

ECONOMY, ENERGY AND FAIR WORK COMMITTEE**CONSUMER SCOTLAND BILL****SUBMISSION FROM: Convention of Scottish Local Authorities**

This submission is made by COSLA which hosts the Trading Standards Scotland team. The TSS team is grant funded by the Department of BEIS and Her Majesty's Treasury. The team is funded to deliver national and cross-local enforcement work. The team also has the responsibility for tackling illegal money lending in Scotland. The team has a politically constituted Governance Board within the COSLA structures. This submission has been approved by the TSS Governance Board and also by Community Wellbeing Board.

Strengthening consumer protection in Scotland is to be welcomed but we wish to express our concern that the new body does not disrupt the partnerships and relationships already established and working well between public bodies and other organisations in the supply chain. It is important to ensure that this new body does not unintentionally lead to underfunding of existing services involved in consumer protection.

1. What are your views on the Bill overall? How far do you think the Bill will achieve what it sets out to do? Are there gaps in the support currently available to consumers? How would Consumer Scotland fill these gaps? What priorities should Consumer Scotland have?

In general we are supportive of the Bill overall. We note that this is very much enabling legislation and that further regulations will be needed to define the details of how the proposed body will operate. There are clearly advantages to be gained from having a galvanizing central point for consumer advice and advocacy services. A body that can bring together data from multiple sources conduct meaningful analysis and provide insight to delivery bodies can lead to tangible outcomes for Scottish consumers.

Key to Consumer Scotland operating effectively will be how it links with the rest of the bodies within the consumer landscape both in Scotland and across the UK. This is important given the fact that enforcement and redress remain reserved matters. What is missing in the Bill is a framework that will allow Consumer Scotland to share information across that landscape. It will be necessary for the UK Government to make amendments to the Enterprise Act 2002 for this to happen. It is also vital that Consumer Scotland is granted "super complainer" status by the UK Government please see our response to Q3 for more detail on this.

Consumer Scotland's priorities should be based on the evidence available but should look to tackle business sectors and practices which particularly disadvantage Scottish consumers. It is important to ensure that the evidence base used by the body to identify priorities is driven by consumer voices across as wide a spectrum as possible. The Bill seeks to put vulnerable consumers at the heart of the work of the body and

ensuring that those consumers contribute to that evidence base is vital. It is important that the new body is not solely driven by data derived from reactive advice services alone. This data will need to be balanced with information from those bodies, such as CAS, proactively looking for areas and practices causing consumer harm.

2. The Scottish Government recognises that there are already many organisations working with consumers in Scotland. The Bill would therefore require Consumer Scotland to work in collaboration with other bodies where appropriate. How does Consumer Scotland fit in with other bodies operating in this sector? How could Consumer Scotland help streamline services? Will the legislative provisions ensure Consumer Scotland does not duplicate existing work?

Our view on how Consumer Scotland fits in with other bodies is partially covered in our response to Q1 and Q3 where we recommend that it seeks designated body status under the Enterprise Act 2002 to take super-complaints. In so doing, it would clarify its role in the UK consumer landscape.

Although the Consumer Scotland Bill outlines the role of new body, it does not remove duties from Citizens Advice Scotland. We seek clarity on the role of CAS following the establishment of Consumer Scotland. We would like to see the good work that CAS does continue to be supported by the Scottish Government. They have an essential role to play in ensuring that consumers have a strong voice and that their concerns are recognized and tackled. It would also be helpful to understand whether Consumer Scotland will seek to become a member of the UK's Consumer Protection Partnership. CAS currently represents Scotland at the CPP in relation to advice and advocacy functions and Trading Standards Scotland represents Scottish consumer enforcement.

Clarity is also required on the relationship that Consumer Scotland will have in relation to Advice Direct Scotland. We would like to see Consumer Scotland providing governance to ADS to ensure that the service is aligned to and assists with its objectives. ADS will be the main source of consumer intelligence for Consumer Scotland as it currently is for Trading Standards. Currently ADS engages with trading standards on a regular basis and the relationship is a very positive one, but ultimately we would like to see a more formal governance structure in place and we see the potential for Consumer Scotland to be the conduit for this.

3. The Bill would provide Consumer Scotland with powers to provide advice; represent the views of consumers; collect information; organise research; and carry out investigations. Scottish Ministers are able to add to, vary or remove functions as required. Do you think Consumer Scotland has the necessary powers to make a difference to consumers in Scotland?

As outlined in the response to Q1 above Consumer Scotland will need to be appropriately designated under the Enterprise Act 2002 in order for it to meaningfully interact and share information with other consumer bodies across Scotland and the

UK, particularly those involved in enforcement. The Enterprise Act underpins the framework within which those bodies involved in consumer protection operate allowing them to share information and data in a legally robust manner.

For Consumer Scotland to be maximally effective it will be necessary for it to be designated as a “super complainer”. This would enable it to make complaints direct to the Competition and Markets Authority where it felt that ‘any feature or combination of features, of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers’

This is not a power that the Scottish Government can grant through this Bill but rather would require an amendment to the Enterprise Act 2002.

Despite being a uniquely Scottish body Consumer Scotland will require the granting of these powers by the UK Government in order to influence the enforcement priorities of other consumer bodies and so leverage the changes that will improve outcomes for consumers.

We do have some concerns that the way that the Bill is written creates the potential risk of replicating existing services rather than augmenting them. This is due to the wide scope of the Bill but the lack of a clear definition of what the new body will do in practice. The value of the new body could be diminished if it was viewed as duplicating work already being done rather than strengthening the response to consumer harm in Scotland.

4. Consumer Scotland would have a duty to consider the interests of vulnerable consumers, including disabled, older, low income and rural consumers. Do you think the creation of Consumer Scotland will make a difference to your consumer problems, or the problems of the consumers that your organisation deals with?

We welcome the proposed duty in the Bill to consider vulnerable groups. Trading Standards intelligence shows that the elderly for example, are disproportionately targeted by rogue traders adding weight to the case for a specific duty to be placed on Consumer Scotland to consider their interests and the interests of other vulnerable groups.

However, defining vulnerability can be difficult, as it is not a binary concept and is often context specific. TSS intelligence develops problem profiles which include an assessment of the targeted demographic and the pinch points in the consumer journey where they are assessed to be vulnerable. Prevention strategies are then devised to address specific groups at specific parts of their journey. TSS would be happy to share intelligence products and prevention strategies with Consumer Scotland to assist it in its advice and advocacy role and its consideration of vulnerable groups.

5. Most consumer protection powers are reserved to the UK Parliament. Consumer Scotland won't be able to change reserved laws or require UK-wide bodies to do anything. Will this limit how effective it can be? How should Consumer Scotland tackle consumer issues which are affected by reserved powers?

It follows that Consumer Scotland could make more of an impact if it could change laws; however it can still be a compelling force in bringing about a change.

The UK's consumer protection legislation is currently mainly based on EU directives. It remains to be seen on what terms the UK will leave the EU and the impact this in turn will have on consumer protection law thereafter. Depending on what transpires, a strong voice for consumers may be more important than ever.

6. The Scottish Government intends that information about consumer problems will be widely shared between organisations so that action can be prioritised (see the Policy Memorandum, paragraphs 21 and 22). There are legal and organisational barriers to this sort of information sharing. Do you think it can be achieved in practice?

We believe that the legal and organisational barriers to information sharing can be overcome in order that the necessary information can be widely shared. However, as we have stated earlier this will require changes to UK legislation to facilitate this.

Clear joint understandings of what information is required and how it will be used will be necessary in order to overcome some of these barriers.

7. The Bill creates a new duty on public bodies to consider the impact of their policies on consumers. How can Consumer Scotland ensure that this makes a practical difference to consumers? How do you think the duty should operate?

Incorporating the consideration and safeguarding of consumer interests into policy making is an admirable aim. If properly implemented and managed this could make a real difference to consumers and minimise the unintended consequences of the actions of public bodies on consumer interests.

The detail of how the consumer duty will be implemented and monitored will be key to ensuring that it works well and does not just become another statutory burden. Currently the supporting paperwork for the Bill states that there will be no additional costs to local authorities however implementation of the proposed consumer duty will almost definitely lead to additional work for local authorities and probably a change in approach when developing and monitoring Council Plans. Any need for additional resource will have to be considered as the bill and any secondary legislation are developed. Robust guidance on the points that bodies should consider and how they should do so will be required.

Further details on the duty and which bodies it covers will be required before it's possible to assess its ability to make a practical difference. Consumer Scotland may find it useful to build a network involving those covered by the duty which will help it lever changes which improve consumer interests.

8. Are there any other aspects of the Bill you would like to comment on?

In our original consultation response on Consumer Scotland we suggested that the body should assume a quality assurance role for face-to-face consumer advice services in Scotland. We note that reference is made to this in the policy notes that accompany the draft Bill and we appreciate this is an operational decision as opposed to something that should be enshrined in the Bill. However we wish to reiterate that such a scheme would not only ensure quality advice service to consumers, it would also ensure quality data is available to Consumer Scotland.

The fact that the Bill's definition of consumer excludes micro and small businesses has caused some concern. These types of businesses experience many of the same issues as individuals and many consumer law statutes do afford them protection. There are clear advantages in ensuring that these types of businesses are able to access advice and advocacy services in the same way an individual would.