

A Consultation on a Consumer Duty for Public Bodies - Analysis of Consultation Responses

June 2023

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1. Background and Introduction

The Consumer Scotland Bill was introduced to the Scottish Parliament in June 2019, passed in May 2020, and received Royal Assent in June 2020. The Consumer Scotland Act 2020 established Consumer Scotland as the statutory body for consumer advice and advocacy in Scotland.

As part of the process in establishing Consumer Scotland, stakeholder feedback identified the need for comprehensive change in how the interests of consumers are considered and integrated into policy and decision making to ensure that no detriment is brought to them as a result of strategic public body policy decisions. To this end, the Consumer Scotland Act 2020 requires that a relevant public authority must, when making decisions of a strategic nature about how to exercise its functions, consider the impact of those decisions on consumers in Scotland, and the desirability of reducing harm to them.

The establishment of Consumer Scotland and the introduction of the Consumer Duty will assist policymakers in considering the rights and interests of consumers as part of their strategic decision-making process. This greater focus on how policies affect consumers could lead to a better understanding of the consequences of policies or decisions on consumers and as a result, build both consumer support for policies and consumer confidence along the way.

2. Overview of Consultation

The purpose of the consultation was to help focus and support the delivery of a duty on specified public authorities to consider the impact any strategic decision could have upon consumers.

This was a short and focused consultation which went live on 3 September 2021 and ran for the standard period of 12 weeks. Questions, of which there were three, and sub-questions focused on three main areas:

- Public Authorities Bound by the Duty;
- Functions in Scope; and
- Reporting and Governance.

The consultation included a full list of public bodies that Scottish Ministers propose to be bound by the Duty. This list was confirmed with the Scottish Government's Public Bodies Unit and individually with officials from Local Government, Health, Tribunals and Colleges policy departments.

Prior to the launch of this consultation, officials engaged with a number of public bodies, and as a result, many bodies were aware of the consultation.

Since this consultation closed, the Scottish Government had to re-prioritise staffing resource to ensure it is responding to the cost of living crisis as effectively as possible. The policy team with responsibility for this consultation were re-focused to prioritise help and advice for consumers in need of support as a result of the cost of living crisis and as a result has unfortunately delayed the publication of this consultation.

3. Respondent Groups

There were 41 responses to this consultation consisting of 36 from organisations and 5 from individuals.

Organisations responding included:

- Public Bodies
- Local Authorities
- Third Sector Organisations
- Businesses and Industry
- Professional Bodies

Analysis of Consultation Questions and Responses

Q1(a) Do you agree that the Consumer Duty should be applied to the organisations proposed in the public authorities section of this consultation?

There were 33 responses to this question.

- 49% (20 respondents) answering yes
- 32% (13 respondents) answering no
- Eight respondents didn't answer the question (20%)

Q1(b) If not, which public authorities should be excluded, and why?

There were 20 responses to this question. The public authorities given as examples in responses to this question included:

- Public bodies which don't receive an income for their services
- Advisory Bodies – which do not provide goods or services to consumers
- Risk Management companies as they don't deliver services to consumers
- Local Authorities – already have interest in both democratically and financially avoiding detriment to consumers and are subject to duties which affect how they make strategic decisions
- Specific examples of organisations include:
 - Scottish Road Works Commissioner
 - Poverty and Inequality Commission (as an advisory NDPB)
 - Creative Scotland
 - Scottish Children's Reporter Administration – Executive NDPB
 - Care Inspectorate
 - Scottish Legal Aid Board – limited scope to address / influence factors related to consumer behaviour in context of legal aid

- A further point made was that a clearer definition of 'consumer' was needed to assist in determining who is bound by the Duty.

Q1(c) Are there any public authorities you feel should be bound by the Duty which have not been listed, please give reasons why?

There were 24 responses to this question. A summary of the main comments is listed below:

- It is noted that the list of organisations included appears extensive and comprehensive which encompasses Scottish Government, local authorities, public corporations, executive agencies, NMOs and NDPBs.
- It was noted that Scottish Government should carefully consider the nature of the work of each listed public authority and whether that work in all aspects fits in a relevant way into the scope of the Consumer Duty.
- Some examples of authorities which should be bound by the Duty and not listed include:
 - NHS (and its subsidiaries) / GP Practices
 - Local Authorities
 - Operator of last resort for ScotRail, after March 2022
 - The Law Society of Scotland, Faculty of Advocates and Association of Commercial Attorneys
 - Trusts that have been set up as a public authority – established to deliver public services
 - Police Scotland
 - Private companies / charities that are contracted to deliver a public service by a public authority

Q2(a) Should public bodies be subject to the Duty when carrying out all of their functions or only specified functions?

There were 29 responses to this question.

- 39% (16 respondents) selected all functions
- 32% (13 respondents) selected only specified functions
- 29% of respondents (12) did not answer

Q2(b) If all functions, why?

There were 19 responses to this part of the question with a wide variety of views. Some of these views are listed below:

- Excluding some functions would be inconsistent with the aims of the Consumer Duty such as to 'embed the consumer perspective into strategic decision making' and to 'encourage relevant public authorities to be proactive in their engagement and consideration of consumer behaviour as a driver to achieve policy objectives'.
- Any functions unlikely to have a significant impact on consumers should be easily identified at an early stage.

- Some have suggested that being subject to all functions may vary depending on the organisation. The Duty is drawn broadly and it would therefore seem appropriate to give it a similar broad application.
- The Duty should apply to all functions so that consumer interest and harms are taken into account in strategic decision making, although this may need to be considered on a case-by case basis as some bodies may have particular functions not relevant to the Duty.
- Making the Duty part of the overall function of public bodies will hopefully make sure that consumer welfare and harm is given proper consideration in developing both strategic and operational plans.

Q2(c) If just specified functions, how should these be determined?

There were 21 responses to this question. A summary of the main points is listed below:

- Only functions which have clear / potential impact (directly or indirectly) on consumers, which is consistent with the aims of the Duty.
- Functions that will impact on the service or costs of the service to consumers.
- Many functions of public bodies do not relate directly to consumers so would be irrelevant.
- Public bodies are already subject to a wide variety of impact assessments and applying the Duty to all functions would be an additional burden. This was also noted, if public bodies have to spend time and resource trying to assess the Duty against each and every strategic or policy decision.
- It is sensible for organisations to be given scope to determine which of their functions have or have potential to have an impact on consumers and impose the Duty on such functions.
- Some respondents highlighted the need for clear guidance on which functions of their particular organisations would be subject to the Duty.
- The functions to which the Duty applies should be on a case-by-case basis.

Q3(a) Do you have any comments on the reporting requirements of the Duty, which will help to ensure public bodies meet the conditions?

There were 29 responses to this question. A summary of the main comments is listed below:

- Has to be public information and not through FOI. It should also be proportionate to the impact and expenditure level of decisions which are being made. As such there is support for the public bodies to determine how it publishes this information.
- There is broad support that reporting requirements could be met within organisations' annual reports, which could mitigate any impact the Duty may have on resources. The issue of the frequency of reporting was also raised as many public bodies are subject to increasingly onerous burden in terms of regular reporting.
- It would be beneficial for Consumer Scotland to provide clear guidance on what should be included and the level of detail required in reporting.

- Broad support for reporting within 12 months.
- Further information is welcomed regarding a public body that does not fulfil its reporting commitments or fails to meet the Consumer Duty. What would be the consequences? A contrasting view was given that Consumer Scotland would not be expected to be responsible for policing public bodies to ensure that they are complying with the Duty. The Duty should be used as a tool to assist public bodies in making good policy rather than an additional burden.
- There are other methods through which public bodies can be held to account – for example through audits. It could also be reported to the Scottish Public Services Ombudsman (SPSO).

Q3(b) What further key considerations or consultation do you think is required to ensure that the governance and reporting structures suit public bodies?

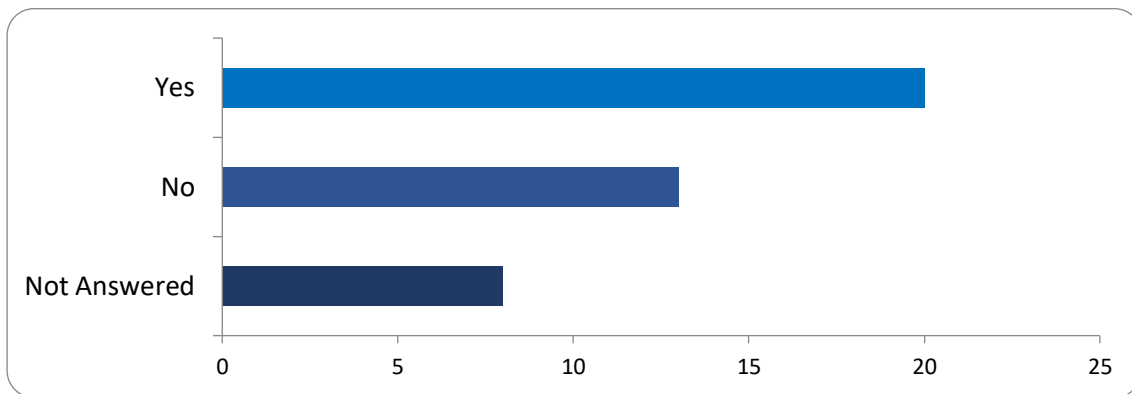
There were 24 responses to this question. A summary of the main comments is listed below:

- Clear guidance is needed on what is expected of those involved in the Duty. Also reference to how reporting structures will align with other Scottish Government frameworks, such as NPF.
- Consideration should be given to governance and reporting structures already in place by public bodies and the relationship between Consumer Scotland and other public bodies with responsibility for consumer protection to avoid duplication of reporting, added burden and confusion.
- An Equality Impact Assessment (EQIA) should be made on the consideration or consultation to ensure it doesn't adversely affect anyone with a protected characteristic. The interplay between other IAs and the demands of regulators should also be considered.
- The size of the public body should be taken into consideration when defining the reporting / governance structures.
- Someone could be tasked with assessing compliance of relevant authorities and if necessary, challenge them on any perceived failings.
- A review could be held after 12 months which considers perceptions of the burdens of adopting the Duty, to see if the system needs to be finessed.
- Reporting should only apply to those elements of a body's functions which are relevant to consumers.

4. Summary

When considering the analysis of responses above, there appears to be broad support for the implementation of a Consumer Duty. The graph below shows a majority in agreement that the Consumer Duty should apply to the organisations proposed.

Graph 1 - Support for the Consumer Duty



It is important to note that while there is broad support for the Consumer Duty, many respondents shared similar concerns regarding reporting requirements, with some respondents raising concerns that the Duty may become burdensome for their organisation. Many stated that consideration should be given to governance and reporting structures already in place by public bodies. Many respondents also stated that clear guidance is needed on the reporting process and requirements.

In terms of the functions and whether the Duty should apply to all functions within an organisation, there were mixed responses. Some organisations agree with question 2(a) that the Duty should apply to all functions, stating that to exclude any function would be inconsistent with aims of the Consumer Duty. It was also noted that inclusion of all functions would help to ensure that consumer welfare and harm is given proper consideration in developing both strategic and operational plans.

Other respondents did not agree and stated that they believed the Duty should only apply to specific functions, mainly, those functions which directly or indirectly impact on consumers. Many organisations noted that not all of their functions relate directly to consumers, and to include these as part of the Duty would, as already mentioned, create extra burden.

While there were many positives around the introduction of a Consumer Duty it is important that the following points are considered:

- Clear guidance is required for organisations to fully understand the requirements in terms of reporting.
- Consideration is needed on whether the Duty should apply to 'all functions' of an organisation where there are functions which do not impact on consumers.
- Could a case by case basis be considered for implementation of the Duty? This was mentioned by many respondents when considering the functions that the Duty would apply to as well as the reporting / governance structures.

5. Next Steps

Scottish Government officials will discuss and agree next steps with the responsible Minister after which this document will be published on the Scottish Government website.

Officials will then move to draft, and lay, the secondary legislation which will name the bodies bound by the Duty. During this preparatory stage for the laying of the SSI, Scottish Government officials will engage with Consumer Scotland as one of the Scottish Government's key stakeholders, and as the statutory consumer advocacy body in Scotland. Officials will also engage with a range of stakeholders who are due to be bound by the Duty to discuss concerns and explore potential solutions to address them. Information on the key principles of the Duty will be shared as part of this engagement to increase awareness and understanding and to support discussion. Consumer Scotland will also play a key role in this engagement given its responsibility to issue the guidance on the implementation of the Duty.



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