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Concern



Consultation response

Ref 4911

Empowering and Protecting Consumers Department for Business, Innovation and Skills

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This consultation from the Department for Business, Innovation and Skills (BIS) proposes radical changes to the current arrangements for consumer advocacy, information and enforcement provision which it considers will ensure consumer advice, representation and enforcement are delivered more effectively and efficiently.

Key points and recommendations

- We think the preferred proposals for reforming consumer protection in this consultation are completely inadequate and do not address the shortcomings in existing consumer protection identified in the recent National Audit Report. We think it better to build on the status quo rather than, as proposed in this consultation adding even more complexity. We think the proposals are likely to result in less protection for consumers than currently exists
- We think trading standards should be a national and not a local service. If this is not possible in the current climate, a more stringent statutory requirement on local authorities should be introduced which better reflects the current remit and responsibilities of trading standards
- If trading standards remains a service operated at local level we think the proposed Competition and Markets Authority should have the same consumer policy scope as the current Office of Fair Trading. However, the links between this new organisation and local trading standards departments need to be improved to meet the criticisms and shortcomings identified in the recent National Audit report on consumer protection services
- The Competition and Markets Authority should retain responsibility for all market studies, including those arising solely from consumer detriment
- Expenditure on consumer protection should be commensurate with the financial amount of consumer detriment it needs to address
- If the new Competition and Markets Authority cannot continue to operate the Consumer Codes Approval process, this should be undertaken by British Standards Institute. However in this case all Codes must be accompanied by a mandatory requirement to have Kitemark approval
- We do not object to responsibility for consumer information, advice and education being transferred to Citizens Advice. However we think the ability of local Citizens Advice Bureaux to provide more consumer services locally unlikely in the current climate. We would want to see Citizens Advice Bureaux make necessary improvements to encourage more older people to use their services since currently they are significantly under-represented compared to clients of other age groups
- Age Cymru believes there is a strong case that powers to establish a consumer body for Wales should be given to the National Assembly for Wales
- Age Northern Ireland has advised they support the proposal to transfer the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland. They also support the proposal that the Postal Services redress Scheme should continue to apply in Northern Ireland to provide parity for Northern Irish consumers
- We support the proposal to combine the current consumer sectoral advocacy bodies to include CC Water and Passenger Focus as well as energy and postal services

- We are concerned about the ability of Citizens Advice to take on the advocacy functions of Consumer Focus. Citizens Advice does not currently have the market focus, remit for ensuring markets work for all consumers or breadth of research experience that Consumer Focus has. To counter this it will be important to ensure that as many current Consumer Focus staff transfer to Citizens Advice as possible
- Given what this consultation is proposing Citizens Advice should become responsible for, we are very concerned at gaps in their legal powers and statutory public accountability. As a charity, their governance mechanisms were not designed to deal with this breadth of responsibilities currently undertaken by a statutory public body, Consumer Focus. This must be addressed before responsibilities are transferred to them.
- The statutory powers of Consumer Focus to obtain information from regulators, businesses and government must be retained
- The current UK representation at international and European level on consumer issues must be maintained

1. Introduction

- 1.1 Age UK is pleased to respond to this consultation. While not a ‘consumer organisation’ as such, we have an interest in certain consumer issues where they particularly affect older people. Some of these are energy and energy efficiency because older households are the highest group in fuel poverty; water because water bills are becoming unaffordable for older people living in certain areas such as the South West which has a higher than average number of older residents; good trading practices because there is evidence that older people are targeted by rogue traders, distraction burglars and high pressure selling in the home; digital inclusion because 60% of people over the age of 65 have never used a computer¹.
- 1.2 We also have an interest in more general consumer issues. We recently conducted research into the barriers facing older people as consumers². Some of the issues we identified were age discrimination and stereotyping, a lack of the use by businesses of the principles of inclusive design in the provision of goods and services and payment mechanisms. So for example we campaigned against the proposals to withdraw cheques because, unless there was an appropriate alternative, many older people would have been disadvantaged.
- 1.3 We have no preference for which particular organisation delivers the services provided they have the capacity and expertise to do so and the current level of service to consumers is maintained or improved. We are anxious to ensure that hard won successes for consumer advocacy and protection are not diluted with these reforms. The current services of the Office of Fair Trading (OFT) which we particularly want to see preserved somewhere are:-
- their undertaking of market studies
 - encouraging businesses to comply with competition and consumer law

¹ Internet Access 2010 Households and Individuals. ONS. August 2010

² The Golden Economy. Age UK. December 2011

- encouraging them to improve their trading practices through sponsoring the Consumer Codes Approval Scheme (CCAS)
- empowering consumers by providing information and education
- helping them to resolve problems through the provision of Consumer Direct
- undertaking enforcement of consumer legislation at the national level
- The supercomplaints process

1.4 We are disappointed that the consultation still leaves significant uncertainties about the future which has made it difficult to properly assess the options given. We have particular concerns with regard to the proposals for consumer enforcement which we do not think will be as effective as current provision. For example we are concerned about whether the enforcement action currently undertaken by the OFT can be continued in the new consumer landscape. While it is important to have the necessary consumer protection legislation in place, it is of no use if there is no effective enforcement.

1.5 We have also found it difficult to make judgements due to uncertainty about funding. Whilst we understand it is the Government's intention to transfer the centrally funded budgets of both the Office of Fair Trading (OFT) and Consumer Focus to Local Authority Trading Standards Services (LATSS) and Citizens Advice, these will clearly be at a reduced level. This could make the provision of the current level of service to consumers difficult to achieve. Further both of these organisations are dependent on funding from local authorities which has been significantly reduced in 2010/11 and will probably be further reduced in future years. We think these budget cuts will make it impossible for both organisations to achieve what this consultation promises.

1.6 These funding cuts in the provision of consumer protection are of particular concern given the current budget is not particularly generous. As a recent report³ on consumer protection by the National Audit Office (NAO) has found 'the level of spend on consumer enforcement appears low compared to the estimates of detriment suffered by consumers and there is no minimum standard to prevent enforcement gaps appearing.' We agree with their recommendation that BIS 'should establish what level of spend is appropriate for consumers to be adequately protected'. We think the total expenditure of £247 million on consumer protection in 2009/10 (i.e. before the cuts programme begun) to combat an estimated consumer detriment of over £4.8 billion compares inadequately with the expenditure of business on advertising. According to Marketing Magazine's 'top 100 online brands' survey 2011, Procter & Gamble alone had a total media spend of £207 million in 2010.

1.7 We must emphasise that our comments should in no way be seen as being critical of either LATSS or Citizens Advice. They currently both provide an admirable service. Our criticisms should be seen in the light of what we see is their capacity to take on the responsibilities proposed in this consultation. Our concern relates to the very unequal strength of consumers with regard to

³ Protecting consumers – the system for enforcing consumer law. National Audit Office. June 2011

businesses and we would not wish to see any diminution of consumer support in advocacy or enforcement.

2. Information, Advice and Education. Questions 1 to 5.

2.1 We can see the sense in having one organisation providing most of the consumer information, advice and education. We agree with the proposal to transfer responsibility for providing independent publicly funded consumer information and advice to Citizens Advice. As well as transferring responsibility for providing Consumer Direct and the Extra Help Unit for vulnerable consumers of energy and postal services, the local Citizens advice Bureaux (CABx) will continue to provide consumer advice and information locally. However,, these are very vulnerable to local authority cuts as past history has shown. The 1970s saw a growth in the number of local authority trading standard departments providing high street based consumer advice centres which proved to be very successful. These developed partly as a result of the Molony Committee on Consumer Protection recommendations to ensure consumers should have access to adequate advice and information. However their numbers were radically reduced in the 1980s due to cuts in local authority budgets.

2.2 While we are pleased with the success of the Government funded Consumer Direct, there are many people, older people in particular, who prefer to get face to face help and, clearly, this has to be given at a local level. Local Citizens' Advice Bureaux (CABx) are best placed to offer this service. However, we are concerned that currently older people are under-represented as CABx users. Analysis of their client profiles in Advice Trends produced quarterly by Citizens Advice consistently shows people over the age of 65+ are significantly under-represented compared to other age groups. Only about 10% of their clients are aged 65 and over compared to the 20% people of state pension age in the UK population⁴. Age UK would like to see this increased. We also think CABx will need to give greater publicity to the fact they provide consumer advice and information if older consumers are to be made more aware of this and take advantage of this local service.

2.3 CABx are widely known to provide help for people in debt and advising on welfare benefits. This is reflected in their statistics which show more than half of the enquiries they receive relate to these two issues. Of the 7.5 million problems they received last year, 2.2 million were about welfare benefits and 2.2 million were about debt. The number of consumer problems they receive are significantly lower and of these, debt and problems with utilities form the majority. Of the 517,000 consumer queries received, 305,000 were about water, energy or communications and 266,000 of these were about debts to their utility companies.

2.4 While not underestimating the importance of helping consumers in debt to their utilities, we think CABx should be dealing with wider consumer issues in the proposed new consumer landscape. However, given that all the local CABx are independent organisations they will need to be persuaded to widen their remit. This will be particularly difficult given their budget reductions. We understand that on average the bureaux have seen a 10% reduction. Averages of course hide huge variations and some have had their budgets cut by 50%. In addition there will be further cuts due changes to the legal aid system which are likely to be of the region of

⁴ Mid-2010 Population Estimates. UK Office for National Statistics 2011.

18%⁵. Unfortunately, we do not believe provision of consumer advice and information is a high priority with local authorities which may make them unwilling to have their grants being used by CABx to expand the consumer information and advice aspect of their service. As we noted in paragraph 2.1 above, the demise of the high street consumer advice services was because of cuts in local authority budgets.

2.5 We are happy for the OFT's consumer education role to be transferred to Citizens Advice, provided they have sufficient resources to develop consumer education materials and undertake national and regional education campaigns. Of particular interest to Age UK have been the OFT publications to raise awareness of scams and we have always supported the OFT Scams Awareness month which we would like to see continue.

2.6 We think Citizens Advice should have responsibility for developing materials for use in schools such as the OFT consumer education tool kit but think that responsibility for visiting schools should remain with LATSS rather than be given to local CABx. LATSS should also retain the role of educating businesses, including advising them about changes to consumer legislation. This is because we think local trading standards officers, as enforcers, will have greater in-depth knowledge of consumer law than local CABx staff, many of whom are volunteers.

2.7 However, we have some concerns there could be a loss of consistency in the interpretation of the law businesses will be given. Complaints from businesses about inconsistency was the prime reason for setting up the Local Government Regulation (formerly the Local Authorities Coordinators of Regulatory Services) in 1978. Its role was to co-ordinate advice to LATSS and business on the interpretation of new legislation. It expanded to cover a range of other services such as food safety and standards and private sector housing where consistency of enforcement caused similar problems. Following a budget cut by the Department of Communities and Local Government of 40% in 2010/11, it has been decided to severely reduce this service.

2.8 The OFT supported Local Government Regulation in providing guidance to business on the interpretation of consumer legislation. Recent examples are OFT guidance on competition law and debt management. We think the removal of both Local Government Regulation and OFT will result in businesses being unhappy about the consistency of LATSS interpretation of the law – which will put us back to where we started in the late 1970's. This could also result in increasing the costs to businesses which will inevitably be passed onto consumers in the form of higher prices.

3. Consumer Code Approvals. Questions 6 to 11.

3.1 We think this was an important initiative taken by the OFT which we want to see continued. History has shown that codes that are completely self regulated do not offer consumers sufficient protection. While there is an important role for industry owned codes, to be successful codes need either statutory backing or to be independently monitored and action needs to be taken against offenders. There are

⁵ The Independent. 2nd August 2011.

three aspects of the OFT Codes which we consider have contributed to their success and which we want to see preserved if the OFT role is taken on by another organisation. These are:-

- that each code must meet core criteria
- that there should be consumer input into the development of the codes equivalent to the OFT Codes Consumer Advisory Committee, of which Age UK is a member
- that compliance with the Code is independently monitored.

3.2 We do not agree with extending the Primary Authority concept to cover code certification. As we will discuss in Section 5 below, we think local trading standards have sufficient challenges without taking on this role. We also think it will be difficult to ensure standardisation and consumer input with this proposal and prefer to have a national body to oversee the codes such as the Gas Safe Register and Trustmark. Our overwhelming preference should it be decided the proposed Competition and Markets Authority will not continue to operate CCAS is for the British Standards Institute (BSI) to take over responsibility.

3.3 However the Codes must have the status of standards and should not be approved under the Publicly Available Specification (PAS). This is because the making of standards is open to having consumer representative participation but the making of PAS does not. Consumer representation on the development of the codes is important since they can identify areas of particular consumer concern that the Codes should cover. Age UK has found membership of the OFT Codes Consumer Advisory body very helpful, particularly when the British Healthcare Trade Association applied for OFT approval for its Code. We were able to ensure that the resultant code ensured that members could not employ the sharp selling practices we had identified in our research⁶ on selling assistive aids in the home.

3.4 However, if they are to be effective the codes must be monitored. Age UK thinks they must be compulsorily required to have Kitemark certification. An added bonus to this proposal is the Kitemark logo is already well recognised by the public, probably more so than the OFT logo, which could result in more consumers being willing to use the services of Kitemarked code members. This will not only benefit code members but also encourage new industries to participate.

3.5 The OFT Codes tend not to attract small businesses for reasons of costs and this is likely to continue. We know that older people prefer to have local, recommended trades people, particularly if they have to undertake work in their homes which is why we supported getting a second tier trade approval scheme operated by local authority trading standards. Small local traders are much more likely to join these Local Authority Assured Trader Networks which aim to complement CCAS.

3.6 They are second tier because they do not offer the enhanced protection that OFT approved codes are required to provide, such as pre-payment protection and independent redress. However, they are subject to an independent and impartial

⁶ Sharp Selling Practices. Age Concern 2002.

application by the local authority. It was recognised there was a need to get greater standardisation between the various local authority schemes and it is the intention to raise the standards of all these local approval schemes to mirror CCAS. To ensure continued improvement in consistency and quality of local trader approved schemes we think it is important that some form of CCAS continues to exist to provide a benchmark. It is important that some agency continues to undertake the co-ordination role in approving the local authority schemes currently undertaken by OFT. We assume this will be done by the Trading Standards Institute (TSI). To maintain and improve standards, it is important that TSI liaise with BSI.

4. Consumer Advocacy. Questions 12 to 18.

4.1 Unlike the transfer of information, advice and education responsibilities, we have more reservations about transferring the advocacy functions of Consumer Focus to Citizens Advice. These concerns have not been helped by the fact there remains uncertainty about whether there will be limits on the functions currently carried out by Consumer Focus that can be transferred. We think the success of this proposal will depend on:-

- how many staff will be transferred from Consumer Focus to Citizens Advice which will of course depend on the funding available.
- The ability to transfer the powers Consumer Focus currently have to investigate and to obtain confidential information to a charity
- The ability to make a charity such as Citizens Advice publically accountable
- That Citizens Advice is eligible for membership of BEUC and Consumers International, the European and international umbrella consumer organisations

4.2 Citizens Advice's policy and campaigns are currently based on the problems and issues that clients seek help and advice on at the local level. As we have said in paragraph 2.3 above, these are overwhelmingly based on the needs of people who are in debt and on welfare benefits. Recent successful campaigns have included getting HM Revenue & Customs to provide revised debt recovery guidance, getting the Department for Work and Pensions to persuade mobile phone operators to provide free calls to their helplines and, in conjunction with the Local Government Association, the production of a good practice guide on the collection of council tax arrears.

4.3 To date the Citizens Advice focus has been on a very specific group of consumers and consumer issues that arise mainly due to low incomes or benefit dependency. While we recognise these consumers will be vulnerable, and their work includes areas of interest to Age UK such as rogue traders, scams and fuel poverty, Citizens Advice does not currently have the market focus or remit for ensuring markets work for all consumers that Consumer Focus does.

4.4 Citizens Advice will have to change. We assume Citizens Advice will continue the analysis of data from Consumer Direct currently undertaken by OFT with a view to determining priority areas of complaints that need action at the national level. The transfer of Consumer Direct will affect the traditional areas covered by Citizens Advice. Calls to Consumer Direct will not necessarily come from low income consumers or those in financial difficulties and will, by definition, be more focussed on consumer issues. For example, top categories of complaint to Consumer Direct

relate to home improvements and repairs, second hand cars and mobile telephones which we do not think will be limited to just due to being on welfare or in debt.

4.5 Given the more limited experience of general and sectoral advocacy of Citizens Advice, it is important that, should it be decided to abolish Consumer Focus and transfer their responsibilities to Citizens Advice, current Consumer Focus staff are also transferred. This would ensure their current expertise is not lost. Similarly it would retain their broader research skills.

4.6 We are attracted by the proposal to combine all the current consumer sectoral advocacy bodies. Our experience of dealing with the essential utilities such as water, energy and communications is there are a number of horizontal issues that are common and not sector specific. Some examples are payment methods, mis-selling and tariff complexities. For this reason we think there could be economies of scale in combining these bodies in addition to administration and building cost reductions. It also fits in with BIS's concept of the 'one stop shop' for consumers so reducing consumer confusion.

4.7 However, we are aware that BIS wanted to do this when it consulted on setting up Consumer Focus in 2006. In the end Consumer Focus was only merged the National Consumer Council, energywatch and postwatch, all of which came under the auspices of the Department of Trade and Industry, the predecessor of BIS. We can only conclude this was because the Departments responsible for the other consumer sectoral advocacy bodies were not prepared to see them transferred to Consumer Focus. We agree with the concept and the design principles for the unit as set out in paragraph 4.34 and very much hope the relevant Departments will agree to transfer CC Water and Passenger Focus to Citizens Advice this time.

4.8 Age Cymru has advised that a major strength of Consumer Focus Wales has been its ability to undertake work of specific importance and relevance to Wales. For example, their ongoing work on food safety in response to Professor Pennington's inquiry into the outbreak of E-coli O157 in South Wales has resulted in a new food hygiene law being proposed by the Welsh Government to make the display of food hygiene ratings mandatory. Age Cymru has also worked closely in partnership with Consumer Focus Wales on reducing fuel poverty in Wales through the Fuel Poverty Coalition. This included work on the Welsh Government's re-designed fuel poverty scheme, Nest, and on specific issues with energy bills in Wales.

4.9 They are disappointed that the current proposals do not provide certainty about future governance structures and resources for Wales, and are very concerned that the specific research, representation and advocacy roles of Consumer Focus Wales may be under threat. The Welsh Government has indicated its intention to seek powers to establish a consumer body for Wales. Age Cymru believes there is a strong case for this responsibility to be passed to the National Assembly for Wales, for the reasons outline above. This may not require an additional funding if Wales received the Barnett consequential for the new model established in England. There is cross-party support in the National Assembly for Wales for the transfer of such powers.

4.10 We had some concerns when the Government first announced its intentions to reform the consumer landscape in October 2010 about whether the statutory powers,

duties and functions of Consumer Focus could be transferred to a charity. It is extremely disappointing that this document cannot give greater clarity on this issue.

4.11 The legislation setting up Consumer Focus sets out statutory and other formal duties Consumer Focus must undertake. These are wide ranging from having to produce a forward work programme and Annual Report to very specific requirements relating to the provision of energy and postal services. In addition, as a statutory public body, Consumer Focus is subject to the Freedom of Information Act, Judicial Review and to be audited by the National Audit Office.

4.12 It may be possible that some of these, such as the production of an annual report and forward work programme could be made a condition of receipt of the grant from BIS. However, since Citizens Advice is not a public body they cannot be subject to the Freedom of Information Act or National Audit Office oversight. If all the proposals this document is suggesting are given to Citizens Advice they would have significant powers, influence and responsibility. We are extremely concerned that this will not be accompanied by sufficient accountability.

4.13 Of particular importance in the establishment of Consumer Focus was the legislative powers the organisation was given. It has the right to investigate any consumer complaint where it is of general consumer interest. To help do this and undertake other issues, it also has the power to obtain confidential information from businesses, regulators and government. The legislation also enables other public bodies such as the OFT and LATSS to disclose information to Consumer Focus. It is still not apparent from this document whether a charity such as Citizens Advice can be given these powers, let alone whether it would be appropriate given their lack of public accountability. We think the proposal to allow them to do so via the regulators is not a solution. Not only does this restrict the power to regulated industries but it seems to be unduly cumbersome. In which case these powers will be lost which will be extremely detrimental for consumers.

4.14 We were surprised at the contents of paragraph 4.24 of the document which starts:- 'Consumer Focus and the Citizens Advice service are both active and highly respected in EU and international consumer fora'. We are not aware that Citizens Advice is active on behalf of consumers at the international level which was another of our concerns when the proposals were announced that they were to be made the UK consumer champion.

4.15 Consumer Focus works at European and international levels. It is a UK member of BEUC, the European umbrella organisation representing the interests of independent national consumer organisations from European countries. It is also a member of Consumers' International. It is particularly important to have consumer representation in Europe since a lot of consumer legislation is now passed at European rather than national level. It is not clear whether Citizens Advice will meet the membership requirements of either BEUC or Consumers' International. Citizens Advice is not a national body and it would depend on whether the funding from business it receives would negate it being seen as independent within the BEUC rules. If it cannot be a member this would be of serious detriment to the UK consumer.

4.16 We strongly support the proposal to extend redress schemes that exist in energy and communications to other sectors. However our preference would be to

restrict it to one scheme as currently exists in energy. We think that having more than one ombudsman scheme such as that existing in communications merely adds to consumer confusion without offering a better service.

4.17 Age Northern Ireland has advised they support the proposal to transfer the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland. This is on the basis that it makes sense to strategically align consumer interests in one body. They also support the proposal that the Postal Services redress Scheme should continue to apply in Northern Ireland to provide parity for Northern Irish consumers.

5. Enforcement of consumer legislation. Questions 20 to 40

5.1 Our most severe criticisms of the Government proposals relate to those on the enforcement of consumer legislation. We think the purpose of re-structuring should be to improve. To improve the current consumer landscape we think the following should be addressed:-

- The national consumer protection infrastructure should be simplified
- The considerable variation in capacity and resourcing of LATSS should be addressed
- Cross border enforcement should be encouraged
- UK should be represented at international forums dealing with e-crime and scams
- There should be greater co-ordination including better intelligence, reporting and accountability at national level
- Expenditure on consumer protection should be commensurate with the financial amount of consumer detriment it needs to address

5.2 We think the proposals in this section of the document merely give a sticking plaster solution without resolving the current fundamentally inappropriate infrastructure for consumer protection. There is plenty of evidence on the problems caused by the current fragmented way consumer legislation is enforced. As the NAO report says:- 'The system for enforcing consumer law is not delivering value for money because the architecture in place to bring together what is a very fragmented delivery landscape is not functioning properly and the Department has few levers to directly influence policy delivery.'

5.3 Yet the Government's favoured proposals will bring even greater fragmentation. It is also proposing to dismantle the skills and expertise held by the OFT but suggests nothing that will replace them. We do not think the favoured option, Option 3, in this document will give consumers the protection they currently have and think it is likely to result in a severe reduction. This option proposes to transfer the majority of OFT consumer enforcement functions with associated funding to Trading Standards. The leadership on cross-border enforcement will come from the creation of a Trading Standards Policy Board (TSPB) located within the Trading Standards Institute (TSI) and primarily formed of Chief Trading Standards Officers (CTSOs) and accountable to the Local Government (LG) group.

5.4 Age UK is supportive of much of the Government's localism agenda. We recognise that effective implementation of localism could lead to better outcomes for

older people if it leads to improvements in local services and access to volunteering. However we do not think localism is appropriate to deliver consumer protection. This is not a local issue but very much a national and international issue. This is borne out by the NAO report which found that more than 70% of consumer detriment arises from cross-border abuse with mass scams and intellectual property crime the main contributors.

5.5 Provision of trading standards services by local authorities was a sensible way to ensure consumers were protected when they were primarily responsible for enforcing legislation under the various Weights and Measures Acts and before the introduction of mass pre-packaging. Until the 1960s most consumers bought their goods from local businesses. Even grocery stores that were part of a chain such as Sainsburys or the long forgotten David Greig, Macfisheries and Home & Colonial weighed out their goods because they were sold loose. The accuracy of their scales was an important protection for consumers.

5.6 In 2011 this situation has completely changed. Not only has the number of local shops selling goods using scales significantly reduced but, since the introduction of the Trades Descriptions Act in 1968, LATSS have been made responsible for the enforcement of a substantial amount of legislation. This ranges from dealing with e-crime and consumer credit to policing Energy Performance Certificates, energy and food labelling and compliance with consumer safety regulations. Most of this is not confined to a local area. Scams, rogue traders and energy company doorstep sales people for example do not operate solely within local authority boundaries. We find it incredible given this change that local authorities are still only statutorily required to provide one weights and measures officer in their trading standards service. We think any proposal to change the consumer landscape should include a more stringent statutory requirement on local authorities which better reflects the responsibilities of LATSS.

5.7 Currently there are 198 TSS authorities but there are wide variations in the size and funding between them. The NAO found:- 'There is already considerable variation in the capacity and resourcing of Trading Standards Services, with some services having as few as two members of staff and others employing over eighty...' Given the range of enforcement responsibilities it is inevitable that each local authority will have to make its own priorities. As the OFT has commented with regard to protecting consumers online:- '..'differing local priorities and funding constraints mean that not all LATSS are equipped to deal with online problems. Furthermore, as the internet is not based around local geographies, there is not necessarily a clear local need for all LATSS to develop an internet enforcement capability.'⁷

5.8 The problem with the local nature of LATSS has already been recognised in other areas. Following successful pilots, BIS funded illegal money lending regional enforcement teams across Great Britain and has committed to continue the funding in 2011/12. In 2006 BIS provided funding for three pilot regional scambusting teams which were subsequently rolled out nationwide. BIS is continuing to fund these this year at about the same level as in 2010. However due to the precautionary attitude of some local authorities in the current circumstances, a guarantee of only one year's funding has been insufficient to save the service. The authorities involved in the

⁷ OFT Protecting consumers online. A strategy for the UK. December 2010

largest scambuster region, London and the South East, have decided to close it as from April 2011.

5.9 Fortunately to date we have had the OFT who can take enforcement action under consumer protection legislation in matters that affect consumers generally. Whilst there have been times when a LATSS has taken legal action which has been in the national rather than local interest, it is difficult to see this will be a common event, particularly in current economic circumstances and certainly will not be to the same extent as the OFT is currently able to do. It is hard to see a LATSS taking on the banks about their charges for example in the proposed new consumer landscape. As the NAO report says:- 'Trading Standards Services have strong incentives to deliver against local priorities with 86% of funding for consumer enforcement being utilised for Trading Standards' work and provided by local government.....The incentives for individual Trading Standards Services to take on cross-border work are weak.'

5.10 In 2011/12 some LATSS have had budget cuts up to 50% with more expected in future years. Given the service is a relatively small local authority department, implementing cuts at these levels make it particularly difficult to maintain current levels of service delivery. With the total budget for Trading Standards expected to be reduced from £213 million in 2011/12 to about £140 - £170 million in 2014/15 it is even less likely that LATSS will be doing cross-border work which is where most consumer detriment lies.

5.11 The document recognises that cross-border work, consistency and co-ordination are important and 'must be retained.' However, Age UK fails to see how the Government's preferred Option 3 which we consider adds to the current confusing and fragmented system is expected to work. CTSOs are employed by individual local authorities and their primary loyalty will be to their employer. It also assumes the local authority will be happy to have their CTSO taking part in TSPB. We think accountability of the TSPB insufficient. Given the LG group has shown complete disinterest in consumer protection by virtually abolishing Local Government Regulation it is unlikely that any of the LG board members will have any expertise or interest in consumer protection.

5.12 We do not see that the resources will be sufficient to fulfil the functions TSPB will be required to undertake. Will a 'small secretariat' be able to provide not only day to day co-ordination and case allocation but also maintain enforcement databases and monitor case management to ensure consistency, lack of duplication and correct use of resources? Further why should TSPB and their secretariat be able to resolve the short comings identified in the NAO report, many of which we think arise from the sheer number of LATSS and the considerable variation in their funding and capacity. We do not see why TSPB will be in a position to 'mobilise the wider Trading Standards community around a common agenda.' Nor do we see how CTSOs who, after all, already have a full time job will have the time to deliver the operational principles identified in paragraph 5.54 let alone adequately undertake the other duties described in paragraphs 5.56 and 5.57 of the document.

5.13 Of equal importance, it is difficult to see how LATSS will be able to undertake work at the international level that is needed to combat scams and problems with the internet. Internet scams are on the increase. Whilst older people are more likely to be targeted by scammers, they are less likely to suffer from internet scams mainly

because 50% of people aged 65 -75 and 25% of those aged 75 have broadband at home⁸. However Age UK research⁹ has shown that older people, even those who are online, are less likely to use it for shopping or banking because of their fears of being scammed and we have called for better consumer protection for internet activity. It is estimated that £100 billion (7.2% of GDP) is contributed to the UK economy by the internet, This figure does not include the cost savings to national and local government that could come from increasing use of providing services on line. It is vital for the UK economy that consumer confidence in using the internet is maintained. So working at the international level with Internet Service Providers and telecomms regulators will be increasingly important to improve enforcement mechanisms against mis-users of the internet.

5.14 In recognition of internet security problems, the 2009 Consumer White Paper required the OFT to develop a strategy for protecting consumers online. Following a consultation in July 2010, the OFT published its proposals in December 2010. Of particular relevance, it recommended changes to enforcement which it had found to be fragmented. It recommended improved co-ordination between OFT, which has its own Internet Enforcement team, Trading Standards and the police and other enforcement agencies. It proposed that OFT would be the 'central hub' for intelligence sharing and case management between the myriad of agencies involved.

5.15 It is now proposed that responsibility for security of online services will be taken on by LATSS. However, even if they get some of the OFT funding, it is not clear how they will be able to undertake the international co-ordination for either e security or scams that the OFT has been able to do given they do not have the same economies of scale. The NAO report has identified that the cost of consumer enforcement functions currently undertaken by the OFT excluding Consumer Direct is £13 million. We do not see, even given ring fencing of this sum, how LATSS could take on an international role let alone perform all the other co-ordinating functions proposed in this consultation with this budget.

5.16 Our preferred option is to improve the status quo without changing powers and responsibilities, and build on them to improve the shortcomings identified in the NAO report. We think the proposed Competition and Markets Authority (CMA) should have the same consumer policy scope as the current OFT. We are however, alarmed that this option seems to require the creation of a Joint Enforcement Board (JEB) which would comprise representatives of the CMA and Trading Standards in equal numbers.

5.17 We do not see how JEB will address the shortcomings identified in the NAO report. These seem to arise out of the inability of the OFT to impose sensible requirements such as the National Intelligence Database on the myriad of LATTs. If the CMA were given powers to **require** a LATSS to comply with their requests we see no need to create JEB which seems to have no authority over LATSS.

5.18 This is another problem arising from LATSS being primarily a local rather than a national service which we think is the primary cause of the current fragmentation of enforcement. It is disappointing that with the current political environment favouring localism let alone the difficulties in getting the local funding currently available for

⁸ The Consumer Experience. Ofcom. December 2010

⁹ The Golden Economy. Age UK. December 2011

Trading Standards re-allocated to fund a national service that under these proposals consumer protection is likely to become even more fragmented and complicated which will be of severe disadvantage for consumers.

5.19 We do not support any of the proposed variants of JEB offered in this consultation. While we think JEB is more likely to be able to deliver the duties and functions outlined in the proposals to establish TSPB than the TSPB would be able to do we do not think any of the proposed models will deal with the NAO report recommendations. We find the second variant, to create a new public body surprising given the reason the Government wants to reform the consumer landscape arose from their desire to reduce the number of quangos. The third variant, to devolve national resources to a central trading standards body such as TSI merely adds further complexity. If pushed we would opt for the first variant suggested in the document, to create a Board with an equal number of CMA staff and trading standards staff but essentially do not see either the need or rationale for creating a JEB. Given this document has given rather a lot of options for the future of consumer protection we think, whichever option is chosen, it should be subject to further discussion and consultation on how the status quo could be improved.

5.20 Despite our preferred option to retain the status quo with regard to consumer protection, we have no objection to the proposal to merge OFT with the Competition Commission to create a new CMA. We have found answering the questions relating to the role of the CMA (questions 25 to 40) difficult given that some of them assume the Government will proceed with their preferred Option 3. We hope that our answers to these questions would be self evident if our preferred option was accepted but our answers in this response relate to the situation if it is decided, unwisely in our view, to proceed with Option 3.

5.21 We are relieved that given the preference of the Government for Option 3, it is proposing that the CMA retain some responsibility for consumer enforcement and we support this proposal for the reasons well argued in the document. We also agree that any procedural restriction to what the CMA can investigate would be excessive and constrain the CMA's flexibility on how to address market problems. We agree that there should not be any procedural limitation to CMA's enforcement role. We also agree that the CMA should enjoy significant discretion over when a market has structural problems and that they should retain responsibility for mixed market studies where there may be competition and consumer issues in the market.

5.22 We would prefer the CMA to retain sole responsibility for market studies even when they are restricted to consumer detriment rather than market structural issues. This is because we think the skills related to investigating market structure and consumer detriment are essentially the same. We think transferring the responsibility to Citizens Advice to undertake market studies in cases where they are restricted to consumer detriment would be a duplication of effort and cost. This seems to be supported by the analysis given in the recent BIS consultation on the creation of the CMA¹⁰ which recognised that the market analysis reports produced by Citizens Advice and Consumer Focus 'are not entirely analogous to OFT market studies in terms of analytical approach' and this could require Citizens Advice to 'build further expertise and capacity.' We think this would be an unnecessary expense in the current climate.

¹⁰ A Competition Regime for Growth: a consultation on reform. BIS. March 2011

5.23 This is particularly relevant if, as suggested in this document and a proposal which we agree with, the CMA is to retain responsibility for the current supercomplaints system. The OFT investigation into doorstep selling in 2002 for example arose as the result of receiving a supercomplaint from Citizens Advice. Is it being suggested that Citizens Advice could make a supercomplaint to CMA which CMA judges to be solely one of consumer detriment, the CMA will refer it back to Citizens Advice to do a market study?

5.24 We also think the determination of what was solely a consumer issue would not always be apparent. We think it possible that something that initially seems to be solely restricted to consumer detriment would finally be found to have some market failure involved as well. Further, if Citizens Advice is unable to take on the demand for information powers of Consumer Focus and if they cannot be made more publicly accountable, we think it would be inappropriate for them to undertake market studies.

5.25 While we cannot disagree with the Government's proposals to ensure there is effective collaboration between CMA, Citizens Advice and Trading Standards, we think this is easier to say than to achieve. We see no reason why the proposals in the document will have more success than current arrangements. We absolutely disagree with the proposal to have some financial resource (from where?) for investigations that required joint agreement between CMA, TSPB and other consumer advocacy bodies for its release because we think this introduces yet more complexity into an already complex situation.

5.26 We think the prospect of a national body such as the OFT taking enforcement action has more effect on businesses than action taken by an individual LATSS. OFT is likely to get more publicity about a case and more likely to win given its access to its own specialist competition lawyers which are unlikely to be available to any LATSS or TSI. Under Option 3 we see no alternative to giving TSI the responsibility for the current OFT functions of giving professional guidance and training. However, we have already explained our severe reservations of their ability to do so in paragraphs 2.8 above without the support of OFT and LACORS. Similarly we do not think the TSI has the capacity to take on the OFT role with regard to international liaison and general policy functions as outlined in paragraph 5.10 above.

5.26 We agree the CMA should have responsibility for chairing the consumer concurrences group and taking on the supercomplaints system currently undertaken by the OFT. We think it would be extremely inadvisable to start to implement any change to the consumer enforcement landscape before the necessary legislation to set up the proposed CMA has been enacted.

