

Introduction

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) is the professional body representing the lead officers for Scottish Local Authority Trading Standards Services (“LATSS”)

We provide our responses to the questions we feel best placed to respond to below but firstly we would like to provide some general views and the context in which we would like our comments to be considered:

- We believe that regulation plays a key role in a well-balanced and successful economy. We are also conscious that our role as regulators is by no means to be a burden on business, however this has to be balanced with protection of the consumer and ensuring that traders who operate within the law are not disadvantaged by the actions and trading methods of those who do not. SCOTSS member authorities have in place enforcement policies the principles of which include fairness and proportionality.
- As markets and technologies develop and change, so legislation and enforcers must respond to deal with the challenges presented. For instance, counterfeit goods once offered at market stalls are now sold via social media and therefore market surveillance methods have needed to change to reflect this. The collaborative economy presents further development and challenges which we need to respond to in terms of our knowledge and understanding of the market and the enforcement techniques we use. Intelligence is a key part of all of this, and enforcers need to work smart, especially within reducing resources.
- As well as our role as enforcers of the law, many Scottish LATSS offer local trader registration and customer feedback schemes. The main aim of these schemes is to encourage consumers to use only those traders who have been in some way vetted and can be trusted, thereby helping ensure good quality and value for money, and that reputable businesses are the most successful. Reputation is very important for growing business, and we believe that consumer power can be used to monitor the collaborative economy through robust feedback systems and voluntary codes.

Responses to Questions

Question 2 - What are the best mechanisms for building trust and protecting consumers within the collaborative economy?

We believe that the same principles apply to consumer protection in the collaborative economy as do elsewhere.

Scottish Expert Advisory Panel for the Collaborative Economy
Participation: Consumers, Providers, Business & Digital skills

27 September 2017

Ideally, this involves a mixture of mechanisms which can be applied in a manner which is appropriate to the circumstances to provide a marketplace which enables reputable businesses to succeed and works well for consumers.

Regulation is only one element of this, but it is an essential one. In a fair and competitive marketplace, established business must not be put at a disadvantage against innovative competitors, perhaps new to business and less aware of or troubled with the need to trade within established rules.

It is important that regulations are flexible so that they can be applied in relation to unanticipated innovations and changing markets. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) is one of our most important pieces of legislation and it introduced the concept of “principles based” legislation to the trading standards environment. These regulations were designed to be broad and able to be applied in a wide range of circumstances, including being worded generally to cover markets and trading practices previously unanticipated and are therefore well placed to provide some degree of protection for consumers in the collaborative economy.

However, we are mindful that most regulations were not drafted with the collaborative economy in mind and so if, as expected, it continues to grow in size and importance there may need to be some amendments to explicitly deal with it, including making these new measures sufficiently flexible as to be “future proof”.

Finally on regulation, it is crucial to ensure that “Brexit” does not reduce the current protections afforded to consumers.

As well as regulation we recognise that consumers can be protected by means of Governments and others encouraging traders to act in an ethical way. If businesses recognised for their high standards are successful, the incentive is there for others to follow suit. Furthermore, the redress systems currently in place such as the Alternative Dispute Resolution schemes (ADRs) can be promoted further to help them meet their goals in benefitting consumers. ADRs are addressed in more detail in the response to Question 3 below.

Finally, consumers will be more likely to trust themselves to new trading methods if they believe that protections and supports exist. It is therefore important that their rights are well promoted and advice and assistance services, both Trading Standards and Citizens Advice at a local level and their national consumer helpline, are adequately resourced.

Question 3 Statistics show that just 43 per cent of Scottish consumers know how to make an official complaint if they had an issue with poor service whilst using a collaborative economy platform. How can we best ensure that redress is available if something goes wrong and consumers are clear how to access it?

Consumers need to be aware of the advice and assistance services available. A number of very useful free self-help resources are available online including for

27 September 2017

instance “Which?” and Money Saving Expert, however the complexity and novel nature of these platforms mean that direct assistance is more likely to be required. Therefore both Trading Standards and Citizens Advice at a local level and their national consumer helpline, need to be adequately resourced and promoted.

Of course, many of the operators within the collaborative economy are international companies with whom it can be difficult for LATSS to engage. ADRs were launched by government as the way ahead however it seems fair to say that they have not enjoyed the success or provided the protection and benefits to consumers anticipated. A main reason for this is that the ADR Regs are compulsory in the sense that businesses are required to provide consumers with information about whatever scheme applies in their sector, however there is no compulsion on them to be signed up to the ADR. Therefore, in effect, many consumer disputes do not have an applicable ADR at all and it seems likely that this will be the case with many collaborative economy purchases. We believe that government can play a role in promoting these schemes more effectively and educating consumers and traders alike as to how they operate and their benefits.

Question 5 What should the thresholds be to define the differences between someone who is an occasional provider versus an established business?

As far as Trading Standards legislation is concerned, whether someone is in trade or business and therefore subject to a particular legislative requirement will be a matter of fact based on the nature of their trading and whether the legislation applies.

Most offences under consumer legislation have a "business" element to them either in the sense that there has to be a "sale" (or supply for sale) or because the statute expressly provides that "business" is an ingredient of the offence.

We are aware that, increasingly, individuals are exploiting the business opportunities available from importing consumer goods, for instance electrical goods from China, to sell in the UK, possibly working from home and advertising via social media platforms. The items are cheap to buy, overheads are low with few advertising or premises costs and therefore there can be significant scope for profit. However, importantly, the individuals concerned may not realise or choose to disregard the fact that they are in business and subject to regulation.

Given that markets are likely to develop further in this way and the particular relevance of much of the collaborative economy to the issue of “occasional provider versus an established business” we would suggest that consideration might be given to further research of these matters with a view to providing definitions or parameters as to what constitutes being “in trade”, perhaps particularly with collaborative economy considerations in mind. This could be useful for future guidance to potential entrants to the market.

Question 6 How can we best ensure that new & existing providers of services and assets through collaborative platforms are aware of their legal obligations or regulations they must adhere to?

Most LATSS offer business advice to new and existing traders in their areas. This is done in response to requests and market surveillance may be carried out online to identify new businesses. However, it is an impossible task for LATSS to get in touch with all business providers who utilise collaborative economy platforms. We need assistance from the platform operators to disseminate information to the site users and to signpost them to us (and other regulators) as necessary. We think that Government (both Scottish and UK) can play a role by liaising directly with the platform providers and “getting them on board” to do the right thing thereby aiding appropriate advice and regulation.

Government can also continue to work in partnership with organisations such as Business Gateway to help ensure that new and existing businesses are kept informed.

Question 7 What role does self-regulation via ratings systems or accreditation systems such as TrustSeal play within the collaborative economy? What evidence is there to show its efficacy?

Online reviews and endorsements can be a very positive way of “quasi regulating” businesses like this, one example being the success and popularity of operators such as Tripadvisor. The Competition and Markets Authority (CMA) has recently carried out research into this area as detailed at:

<https://www.gov.uk/cma-cases/online-reviews-and-endorsements>

The Consumer Code Approval Scheme (CCAS) currently has 24 codes of practice approved, through ‘Code Sponsors’, normally some sort of trade body or association. CCAS are considering whether to seek strategic partners to introduce codes in market sectors where consumer detriment might exist, and where there is no identifiable trade association –examples we believe to have been considered include the digital market comparison industry and the care homes sector.

Covering a sector in the collaborative economy with a Consumer Code, whether mandatory or voluntary, should help reduce consumer detriment and improve competition and transparency in the sector. If government thought there were particular risks for consumers in a market then they may be able to introduce mandatory codes, although voluntary codes would still have an effect if business saw a competitive advantage.

We believe that rating and accreditation systems can play a very positive role in raising standards, promoting best practice and customer care, and protecting consumers. Indeed, many Scottish trading standards services run their own assured trader schemes such as Trusted Trader. These are popular with consumers and seen as positive by many businesses. They are very low in regulatory and legislative burden and can also adapt well to sectors where regulation is difficult like the service sector. A key element of their success is regular and reliable customer feedback which is available to potential new customers. When working well they utilise the voice of the consumer to help ensure higher standards and better outcomes.

Scottish Expert Advisory Panel for the Collaborative Economy
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27 September 2017

At the session you will have ten minutes to present your responses to the Panel. You are welcome to listen to all the other presentations as an observer and other stakeholders will be invited to observe your session too. There will then be an opportunity for the panel to ask questions and seek further information from presenters, before beginning their discussion.