



Evidence to the Scotland Bill committee on the Scotland Bill

September 2011

About Consumer Focus Scotland

Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors' clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

Introduction

Consumer Focus Scotland welcomes the opportunity to provide written evidence to the Scotland Bill committee. Consumer Focus Scotland is the independent consumer champion for Scotland. We work on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level. As part of a UK body, we focus also on ensuring that consumers in Scotland are treated as fairly as those elsewhere in the UK. Where there are differences between Scotland and other parts of the UK (for example owing to our different demographic make-up) that mean uniform treatment would lead to significantly different results, we seek to highlight these and to secure proportionate benefit for consumers in Scotland.

Consumers in Scotland are in the main very similar to consumers in the rest of the UK. But on occasion, Scotland's different geography and demography needs to be taken into account if fairness is to be achieved. Much of Scotland is rural and/or remote, for instance; this remoteness from urban centres often means fewer choices for consumers in relation to services such as energy, transport, telecommunications and retail services. Consumers in Scotland are also more likely to be economically disadvantaged than UK consumers in general, and are more loyal in their habits, often favouring Scottish service providers as a matter of principle and being less likely to switch providers to save money.¹

Rather than addressing all of the questions set out in the committee's call for evidence, this evidence focuses on issues which are likely to affect consumers in Scotland most directly.

The consumer perspective

From a consumer perspective, we believe that consideration needs to be given to how the UK and Scottish governments and relevant regulators work together to take full account of Scottish issues, regardless of whether they relate to reserved or devolved responsibilities.

Although consumer protection is reserved to Westminster², the breadth of the consumer interest is at the heart of devolved policy, including legal services, health, transport, food and diet, social care, energy efficiency, water, digital communications, housing and education. However, from the consumer perspective, these issues are often dealt with in a way which can be piecemeal or disjointed.

We are aware of many instances where there has been a lack of clarity as to whether an issue is reserved or devolved. While the regulation of energy is reserved, for example, fuel poverty and energy efficiency are devolved. Another area where the position is unclear is consumer protection for buyers of new build

¹ Scottish Consumer Council, Making markets work for consumers in Scotland-everyone benefits, consumer switching behaviour and attitudes in key markets, May 2008

² Scotland Act 1998 Schedule 5 Section C7

housing: while consumer protection law is reserved, the devolved law of property governs the contract between the builder and the buyer.

There are also areas of policy which are reserved to Westminster, but which raise particular issues within a Scottish context. While regulation of communications and other basic services is reserved to Westminster, for example, these are a crucial component of the social, environmental and economic fabric of Scotland, which cuts across a range of devolved responsibilities. The best way to improve rates of internet access in deprived areas, for example, is a matter for Scottish policy on social inclusion. Broadband roll-out in rural areas of Scotland is also a crucial issue, which has implications for policy on devolved matters such as economic development, lifelong learning, public service delivery and cultural issues.

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

Consumer advice, education and advocacy

Consumers throughout the UK are protected by the same consumer protection and competition laws, and the same regulatory arrangements for financial services, energy, telecommunications and postal services. While we support this in principle, the delivery mechanisms through which these are enforced and delivered have not always worked as well as they might to secure equity for Scotland's consumers. This is one of the key consumer issues which arises from the current lack of clarity as to the respective responsibilities of the UK and Scottish Governments, and has been brought sharply to the forefront by recent UK Government proposals for far reaching change to the delivery of the enforcement of consumer protection, consumer advice, information and education, and policy advocacy on consumer issues³.

We consider that it would be in the interests of consumers in Scotland if responsibility for the delivery of consumer advocacy, education and advice, together with the funding for their provision, were to lie with the Scottish Government. We believe that, rather than requiring amendment to the Scotland Bill or to the Scotland Act 1998, the most straightforward way to achieve this would be to make an Order in Council under section 63 of the Scotland Act 1998 to provide for the functions listed in Schedule 5 Part II Section C7 (consumer protection) to be exercisable by Scottish Ministers concurrently with UK Ministers.

We also believe that if such provision were to be made to ensure that future responsibility for consumer advocacy lies with the Scottish Government, there

³ Empowering and Protecting Consumers: consultation on institutional changes for provision of consumer information, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011 <http://www.bis.gov.uk/Consultations/empowering-and-protecting-consumers>

may be a need to make further explicit provision in relation to consumer advocacy on postal issues, which is currently within the remit of Consumer Focus Scotland. Schedule 5 of the Scotland Act 1998 provides that '*the subject matter of the Postal Services Act 2000*' is reserved to Westminster⁴. Among other things, the 2000 Act established Postwatch⁵ and set out its functions, which included representing the views of postal services users. Although Postwatch was later abolished and its functions transferred to Consumer Focus⁶, the Scotland Act explicitly states that '*the reference to the subject matter of the Postal Services Act 2000 is to be read as a reference to the subject matter of that Act as at the date when it received Royal Assent*'.

While this could be interpreted narrowly to mean that only the existence, operation and functions of Postwatch itself were explicitly reserved⁷, it could also be taken to mean that consumer advocacy in relation to postal services more widely remains reserved. Given the particular issues experienced by postal consumers in Scotland, particularly those living in rural and remote areas, and the lifeline services which postal services and post offices provide, it is vital that dedicated advocacy arrangements for postal consumers in Scotland are in place. Again, we think that rather than requiring amendment to the Scotland Bill or to the Scotland Act 1998, the most straightforward way to achieve this would be to make an Order in Council under section 63 of the Scotland Act 1998 to provide for the functions listed in Schedule 5 Part II Section C11 (Posts) to be exercisable by Scottish Ministers concurrently with UK Ministers.

Answers to specific questions

Question 7 – More widely, in relation to other energy matters, what are your views on issues not currently in the Scotland Bill, such as the proposal that the Scottish Parliament should have more control over the activities of the power companies and the Carbon Reductions Target (CERT) scheme?

From the end of 2012, the UK Government intends to replace CERT with the new Energy Company Obligation (ECO). The ECO is being framed so as to integrate with the Green Deal, which will also be available from the end of 2012. The Green Deal is aimed at delivering energy efficiency measures, for consumers able to pay for improvements, through a Pay As You Save approach. However, the Government recognises that, in some cases, the Green Deal will not provide appropriate support. Consequently, the ECO is being introduced as part of the Energy Security and Green Economy Bill. Measures in the Bill will place an obligation on energy companies to underpin the Green Deal and focus particularly on those householders (including the poorest and most vulnerable) and those types of property (such as the hard to treat) which cannot achieve financial savings without a measure of support.

⁴ Scotland Act 1998 (as amended) Schedule 5 Part 11 C11

⁵ Referred to in the Act as the Consumer Council for Postal Services

⁶ Consumers, Estate Agents and Redress 2007 section 30

⁷ Postwatch was established by Section 2 of the 2000 Act. Its functions were set out in sections 51-58, while Schedule 2 set out provisions relating to its membership, staff, proceedings, accounts etc, but does not explicitly set out its functions

While Consumer Focus Scotland supports any measures to better target energy efficiency and fuel poverty measures to those consumers in Scotland who need it most, we would not, at this stage, support devolution of CERT/ECO funding. Further work would be needed to assess the impact of disaggregating the UK funding structure and administration and the likely impact this might have on consumers in each of the UK nations.

There is, however, a pressing need to ensure that the development of the Green Deal and the ECO take due account of the particular needs of Scotland, including the large proportion of tenement properties and the extent of homes not on the gas grid. There is also a need to ensure effective integration between UK and Scottish fuel poverty and energy efficiency programmes.

In relation to measures to give the Scottish Parliament greater control over the energy companies, we believe that the role of the regulator, Ofgem, is paramount. However, we are not convinced that new legislation is required. We believe that the Scottish Government could make better use of its existing powers under Section 89 of the Scotland Act 1998 to discuss with the UK Government possible secondary legislation which could be used to increase the accountability of UK public bodies, such as the economic regulators, to the Scottish Parliament. A list of cross-border public authorities was contained in secondary legislation under the Scotland Act. However, the Act contains provision for appropriate UK public bodies to be listed as cross-border authorities in the future by way of an Order in Council. There is therefore clear scope already for the Scottish Government to put measures in train to increase the accountability of bodies such as Ofgem, whose activities have a clear impact on devolved issues, to the Scottish Parliament.

Question 8 – What is your view on the Scottish Government’s call for more influence in the regulation of the reserved matter of broadcasting?

As a result of devolution, a wide range of key political, economic, social and cultural decisions affecting people in Scotland are now taken at Holyrood rather than Westminster. In many policy areas, the main focus of political debate for consumers in Scotland is now the Scottish Parliament. There is therefore a distinct Scottish news agenda, and broadcasters have a critical role to play in offering the Scottish public in-depth information, coverage and opinion about the key political issues affecting many important areas of their lives.

That said, as in relation to Question 7 on energy above, we are not convinced that there is a need for further devolution in relation to broadcasting, but we believe that the role of the regulator, Ofcom, is key here. Where markets are reserved, it is important that UK authorities and regulators take into account how those markets operate within the devolved context and to demonstrate that they are working effectively with the Scottish Government and relevant stakeholders to ensure that these markets are working for consumers in Scotland. It is also vital that issues of devolved policy that may arise as a result of regulatory or supplier activity are addressed in collaboration with the UK legal and regulatory framework. Again, therefore, we would suggest that the Scottish Government

could make greater use of its existing powers to increase the accountability of the regulator to the Scottish Parliament.

Question 11 - What further views do you have on the Bill at this stage and do you have any suggestions which, in your view, would enhance the Bill and should be considered by the UK Government for inclusion?

We would suggest that the following matters which impact on consumers should be considered for inclusion in the Scotland Bill:

1. Trading standards services

As we highlighted in our discussion paper *Local Regulation and the Consumer Interest in Scotland*,⁸ there is a complex and confusing legal framework for consumer protection in Scotland. Consumer protection legislation is reserved to the UK parliament, but responsibility for its enforcement lies with trading standards departments within Scottish local authorities. Following a strategic review of trading standards in Scotland⁹, we concluded that there are a number of areas of concern for consumers: the legal framework for consumer protection in Scotland is complex; the consumer interest is not embedded within Scottish Government, regulators or local regulatory services; local regulatory services do not focus on activities that could empower consumers; and there are no clear national priorities for local regulatory services and therefore no effective performance management.

This is not in the interests of consumers in Scotland, and requires to be addressed. Because many Scottish councils are much smaller than their English counterparts, trading standards services are often tiny, isolated and marginalized, leaving them struggling to deliver a full range of services to the public¹⁰. As recognised in the current UK government consultation paper on empowering and protecting consumers,¹¹ this creates the potential for a gap in enforcement. However, the Scottish Government has no legislative locus to require councils to collaborate. Similarly, there is no clear mechanism for the Scottish Government to shape the delivery of the greater enforcement role for trading standards services envisaged by the UK Government in its recent proposals for change. We would therefore suggest that a slight adjustment to legislative powers to give an administrative role here for the Scottish Government would add value for Scotland's consumers.

We believe that any such role might be achieved through appropriate provision in the Scotland Bill, and would support this if such provision proved necessary. A more straightforward mechanism for giving the Scottish Government such a role, however, would be to make an Order in Council giving Scottish Ministers concurrent powers in relation to consumer protection, as suggested above.

⁸ *Local Regulation and the Consumer Interest in Scotland*, Consumer Focus Scotland, June 2010 – <http://www.consumerfocus.org.uk/scotland/publications/local-regulation-and-the-consumer-interest-in-scotland-a-discussion-paper>

⁹ *Up to Standard: a Review of Trading Standards Services in Scotland*, Consumer Focus Scotland, June 2010

¹⁰ Accounts Commission, *Made to Measure*, October 2002

¹¹ See Note 3

2. The post office network

We think there is a case for the Scottish Government to be given a clearer role in relation to the post office network in Scotland. Local post offices play a vital role at the heart of local communities across Scotland. However, responsibility for post offices is reserved under the Scotland Act 1998¹², and the Scottish Government and Scottish Parliament therefore have no direct responsibility for the post office network, despite its integral importance to social cohesion, access to services, and the sustainability of many communities in Scotland.

The post office network in Scotland needs to reform and modernise if it is to be sustainable, and to widen the range of services that it offers to customers. Increasing the number of Scottish Government and local authority services that are delivered through post offices has the potential to help secure a sustainable post office network and improve consumers' access to a range of important services. However, service providers in Scotland need to be confident that post offices offer an attractive route through which they can deliver services to customers – and at present they have very little scope to influence this situation.

The Scottish Government established a £1 million Post Office Challenge Fund for Scottish post offices in 2010/11, which has been continued in the current financial year. Continuing the fund into the next Parliament would enable many more post offices to improve the service they are able to offer to consumers, making them more attractive to, and sustainable within, the communities they serve. However, the budget statement for 2011/12 contains no commitment to make any further investment to continue the Challenge Fund.

Giving the Scottish Government a clearer remit in relation to the post office network would bring considerable benefits for consumers in Scotland. It would ensure that the vital role of the post office network is recognised, taken account of and developed within the overall strategies for public service delivery, social inclusion and economic development in Scotland. It would also give the Scottish Government a clear locus to intervene to ensure that forthcoming changes to the post office network, such as the roll out of the Post Office Locals model, take account of the particular interests of consumers in Scotland.

We are not arguing that responsibility for the post office network should be fully devolved to the Scottish Parliament. The network is a coherent UK-wide network, and Scottish post offices and post office consumers in Scotland clearly benefit from being part of this single network. The integrity of the network must be protected whatever solution is applied. However, we believe that giving the Scottish Government a clearer role in relation to the network would bring significant benefits for consumers in Scotland, and would help to protect the integrity of the network by ensuring that key issues of particular importance to post office consumers in Scotland are properly recognised, taken into account and acted upon.

¹² Scotland Act 1998 (as amended) Schedule 5 Part 11 C11

We have no set view on what the role of the Scottish Government in relation to the post office network might include. We believe that any such role might be achieved through appropriate provision in the Scotland Bill, and would support this if such provision proved necessary. A more straightforward mechanism for giving the Scottish Government such a role, however, would be to make an Order in Council giving Scottish Ministers concurrent powers in relation to postal issues, as suggested above. This would encompass postal issues in general, in addition to postal advocacy. It would then be for further discussion between the two governments as to what the Scottish Government's role might be. Some policy areas where it may be worth investigating whether the Scottish Government might be given a role could include the post office access criteria in Scotland; the Scottish element of the post office subsidy; or the role of post offices and public service delivery. However, it is essential that a comprehensive impact analysis is carried out before any of these, or any other approaches are taken forward, to explore how any measure would work in practice and ensure that there would be no unintended or detrimental consequences for consumers in Scotland or in other parts of the UK.

3. Consumer and postal advocacy

As stated above, we consider that the easiest way to ensure that responsibility for the delivery of consumer advocacy, education and advice and postal advocacy lies with the Scottish Government would be to make an Order in Council under the Scotland Act 1998, giving the Scottish Government concurrent powers on those issues. If this route were not followed, however, we would wish to see appropriate amendments being included in the Scotland Bill.

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