

Report of the Working Group on Consumer and Competition Policy for Scotland

Scottish Government response

March 2016

FOREWORD



Scotland's economy depends on its consumers. From buying houses, to opening bank accounts, to purchasing everyday necessities, they are instrumental in stimulating business innovation and driving competitive business growth across the country.

Consumers who feel confident that they will be treated fairly and that their rights will be protected are better placed to choose businesses that will treat them well and to avoid rogue traders that disadvantage legitimate businesses through their unscrupulous behaviour. It is imperative that we have a consumer protection system that is effective, flexible and capable of both protecting consumers from harm and empowering them to make good choices. Where markets are competitive, consumers will have the ability to support businesses which are innovative, efficient and fair.

As the First Minister has said, "there is a burning desire across our country to build a more prosperous, fairer and better Scotland". The Scottish Government's vision for consumer protection in Scotland is aligned with this aspiration. We are committed to creating confident and knowledgeable consumers in Scotland and markets that work for businesses and consumers.

The interests of consumers will sit at the heart of economic regulation and policy making. We recognise that some tension between the consumer and business interest is inevitable, but it is also welcome. We want to empower consumers to make good choices and protect themselves, and will ensure that those who need extra help, either because of specific situations or long term circumstances, are supported. At the same time, we will stand up for legitimate businesses in Scotland by holding those that flout the law to account. We want to transform the culture so that consumer protection is a tool for businesses to improve and stay competitive, rather than a burden.

Improvements to the consumer protection system will be complemented by a drive for consumer-focused regulation and a competition policy that understands Scotland's social, economic and geographic landscape and has the necessary expertise to ensure that these specific circumstances are reflected.

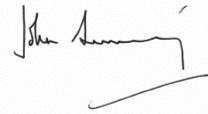
Under the Scotland Bill (as amended), competence for consumer advocacy and advice will be devolved to the Scottish Parliament. Scottish Ministers will also gain the power to act with the Secretary of State to request the Competition and Markets

Authority (CMA) to carry out a second stage market investigation. These changes give us an opportunity to make real improvements for Scottish consumers.

In June last year, I established an independent Working Group on Consumer and Competition Policy for Scotland. Its remit was to consider the best arrangements for consumer protection and competition in Scotland and to advise the Scottish Government on how best to deliver our vision for consumers. The Working Group's final report was published in October 2015 and made a total of 46 recommendations.

We are extremely grateful for the considerable time and energy given by the members of the Working Group and for the excellent support provided by Expert Panels. This paper provides our initial response to the Working Group's recommendations for improved delivery in Scotland of the four pillars of consumer protection - advocacy, advice (including information and education), enforcement and redress - as well as competition policy.

The Working Group's input will be instrumental as we start work to develop a Consumer and Competition Strategy for Scotland and take decisions on the most appropriate delivery mechanisms for consumer advice and advocacy in Scotland. Over the coming months, we will be engaging with stakeholders in order to develop detailed proposals for implementation. In the meantime, we would welcome comments on both the Working Group's recommendations and this paper.



JOHN SWINNEY

Background

The Working Group on Consumer and Competition Policy for Scotland was established in June 2015 to consider optimal arrangements for the consumer protection and competition landscapes and to advise the Scottish Government on how best to deliver our vision for consumers.

Rick Hill, MBE - until recently Chair of the Consumer Council for Northern Ireland and currently on the board of the Ofcom Consumer Communications Panel and the Independent Press Standards Organisation - generously agreed to chair the Group. It was made up of senior representation from the Scottish Public Services Ombudsman, Which?, Citizens Advice Scotland, Trading Standards Scotland, Ombudsman Services, Federation of Small Businesses and the Accounts Commission, as well as sector specific consultants.

The Working Group was supported by five Expert Panels whose work on each of the pillars and competition underpinned many of the final recommendations.

The Working Group's final report was published on the Scottish Government's website in October 2015: <http://www.gov.scot/Topics/Business-Industry/ConsumerCompetition/FinalReport>.

A DEDICATED CONSUMER PROTECTION BODY

The Working Group's primary recommendation was that the Scottish Government should create a new, statutory public body to ensure that the voice of Scottish consumers is heard by policy makers, business, public services, regulators and governments. The Working Group recommended that this body should be independent, with clear lines of accountability to the Scottish Parliament. It suggested that the new body should be called 'Consumer Scotland'.

The Working Group recognised the need for Consumer Scotland to work in partnership with other parts of the consumer landscape to ensure a strategic approach to the provision of consumer advocacy, advice, enforcement and redress to make it easy for consumers of all demographics to access the right help when they need it. It recommended that Consumer Scotland should have the ability to gather and share information from a range of organisations to detect and prevent harm and to support businesses in continuous improvement. It also considered the powers of, and duties placed on, other consumer protection bodies.

Finally, the Working Group recommended that the Scottish Government should consider whether there may be benefits in having a dedicated Consumer Minister.

Scottish Government's response

Prior to the referendum, and following extensive work with consumer and competition experts, the Scottish Government concluded that a unified consumer and competition body would be the most efficient way for an independent Scotland to reduce the fragmentation and complexity of the existing landscape. In light of the new powers now being devolved via the Scotland Bill (as amended), the Scottish Government tasked the Working Group with considering the policy options afresh.

We are grateful for the Working Group's thoughtful consideration of the case for establishing a dedicated consumer protection body and welcome its recommendations on the body's role and purpose. We note its analysis that a statutory body which is resourced and empowered to be a strong consumer advocate, and which strengthens links across the four pillars of consumer protection and competition policy, would improve outcomes for consumers in Scotland. In particular, we agree with its assessment that establishing practical mechanisms to gather and share information from across the consumer landscape is critical in binding all four pillars together.

Next steps

- Given the clear steer from the Working Group, we are working with stakeholders to consider the possible form and functions of a dedicated consumer protection body for Scotland.

- We are committed to working with stakeholders to identify practical solutions to gathering and sharing information data and, in doing so, uniting the four consumer protection pillars in Scotland.
- We intend to establish a Scottish consumer protection partnership, bringing together delivery partners and ensuring multi-agency collaboration on issues such as information sharing.
- We are examining whether consumer issues might be a dedicated brief of a Scottish Minister or whether appointing a designated consumer champion could deliver greater benefits.

ADVOCACY

The Working Group identified the need for a robust system of consumer advocacy in Scotland. It considered the distinction between general consumer advocacy and advocacy for the regulated sectors and highlighted the technical knowledge required to deliver the latter. It recommended that advocacy in Scotland be prioritised through a work planning process designed to take account of the level and impact of consumer detriment and the likelihood of achieving significant change.

The Working Group noted that the Scotland Bill (as amended) will devolve competence for consumer advocacy in the post and energy sectors to the Scottish Parliament. It recommended that the Scottish Government should consider how best to promote links with regulators in other sectors, for example through Memoranda of Understanding (MoUs).

The Working Group noted the involvement of the Customer Forum in the price review settlement for the water industry in Scotland and recommended that the Scottish Government should work with other regulators to pilot approaches which allow direct input from Scottish consumers.

The Working Group recommended that Consumer Scotland should be given responsibility for delivery of consumer advocacy, both across regulated and unregulated sectors.

Scottish Government's response

The Scottish Government recognises the important role that consumer advocacy has to play across all sectors of the economy and particularly in the regulated sectors such as energy, telecoms, transport and financial services. In the regulated sectors, consumers are reliant on services with often limited options for switching. In this context, harm can have a tangible impact on quality of life, employment prospects and financial stability.

We agree with the Working Group's assessment that consumer advocacy should be delivered by an organisation with the skills and resources to carry out research, collate and interpret diverse and complex data and understand how markets operate. Specialist expertise is needed to understand highly technical and fast-moving markets. An effective advocacy body must be capable of acting as a bridge between consumers, regulators and policymakers. It must be capable of communicating the consumer interest while also interpreting the language and context of regulation.

We have already begun work on developing a model of consumer-focused economic regulation, building on the approach adopted in the water sector, where advocacy is already devolved to Scotland. As highlighted by the Working Group, in the latest price review Consumer Futures Scotland, Scottish Water and the Water Industry Commission for Scotland together created the Customer Forum which put customer

representation at the heart of the regulatory process. The Customer Forum negotiated a settlement on prices and service levels with Scottish Water leading to an agreement that accurately reflected customers' priorities and preferences.

On devolution of new advocacy powers to Scotland, we will work with regulators in the post and energy sectors to begin to embed a consumer-focused model. We will continue to build relationships with regulators in other sectors to ensure the Scottish consumer-focused approach is taken into account.

Next steps

- In considering the possible form and functions of a dedicated consumer protection body for Scotland, we will take account of the Working Group's recommendation that it should be given responsibility for delivery of consumer advocacy, both across regulated and unregulated sectors.
- We will work with regulators, industry and consumer groups to determine the current role of consumer advocacy across all sectors of the economy and identify where work must be done to strengthen its impact.
- We will work with regulators across all sectors of the economy to champion a consumer-focused model of regulation.

ADVICE

The Working Group identified the need for consumer advice provision in Scotland to be effective and available in a variety of ways (face-to-face, online or by telephone), whenever needed. It noted concerns over the complexity of the advice landscape and the accessibility and awareness of consumer advice. It also noted the potential for greater data sharing between advice providers and with other organisations involved in consumer protection.

The Working Group recommended that the Scottish Government work with key stakeholders to map the consumer advice landscape to identify duplication and gaps in provision. It saw benefit in creation of a single portal for consumers to seek advice and be referred quickly to the correct advice provider.

The Working Group also recommended that the Scottish Government work with consumer advice providers to increase the range of users accessing advice provision, through marketing, coordination of education and analysis of the factors that prevent or enable access. It recognised the need to raise young people's awareness and knowledge of consumer issues and recommended work with Education Scotland to inform curriculum development.

The Working Group recommended that Consumer Scotland should not itself deliver consumer advice, but should be responsible for its oversight and co-ordination to ensure consistency and promotion of best practice, and for improving data sharing.

Scottish Government's response

The Scottish Government recognises the important role that consumer advice has to play in informing individuals and empowering them to take action. We agree with the Working Group's assessment that advice provision in Scotland must be comprehensive, of a consistently high quality and provided in ways that meet the differing needs of consumers across the country.

There is much to be celebrated in the current system of advice provision, which generally works well to support individual consumers. Because of this, and the fact that devolution of competence for consumer advice will take place during the 2016/17 financial year, the Scottish Government's intention is that advice through the Citizens Advice Consumer Helpline and Extra Help Unit will continue, as currently provided.

However, we also note the Working Group's conclusions that more work needs to be done to ensure advice is available to all consumers who need it and to understand the barriers that prevent consumers from seeking help. We also agree that in some respects the landscape is fragmented, that the type and quality of advice can vary across locations and that arrangements for data sharing and trend detection should be strengthened.

Next steps

- In considering the possible form and functions of a dedicated consumer protection body for Scotland, we will take account of the Working Group's recommendation that it should be responsible for the oversight and co-ordination of advice provision and for ensuring greater data sharing.
- We will work with stakeholders to map the consumer advice landscape to identify and, where possible, address gaps and duplication in advice provision.
- We will explore the feasibility of creating a single portal for consumers, to ensure their referral to the most appropriate advice or redress provider.
- We will use existing frameworks and standards to strengthen consistency between advice providers and develop measurable outcomes.
- We will work with education providers to explore ways to embed consumer rights education in children's learning.
- We will work with advice providers to explore ways to increase data sharing between advice providers and with other organisations involved in consumer protection.

ENFORCEMENT

The Working Group identified the need for effective and consistent enforcement of consumer law - by local authority Trading Standards Services and other organisations which undertake enforcement activity.

The Working Group recognised that policy responsibility in this area will, in the main, continue to be reserved to the UK Government. However, enforcement activity is carried out by Scottish local authorities and there are some areas, such as food standards, where competence is already devolved to the Scottish Parliament.

The Working Group noted the need for a more strategic and consistent approach to enforcement activity, requiring greater collaboration at national and local level. In framing its recommendations, it took account of the fact that a series of Trading Standards reviews are currently underway.

In particular, the Working Group recommended work to ensure that Trading Standards Services in Scotland have the necessary capacity and expertise, and that current problems relating to succession planning and a current lack of training opportunities are addressed. It also recommended work to prioritise and co-ordinate enforcement activity and to improve links with other parts of the consumer protection landscape.

The Working Group recommended that Consumer Scotland should be responsible for raising awareness, amongst consumers and businesses, of Trading Standards Services in Scotland. It should also promote a more joined-up approach to consumer enforcement activity in Scotland, the adoption of common procedures, and adherence to best practice principles.

Scottish Government's response

The Scottish Government recognises the important role that enforcement activity plays in protecting consumers and businesses against rogue practices. We agree with the Working Group's assessment that improving co-ordination of enforcement activity in Scotland, and links with advice and redress providers, will enable enforcement bodies to act quickly when trends of consumer harm are identified.

The Working Group made its recommendations against the backdrop of considerable uncertainty in the enforcement landscape. The Working Group's report noted a number of challenges and that a series of Trading Standards reviews are currently underway to find solutions.

We recognise that the outcomes of these reviews will influence the delivery of enforcement activity in the future. We will continue to work collaboratively with UK Government and enforcement bodies as these reviews continue.

Next steps

- In considering the possible form and functions of a dedicated consumer protection body, we will take account of the Working Group's recommendations for better integrating enforcement activity within the consumer landscape in Scotland.
- We will work with enforcement bodies, CTSI¹, COSLA, SCOTSS² and TSS³ on ensuring that Trading Standards Services in Scotland have the necessary capacity and expertise and that there is effective prioritisation and coordination of services.
- We will consider the outcomes of the various Trading Standards reviews and work with stakeholders on developing a more strategic approach to delivery.
- We will work with enforcement agencies, CTSI, COSLA, SCOTSS and TSS on development of a trading standards workforce and training strategy.

¹ Chartered Trading Standards Institute

² Society of Chief Officers of Trading Standards in Scotland

³ Trading Standards Scotland

REDRESS

The Working Group identified the need for a strong system of consumer redress to make it easier for consumers to resolve consumer complaints outwith the court system. It noted that consumer redress is often a cheaper, more accessible means than the courts for consumers to pursue complaints that cannot be resolved with businesses.

The Working Group found that many consumers find it difficult to know which redress provider to turn to in a complex and fragmented landscape. Equally, many businesses are unaware of the availability and advantages of consumer redress.

The Working Group recognised that policy responsibility in this area will continue to be reserved to the UK Government. However, it recommended work to scope usage of consumer redress by Scottish consumers and to understand the barriers that prevent consumers and businesses from accessing it.

The Working Group recommended that Consumer Scotland should take forward work with redress providers to improve awareness and access by Scottish consumers and businesses, and to promote the adoption of common procedures and adherence to best practice principles. It also identified a need to join up services within the consumer redress landscape (encompassing ombudsman services, mediation, arbitration, courts and tribunals) and to improve links with other parts of the wider consumer protection landscape.

Scottish Government's response

The Scottish Government is concerned that implementation by the UK Government of the recent EU Directive on Consumer Dispute Resolution⁴ has done little to improve access to consumer redress and, in some respects, has increased confusion by establishing a number of bodies to set standards.

The complexity and fragmentation of the landscape means that opportunities are currently not taken to harness and aggregate complaints data. We agree with the Working Group's assessment that redress providers should be using this information to work with companies or sectors to deliver improvements, much as the Scottish Public Services Ombudsman (SPSO) does for public sector organisations in Scotland.

We want to ensure that businesses striving to remain competitive and to retain customers view complaints as an incentive to improve rather than a burden.

⁴http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/adr-odr/index_en.htm

Improving co-ordination between redress providers and their links with advice providers and enforcement bodies will make it easier to identify less scrupulous traders and to take punitive action when it is required.

We will continue to work collaboratively with UK Government and redress providers to deliver the above improvements.

Next steps

- In considering the possible form and functions of a dedicated consumer protection body, we will take account of the Working Group's recommendations for better integrating redress provision within the consumer landscape in Scotland.
- We will work with redress providers to raise awareness, amongst the public and businesses, of consumer redress mechanisms including consumer ADR services, ombudsman schemes and legal mechanisms.
- We will identify barriers to use of consumer redress and practical measures to overcome these.
- We will explore the feasibility of creating a single portal for consumers, to ensure their referral to the most appropriate advice or redress provider.
- We will work with stakeholders to promote a more joined-up approach to consumer redress, the adoption of common procedures, and adherence to best practice principles.

COMPETITION

The Working Group report identified a clear need for a credible competition policy in Scotland: one that is capable of taking account of Scotland's geographical, cultural and economic circumstances.

The Working Group recommended that the Scottish Government should develop a competition policy for Scotland which sets out how it differs from that of the UK and the outcomes it seeks to achieve. It also recommended that the Scottish Government should make clear how its role and responsibilities align with those of the CMA.

The Working Group recommended that the Scottish Government should explore how to increase engagement and participation by Scottish stakeholders in market investigations and develop proposals for delivering competition advocacy - assessing the competition impact of Scottish policy and legislation.

The Working Group recommended that Consumer Scotland should take forward work to analyse public and private Scottish markets to enable market studies and investigations with the aim of increasing the focus on and prioritisation of Scottish work, including influencing CMA priorities.

Scottish Government's response

We recognise that Scotland's size and its rurality and peripherality may give rise to a different scale or range of issues than exists across the UK as a whole. We are already working, with the CMA, on a strategic assessment of Scottish markets that will identify areas of competition concern in Scotland and prioritise how we and other stakeholders will work together to address these market failures.

The recommendations of the Working Group are an important first step towards developing a Scottish approach to competition policy, shining a light on where a lack of competition may be causing significant detriment to consumers in Scotland. This will require all stakeholders in the consumer and competition landscape - from Scottish Government to consumer bodies, business organisations, and the CMA - to acknowledge the importance of gathering robust and credible evidence and the value of engaging in market studies and investigations, particularly where there is a specific Scottish interest. Our overarching aim is to support economic growth by safeguarding consumer interests and preventing anti-competitive behaviour.

Competition on its own may not always be the best tool for ensuring markets work well, and there is a need to strike the right balance between competition and regulation. Where required, we will ensure that regulatory initiatives recognise consumer priorities in Scotland. In doing so, we will exploit the synergies and differences between regulation and competition so that the right tools can be used under the right circumstances.

Increased engagement in this area offers the Scottish Government a clear opportunity to promote open and competitive markets, which improve productivity by encouraging innovative and efficient Scottish businesses, and to harness the role that a different kind of regulation can play in influencing business behaviour.

We are working closely with Professor Chris Hodges, Professor of Justice Systems at Oxford University, whose work focuses on use of collaboration and behavioural insights to create open, ethical cultures that deliver more profound and sustainable organisational change than traditional regulatory methods. We will use this thinking to develop a regulatory approach that supports businesses to treat consumers fairly, and works with them to put matters right when they go wrong, thereby building trust between consumers, regulators and businesses.

This approach aligns itself well to our drive for fairness and access to justice in Scotland and will ensure the right tools will be used under the right circumstances to benefit both consumers and business, ensuring markets work efficiently.

Next steps

- In considering the possible form and functions of a dedicated consumer protection body, we will take account of the Working Group's recommendation that it should contribute to analysis of Scottish markets with potential to cause consumer detriment or potential competition concerns.
- We will shortly publish our assessment of Scottish markets and outline the next steps for addressing the issues highlighted.
- We will develop a competition policy for Scotland that recognises the overarching competition framework set out in European and UK law whilst also taking account of Scotland's areas of economic, social and industrial importance.
- We will develop a strategic steer on competition, which will set out the Scottish Government's priorities for competition policy and provide policy direction to the CMA to consider particular market concerns of importance to Scotland.
- We will outline an action plan to strengthen engagement and participation by all stakeholders in market studies and investigations, particularly those with significant Scottish content.
- We will explore with the CMA proposals for increasing its engagement in the delivery of Scotland's competition policy, which will build on the establishment of its representative office in Scotland.
- We will establish an advisory forum to oversee delivery of competition policy in Scotland, with strong links to the Scottish consumer protection partnership.
- We will ensure that competition advocacy - including understanding where new policy proposals may have unintended consequences on competition - is built into the policy-making process.
- We will develop a policy on ethical regulation to spur economic growth by increasing consumer trust and rewarding ethical businesses.

CONCLUSION

In considering the Working Group's recommendations, two themes have emerged.

First, consumer protection will only be effective if all four pillars - advocacy, advice, enforcement and redress - are strengthened and supported to interact as part of a holistic approach.

Second, consumer protection is part of a wider landscape which includes competition and regulation. Exploiting the synergies between all three areas will allow for the design of flexible, targeted solutions to consumer and market issues.

The Working Group's recommendations provide a good foundation for developing a Scottish consumer and competition policy that reflects these themes and better matches Scotland's need and circumstances.

The Working Group was established to ensure that our policy is developed as a collaborative effort, influenced by those with practical expertise and experience. We will continue to work in partnership with experts in these areas and other stakeholders as we take this work forward.

Getting in touch

We would welcome comments on both the Working Group's findings and on this response.

These can be submitted via email to consumerandcompetition@gov.scot

or to the Consumer and Competition Policy Unit at the following address:

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