

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

October 2015

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Chairman's Foreword

I was appointed by Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy, John Swinney, to chair an independent Working Group on Consumer and Competition Policy, which was formed to consider how best to implement changes to the consumer and competition landscape in Scotland. I was honoured to be asked to take on the role, and am proud of what the Working Group and I have achieved together.

I have formerly chaired the General Consumer Council for Northern Ireland and been a Board Member of Consumer Futures. I am currently the Northern Ireland Member of the Ofcom Communications Consumer Panel, and Board Member of the Independent Press Standards Organisation. I come with some experience in both devolved and UK contexts. I'm mindful too that alongside experience usually sits some baggage acquired along the way. I hope that some of what I have learned from past successes and failures in consumer policy has been of use in our discussions.

This report is not a solo performance, it is the result of collaborative effort by people with diverse skills and experience from a range of public, academic, charitable and business bodies including: Scottish Public Services Ombudsman, Which?, Citizens Advice Scotland, Trading Standards Scotland, Ombudsman Services, Federation of Small Businesses and Accounts Commission. The Working Group comprised 12 members and we were assisted by five expert panels with a further 16 members. I'm grateful to all who have given generously of their time and effort endeavouring to find Scottish solutions to the needs of Scottish consumers. Thanks are due to Jamie Steed and the Consumer and Competition Policy Unit within the Scottish Government for the secretariat support provided to me. Special thanks are also due to Which?¹ for sharing their consumer research with us.

Our work follows on from and builds upon the Scottish Government publication [Consumer Protection and Representation in an Independent Scotland](#)² and the Scotland Bill provisions (as introduced in the House of Commons on 28 May 2015) to devolve consumer advocacy and advice to the Scottish Parliament. [Scotland's Economic Strategy](#)³ also states a commitment to create a more productive, cohesive and fairer Scotland, which recognises that a fairer and more equitable society underpins a strong economy. A desire for fair and ethical competitive markets, person-centred public services, empowered and informed consumers, and effective redress when something does go wrong, have been foremost in our deliberations as we have considered our task. We have reflected on how the four pillars of consumer protection (advocacy, advice including education & information, enforcement and redress) and competition work together.

“Social scientific research is and always will be tentative and imperfect. It does not claim to transform economics, sociology, and history into exact sciences... it can inform democratic debate and focus attention on the right questions. It can help redefine the terms of debate, unmask certain preconceived or fraudulent notions and subject all positions to constant critical scrutiny.”

Capital in the Twenty-first Century,
Thomas Piketty

¹ Unpublished research, Which?

² Consumer Protection and Representation in an Independent Scotland: Options, Scottish Government, August 2013

³ Scotland's Economic Strategy, Scottish Government, March 2015

It is my hope that our deliberations and recommendations to the Scottish Government will lead to the creation of Consumer Scotland: an independent body working to ensure the voice of Scottish consumers is heard, informing debate in devolved and UK and European contexts with constant critical scrutiny which keeps asking the right questions.

A handwritten signature in black ink, appearing to read "Rick Hill". The signature is fluid and cursive, with a long horizontal stroke at the bottom.

Rick Hill MBE

Executive Summary

Consumer protection and representation are important because they allow a free market to operate effectively, ensure the vulnerable are protected, guard against unscrupulous traders and put consumers, businesses and local communities at the heart of regulatory decisions. Economic activity flourishes when consumers can trust businesses, so consumer trust is necessary to ensure a flourishing economy. Good consumer protection systems also protect businesses from rogue trading practices.

“Consumers by definition, include us all, They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard.” John F Kennedy

The Smith Commission recommended that consumer advice and advocacy powers be devolved to the Scottish Parliament, as well as the ability for Scottish Ministers to act with the Secretary of State to request the Competition Markets Authority to carry out a second stage market investigation. Scottish Minister’s established a short-term Working Group with a specific remit of providing recommendations on how these powers could be put to best effect and what improvements could be made to the consumer protection and competition landscape in Scotland. The Working Group structured its discussions around the four pillars of consumer protection – advocacy, advice (including education and information), enforcement and redress - and competition. This report is a distillation of the discussions held by our five expert panels and the Working Group itself, and sets out recommendations to the Scottish Government.

The primary recommendation made by the Working Group is that the Scottish Government should create a statutory, unified consumer body. The Working Group made an early decision to name it Consumer Scotland. At its heart should be a synoptic approach to consumer and competition policy allowing cross-cutting policy engagement, ensuring that the voice of the consumer is heard at local, national (Scotland and UK) and European levels. In order to build credibility and gain the respect of governments, regulators, stakeholders and consumers, the new body must have the ability and the powers to undertake research, analysis and representation on a wide range of issues in markets and public services that affect both current and future consumers, some of which will require in-depth knowledge and technical expertise. It should also be able to respond as required to events that have immediate consumer impacts.

The poverty premium faced by some consumers is not restricted to one market. Remedies often require multi-utility, multi-agency approaches, across a range of regulators, local and central governments. Consumer Scotland should be sufficiently resourced and evidence-led to ensure that consumers’ voices are heard, taken into account, and that proportionate changes can be taken forward. The Working Group is clear that Consumer Scotland should develop a consumer strategy that empowers and informs as well as protects consumers. To support this, the Working Group feels that Consumer Scotland should develop a coherent consumer strategy that recognises and supports the links between all four pillars, and simplifies the landscape to make it easy for consumers of all demographics to access help when they need it. The Working Group also wishes to emphasise that the Scottish

Government should make full use of the devolved competition powers and develop policy accordingly.

The Working Group recommends that the Scottish Government should determine what new legislation and powers will be required for Consumer Scotland to gather and share robust information across the four pillars from a range of sources. This will allow Consumer Scotland to detect and prevent harm, and support businesses, public services, regulators and governments in continuous improvement.

When creating Consumer Scotland, the Scottish Government should set out clear lines of accountability to the Scottish Parliament, and consider whether there may be merit in creating a dedicated Consumer Minister. The Working Group feels strongly that Consumer Scotland should be a public body that is free from undue political or commercial influence. Consumer Scotland will need governance and oversight arrangements that demonstrate that it is independent and seen to be independent. To ensure the correct use of public funding and demonstrate the best value for money, Consumer Scotland must be accountable directly to the Scottish Parliament.

Consumer Scotland will also require information-gathering powers similar to those currently held by the Citizens Advice service and the Consumer Council for Northern Ireland. These should include rights to be consulted by economic regulators on matters which affect Scottish consumer interests; rights to refer failing markets to regulators; rights of appeal where appropriate against high impact regulatory decisions; powers to initiate super-complaints; and resources to sponsor and support collective actions for competition law redress under Schedule 8 of the Consumer Rights Act 2015.

A key principle for Consumer Scotland should be that it is an intelligence-led organisation which is able to follow the golden thread of shared data, allowing it to analyse current issues of consumer detriment and reduce or eliminate future occurrences. Consumer Scotland should be able to commission research, use data from partner organisations and other relevant policy and demographic data to inform its work.

Consumer Scotland should also work with businesses to help build effective and fairer relationships with their customers by contributing on consumers' behalf in formal price control review processes and working informally with regulated and unregulated firms to improve service standards. Underpinning all of this, Consumer Scotland should ensure competitive markets for Scotland and encourage better access, quality and prices for consumers. Consumer Scotland should develop effective interfaces with existing competition regimes throughout the UK for the benefit of Scottish consumers. Finally, Consumer Scotland should work for a fairer deal for Scottish consumers, making sure their voices are heard across regulated and unregulated markets.

1. Context

Working Group on Consumer and Competition Policy

In June 2015, the Scottish Government established an independent, short-life Working Group to consider optimal arrangements for delivering consumer protection and competition policy in Scotland. The Group was tasked with providing recommendations to the Scottish Government on specific improvements that could be made to the consumer protection and competition landscape. The Group was set a number of objectives to deliver its overall aim:

- consider how best to implement changes to the consumer and competition landscape in Scotland;
- develop practical solutions which optimise future arrangements for consumers in Scotland, encompassing links to relevant devolved and reserved policies and services;
- make practical recommendations for an innovative and bespoke model of delivery for consumer and competition policy in Scotland; and
- shape development of a competition policy fit for Scotland, which places consumer interests at the heart of economic and competition regulation.

Five expert panels were created to support the Working Group – one for each of the pillars of consumer protection and a further one for competition. Each panel delivered a report to the Working Group, and these played a key role in informing the Working Group discussions and shaping the final recommendations.

The Working Group and Expert Panel’s membership and meeting schedule can be found in Annexes A and B to this report.

Existing landscape

A robust system of consumer protection is sustained by four mutually supporting pillars:

- advocacy;
- advice (including education & information);
- enforcement; and
- redress.

The Scottish Government’s paper “[Consumer Protection and Representation in an Independent Scotland](#)⁴” outlined how all four pillars complement one another. Through advocacy, the rights of consumers can be represented to Parliament, governments, regulators, public services and businesses, so that new policies can be pursued or refined. Through advice, individual consumers can be made aware of their rights and become more empowered, making it easier to avoid unscrupulous businesses, or to take action when they suffer harm. Through enforcement, traders who flout consumer protection or competition laws can be held accountable. Through

⁴ Consumer Protection and Representation in an Independent Scotland: Options, Scottish Government, August 2013

redress, consumer detriment can be overturned and consumers gain access to justice.

On the ground advice, including education and information, can empower consumers, making it easier for them to avoid harm in the future. If aggregated properly the data from this can be used to identify problem areas and unscrupulous practices early on. With this knowledge, it should be possible to respond quickly with enforcement measures to prevent further detriment, or advocate for needed policy changes. And, when consumers *are* harmed, a simple and easy dispute resolution system ensures consumers are able to get access to justice.

With new powers devolved to the Scottish Parliament in the Scotland Bill and a willingness to innovate in the existing landscape, there is now a golden opportunity to unite all four pillars and develop a world-leading system of consumer protection, which would be supported by new competition powers. The following section describes each pillar and the opportunities for realising this vision.

Advocacy

A strong system of consumer advocacy is essential for an effective system of consumer protection. With a powerful enough voice, it brings balance to markets, public services and regulatory processes and ensures the consumer interest is paramount. For this reason, Scotland needs a robust system of consumer advocacy that is comprehensive, effective and widely respected. Such a system must reduce duplication and should be applied consistently.

In Scotland, statutory advocacy on behalf of consumers has, until recently, been provided by a range of different organisations. Until UK Government reforms took effect in 2013, Consumer Focus Scotland (CFS) carried out general advocacy work (in addition to sectoral advocacy work in the post, energy and water sectors). Following the reforms, CFS was abolished and Consumer Futures was created to carry on CFS's advocacy role. In the final stage of this landscape remapping, Citizens Advice Scotland (CAS) took over the role of Consumer Futures, and since 2014 has been the lead national organisation for advocacy in Scotland. It is responsible for both general advocacy work and advocacy in the regulated sectors. However, a number of other bodies also continue to perform a consumer advocacy role, such as Which? and Transport Focus.

Advice

The Citizens Advice Service and the Citizens Advice Consumer Service are the principal providers of advice to consumers in Scotland, offering assistance face-to-face, online and over the telephone. There are also a number of other organisations offering services such as legal and financial advice. These bodies often provide similar or related services to the better known consumer organisations. Furthermore, several agencies involved in the money advice arena, such as the Money Advice Service, Money Advice Scotland, Money Advice Trust and CAS, have related functions. In addition to these bodies, some local authorities also offer money advice as part of Trading Standards. Other sectors, including energy, have multiple consumer advice providers, whereas transport has one agency for consumer

protection on rail travel (Transport Focus), another for protection on bus travel (Bus Users Scotland) and the Traffic Commissioner.

Finally, important second tier advice, which assists consumers with complaints, is provided by most Trading Standards services. It helps consumers obtain a resolution when they have been unable to do so on their own. But it is also the intelligence which informs Trading Standards of persistent trading malpractice. In response to a second tier referral from the consumer advice helpline, Trading Standards will contact the trader on the consumer's behalf and explain the basis of the complaint and the legal obligations placed upon the trader. If – through dealing with second tier complaints, Trading Standards identifies persistent malpractice, it may seek a formal civil law undertaking from the trader to desist. If breached, criminal proceedings can be instigated.

Enforcement

The current model for local enforcement has led to variations in how different local authorities protect consumers and regulate businesses. There is consensus that action is needed to strengthen protection for consumers through more collaborative working at a national and local level.

The effectiveness and viability of the current enforcement regime has been under scrutiny for a number of years, including reports from the [Accounts Commission](#) in 2002⁵ and 2013⁶ and a report from [Consumer Focus Scotland](#) in 2010⁷. For example, the 2013 report found that:

- 1.3 million people in Scotland thought they had reason to complain about goods and services in the last year;
- 35,000 consumer complaints and advice requests were dealt with by councils' Trading Standards services in 2010/11;
- the long-term viability of councils' Trading Standards services is under threat, and urgent action is needed to strengthen protection for consumers;
- the lack of any national priorities, standards and reporting in Trading Standards services in Scotland has led to variations in how different councils regulate businesses; and
- many consumers do not know where to go for help when they have difficulty with a purchase.

The current consumer protection landscape is a barrier to ensuring a strategic and consistent approach is taken to addressing these problems. It is on this basis that the UK Government is currently reviewing Trading Standards while the National Audit Office is due to begin a study of Trading Standards in the near future. COSLA, the Scottish Government and local authorities are also working to address these challenges through the Trading Standards Strategic Review Group.

⁵ Made to Measure: an overview of trading standards services in Scotland, Accounts Commission, October 2002

⁶ Protecting Consumers, Accounts Commission, January 2013

⁷ Up to Standard?: a review of trading standards services in Scotland, Consumer Focus Scotland, June 2010

Redress

The recent [EU directive on consumer alternative dispute resolution \(ADR\)](#)⁸ covers:

“...any entity that is established on a durable basis, offers the resolution of a dispute between a consumer and a trader through an ADR procedure and is listed in accordance with this Directive. This Directive may also cover, if Member States so decide, dispute resolution entities which impose solutions which are binding on the parties.”

This definition of consumer ADR has been adopted by the Scottish Government in its consideration of consumer redress. Under this formulation, consumer ADR can take many forms, ranging from informal mechanisms such as mediation, which seeks to help parties reach agreement, to more formal routes, like ombudsmen, which can potentially deliver binding rulings to settle a dispute.

What all consumer ADR schemes have in common is the opportunity to solve disputes without using the courts. Courts are often seen as too costly, time consuming or intimidating for consumers to pursue complaints, so it is essential that there is an effective, less formal system of consumer redress available as an alternative.

There is evidence that the current consumer redress landscape is not working well for consumers in the UK. According to research undertaken by the [Office of Fair Trading](#)⁹ (OFT) in 2013, only 64 per cent of people who experienced a problem took any steps to complain about it. This figure is far lower in some industries; for example [in legal services just 13 per cent of those who were dissatisfied pursued a complaint](#).¹⁰

One reason for this is that there is a diverse array of industry and enforcement bodies dealing with consumer detriment. There are multiple consumer ADR providers, both accredited and unaccredited, each with their own procedures and powers. Navigating all of these is unnecessarily complicated for consumers. In terms of consumer ombudsmen, some of the most prominent schemes are:

- the Scottish Public Services Ombudsman – covers disputes between citizens and public authorities in Scotland;
- the Scottish Legal Complaints Commission – covers disputes involving the legal profession;
- Ombudsmen Services – covers disputes in a wide range of sectors, including statutory schemes in energy and communications;
- the Financial Services Ombudsman – covers disputes involving providers of financial services; and
- the Pensions Ombudsman – covers disputes relating to pensions.

⁸ EU legislation on Alternative Dispute Resolution, May 2013

⁹ , Consumer Detriment: Assessing the frequency and impact of consumer problems with goods and services, Office of Fair Trading, April 2008

¹⁰ Economic Research into Regulatory Restrictions in the Legal Profession, -a report for the Office of Fair Trading by Europe Economics , January 2013

Even this does not represent the entirety of the landscape. There is, for example, a plethora of other ADR bodies, such as the Furniture Ombudsman, and Removals Industry Ombudsman.

At the EU level, the new [European Directive on ADR](#)¹¹, which came into force in July 2015, requires that:

- in the event of a dispute, businesses must provide consumers with information on an accredited ADR provider eligible to deal with the dispute;
- a competent authority is established to accredit ADR bodies; and
- businesses in all sectors (with a few notable exceptions, such as healthcare provision) have access to an accredited ADR provider.

To comply with the Directive, the Department for Business, Innovation and Skills has appointed the Chartered Trading Standards Institute, along with a number of bodies responsible for operating statutory redress schemes, as UK competent authorities for accreditation purposes. However, there is no requirement for businesses to engage with an ADR scheme, and no outline of what jurisdiction approved ADR providers will cover.

Finally, the Directive also requires a residual body to be established to hear disputes in any area which is not covered by an existing provider. This role currently seems likely to be provided by Ombudsman Services, which launched a new online portal, called the Consumer Ombudsman in August 2015. This is expected to make it easier for consumers to complain about goods or services in any sector not currently served by an accredited ADR body.

Smith Commission

Following the Referendum in September 2014, the UK Government established the Smith Commission to consider further powers for Scotland. It [published its recommendations](#)¹² in November 2014, and recommended that “consumer advice and advocacy will be devolved to the Scottish Parliament”. The UK Government published its [command paper with draft clauses for a new Scotland Bill](#)¹³ in January 2015, and the Bill as introduced to the UK Parliament in May 2015. The Scotland Bill proposes to devolve two of the four consumer protection pillars – advocacy (although exceptions remain for telecommunications and wireless telegraphy, and transport) and advice. It also devolves competition powers to Scottish Ministers enabling them, acting with the Secretary of State, to require the Competition and Markets Authority (CMA) to carry out a second stage market investigation.

It is the Working Group’s understanding that the Scottish Government believes that, as currently drafted, the Bill does not honour the intent of the Smith Commission, and would only allow Scottish Ministers to make a reference to the CMA in the most exceptional circumstances and only with the involvement of the Secretary of State.

¹¹ EU legislation on Alternative Dispute Resolution, May 2013

¹² Report of the Smith Commission for the further devolution of powers to the Scottish Parliament, The Smith Commission, November 2014

¹³ Scotland in the United Kingdom: An enduring settlement, HM Government, January 2015

Similarly, Scottish Government (and civic Scotland more generally) is clear that Clauses 43 and 44 on consumer protection also do not live up to the spirit of the Smith Commission. In respect of consumer advice (and advocacy) specifically, Clause 43 of the Scotland Bill does not cover all relevant reservations in Schedule 5 to the Scotland Act 1998 (for example, telecommunications and wireless telegraphy, and transport are not covered).

In practice, enforcement is already devolved operationally through the block grant to local government, as this is the source of funding for Trading Standards. Additional grant funding from the Department of Business, Innovation and Skills to COSLA is used to co-ordinate cross border enforcement issues. The Scottish Government is also working to clarify the scope of its powers in relation to redress and in any event, will continue to make the case to the UK Government that both enforcement and redress should be devolved entirely.

Scottish Government vision

The [UK Government's 2012 response](#)¹⁴ to its consultation on institutional reform in consumer policy, [Empowering and Protecting Consumers](#),¹⁵ described the landscape of bodies responsible for consumer protection as “inefficient and confusing, leaving consumers uncertain who to turn to for help and advice when things go wrong.” Despite this, the Scottish Government found the resulting proposals for reform to be insufficient for Scottish consumers and businesses and made clear its intent to simplify the consumer and competition landscape.

Following initial consultation with a wide range of stakeholders, both national and international, these ideas were developed in the Scottish Government's paper [Consumer Protection and Representation in an Independent Scotland](#),¹⁶ which proposed a single body that would bring together consumer protection and competition regulation. It also proposed the creation of a one-stop-shop for consumers to seek redress in disputes with traders.

At the heart of this vision was a coherent system of consumer protection that united the four pillars of consumer policy – advocacy, advice (including education and information), enforcement and redress – and complements and supports them with a distinctive Scottish competition policy. Further devolution of consumer and competition powers creates an opportunity in Scotland to realise this vision by creating a unified consumer body – Consumer Scotland – to be combined with competition expertise. This could bring benefits of closer alignment between market arrangements and consumer interests. As a result, Consumer Scotland has the potential to be a stronger advocate and enforcer on behalf of consumers than separate bodies working in this area have been to date.

¹⁴ Empowering and Protecting Consumers: Government's response to the consultation on institutional reform, Department for Business, Innovation and Skills, April 2012.

¹⁵ Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011.

¹⁶ Consumer Protection and Representation in an Independent Scotland: Options, Scottish Government, August 2013

2. Key characteristics of Consumer Scotland

In 2004, the [Scottish Consumer Council](#) stated “When we talk about consumers, we mean people who purchase or use particular goods or services, whether provided in the public, private, or voluntary sector. However, our interest as citizens is likely to be wider, taking into account a general interest in our society as a whole”¹⁷. We believe this definition is still as relevant today, as are the key issues it identified for any consumer organisation:

- being clear about the different issues facing consumers and citizens;
- having a basis in statute;
- being independent and being seen to be independent;
- representing and promoting the interests of those most in need;
- having a policy-making function which is sensitive to the needs of consumers and stakeholders in Scotland;
- appointing the right people in the right way;
- being accountable;
- having statutory powers and knowing when to use them appropriately; and
- being given enough funding to be effective.

Additionally the Working Group believes that Consumer Scotland should consult annually on its work plan and ensure it has appropriate data management protocols.

The Working Group also notes that Consumer Scotland will require to be intelligence-led to carry out its advice functions successfully. This would entail developing robust data sharing protocols for use both amongst consumer advice providers and between consumer advice providers and the other three consumer pillars and competition. A ‘common framework’ for data sharing agreed by all agencies and a central repository for general information could allow agencies to share best practice and lessons learned as well as identify and highlight trends of consumer harm.

Analysis of this intelligence by Consumer Scotland should direct activity at a strategic level, while operational control should remain the responsibility of delivery partners. This intelligence should also be used to inform the work of the other consumer pillars, particularly advocacy and enforcement.

The Working Group suggests Consumer Scotland could enhance its intelligence gathering capability by working in close collaboration with a Consumer Protection Partnership (CPP). The UK CPP’s current role is to identify, prioritise and co-ordinate joint action to deal with the issues causing greatest harm to consumers; however, this CPP only meets periodically. The Working Group believes Consumer Scotland and a Scottish CPP could improve on this model by feeding data back in real time, through effective intelligence/data sharing.

¹⁷ Making consumer organisations work for consumers in Scotland, The Scottish Consumer Council, July 2004

3. Consumer Protection and Competition

Advocacy

The Working Group identifies the need for a robust system of consumer advocacy. In particular, it notes, that to be effective it requires technical knowledge in the regulated sectors as well as expertise across general private and public markets. It is important to make the distinction between general consumer advocacy and advocacy for the regulated sectors. General consumer advocacy is, and will continue to be, provided by a range of bodies, such as Citizens Advice Scotland (CAS) and Which? who advocate on behalf of consumers on a range of issues across public and private markets. The consumer advocacy role for the regulated sectors, however, requires a consumer body not only to advocate on behalf of consumers to policy makers, but also to work closely with, and challenge, economic regulators on complex regulatory policy and decisions to ensure that they reflect consumers' interests.

The role of advocacy in Consumer Scotland

The role of advocacy should be to act independently on behalf of consumers in general, to identify issues that are detrimental to consumers and then ensure these issues are addressed by educating, advising and influencing policy makers, businesses, service providers and regulators. Within the current framework, there are gaps in the provision of consumer advocacy, in part a legacy of the narrowing down of Consumer Focus Scotland's remit. The Working Group agrees that Consumer Scotland should be an outward facing organisation that gathers information from a wide range of sources, and through evidence based analysis, provides collective input on consumer issues directly to policy and decision makers.

As already noted, the Consumer Futures advocacy powers (for energy, post and water) currently sit within Citizen Advice Scotland (CAS), whose principal focus is necessarily on social policy issues and providing advice to vulnerable consumers. Consumer Scotland will develop a partnership working approach with a range of stakeholders in order to strengthen the links between advocacy and advice (including education and information), enforcement and redress as well as competition.

There is an on-going need to balance the needs of future consumers with consumer's needs today. The Working Group, therefore, believes that the statutory Consumer Futures powers should sit within Consumer Scotland, ensuring it can provide general and regulated sectors consumer advocacy as well as horizon scanning functions. Consumer bodies would be able to feed in information they receive directly from consumers to inform Consumer Scotland's workplan. However, CAS has requested that further consideration be given to support the transfer, given that it has only been two years since the function was transferred to them.

Under the current provisions of the Scotland Bill, the Scottish Government will gain consumer advocacy in the specific sectors of post, electricity and oil & gas. Early indications are that other economic regulators are keen to work with the Scottish

Government. Consideration should be given to how this might best be achieved, for example, through Memoranda of Understanding (MoUs).

The importance of technical expertise in the regulated sectors

The Working Group feels that it is critical that Consumer Scotland should maintain an understanding of the regulatory framework in order to provide effective challenge. Where there are difficulties for Consumer Scotland to maintain the technical expertise needed to interact effectively with all economic regulators in technically complex areas, it will need to work in close partnership with academia, international experts, other stakeholders and commission expertise.

Furthermore, Consumer Scotland will need to strike a balance between regulatory and general consumer expertise. Consumer Scotland should, therefore, use its general consumer expertise to challenge regulators and businesses effectively from a consumer perspective and to look at the wider picture. This will prevent companies and regulators from dragging the consumer body into technical detail as a way of diverting a focus on outcomes.

The Working Group identifies a significant element of commonality of consumer issues across the regulated industries. Consumer Scotland should be able to transfer thinking between sectors in the interests of consumers and be able to 'benchmark' across sectors. This can be a very powerful way of influencing behaviour and could include looking at key areas across sectors, such as service levels and output delivery, as well as more technical areas such as financing, security of supply, connections and metering.

General Consumer Advocacy

The Working Group believes that while Consumer Scotland should maintain an ongoing focus on consumer advocacy for all the regulated sectors, it should also look at consumer issues beyond these. It feels that more work is needed to scope the existing sectoral consumer advocacy landscape in public services and in the unregulated sectors in order to avoid any duplication. Consumer Scotland should work in partnership with bodies such as CAS and Which? who have general consumer advocacy at their core.

Accordingly, Consumer Scotland's statutory powers should reflect its responsibilities in the regulated sectors and for general consumer advocacy and its funding should also allow for both. Given that Consumer Scotland will receive ring-fenced levy funding for the regulated sectors (in energy, water and post) and have associated statutory duties to fulfil, it will need to ensure that it maintains a focus on these sectors, while also carrying out more general consumer advocacy across public and private markets.

There is, therefore, merit in a dual approach: separating the specific regulated sectors work from the more general role. For general advocacy, Consumer Scotland could undertake an assessment, as the Competition Market Authority does, in order to determine areas of particular concern each year and establish its priorities. Horizon scanning should also be a core function of Consumer Scotland and will be

informed through significant engagement along with consumer research activities. Given that this work might be funded by general expenditure rather than levy funding, there will always be some risk that there may be a reduction in general consumer advocacy funding, which would significantly change the balance of work in Consumer Scotland. Our hope is this workstream will continue to be properly resourced.

Consumer Scotland will need to strike the balance of being focused and effective, rather than being spread too thinly. In order to achieve this within a wide remit, it will have to conduct transparent prioritisation of consumer detriment. The Working Group suggests that this could be achieved through a work planning process similar to the approach that was previously used by Consumer Focus Scotland and the General Consumer Council for Northern Ireland. These organisations considered: the level of consumer detriment; the impact on disadvantaged consumers; whether other organisations were undertaking this work and the realistic chance of achieving impact.

Consumer advocacy in the regulated sectors

The Working Group acknowledges that regulators are already engaging actively with consumers. It has identified a clear role for Consumer Scotland in providing advocacy input to the regulatory process in terms of general consumer interest. This should be based on research and analysis. In doing so, it must work across UK markets to provide a Scottish consumer view, which will sometimes be aligned with, and sometimes distinct from, the views of UK consumers. Consumer Scotland should work in partnership with UK customer bodies and regulators. These relationships should, preferably, be maintained through a MoU outwith energy, post and water.

The Working Group felt that Consumer Scotland should also aim to promote a consumer focused approach to economic regulation. In doing so, it should engage closely with the UK regulators to develop the regulatory framework in Scotland. It should aim to ensure that the UK regulators' consumer engagement approaches reflect the specific interests of Scottish consumers. For example, in the water sector - which is already devolved to Scotland - a dedicated Customer Forum is able to engage directly in the price review settlement. It is, however, potentially more problematic to replicate this model at a UK level in sectors where economic regulation is not currently devolved.

The Scottish Government should aim to pilot the approach of increased consumer engagement with UK regulators. For the UK-wide economic regulatory bodies, careful consideration will be required as how best to establish consumer focused approaches that will allow for direct input from Scottish consumers. However, it is worth noting that in some cases UK regulators already take a different approach with Scottish matters. For example, the Office of Rail and Road regulates Network Rail separately in Scotland from the rest of Great Britain.

4. Advice (including education and information)

The Working Group believes it is essential that consumers in Scotland have an effective system of advice that will provide access to relevant information and assistance when needed – such a system will create confident consumers who feel empowered to make good choices. This will, in turn, increase consumer trust in business and public services.

At present, however, there are a number of issues that reduce the effectiveness of advice provision in Scotland. The Working Group identified that the most crucial of these were: concerns over the accessibility and awareness of advice availability; the complexity of the landscape and gaps in provision; and a lack of useful data sharing between advice providers and other agencies involved in consumer protection.

Awareness

Advice will only be effective if those whom need it understand that it is available, and are able to access it. Evidence provided to the Working Group from the advice expert panel suggests that advice often does not reach a wide enough audience. Many consumers still do not know where to turn when they have a problem, and would benefit from advice at an earlier stage in their 'consumer journey'. Indeed, they often do not know they need advice until they have already started on this journey, for example, after they have started formal proceedings, or when they have missed the opportunity to take action at all because they were unaware of their options. Likewise, there may be underlying problems that go unaddressed, and only come to light when a consumer seeks advice on a related matter. For example, a consumer who is struggling with the terms of a payday loan may have taken it out because they were struggling to heat their home. Intervention at an earlier stage could, in many cases, help both consumers and businesses resolve issues before there is a build-up of mistrust or related problems.

Accessibility

Although no single profile exists for the kind of person who does or does not seek advice, there is evidence – for example, from Trading Standards commissioned research in 2014¹⁸ – to suggest that younger, more socially disadvantaged people are less likely to know where to get advice or help, to understand their rights, or to assert them. In particular, evidence from the advice expert panel suggested that men under the age of 35 are less likely to make use of advice services, while evidence from Scottish Citizens Advice Bureau (CAB) service shows that some underrepresented groups, such as those with disabilities, are more likely to seek help. It is clear that a better understanding of who needs and seeks advice, and by which means, would assist advice providers to reach a wider range of users.

¹⁸ Research is unpublished

Complexity and gaps in provision

The number of advice providers can lead to confusion amongst consumers about where to turn. The Citizens Advice Service and the Citizens Advice Consumer Service are the principal providers of consumer advice, providing assistance either face-to-face, online or over the telephone. However, consumers can also seek advice from a variety of other services, for example, the Money Advice Service, some Trading Standards services and a variety of sectoral schemes, such as Energy Savings Trust.

Nonetheless, despite the number of providers, there is currently an absence of important second tier advice provision in some local authority areas, which can lead to consumers not getting the help they need. Second tier advice is available to help consumers reach a solution when they have not received a satisfactory resolution. Gaps in provision are not only detrimental to individual consumers, but also to consumer protection more generally. Advice providers are often in an ideal position to spot trends and patterns of consumer harm by looking at the cases consumers bring to them. If consumers are prevented from doing this, that ability may be lost and enforcement action not initiated against unscrupulous traders who indulge in persistent trading malpractice.

Data sharing

While a number of advice providers work well together and communicate regularly at a high level, there are times when difficulties in sharing information between agencies have made it more challenging to progress cases efficiently. In the most serious cases, this has resulted in a failure to spot patterns of consumer harm, which has prevented swift enforcement action, which in turn has resulted in higher numbers of consumers being affected.

Solutions

Given the number of advice providers and the issues identified, the Working Group concludes there is a role for national coordination of advice (including education and information), and the setting of strategic priorities. There should also be National Standards around quality assurance and advice provision. These National Standards should be adopted across public, private and voluntary organisations and should provide consistency of agreed processes, thus ensuring consumers receive the same level of service regardless of where they seek advice.

There should also be a greater emphasis on the promotion of advice provision, for example, advertising and marketing in places such as libraries, GP surgeries and student unions. This should be supplemented by early intervention in schools, colleges and universities to promote active consumers. By accessing education providers and speaking to pupils and students, consumers will more likely know their rights and be comfortable and confident in standing up for them from an early age. Evidence from Northern Ireland suggests that there may be much to be gained by including consumer education and financial capability skills in school curricula and the Scottish Government should consider if this could also apply in Scotland.

Finally, it is crucial that an early stage approach is adopted. A common 'signposting and triage' model with a single entry point would ensure that consumers are directed to the relevant level of advice immediately and would allow consumer complaints to be resolved quickly and correctly. The additional step of a referral system based on the one already used in the CAB service would prevent consumers getting lost in the system and reduce the number of people who drop out. Furthermore, any new process must ensure that consumers are made aware of any changes made to the existing system, and give their full informed consent to their details being shared.

The role of Consumer Scotland

Since there is already an established network of consumer advice provision in Scotland, the Working Group is in agreement that Consumer Scotland should not deliver frontline advice. However, the Working Group concludes that Consumer Scotland should be well placed to: take on the role of strengthening data sharing; ensure delivery bodies work together effectively; set strategic priorities and national standards; and raise awareness of advice provision. The Working Group recommends that Consumer Scotland should work with existing partners, from advice providers to education bodies to ensure that existing national standards are acknowledged.

To this end, the Working Group wish to see Consumer Scotland focus on outcomes based on a clear understanding of the consumer advice landscape and recognition of local and national issues. It should set Scottish national priorities in relation to consumer protection that all partners work towards, and take account of aims and priorities in the broader advice provision landscape. These should be informed by intelligence gathered from all relevant stakeholders and should complement local priorities.

Another opportunity to impact outcomes is for Consumer Scotland to develop a clear education strategy that provides tools for today's consumer issues and empowers the next generation of consumers by developing financial capability and general consumer skills. There is an opportunity for Consumer Scotland to work in partnership with consumer advice agencies to help provide relevant information to inform consumer choices. Additionally Consumer Scotland should work with Education Scotland to inform curriculum development ensuring that the needs of tomorrow's consumers are adequately met thus reducing future detriment.

5. Enforcement

The Working Group recognises the key role that enforcement plays within the overall consumer protection landscape. It notes that there are a number of reviews of Trading Standards underway or due to begin shortly. There is agreement that the current arrangements are a barrier to guaranteeing a strategic and consistent approach to addressing consumer problems. To strengthen protection for consumers there is agreement that more collaborative working at both national and local levels is needed.

Direction and Purpose

The Working Group feels that all the evidence shows conclusively that the current arrangements are not fit for purpose and do not serve the best interests of consumers or businesses. The Scottish Government has the key role in driving forward any changes required to deliver a new vision for enforcement. A range of policy and resourcing issues need to be taken into account when determining the optimum number of trading standard teams that would be ideal. There also needs to be an agreed vision of Trading Standards by Consumer Scotland taking due account of the UK Government, Scottish Government, local authorities, consumers and business.

Consumer Scotland should be responsible for setting national priorities, having due regard to the views of stakeholders. National standards would flow from national priorities, which should also be the responsibility of Consumer Scotland. Consumer Scotland should agree an annual operating plan. All of this would need to be undertaken following substantial consultation with stakeholders.

The Working Group feels that Consumer Scotland should adopt a risk based approach to enforcement within the priorities of their workplan. For example, Scottish Environment Protection Agency uses a spectrum of compliance to tailor its approach to enforcement: at one end are those deliberately flouting regulations (prosecute); in the middle those who want to comply but don't have the necessary knowledge (educate); and at the other end those who are models of compliance (use as exemplars). Trading Standards already target resources to the highest risk areas, but the development of service standards by Consumer Scotland could improve the effectiveness of this approach and allow it to be codified, if necessary. Recognition also needs to be given to market surveillance duties given to local authorities and delivered through their Trading Standards services.

Consumer Scotland should develop a strategic approach and will need appropriate levers to facilitate change. Funding of Consumer Scotland must ensure it can deliver its objectives and should include enough flexibility to accommodate additional activities in the future. The Working Group identifies the importance of Consumer Scotland being able to separate its advocacy and enforcement roles. However, enforcement needs to be closely aligned with advice and redress: the four pillars of consumer protection are not equidistant. It was noted that the Consumer Council Northern Ireland manages advocacy and enforcement (second level complaint functions) within one overarching organisation.

Accountability

Individual Trading Standards services need to be accountable nationally but arrangements to secure accountability for local priorities would need to be put in place. Consumer Scotland's operating plan must strike a balance between national and local priorities. Trading Standards should report to Consumer Scotland on the delivery of their plan. Consumer Scotland requires suitable powers to deal with a situation where a local delivery is not performing in a satisfactory manner.

The Working Group highlights a need for Consumer Scotland to develop good relations with other agencies. The creation of the Crime Campus at Gartcosh, which brings together representatives of various intelligence gathering agencies, has improved co-ordination at both a strategic and an operational level and could be further developed. Community Planning Partnerships could also offer scope for Trading Standards services to link to other service providers.

Resources

Consumer Scotland could use its position to tackle specific issues that are currently not addressed centrally. For example, it could ensure that Trading Standards services have adequate IT systems and officer competency in place to undertake e-commerce investigations. It could also develop a Trading Standards workforce strategy which would tackle the issue of succession planning in what is an ageing profession while offering more training opportunities and career development by moving between the four pillars.

The issue of how data are gathered, structured and shared needs to be considered and may need to feature in legislation. A national data strategy will be required to ensure IT systems can speak to each other and sets of codes are compatible. Systems also need to be robust so that crime agencies have enough confidence in Consumer Scotland to share data with it.

The current national teams (illegal money lending and Scambusters) based in Trading Standards Scotland (TSS) within COSLA should be located in one Trading Standards local delivery structure whilst still ensuring that there is a specialist resource able to work across the whole of the country tackling the more serious and cross border criminality. The elements of TSS which look at strategic intelligence and national priorities should be placed in Consumer Scotland. Consumer Scotland should, with input from other stakeholders, ensure the strategic tasking of Trading Standards services, but operational tasking and investigative work should be left to the local management.

Community based hubs could provide a simplified approach to delivering advice (including education and information) and other consumer services. As hubs should be advice driven and with accessibility being a primary driver resulting in the current predominance of web and phone based advice provision, there is no practical requirement for Trading Standards services to be co-located with them, but there is a need for good lines of communication between all four pillars, which can be facilitated by Consumer Scotland.

6. Redress

The Working Group recognises that consumer redress is an important pillar of consumer policy. It is essential that consumers have a means of solving disputes with traders or service providers outside the costly and time consuming court system.

Scottish Public Services Ombudsman (SPSO)

It should be noted that in the public sector, Scotland has led the way across the UK by forming the Scottish Public Services Ombudsman (SPSO) streamlining the process for consumers to lodge a complaint. It handles the final stage complaints concerning councils, the NHS, housing associations, colleges and universities, prisons, most water and sewerage providers, the Scottish Government and its agencies and departments, and most Scottish public bodies. It replaced three previous offices - the Scottish Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland. In so doing, it receives data on a variety of vital public markets, and works with organisations to learn and improve from past mistakes.

Going forward, the SPSO will be a vital source of intelligence and it has the potential to serve as an example for how Scotland could continue to innovate in the consumer ADR landscape.

Challenges

The Working Group identified a number of challenges consumers faced when navigating the current redress landscape. The most significant of these were considered to be: the fragmented and complex landscape; the potential for gaps; the lack of consumer awareness of available Alternative Dispute Resolution (ADR) schemes; and the lack of strategic oversight.

The Working Group concludes that navigating the consumer redress landscape is unnecessarily complicated for consumers and is likely a deterrent to more widespread use of consumer ADR services. According to research undertaken by the Office of Fair Trading (OFT) in 2013¹⁹, only 64 per cent of people who experienced a problem took any steps to complain about it. This figure is far lower in some industries for example in legal services just 13 per cent of those who were dissatisfied pursued a complaint.

The Working Group is of the view that the Department for Business, Innovation and Skills' implementation of the consumer ADR Directive will do little to improve this situation and may, in fact, increase the complexity of the landscape. For example, even though businesses must provide consumers with information on accredited consumer ADR schemes, there is no requirement for businesses to engage with one. This means businesses could provide information on a scheme even though it

¹⁹ Economic Research into Regulatory Restrictions in the Legal Profession – A Report for the Office of Fair Trading by Europe Economics, January 2013

planned to use a non-accredited one, or indeed, not to use a consumer ADR scheme at all.

Additionally, while the creation of a new Consumer Ombudsman portal run by Ombudsman Services may significantly reduce sectors in which there is no accredited consumer ADR provider to hear a dispute, the Working Group believes this will not eliminate gaps entirely. Also, as the new service is in the early stages of development, its impact will need to be monitored.

The Working Group believes that complexity of the landscape is compounded by a lack of consumer awareness of available services and trust in their independence. Additionally, the Working Group noted that forms of ADR, such as mediation and arbitration, were not always flagged up to consumers as possible alternatives.

Also the Working Group notes that, while the recent [EU directive on ADR](#)²⁰ compels a competent authority to accredit ADR services, there are a variety of organisations responsible for this accreditation in the UK, including the Chartered Trading Standards Institute and regulators responsible for statutory redress schemes. This situation, in the Working Group's view, is adding to confusion rather than reducing it for both consumer ADR providers and consumers.

There are also different complaints procedures and criteria operating across different consumer ADR providers, which make it difficult for a consumer to develop confidence in navigating them. The Working Group is also concerned that this lack of oversight and national standards means that data sharing is not always used effectively to identify trends and prevent further consumer harm.

Addressing the challenges

The Working Group recommends that the Scottish Government should continue to be proactive in developing a more effective consumer redress landscape, focusing particularly on coordinating and developing standards for consumer ADR providers. Given the number of bodies currently carrying out consumer ADR, the Working Group did not see a need at this time for the Scottish Government to create a body which would offer consumer ADR of its own. However, the Working Group did strongly recommend that the impact of the Consumer Ombudsman portal should be kept under review by Consumer Scotland to determine how well it filled the existing gap for consumer disputes.

The Working Group also proposes a single entry point for consumers to contact and be directed to the right consumer ADR provider. Administering this would require strong links with existing consumer ADR schemes. Developing these links should not only help simplify the landscape, but also ensure better data sharing of complaint information to identify trends and prevent harm.

The Working Group proposes that the Scottish Government should consider whether these functions could be overseen by Consumer Scotland, thus ensuring that all four pillars of consumer protection are strongly linked.

²⁰ EU legislation on Alternative Dispute Resolution, May 2013

The Working Group also suggests that Consumer Scotland, if delivering these functions, could seek to become the competent authority for Scotland, which would allow it to set appropriate standards for Ombudsmen and other consumer ADR schemes operating in Scotland. Other functions should include: directing consumers to accredited consumer ADR providers; monitoring performance of providers; publishing best practice principles; using intelligence from the sector to respond to areas of concern and help businesses improve performance; and publishing details of organisations that have not complied with resolutions. The awareness and use of mediation and arbitration should be increased to make consumers aware of its potential benefits. More generally, work should be done to understand the factors that deter consumers from using available ADR services, and its findings turned into practical measures to overcome these.

7. Competition

The Working Group is clear that the Scottish Government should make full use of the competition powers that are being devolved. It recognises that economic activity flourishes when consumers can trust businesses, and that consumer trust is necessary to ensure a flourishing economy. The Working Group highlights clear benefits to Consumer Scotland being able to review Scottish markets and public services that have the potential to lead to consumer detriment or competition concerns, as a significant lever going forward.

Competition policy and enforcement landscape

The devolved powers on competition policy will facilitate a greater focus on competition within Scotland than has previously been the case. Whilst this is welcomed, Scottish Ministers need to be clear on the rationale for establishing a Scottish competition policy and how it is distinct from that of the UK or EU. The Working Group acknowledges that the overarching EU and UK Government competition policy framework is sufficiently general to be appropriate for Scotland. However, the Scottish Government may wish to articulate its needs around differences in the relative economic importance of different sectors and other related issues such as structural differences in markets and Scotland-specific areas of concern.

The Competition and Markets Authority (CMA) remains the UK competition authority and has a key role to play in investigations and in delivering competition policy outcomes in Scotland. There should be a key division of roles and functions between Consumer Scotland, the Scottish Government and the CMA and a clear set of structures and administrative arrangements for them to work within. This would be key to building credibility and effectiveness.

Scottish Government policy for Competition

The Working Group feels that the Scottish Government should set out priorities for competition and these should be kept under annual review. Consumer Scotland should take account of these priorities however it may dissent from the views of government, if it believes if these are not in the consumer interest.

Engagement in market studies and investigations

Whilst the recent expansion of CMA's representative office in Scotland has been welcomed, further work is needed to ensure that both the CMA and Scottish stakeholders, including the Scottish Government, business organisations and consumer bodies, contribute and participate fully in the CMA's market studies and investigations. This is of vital importance where markets may be of greater economic importance in Scotland compared with the UK as a whole. The Scottish Government needs to consider the reasons for lack of engagement amongst Scottish stakeholders with a view to increasing participation going forward. By the same token, the CMA needs to consider how it will increase its engagement in Scotland, with suggestions including establishing a Scottish advisory board, a Scottish

representative on the CMA board and with regards to market investigations, additional Scottish members.

Analysis of Scottish markets

The Working Group identifies a need to assess differences in the relative economic importance of sectors and other related issues in Scotland, as compared to the UK as a whole, including structural differences in markets and areas of consumer protection or competition concern which might be occurring to a greater extent within Scotland. These assessments would lead to a greater focus and improved basis for prioritisation of Scottish work, including influencing CMA priorities. This would, in turn, allow engagement and research in Scotland to form key elements of CMA market investigations, as well as highlighting where there may be differences in relation to possible adverse impacts on competition and consumer detriment occurring in Scotland.

However, any such assessment would need to be a technically sound examination of Scottish markets, consistent with accepted CMA methodologies. This would enable market investigations to be more credible and effective and to identify interventions suitable for Scottish markets, particularly in relation to ensuring that these are considered by the CMA.

The Working Group also stresses that Consumer Scotland's work on markets should cover the interactions between businesses – not just the relationships between consumers and businesses. Whilst the end point for competition analysis is the impact on consumers, interactions between businesses in the supply chain will have both direct and indirect impacts on consumers. It is, therefore, important that Consumer Scotland is able to consider the competitiveness of all stages and components of markets and their potential impacts on consumers. This need to look at the wider working of markets should not be confused with its consumer advocacy role. As such, Consumer Scotland would play no role in disputes between, or matters between businesses where the consumer interest is remote.

Competition advocacy

There is a clear need for an informed and objective assessment of the competition impact of Scottish policy and legislation. Whilst the CMA now has this important competition policy tool²¹ at its disposal in relation to Westminster legislation, there is no such challenger to policymakers in Scotland. The establishment of an equivalent role in Scotland will ensure that Scottish Government is aware of where unintended consequences of government policy may lead to unfair treatment or distortions in competition.

Collective Actions

New powers to bring collective redress claims in the Competition Appeal Tribunal (CAT) pursuant to Section 81 and Schedule 8 of the Consumer Rights Act 2015 came into force on 1 October 2015 and are applicable in Scotland. Under these

²¹ Small Business, Enterprise & Employment Act 2015

powers the CAT can approve collective proceedings and authorise a person to act as class representative. Although it would be entitled to do so, it is unlikely that Consumer Scotland would itself want to bring a claim or act as class representative. It would be likely, however, to take a keen interest in any claim brought on behalf of Scottish consumers or businesses or otherwise affecting Scotland and, if necessary, to lend its support and encouragement. Sufficient resources to do this would need to be made available.

Credibility

Any competition expertise within Consumer Scotland will need to be credible. In particular, thought is needed as to how the competition part of Consumer Scotland will work and speak with adequate authority within what will be a predominately consumer-focused body. Clear understanding about roles, relationships and expectations between Consumer Scotland and its stakeholders will need to be established. If it is to be respected and listened to, it must have open and honest relationships with stakeholders who may be critical as well as supportive. The Working Group feels that having leadership with the right experience and skills will play a key role here.

Recommendations

Following consideration of the Expert Panel reports and subsequent discussions, a variety of key themes emerged which resulted in a number of overarching recommendations. In addition to these, there was a series of specific recommendations for each of the four pillars of consumer protection and competition.

The Consumer and Competition Policy Working Group recommends that the Scottish Government should:	
1.	create a new statutory public body, Consumer Scotland, to ensure that the voice of Scottish consumers is heard by policy makers, business, public services, regulators and governments.
2.	develop a consumer policy that empowers as well as protects consumers.
3.	ensure that Consumer Scotland develops a coherent consumer strategy that recognises and supports the links between all four pillars, and simplifies the landscape to make it easy for consumers of all demographics to access help when they need it.
4.	investigate if new legislation will be required for Consumer Scotland to gather and share robust information across the four pillars from a range of sources to prevent and detect harm, and support businesses in continuous improvement.
5.	ensure appropriate protocols are in place for data sharing to ensure best outcomes for consumers.
6.	set out clear lines of accountability for Consumer Scotland to the Scottish Parliament and consider whether there may be benefits in having a dedicated Consumer Minister.
7.	ensure Consumer Scotland is independent and has a governance structure that supports independence.
8.	ensure that Consumer Scotland has the powers and duties outlined in the Consumers, Estate Agents and Redress Act 2007.

The Consumer and Competition Policy Working Group recommends that the Scottish Government should ensure that Consumer Scotland has the following statutory powers and duties:	
1.	information-gathering powers along the lines of those currently held by Citizens Advice and the Consumer Council for Northern Ireland.
2.	rights to refer failing markets to regulators along the lines of those currently held by Citizens Advice and the Consumer Council for Northern Ireland.
3.	rights to be consulted by economic regulators on matters which affect Scottish consumer interests.
4.	rights of appeal where appropriate against high impact regulatory decisions.
5.	powers to initiate super-complaints.
6.	resources to sponsor and support collective actions under the Consumer Rights Act 2015.
7.	to deal with a situation where a Trading Standards service is deemed to be performing unsatisfactorily.

On consumer advocacy, the Consumer and Competition Working Group recommends that Scottish Government should:	
1.	ensure that the proposed advocacy functions for Consumer Scotland be as broad as possible, covering private and public markets and all of the regulated sectors.
2.	make best use of existing resources by ensuring Consumer Scotland works in partnership with current and future consumer advocacy stakeholders.
3.	ensure that the Consumer Futures advocacy powers sit within Consumer Scotland. ²²
4.	work with relevant organisations to map out the consumer advocacy landscape to identify the gaps within the current provision.
5.	ensure that Consumer Scotland balances the need for technical regulatory expertise with the need to maintain a high level consumer perspective.
6.	ensure that Consumer Scotland promotes a consumer-focused approach to economic regulation through engagement with UK regulators on how Scottish consumers' views are integrated into the regulatory process.
7.	acknowledge regulatory initiatives that exist in Scotland and seek agreement from the relevant UK regulators to pilot a consumer-focused approach to regulation in Scotland.

On consumer advice, the Consumer and Competition Working Group recommends that Scottish Government should:	
1.	work with key stakeholders to map out the consumer advice landscape to identify duplication and gaps in provision.
2.	ensure that, where gaps are identified, steps are taken to fill them so that consumer advice provision across Scotland is comprehensive.
3.	work towards a single portal for consumers to seek advice and be referred quickly to the correct advice provider.
4.	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.
5.	ensure that all consumer advice (including education and information) adheres to a consistently high standard, and takes account of the needs of different demographics.
6.	ensure that Consumer Scotland works with Education Scotland to inform curriculum development so that the needs of tomorrow's consumers are adequately met thus reducing future detriment.

On enforcement, the Consumer and Competition Working Group recommends that Scottish Government should:	
1.	ensure that Consumer Scotland is able to facilitate the changes required on enforcement delivery to ensure that Trading Standards services have the necessary capacity and expertise.
2.	ensure that Consumer Scotland provides effective co-ordination across Trading Standards services.
3.	set out a requirement for Consumer Scotland to develop relationships with

²² One Working Group member, Anne Lavery wished to have her dissent with this recommendation recorded. The majority of members approved it.

	other relevant agencies and improve co-ordination across the enforcement landscape.
4.	ensure that Consumer Scotland addresses current problems relating to succession planning in an ageing profession and lack of training opportunities within the Trading Standards service.
5.	ensure Consumer Scotland has responsibility for setting national enforcement priorities – from which national enforcement standards should flow.
6.	ensure that Consumer Scotland should approve an annual operating plan, following consultation with key stakeholders, and which strikes a balance between local and national priorities.
7.	ensure that the elements of Trading Standards Scotland within COSLA that look at strategic intelligence and national priorities should be placed in Consumer Scotland.

On redress, the Consumer and Competition Working Group recommends that Scottish Government should:	
1.	scope the wider consumer ADR landscape and monitor the impact of the newly created Consumer Ombudsman portal and other changes in the redress landscape.
2.	develop a model of Scottish consumer ADR that directs consumers to the appropriate redress scheme; sets standards; requires data sharing and enables proactive harm prevention; and ensures common procedures are followed by consumer ADR providers.
3.	consider whether Consumer Scotland is an appropriate body for delivering Scottish consumer ADR functions and whether it should become the competent authority for Scotland.
4.	consider how to create a more joined up approach with existing Scottish consumer ADR services within the consumer redress landscape such as mediation, arbitration, courts and tribunals.

On competition policy, the Consumer and Competition Working Group recommends that Scottish Government should:	
1.	develop a competition policy for Scotland including any rationale for how it differs from that of the UK and EU and the outcomes it seeks to achieve.
2.	ensure the respective roles and responsibilities of how it will engage with Consumer Scotland and the CMA are clear and distinct.
3.	consider how to increase engagement and participation in market investigations amongst Scottish stakeholders and CMA.
4.	develop proposals for delivering competition advocacy - assessing the competition impact of Scottish policy and legislation.
5.	ensure Consumer Scotland conducts credible analysis of 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.
6.	ensure that Consumer Scotland has the resources to sponsor and support collective actions under the Consumer Rights Act 2015.
7.	ensure that Consumer Scotland has the leadership and competition expertise to be credible.

Annex A: Membership

The Working Group

Rick Hill MBE – Chair
Sheena Brown – Scottish Government
Peter Freeman CBE – Personal capacity
Richard Khaldi – Personal capacity
Susan Love – Policy Manager for Scotland – Federation of Small Businesses
Margaret Lynch – CEO, Citizens Advice Scotland (was replaced by Anne Lavery from 3 September 2015)
Jim Martin – Ombudsman, Scottish Public Services Ombudsman
Trisha McAuley OBE – Consultant
Pete Moorey – Head of Campaigns, Which?
Fiona Richardson – Chief Officer, Trading Standards Scotland
Lewis Shand Smith – Chief Ombudsman, Ombudsman Services
Douglas Sinclair CBE – Chair, Accounts Commission

Secretariat

Jamie Steed – Scottish Government

Advice Expert Panel

Margaret Lynch – Citizen Advice Scotland – Chair
Susan McPhee – Citizen Advice Scotland (replaced by Sarah Beattie Smith at the second expert panel)
James Fowlie – COSLA
Julie McCarron – Trading Standards Scotland (spokesperson)
Robert Samson – Transport Focus
Zoe Hollywood – Scottish Government support

Advocacy Expert Panel

Pete Moorey – Which? – Chair
Ken Daly – Society of Chief Officers of Trading Standards in Scotland
Ian Tait – Water Industry Commission for Scotland
Gareth Williams – SCDI
Trisha McAuley OBE – Consultant
Lucy Reid – Scottish Government support

Competition Expert Panel

Richard Khaldi – Chair
Colin Borland – Federation of Small Businesses
Michael Dean – Maclay Murray & Spens LLP

Jeremy Peat OBE –Hon Prof Strathclyde International Public Policy Institute
Graeme Young – CMS Cameron McKenna LLP
Lorraine King – Scottish Government support

Enforcement Expert Panel

Douglas Sinclair CBE – Accounts Commission – Chair
Val Malloch – Scottish Public Services Ombudsman
Fiona Richards – Trading Standards Scotland
Gordon Robb – Society of Chief Officers of Trading Standards in Scotland
Matt Vickers – Ombudsman Services
Andrew McConnell – Scottish Government support

Redress Expert Panel

Jim Martin – SPSO – Chair
Lauren Bruce – CAS
Gordon Downie – Shepherd & Wedderburn
Cowan Ervine – University of Dundee
Sarah O'Neill – Consultant
Lewis Shand Smith – Ombudsman Services
Jamie Steed – Scottish Government support

Annex B: Meetings

Working Group Meetings

15 June 2015 – 1st Meeting

10 August 2015 – 2nd Meeting

3rd September 2015 – 3rd Meeting

10th September 2015 – 4th Meeting

26 October 2015 – 5th Meeting

Expert Panel Meetings

Advice

27 July 2015 – 1st Meeting

27 August 2015 – 2nd Meeting

Advocacy

20 July 2015 – 1st Meeting

25 August 2015 – 2nd Meeting

Competition

29 July 2015 – 1st Meeting

17 August 2015 – 2nd Meeting

Enforcement

28 July 2015 – 1st Meeting

17 August 2015 – 2nd Meeting

Redress

13 July 2015 – 1st Meeting

19 August 2015 – 2nd Meeting



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