



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to the BIS consultation: Empowering and Protecting Consumers

October 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.

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Overview

Consumer Focus welcomes the Government's review of the institutional consumer landscape. We strongly support the over-arching objective of improving consumer outcomes through better functioning markets operating within a clear and appropriate framework of regulation, information, protection and advice. The consultation is important not only to the welfare of individual consumers but to the ability of consumers to make an effective contribution to the Government's agenda for growth, as part of an empowered and effective 'demand side'.

We welcome the Government's commitment to avoid any diminution of consumer representation. We hope our response will help policy makers identify how changes can avoid such diminution and improve the current system within the resources available. Any new arrangements should preserve the independence of consumer bodies from Government, regulators and industry and maintain the powers and functions that Parliament gave Consumer Focus within the new system. The capacity to identify and address 'upstream' consumer problems is a key element of the current framework and helps prevent more expensive downstream problems; it should not be lost.

Private markets and public services are undergoing significant change. The Department for Business, Innovation and Skills (BIS) review provides the opportunity to design a system fit to meet the challenges of the 21st century. Much can be done to improve the coherence and effectiveness of the current system – by rationalising and streamlining publicly funded provision, by strengthening consumer representation, particularly in complex regulated markets, by improving the effectiveness of consumer enforcement and by delivering more cost-effective advice closer to the consumer.

Given the scale of change in markets subject to economic regulation, and their importance to the lives of all consumers, particular priority should be given to achieving synergy in consumer representation in these areas by creating a Regulated Industries Unit (RIU). We welcome this proposal in the consultation document. We recognise that it may take time to build an RIU covering all regulated sectors, but there should be a clear glide path to such a Unit in the medium term. The current policy advocacy work carried out by Consumer Focus in gas, electricity and postal markets could form the kernel of such a Unit. Much of this work is invisible to those not involved with regulatory issues, dealing as it does with complex technical and economic analysis and working closely with regulators, senior government officials and regulated firms. The powers, skills and expertise we currently enjoy must, in our view, be sustained in the new system in a coherent and fully accountable way. We will shortly publish a further paper on consumer representation in regulated industries to add to the debate.

Since Government announced its intentions last October we have not argued for the interests of Consumer Focus as an organisation, but instead sought to put the interests of consumers first. However, we would regret any decision to abolish Consumer Focus if it was not part of a set of changes which can lead to better empowerment of consumers and protection of their interests. The opportunity costs of getting the new arrangements wrong are considerable. They will not be measured solely in terms of how well new institutional arrangements perform, but on the impact on the welfare of millions of households across the UK and on the drivers for an efficient, innovative and growing economy.

We have identified a set of 10 ‘tests’ which we believe need to be met if consumers are to benefit from the consumer landscape reforms. These are listed below, followed by an analysis of the proposals in the consultation document against these tests. Finally, this document contains Consumer Focus’s response to relevant questions in the consultation document.

Consumer Focus’s 10 tests:

1. Will the new arrangements deliver a system which is stronger and more effective than that which exists now in terms of protecting consumers and promoting their interests across the economy?
2. Will there be sufficient powers, resources, capacity and intellectual capability in the new system to enable this to be done?
3. Will the form of the new system allow for proper accountability to funders, both taxpayers and industry, and to Parliament and the public for the use of money and the discharge of statutory powers?
4. Will the new system be sufficiently durable and flexible to address new issues and concerns as markets develop in unknown and novel ways in future?
5. Will the interests of consumers (including small business users) on complex ‘upstream’ policy issues in regulated industries be properly represented?
6. Will the new system enable sector specific consumer bodies to be brought together in an orderly way to maximise effectiveness, impact and value for money?
7. Will the new system be capable of ranging across the economy in a risk based way, with ability to read across from one sector to another, and with the independent statutory powers to protect consumers which Parliament has given to Consumer Focus?
8. Will the public money available for consumer functions be effectively spent, having regard to the value of prevention rather than cure?
9. Will the central capability to analyse markets that aren’t working for consumers and advocate on behalf of all consumers where markets are UK wide, be retained or will we end up with a more fragmented and less effective system?
10. Will the new arrangements ensure a relevant consumer voice on issues that are within the competence of the devolved Governments, and will issues arising for consumers in the devolved nations be able to be heard and reflected adequately in the development of UK wide policy?

Our 10 tests

1 Will the new arrangements deliver a system which is stronger and more effective than that which exists now in terms of protecting consumers and promoting their interests across the economy?

In our view, the discussion to date has been unduly focused on institutional change rather than on the primary analysis of what needs to be done to empower and protect consumers, now and in the future. The decision on which organisation is best placed to deliver a particular function should be taken after Government has identified what needs to be done, not before. The choice of form should follow the function required, or there is a danger that function will follow the form. We are not clear how the analysis of policy options has been entirely driven by the stated policy objectives of streamlining the consumer landscape and maximising value for money for taxpayers while ensuring there is no reduction in consumer protection.

We can see strong logic in moving publicly funded consumer information and advice services to the Citizens Advice service, which has a highly trusted and recognised brand and local presence. We support the move of the Consumer Direct and consumer education functions from the Office of Fair Trading (OFT), and the Extra Help Unit (EHU) from Consumer Focus, to Citizens Advice. (*Further comments are at Annex 1.*)

Consumer Focus currently has important statutory powers to investigate matters where it believes there could be material consumer detriment; call for information and evidence; undertake research; publish reports; and make representations to policy makers, regulators and others. Over the past year alone this has included advocacy on public services, insurance markets, digital communications, financial services, post offices, private rented accommodation and, legal services. Our work is driven by this remit set by Parliament, to whom we are accountable. In addition to being able to range across the entire economy, and draw lessons from one sector to another, we have specific statutory duties to represent the consumer interest in complex energy, post and post office sectors. It is not clear to us that a third sector body with a primary mission of providing individual citizens with advice and information represents the best fit for the 'upstream' advocacy and representational work that Consumer Focus carries out.

In particular, we are of the firm view that complex advocacy work in regulated industries, funded by industry levies rather than taxpayer funds, must be carried out in an autonomous and independent ring fenced unit with the full suite of statutory powers that Consumer Focus has been granted, and with a strong and appropriate governance and accountability framework. The proposals so far have not convinced us that the proposed new arrangements will be effective.

While we support the principle of the proposed merger of the OFT and the Competition Commission into a single Competition and Markets Authority, we have significant concerns about the loss of central capacity and capability in the new system in terms of consumer market analysis and action by a strong, statutory, pan-economy body. We urge Government to ensure that the new CMA has the same capability as the OFT currently does to undertake the full range of market studies and investigate super-complaints. It is not possible to neatly segregate 'consumer' market studies because consumers are active parts of markets and specialist (and expensive) market analysis skills are required to undertake such studies. An ineffective demand side is often the primary reason why 'competitive' markets do not work well in the interests of consumers.

The OFT currently brings together both competition and consumer analysis to publish authoritative reports balancing the market and consumer perspectives. It is often extremely difficult to know at the outset of a market study whether a given issue is a consumer, a competition, or a 'mixed' problem.

We have high regard for the advocacy work done by the Citizens Advice service which is driven by its charitable objectives and by the evidence of millions of clients who present themselves to the bureaux. However we do not believe the skills, culture and expertise of the Citizens Advice service are sufficiently close to the forensic skill set needed to undertake the sort of market studies described above, which should rather be a function of the new CMA.

While we support any measures that would improve the co-ordination and effectiveness of the trading standards service, we believe the loss of a strong statutory capability at the centre of the new system to enforce consumer law could lead to a real loss of protection for UK consumers. Many markets are complex and providers of goods and services may be powerful global brands. UK consumers need a strong and fearless enforcement agent capable of acting on their behalf in such cases. (*Further comments are at Annex 2.*)

We can see potential benefits and synergies from strategic partnership arrangements between existing consumer bodies and would like to work with Government to explore these opportunities further.

2 Will there be sufficient powers, resources, capacity and intellectual capability in the new system to enable this to be done?

The UK has an internationally admired reputation for strong consumer representation. This is in no small part driven by the work that different consumer bodies have undertaken. Their functions are diverse, ranging from providing consumers with information to influencing major transformations of markets. The activities of existing consumer bodies (Consumer Focus, including Consumer Focus Wales, Consumer Focus Scotland; Which?; Citizens Advice and Citizens Advice Scotland; and sector specific consumer bodies) include:

- Influencing early stage public policy design and thinking – generating creative new policy approaches
- Influencing green papers, white papers, primary and secondary legislation, EU policy proposals
- Inputting formally and informally to policy making by regulators, including making responses to technical consultations, membership of industry working groups, direct involvement in regulatory processes such as price reviews
- Assessing public or private sector pilot projects from a consumer perspective
- Comparing performance of firms across markets
- Encouraging higher standards in specific markets by sharing best practice
- Developing self-assessment frameworks and toolkits for regulators and others who need to promote consumer interests
- Harnessing consumer behaviour to improve performance
- Negotiating with individual companies to put things right
- Helping broker industry-wide solutions in regulated markets
- Stimulating regulatory intervention via super-complaints and other representations
- Representing consumers on decision-making bodies

- Promoting consumer awareness by providing useful consumer information
- Helping promote consumer confidence and choice by providing guidance and advice on switching, best buys, etc
- Providing individual advice and help to consumers, and advocate on their behalf where necessary
- Campaigning publically and privately for changes to market practices that cause consumer detriment
- Helping ensure that consumer complaints and other problems are properly dealt with

The above list demonstrates the diversity of work needed to ensure that consumers can be properly informed and engaged in today's markets and for their interests to be properly taken into account in policy making. The diverse activities needed are all necessary. They are complementary, and are not substitutable.

Providing advice and support to individuals who often have multiple and complex needs requires a particular culture, skill set, brand and geographic capacity. Running high impact campaigns in order to influence opinion and shift the focus of policy makers or private sector providers similarly requires a discrete skill set. Undertaking behind the scenes representational work on complex regulatory issues requires yet another set of skills and expertise. All these functions are important; but the expertise and culture or 'mind set' required to deliver them will be different.

Consumer Focus currently holds crucial statutory powers both across the economy and specifically in the energy, post and post office sectors. In our view it is essential that these powers are retained in the new landscape by bodies that are independent of government but properly accountable to Parliament for their use. We are unclear as to how such arrangements would work if those bodies had charitable status.

Consumer Focus is the statutory consumer advocate for energy and post, where it makes representations to sector regulators, regulated firms and government departments/the EU as necessary on highly complex issues affecting the structure of markets and the behaviour of market participants. The work is largely of a specialist nature and the decisions made in the next three to five years will be crucial to the interests of consumers, retail and small businesses for the next two decades. In non regulated sectors, eg the Post Office network, we will also see significant change. It will be essential to ensure that the critical mass of expertise on these issues built up in Consumer Focus is preserved and safeguarded during the transition to any new arrangements over the critical period ahead.

In addition, industry levy funds available for consumer advocacy work in regulated markets must be safeguarded and ring fenced in order to ensure they are properly used on the raft of upcoming regulatory and policy issues that will affect consumers and small business users in future. There will need to be proper public accountability for the use of these precious resources, which should largely be directed at upstream issues. Proper regard for consumer interests upstream will reduce the likelihood of consumer detriment down the track, and deliver the stable regulatory framework needed to encourage much needed infrastructure investment.

3 Will the form of the new system allow for proper accountability to funders, both taxpayers and industry, and to Parliament and the public for the use of money and the discharge of statutory powers?

As a Non Departmental Public Body, Consumer Focus is accountable to Parliament. Its Accounting Officer is personally accountable to Parliament for spending the funds provided to the organisation either from taxpayers or levies on industry. Parliament has also given Consumer Focus heavyweight powers to force companies, regulators and Government to disclose information and Consumer Focus is accountable to Parliament for the way it uses these powers. Consumer Focus is rightly required to publicly consult each year on its work programme, publish that plan following consultation, and lay its annual report and accounts before Parliament. We are also required to take account of the work of other public bodies and this has been important in avoiding duplication of work with other publicly funded bodies.

Current proposals would provide these funds to charities which, while they have their own accountabilities – principally to their Board – are not accountable to Parliament. We think the loss of accountability, particularly in regulated industries, would be highly regrettable. In our view our successors must be properly and publicly held accountable for the delivery of effective advocacy where they discharge statutory powers and spend taxpayer or levy funds. We do not believe that annual contractual arrangements between a third sector body and BIS would be sufficiently robust in this regard.

4 Will the new system be sufficiently durable and flexible to address new issues and concerns as markets develop in unknown and novel ways in future?

Private and public markets are changing and there is no guarantee that what has worked in the past will work in the future. Consumer Focus is currently looking at a number of developments which we think will be of growing importance. (See *annex 3*.) Nonetheless it is important to learn from what has and has not worked in the past. Consumer Focus will shortly publish a paper on consumer insights, which distils key learnings drawn from experience of consumer advocacy work over the last 36 years. The paper will identify the emerging themes and patterns of detriment which new consumer landscape arrangements will need to address.

We have found that strong, clearly focused consumer advocacy is needed if consumer interests are not to be neglected or considered as an afterthought. Such advocacy needs to highlight all aspects of consumer experience, based on the best available research and intelligence, and looking across sectors and departmental boundaries for best practices and lessons learned. It can vary in method from ‘think tank’ to ‘watchdog’ to ‘lobbying’ and can adopt range of styles according to need – from stern critic to critical friend.

This can involve getting the right legal and policy frameworks in place, influencing particular decisions, working to improve provider performance, taking direct action on specific instances of detriment, embedding the consumer interest in decision-making processes, and empowering consumers. The Government has rightly recognised that empowering people doesn’t happen on its own – more active intervention is often needed to get things moving.

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 how the reform of the institutional landscape can promote the kind of empowerment approaches that can help to condition and develop markets which are more responsive to consumer needs and aspiration.

A modern, forward-looking strategy for the consumer landscape should have such issues at its heart

The new landscape will need a body or bodies with the capacity, resources, powers and will to move nimbly and flexibly into new areas of emerging consumer detriment and address them. The capacity to do this must be protected both from day to day resource pressures derived from the need to deliver front line services, and from the temptation to prioritise work on the basis of short term campaign impact.

5 Will the interests of consumers (including small business users) on complex 'upstream' policy issues in regulated industries be properly represented?

We support the proposal to bring together sector regulators into a Regulated Industries Unit (RIU) which would address consumers' medium to long term interests in sectors subject to economic regulation. This would deliver more effective consumer representation in highly complex markets where it is necessary to engage closely with technical regulatory processes, and enable synergies to be exploited and learnings to be shared across sectors in the many areas where there are common policy challenges. It would also enable some financial savings to be made.

Consumer Focus has already published two papers on a RIU, and will publish a further RIU prospectus shortly.

Consumer Focus has increasingly focused on the needs of small businesses as well as retail consumers in regulated sectors. It is vital that their needs are taken into account in designing the new institutional landscape. A particular concern is for micro-businesses whose needs are often similar to those of individual consumers but who fall into a gap and are often not effectively represented in these complex markets.

Consumer Focus is also required by Parliament to have special regard to the needs of disadvantaged or vulnerable consumers. While all consumers can be vulnerable at some stage and in some markets we think it is important that future arrangements should protect the most disadvantaged consumers.

6 Will the new system enable sector specific consumer bodies to be brought together in an orderly way to maximise effectiveness, impact and value for money?

We fully support the Government's objective to streamline the consumer landscape. Consumer Focus was established in 2008 as the result of a previous review of the consumer landscape. This review looked across a wide range of sectors and types of activity, covering a range of Whitehall departments, but as the process developed the scope of the proposed changes was progressively reduced. The result was that it was just the advocacy bodies linked to BIS's predecessor department that were merged by the Consumers, Estate Agents and Redress Act 2007, although provisions were included to incorporate the Consumer Council for Water. The CEAR Act brought the National Consumer Council (including the Scottish and Welsh Consumer Councils), energywatch, and Postwatch together to form Consumer Focus.

The 2008 changes were an incomplete solution to the challenge of creating the strongest possible body representing all of consumers' interests across the economy. For this reason Consumer Focus has always been an advocate for further streamlining of the consumer landscape. The failure to include the wider group of publicly funded consumer bodies in 2008 was, we believe, a missed opportunity which we hope the current review will not repeat.

7 Will the new system be capable of ranging across the economy in a risk based way, with ability to read from one sector to another, and with the independent statutory powers to protect consumers which Parliament has given to Consumer Focus?

It is unclear to us whether Government intends for our economy-wide powers to continue to be located in an independent consumer body or bodies, as we believe they must, or whether consumer bodies will be required to request that others seek to gather the information for them. We fear that this latter course would fetter a consumer body's effectiveness, independence and impact.

We are concerned that the loss of the OFT's consumer functions, combined with the loss of Consumer Focus, will reduce flexibility and analytical capacity at the centre of the new system and make it less likely for non urgent, non high profile but important preventative work to be done. This is likely to make the new system less efficient and cost effective than the current one over time.

8 Will the public money available for consumer functions be effectively spent, having regard to the value of prevention rather than cure?

We are concerned about the implications for consumer representation of transferring our functions to bodies whose primary function is to provide advice and assistance to individuals. Consumer Focus's work is largely about prevention, and where it is about advice we support its transfer to the Citizens Advice Service. We seek to prevent problems occurring by working with industry, regulators and Government to ensure that policies and products are designed in a way that consumers get a fair deal, for example our work on smart meters which will be installed in every home in a few years. Very few people are reporting problems with smart meters today, but they will do so tomorrow if consumer interests are not built into policies being designed now. Our work on copyright has been highly influential and will hopefully lead to balance the needs of consumers and copyright owners and help drive economic growth in a dynamic and growing communications market. In terms of value for money, the greatest value is usually derived from preventing problems from happening in the first place ie through effective 'upstream' work, rather than through trying to sort them out after the event.

We are disappointed that more radical options have not been considered for reforming and streamlining consumer law enforcement, which currently accounts for the greatest share of public resources available for consumer protection and representation.

Consumer advocacy work on energy, post and other regulated industries is funded through levies on regulated private sector firms. It would, in our view, be a false economy to seek to reduce it. The arguments made for securing greater value from public funds therefore do not apply to regulated industry advocacy, where the key objective should be to ensure the work done is of sufficient quality and scope to be relevant and help ensure robust, fair and durable regulatory decision making.

9 Will the central capability to analyse markets that aren't working for consumers and advocate on behalf of all consumers where markets are UK wide, be retained or will we end up with a more fragmented and less effective system?

Consumer Focus's UK wide remit and pan-economy powers enable it to spot common issues, read across sectors, and apply learning from one part of the economy to another. Consumer Focus's constitutional arrangements allow a distinctive voice for Scottish and Welsh consumers to be heard by governments while at the same time ensuring effective co-ordination and articulation of a UK or GB wide voice in markets that do not stop at England's borders.

Consumer Focus, alongside Which?, also ensures that the views of UK consumers are heard in Brussels where many relevant policies are decided. BEUC – the European Consumers Organisation – says Consumer Focus has 'a very strong reputation with EU and international decision makers' and that we are 'key in providing expertise and advocating the consumer perspective on issues that constitute a high priority on the EU agenda'. It is essential that the UK consumers' voice in Brussels is not weakened or diluted.

Under the proposed arrangements, we are not convinced that effective consumer representation will necessarily continue in complex markets and services where issues are not complaints driven and where there is no industry funding. We believe this could result in gaps in the consumer protection system in future, and look forward to understanding more clearly how Government will mitigate this risk.

10 Will the new arrangements ensure a relevant consumer voice on issues that are within the competence of the devolved Governments, and will issues arising for consumers in the devolved nations be able to be heard and reflected adequately in the development of UK wide policy?

The Government has said that it is open to alternative proposals for consumer advocacy in Scotland and Wales, and we welcome this openness.

Consumer Focus operates in a devolved context in order to fully represent the interests and priorities of consumers in Scotland and Wales in decision making in both devolved and reserved matters. The 2007 CEAR Act requires Consumer Focus to establish national committees. Consumer Focus Scotland and Consumer Focus Wales exercise powers under the Act insofar as they are exercisable in Scotland and Wales. However, Consumer Focus Scotland and Consumer Focus Wales are not solely requirements of the 2007 Act. They reflect a background of more than 30 years of respected and powerful advocacy for consumers in Scotland and Wales, are an integral part of the policy environment in those nations and play an important role in the public life of the two nations.

It is our view that consumer advocacy arrangements in Scotland and Wales must have the active support of the devolved governments, that they should be able to advocate directly on devolved matters, including public services, and effectively represent the particular interests of consumers in relation to reserved issues, markets and services.

The Scottish Government proposes further devolution of the responsibility and powers for the delivery of consumer advocacy, education, information and advice, which will enable them to build a model of service delivery which is more likely to meet the needs of Scottish and UK consumers than, as happens now (and as would happen under the proposed arrangements), separate Scottish structures having to be supported at a UK level.

The Welsh Government suggests the UK government consider making provision which would permit the transfer of Consumer Focus Wales functions to the Welsh Ministers and allow Welsh Ministers in turn to transfer the functions on to an existing body in Wales or a new body created for the purpose of exercising those functions.

The institutional form consumer advocacy arrangements takes in the devolved contexts should provide a high and direct degree of accountability to consumers in Scotland and Wales for the actions that they take on their behalf. A number of principles are likely to underpin the success of consumer advocacy bodies in Scotland and Wales:

1. Governance – they should have distinct national governance arrangements, responsible for the identification of consumer priorities, work planning and resource allocation
2. Accountability – they should be publicly accountable for their work on behalf of consumers through the Scottish Parliament and the National Assembly for Wales
3. Functions – they should retain the statutory powers, representative, research and investigative functions that Consumer Focus Scotland and Consumer Focus Wales are currently able to deploy
4. Focus – they should work across the economy including on emerging issues and contribute fully to consumer policy development in a devolved, GB or UK context
5. Resources – they should have sustainable funding to allow them to represent the priorities of consumers in relation to devolved and reserved issues including, where appropriate, on issues which are the responsibility of a GB RIU funded through industry levies. They should have the capability to undertake forward looking research to provide a strong evidence base for advocacy

Consumer advocacy arrangements developed and established by the devolved Governments, as well as those proposed in the consultation document (Citizens Advice England and Wales, Citizens Advice Scotland, and the Consumer Council for Northern Ireland), could result in separate bodies and voices for different parts of the UK. It will be critical to ensure clarity on the demarcation of responsibility in relation to UK/GB wide issues, coupled with strong collaborative and co-ordinating mechanisms and sharing of intelligence, in order that the issues arising for consumers in different parts of the UK help shape the UK wide consumer voice. Memoranda of Understanding should facilitate such co-ordination and co-operation.

Conclusion

In summary, while we support the objectives of the review, we believe there are a number of risks to maintaining effective consumer protection and representation which could undermine the success of the reforms. These are:

- The proposals for regulated industries need to be strengthened to ensure that an effectively resourced and accountable RIU for energy and post is established in a form that could act as the kernel for further consolidation of sector specific advocacy in the medium term
- Precious expertise, on energy and post consumer advocacy in particular, must not be lost as we transition from the current to the new landscape
- The capacity to undertake upstream advocacy in other complex public and private markets needs to be retained in the system, recognising that detriment is frequently not driven by today's consumer queries and complaints, and that solutions in one market can have relevance to others
- Intellectual analytical capability and powers should be retained at the heart of the new system to ensure market studies and consumer enforcement can be done by a statutory body with teeth
- Levels of accountability to Parliament for taxpayer and levy funded consumer advocacy should not be weakened
- The ability for independent consumer bodies to force companies, regulators and Government to divulge information should not be weakened
- The protection of vulnerable consumers should be maintained

This review is an opportunity to build an advice, advocacy and enforcement system fit for the 21st Century. The aim must be both to protect and empower consumers and this in turn can drive economic growth and public services which are responsive to people's needs. We look forward to continuing to work with Government and others to develop these proposals.

Annex 1 – Advice

We agree with the proposal for consolidating publicly funded consumer advice into the Citizens Advice service. The Citizens Advice service provides a strong, flexible and trusted foundation on which to consolidate other advice provision and will help make Citizens Advice the ‘go to’ place for advice. The transfer of Consumer Direct, Consumer Focus’s EHU and the consumer education functions of the OFT has the potential to provide a simpler and more intuitive advice resource for consumers and for Welsh speakers to be able to access an equal service.

To be successful, Government will need to ensure that the Citizens Advice service has the resources and support necessary to make the transition work and then to deliver an expanded service. We are particularly concerned that support available to vulnerable energy and post consumers through the EHU and the dedicated capacity within Consumer Direct, is protected in the new arrangements. In addition, a consolidated database of consumer complaint and queries that should result from the transfer will achieve wider benefit to consumer welfare goals if specified consumer groups, regulators and others are given good access to this data and are able to interrogate disaggregated data. As the National Audit Office (NAO) has pointed out, ‘Consumer complaints and intelligence logs do not in isolation provide an assessment of the threat to consumers. Raw data needs to be analysed so that it can be turned into intelligence...’¹

There are many similarities in the needs of consumers across Great Britain in relation to most markets, including energy and post although there are also differences. Consumers’ experience of public services varies more widely. Issues such as access to support for remote communities are particular issues in Scotland and Wales, but they are not unique to these nations. However, as consumer advocacy arrangements in Scotland and Wales may be different to those in England, and as one of the objectives of the review is to maximise the synergy between advice and advocacy, it will be important to ensure that the availability of data on Scottish and Welsh consumer priorities is easily available to national advocacy bodies even if the advice and advocacy functions are not integrated into a single institution.

While consumer policy in general is a reserved issue, it makes sense to organise and co-ordinate the delivery of advice, support and aspects of advocacy as close to consumers as possible. Levels of appropriate funding are a matter for discussion between the relevant Governments.

¹ *Protecting consumers – the system for enforcing consumer law*, NAO, June 2011

Annex 2 – Enforcement

This consultation provides the opportunity to build a system of consumer law enforcement fit for the 21st Century. The publication of the BIS consultation coincided with the publication of a NAO report on consumer enforcement² which found that ‘the system for enforcing consumer law is not delivering value because the architecture to bring together what is a very fragmented delivery landscape is not functioning properly and the Department (BIS) has few levers to directly influence policy delivery’. Given the closeness of the publication dates it would be wrong to treat the proposals in the current consultation as a full response to the NAO report.

However, in our view the problems identified by the NAO require decisions which will achieve a greater degree of national co-ordination, if not control, of trading standards, a more rational system of allocating resources in proportion to detriment and stronger and more direct accountability to Parliament.

The proposals for either a Trading Standards Policy Board or a Joint Enforcement Board could both achieve improvements to the current system if properly established and resourced. However, the real benefit they should aim to achieve relates to solving national and regional problems and to providing a joined up consumer enforcement strategy from international, to national, through regional, to the local level. Of the two we favour the Joint Enforcement Board because it is a lower risk approach building on the existing strength of the OFT, which we hope will be preserved in the new Competition and Markets Authority, in collaboration with Trading Standards.

As is the case with the advocacy proposals, there is an immediate attraction of delivering enforcement action ‘closer to the consumer’. It is our view that the proposals tend to stretch the ability of local delivery to provide appropriate enforcement action on complex and national issues and the co-operation models are not a replacement for an effective national agency with the capacity to act. We believe that there are limits to the ability and capacity of local trading standards to deliver effective enforcement action in national and complex cases. As with the advocacy proposals this has nothing to do with the value and commitment of individuals or locally focused institutions, but has everything to do with the diversity of market failure, industry behaviour and the sorts of enforcement action that should follow.

We are concerned that the proposals may lead to the loss of central national capacity on consumer law enforcement. The OFT has over 70 expert professionals working on areas as diverse as international enforcement, unfair contract terms and internet crime. Under the current proposals these services would be provided by local authorities. While some local authorities could do excellent work in these areas, fragmenting the OFT’s assets risks a loss of central capacity and would be a less stable and sustainable regime over time.

We do not support the passing of responsibility for Market Studies to the Citizens Advice service. Separating demand side and supply side perspectives will not achieve better outcomes for consumers or economic growth.

² *Protecting consumers – the system for enforcing consumer law*, NAO, June 2011

However, we do not make an argument for the status quo. OFT and Trading Standards have not always worked well together and there needs to be improvements. On balance we prefer the approach which seeks to improve existing structures rather than create new ones. It should be noted however that neither of these proposals appear relevant to the Scottish context, where clear proposals are yet to be put forward on national enforcement and co-ordination.

We recommend that BIS takes the opportunity offered by the consultation process to consider more radical options for the reform of the enforcement regime in order to meet the challenges of enforcement in 21st Century markets. We recognise the challenges in doing so but nonetheless believe that opportunities should be sought rather than make small changes which will not address long run problems which may grow. We believe that the Welsh Government's proposals for a national trading standards service have merit and as it develops it should be evaluated to judge its ability in England and Scotland. Northern Ireland already has a service covering the six counties.

Annex 3 – Changing future

Private and public markets are changing as is consumer behaviour. In designing a new institutional landscape it is critically important to look to the future. Consumer representation, especially in complex regulated markets, must be durable and sustainable in order to maintain long term engagement with complex markets and regulators. If statutory consumer representation is to be delivered from third sector organisations then this vital function must be protected from periodic changes to the strategic focus of the host body.

Our analysis suggests that the following areas of focus will be particularly important in ensuring that consumers get a good deal and decision-makers make the right choices:

- New approaches to consumer empowerment
- Effective advocacy across regulated sectors and public services, and at EU and international level
- Smart regulation, focused on consumer outcomes.
- Evidence-based insight into the diversity of consumer experience and behaviour

Without strong, clearly focused consumer advocacy, consumer interests will all too often be neglected or considered as an afterthought. Such advocacy needs to highlight all aspects of consumer experience, based on the best available research and intelligence, and looking across sectors and departmental boundaries for best practices and lessons learned. It can vary in method from ‘think tank’ to ‘watchdog’ to ‘lobbying’ and can adopt range of styles according to need – from stern critic to critical friend.

This can involve getting the right legal and policy frameworks in place, influencing particular decisions, working to improve provider performance, taking direct action on specific instances of detriment, embedding the consumer interest in decision-making processes, and empowering consumers. The Government has rightly recognised that empowering people doesn’t happen on its own – more active intervention is often needed to get things moving.

The proposals in the Consultation document do not connect closely enough with the sorts of challenge and opportunity to increase individual, collective and strategic consumer empowerment that have emerged from the *Better Choices, Better Deals* White Paper. It is key that the proposed changes are completely aligned with the drive to increase consumer empowerment in relation to private markets and public services.

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 how the reform of the institutional landscape can promote the kind of empowerment approaches which can help to condition and develop markets which are more responsive to consumer needs and aspiration. A modern, forward-looking strategy for the consumer landscape should have such issues at its heart

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. Consumers share information within and across networks about the products they are buying and about the companies behind those products and services.

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

Not everyone will benefit immediately or directly, and 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.

Annex 4 – Selected questions

1 How do you think the provision of consumer information to consumers can be improved upon?

Consumers need trusted sources of advice and information. Our research shows that consumers appreciate being able to resolve a range of issues through a single advice agency. The consolidation of publicly funded advice and support services into a brand such as the Citizen's Advice service would provide a more intuitive advice solution for consumers across a wide range of issues and from a single trusted source.

We fully support the Government's proposals in this area.

2 Do you agree that the OFT's consumer information role should be transferred to the Citizen's Advice service?

We support the Government's proposals to transfer responsibility and resources for consumer information from the OFT to the Citizens Advice service.

Effective consumer information will benefit from being developed and delivered by an agency which is close to consumers and closer to the way that consumers experience and use information materials. It should also enable a faster response, to observed trends in consumer detriment.

3 Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

The Citizens Advice service is a natural home for the EHU. Bureaux already deal with such issues and the consolidation of services into one organisation should improve the quality of advice provision from Bureaux staff and the referral of appropriate issues through to case handlers in the EHU. In both cases consumers with immediate and serious issues with their energy supplier would be more likely to receive the appropriate level of support quickly and consistently.

Furthermore, depending on the practicality of such a move, Consumer Focus would support the earliest transfer of this function to the Citizens Advice service in order to support the early and efficient integration of advice services.

4 Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and co-ordinated?

In light of the proposed changes to consumer advice and information, we support an integrated approach to advice, information and education. The co-ordination and in most cases the production of consumer education delivery should transfer to the Citizens Advice service.

5 Do you agree that the proposed Trading Standards Policy Board and the TSI should co-ordinate business-facing educational activities

Consumer Focus prefers the alternative of a Joint Enforcement Board over a Trading Standards Policy Board. Both these proposals are designed to combat significant regional and national breaches of consumer protection law. Either could work although from a risk point of view the Joint Enforcement Board is the best option because it builds upon and improves existing structures. Either body would be well suited to the task of co-ordinating business facing educational activities. We are concerned that the proposals to get rid of a central national enforcement body and parcel out their work, eg on internet crime, to local authorities will fragment essential capacity and it would be better to have a centre of excellence on consumer law enforcement.

6 Do you consider that, subject to decisions by individual departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

Consumer Focus has long argued that the concentration of sectoral consumer advocacy functions into a single body would be the best way to make such advocacy more efficient and effective.

Aside from the efficiencies of scale and reduction in back office costs, these bodies address many common issues, albeit in different markets, and adopting a more consolidated model of advocacy across the sectors would enable cross economy benefits to emerge from detailed sectoral work. However, the vision of bringing advocacy functions together must be informed by the work that these advocacy bodies undertake in their sectors, whether Government wants that work to continue and, most importantly, what the best vehicle to maintain or enhance that work might be.

Government proposes to consolidate these functions into the Citizens Advice service. The Citizens Advice service has a focus on advocacy that emerges from the evidence of their clients experiencing today's problems. This is very different from much of the work that sectoral consumer bodies undertake and that a RIU would need to carry out.

We support a strengthening of Citizens Advice service to undertake more advocacy on behalf of their clients and consumers more generally, but we do not believe that it represents the best vehicle to undertake detailed work in complex regulated sectors.

7 Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Yes. We will set out more detail of what work consumers need from such a body in a *RIU prospectus*.

8 In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

We would regret any decision to abolish Consumer Focus if it was not part of changes which led to better empowerment of consumers and protection of their interests. Whether in changes to the Post Office network, reform of public services, revision to the copyright regime or the growth of ecommerce and online purchasing, Consumer Focus has been able to represent the interests of consumers at the first sign that such changes may lead to unintended consumer detriment.

In addition to working on these forward looking issues we have secured real immediate benefits, eg the return of £60 million to npower customers who had paid more than expected and savings of £15 million per year to cash ISA savers.

While we recognise the achievements of the Citizens Advice service in advocating on behalf of their clients we do not believe that it is the most suitable vehicle for our detailed work in energy, post and in other areas.

Consumer Focus works as an advocate for UK consumers in the International and European arenas, on the strategic empowerment agenda, on the framework of consumer law and on public services. This work is important and should not be lost in any process of rationalisation.

If Government wants this work to continue it will need to specify which functions it values and where it intends for them to continue. We would hope to see in the Government's decision following the consultation, a schedule of where the various functions and work plan activities of Consumer Focus will transfer and which areas of work will disappear.

Which? and the Citizens Advice service have suggested the idea of a partnership. We believe that this prospect is worth considering and we look forward to seeing more details of the proposal.

9 What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

We have set out the key considerations above, in answer to the 10th of our key questions. We believe that any consumer advocacy arrangements must provide for effective and credible consumer representation in Scotland and Wales.

To be credible, such arrangements would need to be established with independent governance arrangements and a high degree of accountability to devolved administrations and parliaments for the work priorities of the new advocacy bodies in Scotland and Wales.

To be effective, such arrangements would need to engage in complex consumer and public policy issues which may not be directly informed by client experiences or consumer complaints. In this respect, there are similar issues in a national context as arise in the proposal to transfer Consumer Focus functions to the Citizens Advice service.

We believe it is in the interest of consumers in Scotland and Wales if the primary responsibility for the delivery of consumer advocacy, information, advice and education were to lie with the Scottish and Welsh Governments, supported by an appropriate share of the available funds (as is already the case in Northern Ireland).

10 What are your views on these options for the transfer of information gathering powers? Which is preferable and why?

Consumer Focus supports the direct transfer of information gathering powers to new consumer arrangements and for those bodies to be responsible for their use. Whatever new arrangements emerge, they will need to be able to use information gathering powers to identify the scale of problems, their root causes, whether an issue is company specific or endemic and what workable market solutions may look like.

The ability of a body in the private or third sector to exercise such powers may require clarification. However, the ability to require market intelligence has been a defining quality of Consumer Focus and it must be also for its successor.

While a successor body will need to use these powers with care, it should be able to do so without approval from regulatory authorities and in relation to those sectors of the economy where it identifies significant consumer detriment and where there is insufficient evidence in the public domain about business models and practices.

There will be occasions when consumer advocate and regulator do not agree on the scale or character of the detriment. In those cases it is for the advocate to persuade the regulator through argument and evidence. It would not be appropriate for the regulator to be the gatekeeper of the information which may provide that evidence

11 What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Consumer Focus is strongly of the opinion that redress schemes should be extended to the water and transport sectors, regardless of whether or not the functions of CC Water and Passenger Focus are transferred to a RIU.

The evidence is that redress schemes are of great benefit to consumers not only in providing a free, independent means of resolving individual disputes but also in raising the standards of internal complaint handling and customer service in an industry generally. In addition, our own research indicates that when consumers are asked for their views on what good complaints handling would look like they see the existence of redress schemes as a vital part of best practice. In other words, consumers expect to have access to an external redress scheme to handle unresolved complaints and provide remedies and it is illogical that these do not exist in water and transport. This is particularly important in relation to sectors that provide essential services to consumers and which vary from regional monopolies (water and sewerage supply) to imperfectly competitive ones (local bus services) and where significant sums of public money may be involved (rail transport).

12 Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

GCCNI is the logical place to transfer Consumer Focus' post functions in respect of consumers in Northern Ireland. Consumer Focus fully supports the Government's proposals in this regard.

13 Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

The numbers of cases reaching the redress scheme from Northern Ireland are likely to be very small and it would not be sensible to set up a separate one in terms of cost or efficiency. It could also lead to inconsistency in adjudication across the UK which could weaken the position in any dispute with Royal Mail on policy about postal services issues and complaints.



**Consumer
Focus**
Campaigning for a fair deal

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