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RESPONSE TO CONSULTATION
Reforming Competition and Consumer Policy

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I am delighted to have the opportunity to respond to this timely and important Consultation. I strongly support the two aspirations set out in the White Paper of 'Achieving more: Enforcing the law quicker and better; Helping individuals solve their problems' (paras 3.5-3.8) and the statement that courts are too expensive or daunting for consumers in dispute resolution with traders. Those policy statements have important implications for the issues that follow.

I propose to be selective in responding to questions, in order to focus on what seem to me to be important issues.

Competition – Qs 1-29 and 55-64

The UK clearly needs to establish a new national basis for competition law after leaving the EU. I am broadly in favour of the proposals set out. It is important that the CMA and other bodies involved in overseeing market competition have clear mandates and effective powers.

Qs 12, 17, 20 & 55. Although authorities should have powers, the mode of engagement with most responsible businesses should, however, be that of cooperation on both sides. Hence, the ability for both sides to raise and resolve problems should be encouraged. This means having the ability to engage in solving problems, and agree arrangements and undertakings.

Similarly, the *same* enforcement powers should be held across *all* regulators, namely a large toolbox of powers, including civil remedies and the power to agree undertakings. However, there is a very important caveat. If the CMA is to have the same powers as other regulators (para 3.33) then it needs to act as they do and there needs to be consistency between them. Two mechanisms are vital here: the Regulators' Code and the Primary Authority scheme.

The vast majority of regulatory authorities are subject to the Regulators' Code, and hence to the duty to consider growth in their actions, whereas the CMA is not. Regulatory Authorities have significantly evolved their attitudes and means of engagement with responsible businesses over the past decade, partly as a result of the policy directions contained in the Regulators' Code. The same approach should be taken towards *all* business entities by *all* state authorities. The state has to be consistent in this. To continue inconsistency impedes business certainty and growth, and does not support good customer-focused behaviour. The approach of course includes the ability to take swift and effective enforcement action against clearly intentional criminal activity, but it also involves *intervening* (rather than 'enforcing') in respect of most problems involving responsible businesses, so as to achieve changes in behaviour and activities that deliver the right outcomes and reduce future risk.

One of the consequences of the Regulators' Code is that regulatory authorities have been required to publish broad statements of the basis on which they *engage* with business and choose their appropriate means of *intervention* in individual cases (the latter being typically in Enforcement Policies). The

CMA's leniency policy has some similarities in approach to other authorities' Enforcement Policies but also some has important differences, and it should be brought into line to provide consistency.

The Primary Authority scheme is a highly effective mechanism for achieving consistency in consumer enforcement between local authorities and national sectoral authorities. But it needs to be strengthened, as there are variations in how it is operated. Unquestionably, the CMA should be part of this scheme if it is to be given wider consumer enforcement powers.

Q21. Early and holistic resolution of all issues where there has been damage and infringement is strongly to be encouraged. The objectives should be to identify problems, cease infringements and harm, make redress, implement changes that will prevent or reduce future risk. The traditional theory that imposing fines or damages achieves all or any of these objectives is simply no longer credible, as other regulatory authorities and business sectors have recognised. In particular, there should be a mechanism by which a business can resolve all its issues of making reparation and redress in one go as part of a comprehensive settlement of regulatory, behavioural and civil damage issues. Other regulatory sectors achieve this without difficulty. It is surely the duty of a competition authority to ensure that full redress is paid promptly, since otherwise the level playing field will not be restored in the market.

Competition – Qs 30-54

These are significant consumer protection issues and I am broadly in favour of the proposals.

(Alternative) Dispute Resolution – Qs 65-73

Consumer Dispute Resolution: A Vision of a Modern System

A number of fundamental points need to be emphasised before turning to the detail. Many of the problems that exist with the current system, raised in the Consultation, stem from the need to modernise the ideas of how dispute resolution and enforcement can be delivered in the future world.[1]

Some initial points are:

(a) Consumers have deserted the courts whenever they can in bringing consumer claims against traders. Accordingly, the real options are either an Ombudsman, a redress scheme, where either of those exist, or nothing. The problems of identification, lack of easy access, confusion between different options, complex processes, lack of familiarity, access costs and delay all mean that many consumer issues remain not raised or resolved. That means that opportunities for businesses to improve their behaviour and performance are missed, as are opportunities to intervene and/or enforce where required. This behaviour likely to remain notwithstanding commendable efforts by the courts to modernise through the Online Court project.

(b) The landscape of consumer dispute resolution (CDR) deserves to be improved on its own terms. The reality is that the courts and advice from lawyers is now irrelevant. There are also major problems in the current structure and operation of the local advice landscape and provision.

(c) The concept of 'Alternative Dispute Resolution' has now been abandoned as it is out of date. Both the Master of the Rolls[2] and the Lord Chancellor[3] have recognised long-held academic views that whatever might previously have been 'alternative' is now simply mainstream dispute resolution, and part of the national dispute resolution landscape. Indeed, the current objectives are to integrate

[1] See the analysis of all major types of dispute resolution in C Hodges, *Delivering Dispute Resolution: A Holistic Review of Models in England & Wales* (Hart, 2019).

[2] Sir Geoffrey Vos MR, 'Recovery or Radical Transformation: The Effect of Covid-19 on Justice' Speech at London School of Economics, 17 June 2021.

[3] Speech by Robert Buckland QC, Lord Chancellor at London International Disputes Week, 13 May 2021.

all sensible dispute resolution techniques and options into a single integrated functioning system.[4] Accordingly, I refer below to a Dispute Resolution (DR) system.

(d) In any event, many existing 'ADR schemes' adopt an old-fashioned model—and one which is inherently unattractive to consumers—because they are based on arbitration, which was itself originally based on the courts' adversarial model. An adversarial model will inherently involve lack of clarity for users, time and expense, and drive parties apart. (It is unsurprising that attempts by some ADR schemes to introduce a 'mediation option' have failed—because the offering was too complex, involves extra cost, and the technique of 'mediation' was not integrated into the basic process.)

(e) Many of the problems that are currently perceived to exist with the 'ADR system' arise from the fact that the 'ADR system' is out of date, both in practice and as a concept, so trying to address those issues and with that focus is simply looking in the wrong place.

(f) In relation to consumer dispute resolution, what is needed is a swift, low-cost process that provides information and advice to both parties (replacing a model of obtaining advice from a solicitor, and possibly from traditional consumer advice services) and is integrated with early facilitated dispute resolution techniques. Leading Ombudsmen have been delivering this model for some years, and it is at least partly envisioned in the developing Online Court process.

(g) The critical shift in thinking has been to move the technique of 'mediation' (and hence 'ADR') away from being a separate stage before or alongside the 'formal' DR process, and instead into the pathway of advice-investigation-resolution as an integrated element. This has been achieved by the leading DR Ombudsmen models (and is inherent in the Online Court model, which copied the Ombudsmen model of the early 2010s).[5]

(h) The current best practice for almost all consumer and small disputes is a 'facilitated early resolution model'. The consumer records the complaint on a platform, or details are recorded by the trader or an Ombudsman, by phone or online, in any event overseen by the Ombudsman. The details are only entered once, so there is no need to repeat entry of details in any subsequent stage. The single file is created and can be passed on. When the Ombudsman becomes involved, the expert case handler can identify further details that may be needed from either party (ignoring those that are irrelevant), and facilitate informed communication and negotiation between the parties, under the scrutiny of this independent expert third party. The experience is that most cases settle through this 'early facilitated resolution' process swiftly and with little cost.

(i) The wider picture is that the vision and functions of a dispute resolution system (and certainly ADR) have been transformed and replaced by their position in, and contribution to, market and behavioural systems, involving identification and prevention of issues and reduction of risks. hence, their design and functions have to change radically.

There is a clear evolutionary trajectory across Europe from arbitration-based ADR schemes to Ombudsman bodies. This is occurring for several reasons, each of which is compelling. Unlike traditional courts and arbitration or mediation schemes, an advanced Ombudsman is able to deliver the following functions:

(a) Having a **single Ombudsman per sector** (or covering several sectors, together with a 'residual' Ombudsman (as in Belgium)) with a unified **single portal** provides a simple architecture in which consumers and businesses know where to go for information, advice, support and resolution, and have confidence in the quality and independence of the third party.

[4] This is hinted at in the Ministry of Justice's current *Call for Evidence on Dispute Resolution*
[5] Lord Justice Briggs, *Civil Courts Structure Review: Final Report* (Judiciary of England and Wales, 2016).

(b) The Ombudsmen are able to **evolve** and improve their processes and IT and have developed advanced processes. Private bodies have greater flexibility than public bodies here.

(c) Ability to **integrate the functions** of impartial advisers (able to replace consumer advice and lawyer services), mediator services, and independent decision-making functions (quasi-judge or arbitrator).

(d) Ability to compile a **single authoritative database** of market issues in almost real time by aggregating information from issues raised (in questions as well as formal complaint cases) that provides invaluable information that can be fed back to traders, regulators, consumers and others on market issues, issues for individual traders, and evidence-driven intervention and enforcement. This facility has proved to be invaluable for sectoral regulators, and it is an untapped resource in some sectors and for Trading Standards. The database has to be as large as possible if it is to maximise its utility at low cost. This factor drives the need for a *single* Ombudsman per sector: the dispersal as well as failure to capture data through having even two DR schemes in a sector significantly undermines the function. Further, the data should be held by a trusted entity that has public sector values, and not sold for profit, as some private for-profit platforms and ODR schemes have always done. That consideration also points to the necessity for having an Ombudsman as data controller, who is either statutory or regulated not-for-profit.

(e) **Intervention to support changes** in the practice and culture of traders based on the database, so as to improve performance and reduce risk of recurrence or other future risks. Traders usually prefer to talk to Ombudsmen rather than regulators because the former have no enforcement powers, and can offer what are effectively expert consultancy services at not-for-profit prices. This support function cannot be provided by courts, arbitrators or mediators.

(f) A point that is frequently overlooked is that the basis of an Ombudsman's jurisdiction is typically a **Code of Ethical Practice**. Thus, the Ombudsman is the guardian not only of fair DR but also of ensuring ethical behaviour in a regulated sector. Almost all rules and guidance in regulated sectors are based on the requirement that traders should observe ethical standards. This powerful requirement is missing from unregulated sectors. If it were to be introduced as a core requirement for all traders, it could form the basis of an extremely powerful force for good market behaviour, improvements in performance, differentiating good from unacceptable trading behaviour, supporting consumer confidence and driving vibrant markets based on trust.

In short, several considerations point to the future model having attributes of simplicity, data capture and feedback that point inevitably to the Ombudsman model. Various stand-alone ODR platforms can provide some elements of what is required, but fall at the requirements of independence and providing a single database.

The UK was one of the leaders in first developing ADR and developing the more advanced Ombudsman model—but it is now falling behind in supporting its consumer markets by failing to modernise and integrate its DR/Ombudsman and regulatory model. Various steps should be taken towards completing the vision outlined, including:

(i) Encouraging the existing Ombudsmen to operate under a consistent and integrated framework and create a single national portal.
(ii) Encouraging different databases (eg Citizens Advice, Ombudsmen, Resolver etc) to be integrated and come under the supervision of the Ombudsmen.
(iii) Providing an integrated 'regulatory' framework for *supporting* small businesses, built around a co-created Code of Ethical Practice, a refocused landscape of enforcement and advice for SMEs (based on a *supportive* approach and the primary Authority mechanism), supported by data collated by one or more of the Ombudsmen.
(iv) These steps would enable the Ombudsmen to develop a cheap 'residual ADR' facility for SMEs. We know that SMEs are reluctant to buy ADR schemes, but if the dispute resolution function is a

cheap benefit of enhanced advice and support (as provided by Chambers of Commerce regionally in Germany) than the problem is solved by adopting another approach.

Several of these steps can be achieved spontaneously with no legislation or much if any public cost. Implementing spontaneous steps would be facilitated if the vision were to be clearly identified by Ministers and supported by those involved.

It would be positively *unhelpful* for ADR schemes to proliferate. This would confuse consumers, enable differences in quality to continue, to be exploited by less ethical businesses, and fail to build effective databases on market behaviour and issues. In short, the unintended consequences would easily outweigh the achievement of much if any improvement.

The Impact Assessment indicates that the option of *changing the system* from one based on 'ADR' to one based on Ombudsmen has not been considered. This option would provide the solution to the problems identified.

The Consultation Questions

Turning to the specific Consultation Questions, the Consultation rightly seeks to address three issues:

- Improving consumer awareness and signposting
- Increasing the quality and oversight of ADR
- Improving the take-up of ADR by businesses in non-regulated markets.

Awareness and signposting

Responses to the Green Paper identified that, despite the availability of a variety of public and privately funded advice providers, consumers 'still find it difficult to understand their redress options, make the right choice for them and navigate the routes to resolving their problem, particularly if they are vulnerable.' (para 3.76)

The issue is confusion caused by proliferation.[6] Multiple different advice services have been created, dealing with different issues, with different funding and levels of resource and expertise. The situation is now worsening as information platforms proliferate. The solution is that the system needs serious **simplification**.

Providing extensive choice in advice services has not served consumers or businesses well. The landscape of advice services needs to be pulled together within an integrated framework to make it much simpler for people to identify and access. The same issue of proliferation and confusion also exists in relation to businesses, especially SMEs. An integrated solution can be envisaged for both these issues.

In both instances, solutions can be identified for achieving greater vertical integration between local advice/support outlets, platforms and specialist dispute resolution services.

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

Considerable work is being done by national sectoral regulators and Ombudsmen on identifying vulnerable consumers. Any complex or adversarial mechanism will not help vulnerable people. Training and AI is used by Ombudsmen now. Greater local in person support could be offered by integration with local citizen advice services. Again, the system must be simply to identify and use. Training to identify and assist vulnerable people should involve trusted and trained personnel. Ombudsmen currently provide this and have the corporate resources and governance to ensure quality control in delivery.

[6] *Tackling the Advice Deficit. A strategy for access to advice and legal support on social welfare law in England and Wales* (The Low Commission, 2014); *Getting it Right in Social Welfare Law. The Low Commission's follow-up report* (The Low Commission, 2015).

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?
The assumption behind here is that consumers first raise problem direct with traders, traders then need time to investigate and respond, both sides need time to negotiate, and then (after 8 weeks) an unresolved case can be referred to 'ADR'. This model is already becoming out of date for the following reasons:

(a) Many systems provide for instant integrated pathways.
(b) In some types of disputes, a dispute cannot be objectively resolved without the assistance of an independent expert. Consumers face a significant barrier in accessing or paying for such expertise. But an independent.
(c) The two-stage process (bilateral then involving a third party) has already been overtaken in practice in many situations. First, much online trading has long had a single integrated 'ODR' process: all the major platforms operate this way. Second, in view of consumers' contemporary expectations for instant resolution, some [increasing?] traders outsource their bilateral stage to independent Ombudsmen, thereby telescoping the two stages into one. ???

What is the empirical evidence for the assertion that businesses need to fully investigate cases before a third party intervenes (para 3.83)? This is a hang-over from the traditional adversarial court procedure model. But it is an impediment to modern trading conditions and the expectations of both consumers and businesses.

It is true that 'some complaints are complex' but why should the requirements for the most complex apply to the vast majority of consumer disputes, which are straightforward and require very little evidence or analysis?

Against this background, the following recommendations would apply:

1. The responsibility for timely processing of complaints is a matter for case management, depending on the type of dispute. Average times are likely to vary between sectors. Many disputes should be capable of being resolved in a few days.
2. No standard time should apply before a case can be referred to independent DR.
3. The relevant Competent Authority could be empowered to set a maximum time, which will vary depending on the type of dispute and sector. Some disputes may only need one day, some may need longer.
4. Traders should be encouraged to
    a. Agree a shorter time than specified, which would incentivise good reputations and consumer relations.
    b. Integrate their first and second stages of DR by using the Ombudsmen's single integrated platform, on the model pioneered by Resolver.

<u>Increasing the quality and oversight of ADR</u>
The need to address quality of consumer DR providers arises solely because of the continued reliance on the 'private market' model of ADR provision. All of the existing Ombudsmen and most of the redress schemes deliver high standards. But there are many small-ish 'ADR providers', where standards are typically poor. They are mostly relatively recent and entered 'the ADR market' after the 2013 EU Directive in order specifically to make money from consumer redress. That is an inherently unattractive motivation and contrasts poorly with business-led attempts to improve reputation and Ombudsmen motivations to provide an impartial public service to support markets and good practice.

So the proposal here is to impose extra cost on all the existing providers—passed on to businesses and consumer prices—in order to try to improve the low-quality providers or maybe even encourage some out of the market. Surely this strategy is both to impose disproportionate costs on the market (and high-quality providers) and also not sure to succeed? The estimated extra regulatory requirements and compliance cost on ADR bodies (IA paras 30-42) are not guaranteed to improve quality. France tried a

similar regulatory mechanism on implementing the Directive and it was both ineffective in improving overall performance quality and disruptive of the system as a whole.

The IA has only estimated familiarisation costs: what about the cost to providers and regulators of inspection and enforcement to raise quality? Will TSI have the resource to deliver these objectives? What extra cost would there be to consumers?

Further, a policy of trying to improve the quality of ADR providers will do nothing to address the underlying problem of confusion of consumers between different ADR providers, and may make this worse. There will continue to be competition between ADR providers of all kinds. There is clear evidence that this undermines quality where it exists, even where there are only two providers (examples from aviation and communications sectors), and it will not support improving consumer confidence. It is a fundamental error to regard ADR as a market, and also one in which competition between providers is necessary. Justice and fairness are public goods and should be not subject to competition. One does not contemplate competition between courts or judges, on quality, price or any other feature.

The policy of attempting to raise quality of ADR providers without rationalising the number of them, will *fail* to achieve the objective of making markets work more effectively and drive economic growth (IA para 10). It will fail to take advantage of the means and opportunities that would achieve that policy if the focus were on achieving the functions of easy access to advice and early facilitated resolution, data collection, and support of traders based on market evidence.

I suggest that the policy should be to rationalise the market more directly and move to the Ombudsman model, in which quality can be guaranteed and multiple further benefits automatically delivered.

Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?
This is the wrong policy. The ADR model is out of date. None of the proposals are intrinsically wrong, but they are all unnecessary if a better approach is adopted. It is unnecessary to increase regulation on the existing Ombudsmen. Indeed, some of them are subject to duplicative regulatory regimes and Competent Authorities (eg in the property sector) and this unnecessary regulatory burden should be simplified. The only reason to increase regulation now is to try to improve poor practices by some redress schemes, or drive them out of the 'market', but if the system is switched to an comprehensive Ombudsman model, that issue is solved another way.

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?
The real issue is the architecture of the regulatory-DR model, which should be changed to an Ombudsman model, rather than with the ADR Regulations.

<u>Improving the take-up of ADR by businesses in non-regulated markets.</u>
Most regulated sectors have a 'single regulator + single Ombudsman' model. The conundrum that arises is how to persuade many smaller businesses in unregulated sectors that it is in their interests if customer complaints (whether consumer or trade) can be dealt with by an Ombudsman system rather than by lawyers and the courts. The reality of this situation is that by allowing no option other than the courts to be available, a serious imbalance is permitted to continue between consumers and traders, since traders know that consumers will simply not use the courts. This major imbalance and unjust situation, which significantly undermines consumer confidence in markets, simply cannot be allowed to continue. An effective DR solution other than courts must be provided. Failure to do this cannot be reconciled with the Government's policy of supporting vibrant markets.

Debate is currently underway about the same problem in relation to disputes where SMEs are the claimant. The solution to both these problems—consumer and SME—can be found by solving both together.

Research has shown that SMEs fail to see the need to sign up to, or pay for, DR schemes. However, their major (and currently unmet) need is for focused information, advice and support. Just as with the consumer advice problem referred to above, there is no shortage of sources of information and advice—the problem is one of proliferation, confusion and reliability of sources of advice. This is an issue that the Small Business Commissioner and others are currently considering. The solution that recommends itself is to offer integrated networks of reliable advice and support for SMEs, that integrate local provision (Business Hubs and so on) with national platforms and expertise. A critical element of this system is to provide a data capture system that identifies issues and drives focused support (or enforcement). The Ombudsmen network can provide that data capture system, and currently have the facilities. The advice and support system can automatically deliver a back-end DR facility, at little extra cost. Hence, the solution to the 'ADR problem' lies in addressing the 'data-driven support and regulatory system'. This also solves several problems at once.

This would have to be discussed with the Ombudsmen, but I suspect that a single portal-based hub could be operated on a highly cost-efficient basis, with low cost to SMEs (or their associations or regional organisations). Ideas such as a free tier and differential pricing could assist.

The IA modelling (para 58) speculates on having a cost threshold, of £100 or £500 below which claims would be out of scape. But how is that to be operated in practice? The value of a claim may not be calculable in advance, and this gateway could add significantly to administration costs. Any such threshold would deter consumers from raising problems that might be solvable but would remain unresolved and hidden, without the opportunity to rectify behaviour.

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?
These changes are unnecessary if the systemic approach outlined above is adopted.

It is clear that these are priority sectors in which to provide effective dispute resolution. However, it is of critical importance that the result is *not* a proliferation of ADR schemes. What is needed is to strengthen the current Ombudsmen system and network. Accordingly, the Motor Ombudsman and the Home Improvement Ombudsman should be authorised to extend their mandates. To permit any other outcome would be positively to damage markets and consumer confidence rather than improve it.

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?
The existing Ombudsmen are free. Businesses pay but there is pressure to keep costs low, and constantly improve processes, response times and means of engagement. It would be a retrograde and unnecessary step to introduce access fees for consumers. This would deter many consumers from raising complaints and fail to build useful databases that will drive improvements.

The risk that some consumers need to pay a fee in order to deter frivolous or low value claims (para 3.101) is ill-thought out as a matter of behavioural psychology. Fraudulent claims may always exist, but effective AI and other screening can identify these and trigger enforcement action. Just because a consumer raises an issue that turns out not to have 'merit' as a matter of law or fairness does not mean that the information is not relevant in relation to identifying generic issues that could benefit from improved behaviour or performance.

Q71. How can government best encourage businesses to comply with these changes?
The model outlined above should avoid this issue. There would be an integrated national model, involving identifying problems and solving them in a swift and low key manner, avoiding unnecessary confrontations and adversarial models that disrupt reputations and confidence. The best businesses say 'Complaints are gifts'.

Q72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?
The Consultation cites no empirical evidence that court or other routes are necessary. It is now standard and common practice for mass redress to be paid swiftly through two mechanisms. First, regulators may order traders to pay redress, and as a result it is common for redress arrangements to be agreed as one element in a comprehensive resolution of all regulatory, behavioural and redress aspects of a case that affects multiple consumers. Second, Ombudsmen (unlike other forms of 'ADR' or courts processing individual cases) identify similar issues and action various ways of resolving multiple similar cases, by adopting similar or streamlined approaches, or notifying traders and regulators (who respond as above), or managing specific redress schemes. These two mechanisms currently resolve many systemic consumer disputes and are capable of handling all mass consumer disputes if the Ombudsman model is extended, without the need for more expensive, costly and slow court procedures.

Publicity about litigation tends to have a particularly deleterious effect on consumer confidence. As the Consultation notes, litigation processes are slow and expensive. The Ombudsman-plus-regulator mechanisms was shown in a pan-EU study to be far more effective than any other mechanism identified.[7]

The few GLOs that have occurred in the past decade or so have all existed because no regulator/Ombudsman option was available for the specific issues. It is important that the court process continues to cede priority to the Ombudsman and regulator routes.

Q73. What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?
This would completely undermine the benefits of the current system of regulation of market and trader behaviour, and data capture. What is the evidence that there is a gap? If there is any gap, it can be filled better by continuing to develop the current regulator-plus-Ombudsman model. A court-based system can only deliver redress and is incapable of delivering the data, monitoring, behavioural, or cultural changes that the other systems deliver.

It is imperative that there should be no disincentives for traders not to support the Ombudsman system.

Q74. How can national enforcement agencies NTS and TSS best work alongside local enforcement to tackle the largest national cases of criminal breaches of consumer law?
Part of the solution here is better data, as discussed above. That can be delivered by closer integration between Ombudsmen and public regulatory/enforcement authorities. In essence, the model would be the same as exists for major sectors, such as financial services, energy and so on.
Another key element would be closer integration between the public network and the private sector's responsible coordinating bodies. This would involve strengthening and expanding the Primary Authority framework, harmonising the approaches and work of more national regulatory and enforcement bodies, including the CMA, Small Business Commissioner, Groceries Code Adjudicator, Pubs Code Adjudicator in a coordinated matrix. It would also involve agreeing the glue of a consistent ethical Code covering both businesses and public bodies.

Q75. Does the business guidance currently provided by advisory bodies and public enforcers meet the needs of businesses? What improvements could be made to increase awareness of consumer protection law and facilitate business compliance?
The basic point is to create a simpler archiotecture that is more easily identifiable, and that operates in a consistent and predictable way. The architectural aspects are discussed above. The manner of engagement should be in a Code of Ethical Conduct that is co-created and co-owned and evolved by business, consumer and public bodies.

[7] C Hodges and S Voet, *Delivering Collective Redress: New Technologies* (Hart, 2018).