider commercial interest to consider operating post office services in certain locations. The introduction of the 'right to buy' measures, and the potential impacts that the measures could have, will therefore need to be carefully considered and assessed.

## Timings

Consumer Focus supports the suggested six-week and six month timings for the interim and extended windows of opportunity. In doing so, we are mindful of the actual timescales associated with the development of community-led bids, and the need to balance these timings with proportionate respect for the owner's property rights and wider financial imperatives.

However, in order to achieve this, the 'right to buy' measures will need to be accompanied with additional measures, such as additional investment in training, guidance and support for community groups, all of which will be necessary to ensure community groups can maximise the six month 'full' window when it opens.

Of the community post office operators who attended our roundtable, only a small number had successfully completed the purchase of their premises within the initial six month period. Attendees felt strongly that if a maximum six month window was to be applied, considerable signposting to relevant expert bodies and support agencies that could assist in them the development of their bid would be required.

It is surprising that the provisions do not allow for measures that would enable a community to nominate, on an emergency basis, a premises or land which may otherwise be withdrawn from its existing primary use. The proposals should therefore strike a better balance between the proactive and reactive nomination of assets. Otherwise it is entirely conceivable that many communities may seek to nominate the widest possible range of assets, in order to secure for themselves maximum flexibility in response to future potential threats to provision, or other changes in the ownership of local assets.

## Who can trigger the full 'window of opportunity'?

We agree with the proposal that, as the request to be treated as a potential bidder triggers the full window of opportunity, it is reasonable that either a parish council – representing the plurality of interests in a given community – or a specified community interest group should be the primary bodies who can exercise this option.

This proposal represents an effective balance between the needs and rights of community bodies and land or asset owners. Community bodies – who are likely in terms of budget and means to be well-placed to bid – benefit from the time and space to develop their application, while the legitimate interests of owners who wish to dispose of their asset promptly are taken into account.

We note that Human Rights considerations suggest that providing a window of opportunity period which is long enough to support the aims of the policy is important if the interference in private property rights is to be justified. It is the view of Consumer Focus that this interpretation is also important in framing which bodies should be able to trigger the extended window of opportunity period: in the interests of securing a viable network, operators should benefit from the confidence that the full window can only be triggered through by community groups that have a reasonable interest in developing a bid, and with sufficient means and capacity to develop a suitably robust proposal.

## Wider operation of the scheme

We welcome the Government's intention that the proposals should drive behaviour change, so that owners of community assets – including public bodies – see selling or transferring that asset to a community group as a viable, positive option. However, it is unclear whether the proposals as they stand will deliver the behaviour change that Government seeks.

A number of attendees at our community-operated post office roundtable expressed concerns that, unless the proposals were rolled out in a sensitive fashion, the measures could frustrate rather than encourage the sale to community groups. For example, if the existing owner was frustrated by the imposition of what they saw as undue burdens on their right to sell, this could frustrate the chances of the community to successfully purchase the asset from them.

Likewise, some groups voiced doubts over whether they would seek to nominate some assets because of the risk of antagonising the current service provider. In other words, decisions on whether to seek to list assets – and to use the 'right to buy' measures vigorously – will be shaped and framed by the perceived fragility of existing services, and the relationship that community groups have with the owner of the existing assets.

It is unclear whether the desired behaviour change can be achieved unless the measures are accompanied by a 'right of first refusal'. There is merit in considering whether, if the community group is able to meet the costs of purchasing the property, as established by an independent valuation, such a right of first refusal should apply. Consumer Focus would not seek the extension of this option beyond the 'full' window of opportunity period.

It is also unclear whether local authorities, but also private owners who justifiably should be able to secure the market value for their assets in the event of a sale, will be willing to sell to community groups who may be able to meet the independent valuation, but may be outbid by other prospective purchases if a 'right of first refusal' did not apply.

Consumer Focus considers that any binding independent valuation should apply on the basis of the existing building use, and not in respect of the commercial return that could be generated by seeking to change the right-of-use.

We are aware of a growing number of examples where subpostmasters have sought to convert their property, enabling this to be used for residential as opposed to commercial purposes. Such a change of use can significantly increase the valuation of these assets, often putting these out of the range of community enterprises who may otherwise wish to purchase it. This measure would be consistent with the Government's outline suggestion that communities could only seek to nominate an asset as performing an existing, as opposed to potential, community value.



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