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Consumer and Competition Policy Directorate
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RCCPconsultation@beis.gov.uk

Dear sir/madam

Reforming Consumer and Competition Policy

The Society of Chief Officers of Trading Standards in Scotland is a Scottish Charitable Incorporated Organisation (SC047951) and is the professional body representing the heads of service for all 31 trading standards services in Scottish local authorities.

We very much welcome the opportunity to respond to this consultation, and I am pleased to outline our responses to the individual questions below.

In summary, we are of the view that there are many positive proposals here that will improve consumer rights and enhance consumer law enforcement. We agree with the creation of administrative fining powers for the CMA and the changes outlined to the Enterprise Act 2002. The potential for compulsory ADR in certain problematic sectors such as home improvements and second-hand cars could improve the consumer experience in resolving complaints. They would require detailed consideration but are also on the face of it positive.

However, we are disappointed in the lack of proposals to address the current capacity crisis in Scottish local authority Trading Standards Services (SLATS). These are the cornerstone of consumer protection advice and enforcement across Scotland and the rest of the UK and are in urgent need of review. The demise of local delivery of these statutory functions in terms of capacity and resilience is the most pressing issue we face. If there is to be effective cooperation and coordination of enforcement at local and national levels to tackle the largest cases, then steps must be taken to make sure the local element continues to be an effective partner. This consultation was an opportunity to set out how these crumbling foundations of consumer protection in Scotland could

be addressed and reversed. We regret that this consultation represents another missed opportunity to do so.

Chapter 1: Competition policy

We have no comment to make on this chapter of the consultation.

Chapter 2: Consumer Rights

Q30. Do you agree with the description of a subscription contract set out above? How could this description be improved?

We think the description is generally good, with elements clearly identifying the three types of product (goods, services, digital content) and the examples providing clarity. It may benefit from a reference to many such contracts involving free or discounted periods, although the definition should be kept wide to not restrict it only to contracts with free or discounted periods.

Q31. How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?

Q32. Would it make it easier or harder for traders to comply with the pre-contract requirements? And why?

Arguably such information is already required by the Consumer Contracts etc Regulations 2013 and the Consumer Protection from Unfair Trading Regulations 2008. However, we think that, given this has been identified as a problem area, it would be beneficial to provide more specific and prescriptive requirements for how this information is conveyed to consumers. Given that businesses should already be supplying consumers with this kind of information, these requirements should not result in much by way of increased burdens. In fact, more prescriptive requirements may be easier to comply with.

Q33. How would expressly requiring giving consumers to be given, in all circumstances, the choice upfront to take a subscription contract without autorenewal or rollover impact traders?

No comments.

Q34. Should the reminder requirement apply in the circumstances where: (i) the contract will auto-renew or roll-over, at the end of the minimum commitment period, *onto a new fixed term only*, or (ii) the contract will auto-renew or roll-over at the end of the minimum commitment period

We think that (ii) is best: there should be a reminder regardless of the terms on which the post-renewal contract is based. Consumers should be prompted to decide whether they wish to continue the arrangement. In fact, we think that further consideration should be given as to whether "auto-renew" is acceptable at all. It may be appropriate to require explicit consent from the consumer in every circumstance and not simply issue a reminder that may not be read properly by a consumer.

Q35. How would the reminder requirement impact traders?

While we acknowledge that this would create some new burdens for business – and that trade representatives are best placed to answer this question – we think that the small extra burdens are proportionate to the benefit being achieved through increased fairness.

Q36. Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (i) provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (ii) obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?

In line with our response to Q34 above, we prefer (ii) and explicit consent should be given at any point where the trial or otherwise low-cost period ends.

Q37. What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?

No comments.

Q38. What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?

We recognise that this is a difficult balance to strike. While steps towards reducing the duration of wasteful inactive contracts are welcome, some consumers will not welcome suspension and will prefer continuation. Reasonable timeframes will vary according to the length and nature of the contract and businesses will need to put some thought and planning into producing effective renewal and suspension systems.

Note however, that if auto-renewal is discontinued and express consent is required in all cases (see our suggestion under Q34 above), then there would be no need to consider inactivity and notices of suspension. This may be another reason to move away from auto-renewal being acceptable.

Q39. Do you agree that the process to enter a subscription contract can be quicker and more straightforward than the process to cancel the contract (in particular after any initial 14-day withdrawal period, where appropriate, has passed)?

Yes, officers from SLATS see this in their everyday work and is very commonly the case.

Q40. Would the easy exiting proposal, to provide a mechanism for consumers that is straightforward, cost-effective, and timely, be appropriate and proportionate to address the problem described?

Yes, there is significant detriment associated with this sector and easier exiting is reasonable and proportionate.

Q41. Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?

No, we do not think that any sectors should be explicitly exempted.

Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

Your preferred option is

a) ☐ OR **b)** ☐ OR **c)** ☒

Please indicate your option and add additional comments if you have any.

We agree that the practice of producing fake reviews is a problem to be tackled and which threatens the fair and effective operation of e-Commerce, where reviews are increasingly influential in online buyers' choices. We think that Option (a) may go too far in prohibiting "commissioning" of reviews in all circumstances as it is not clear how this may affect the legitimate practice of businesses encouraging consumers to provide honest reviews based on their experiences. Option (c) is better than Option (b) as it includes "incentivising", thus potentially encompassing a much wider range of unfair practices than simply "commissioning" fake reviews (b) would.

Q43. What impact would the reforms mentioned in Q42 have on a) small and micro businesses, both offline and online b) large online businesses and c) consumers?

We think that it is important to recognise the dramatic effect that even a small number of reviews can have on small businesses, especially micro-businesses. Officers in Scottish local authority Trading Standards Services deal daily with local businesses that can be affected in a variety of ways, positive and negative, for example: benefitting sharply from a relatively small number of very positive reviews; suffering real reputational harm and lost sales from even a single unfair review from an unreasonable customer or fake review from a competitor. These businesses have a significant interest in the reviews system working effectively and fairly and while these proposals will not solve every problem, they should make a positive contribution.

Consumers and reputable large businesses should also benefit from fairer and better-functioning online review systems. Businesses of any size that have benefitted from fake reviews will do so less often, which is clearly a positive development.

Q44. What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?

We think that this is a very important part of regulating on this issue: it has the potential to foster much wider fairness, while being fair to all businesses, as any requirement on them is "reasonable and proportionate". If the coverage of these provisions was limited to deliberate and direct fraudulent activity by online businesses, then the effect would be limited. But extending the obligations to legitimate businesses having to take taking reasonable steps to ensure that any reviews that their platform brings to consumers are fair, widens the scope in a very positive manner.

Some detailed further work is required on determining what these reasonable steps would be in practice, but we would anticipate that they would be largely in line with consumer law concepts around "reasonable precautions" and "due diligence" that have been developed over recent decades. We certainly think that this should include taking action where they have any reason to suspect that a review is not fully "genuine", but should also include some measure of pro-active checks, perhaps on a sampled basis. Doing nothing should be insufficient in all circumstances.

We recognise that such provisions would impose some burdens and costs on all affected businesses, but we think the "return" in terms of a more reliable system of online reviews makes this very worthwhile. The reasonableness and proportionality requirements will ensure that burdens on business will be scaled appropriately and are manageable by all businesses. A large multi-national will presumably require a sophisticated and comprehensive system of checks, while a small business something much smaller in scale that fits their operation. Both should be able to incorporate this into their business model and indeed arguably should already be operating in this way to ensure compliance with the general provisions of the Consumer Protection from Unfair Trading Regulations 2008.

The steps should not be completely automated - with human intervention at some stage crucial - and appropriate records should be kept. Approaches may vary from sector to sector. The detailed further work that is required on this would benefit from a contribution from Trading Standards officers who understand the legitimate needs of both businesses and consumers.

Q45. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

While this practice is probably already prohibited as a CPRs "misleading action" (or even by fraud law), it would strengthen the approach to this objective to make it specifically prohibited under Schedule 1.

Q46. Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

Officers of Trading Standards have some insight into these matters from their daily work, with anecdotal evidence suggesting that an increasing number of consumers are being misled without realising it. The concept of "vulnerability" is changing and can be applied to a much wider range of consumers, sometimes in only specific circumstances, e.g. purchases surrounding a stressful time like a house move or bereavement, or in enthusiastic pursuit of a hobby.

This is an important and fast-developing topic within the consumer landscape. Some good work has been done to try and better understand these phenomena, but much more is required to guide future regulation, enforcement and consumer advice and education. The Behavioural Insights Team at the CMA seems well placed to lead on some of this work.

Q47. Do you think government or regulators should do more to address (a) 'drip pricing' and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?

These are two different issues. Our thoughts are:

(a) "drip pricing" remains a problem and consideration should be given to improved ways to control it. However, we broadly think that this is not a priority and that the existing CPRs and the Prices Code may be sufficient.

(b) Paid-for results that are not labelled as such should be addressed through new provisions in the CPRs, preferably through a Schedule 1 banned practice. This should extend widely, and certainly to search engines and e-marketplaces.

Q48. Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?

One important area which urgently needs attention to bring greater clarity and fairness is over the status of a seller on multi-seller platforms. The difference in buyer rights if the seller is in business or a private individual is very significant. The status of the seller is often unknown to the buyer, which significantly affects the validity of their original buying decision, and of the options available if anything goes wrong with the purchase. This has been an issue for some time, e.g. the "small ads" in local newspapers. But with the explosion of online buying, it is now a much larger and increasing problem, extending across online marketplaces, collaborative economy platforms and social media sites which enable sales. It also causes great difficulties for enforcers like Trading Standards.

There is already a prohibition in CPRs on "falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer". This can be useful for Trading Standards in some cases but does not address the scale of the problem or help many consumers. Additionally, we think that any platform facilitating the sale of goods, services or digital content by other parties (including all of the types listed above) should have an obligation to ensure that there is a clear declaration of each seller's status (i.e. business or private individual) for any prospective buyer to see. The platform should also take reasonable and proportionate steps to ensure that the declaration is accurate.

We think that this new measure would very significantly increase clarity for buyers and deter and block many who intend to treat buyers unfairly.

A second point we would make here is that there is a general problem in online sales (and consumer law generally) of what we characterise as "Transparency versus Clarity". There are potentially conflicting demands of providing all the information that a consumer might need ("transparency") and bringing to their attention the most important matters ("clarity"). Well-intentioned comprehensiveness can result in consumers not really being aware of the elements of the contract that are likely to be most important to them. Further, in some cases the "comprehensiveness" is not so well-intentioned, with clauses unfavourable to the consumer deliberately "hidden" in lengthy Terms and Conditions that the seller hopes and suspects the buyer will not read.

This is a difficult problem with no easy solutions. However, we do think that any reform of consumer law should seek to tackle this matter. A fresh look at the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which arguably provide too many information provision requirements, may be a start. This could lead to clarity for consumers and fewer burdens on business.

Q49. Are there perverse incentives or unintended consequences from our existing consumer law?
Q50. Are there any redundant or unnecessarily burdensome requirements to provide information or other reporting requirements, which burden businesses disproportionately compared to the benefits they bring to consumers?

As stated above under Q48, we think that information provision should be reconsidered.

Q51. Do you agree that these powers should be used to protect those using "savings" clubs that are not currently within scope of financial protection laws and regulators?

Yes, this seems like a sensible proposal.

Q52. What other sectors might new powers regarding prepayment protections be usefully applied to?

We think that the issue of prepayments goes much wider than savings clubs. Increasingly prevalent in the online world, the issue of how these are managed and protected requires attention. Some recent COVID-affected experiences in the holiday, travel and leisure sectors have brought this into focus. We think that detailed research should be carried out on this topic and consideration given to whether consumers are being well-served by current practices.

Q53. How common is the practice of using terms and conditions to delay the formation of a sales contract?

Trading Standards officers have observed this in their daily work and the Law Commission report appears to confirm that this is a widespread practice.

Q54. Does the practice of using terms and conditions to delay the formation of a sales contract cause, or have the potential to cause, detriment to consumers? If so, what is the nature of the detriment or likely detriment?

We do think that it has the potential to cause detriment: where a payment is taken immediately but the contract is not being binding for some time after – potentially a lengthy period - seems unfair on the buyer. If the seller becomes insolvent during this interim period then the consumer may not have a strong claim as a creditor to the insolvent company, and their ability to claim through other mechanisms – such as under section 75 of the Consumer Credit Act or under a financial "Chargeback" scheme – is likely to be adversely affected.

We are confident that most consumers are unaware of this and more should be done to increase awareness among buyers. If this is not successful, it may be suitable to consider specific legislative provisions to increase clarity or even outlaw this practice.

Chapter 3: Consumer Law Enforcement

Q55. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

We strongly support this proposal. The CMA has proven itself to be effective in tackling consumer problems and is well placed to use these proposed new powers to take their work further and quicker. Reputable businesses have nothing to fear from the proposals, which have fairness and proportionality built into them.

Q56-60– *No response.*

Q61. Would the proposed fines for non-compliance with information gathering powers incentivise compliance? What would be the main benefits, costs, and drawbacks from having an option to impose monetary penalties for non-compliance with information gathering powers?

We think that new sanctions for non-compliance with information request would incentivise compliance. The current sanction – another court action to instruct the company to act – is not effective.

We support the idea of giving the CMA the power to impose such fines as part of the new administrative model, and indeed national sector regulators if the model is extended to them. We assume that the statement in 3.44 of the consultation that "(a)ny other enforcers would have to

apply through the civil courts under Part 8 of the EA 02" refers to local authority Trading Standards services. As such, we also strongly support this idea. Although Trading Standards authorities would still have to go to court to seek sanction for a failure to comply with an information request, the potential for a fine would incentivise businesses to comply at an earlier stage and would assist Trading Standards investigations. It would also provide a fair and reasonable potential sanction for the provision of misleading information.

Q62. What enforcement powers (or combination of powers) should be available where there is a breach of a consumer protection undertaking to best incentivise compliance?

We support Options 2 and 2A in the document which we think could operate concurrently and are not alternatives. Option 1 is more likely to be an alternative to Option 2, and we prefer Option 2.

Making Undertakings enforceable, in their own right, could be a very important additional option for enforcers including the CMA and Trading Standards when taking cases to court. Trading Standards services often find Formal Undertakings under the Enterprise Act to be an effective way of bringing a business into compliance. But in circumstances where the business continues to break the law, the enforcer must effectively "start again" and prove a full case, with the fact that an Undertaking has been signed only really being useable as part of the evidence of "Consultation" with the business. This new option is fair and reasonable and will facilitate better enforcement of consumer laws.

The possibility of monetary penalties for breach of Undertakings takes the options a little further, and also provides a clear deterrent to further breaches by the businesses concerned.

Q63. Should there be a formal process for agreeing undertakings that include an admission of liability by the trader for consumer protection enforcement?

This is an interesting idea, and we can see how it may be beneficial in developing precedent and providing clarification on how consumer law applies to different situations.

However, we think that it is very important that such admissions of liability are not compulsory in Undertakings as this would reduce the number of Undertakings given to local authority Trading Standards services. Officers are aware that some – and perhaps many – businesses would not sign a document which involved an explicit admission of liability. Trading Standards is dependent on most cases being concluded at Undertaking stage and does not have the resources to take many more cases to court.

Therefore, we could support the option of an admission of liability as being part of an Undertaking but not it being compulsory. We think that the implementation of a new system where breach of an Undertaking is actionable in itself (see above) should make such compulsion unnecessary.

Q64. What enforcement powers should be available if there is a breach of consumer protection undertakings that contain an admission of liability by the trader, to best incentivise compliance?

There should be a clear and direct route to sanctions including fines.

We note that at 3.66 in the consultation it states that although the CMA – and potentially other sectoral regulators – could impose administrative fines, "(a)ny other enforcers would have to apply through the civil courts under Part 8 of the EA 02". As per our response to Q61 above, we assume that these "other regulators" includes local authority Trading Standards services and we strongly welcome this proposal to enable Trading Standards to apply to the courts for fines for breaches of Undertakings.

Improving Alternative Dispute Resolution

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

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?

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?

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

SCOTSS agrees that ADR can play an important part in ensuring fairness in consumer markets if it can provide a realistic and useable alternative to court action for settling individual consumer disputes. Some ADRs are effective, such as the Financial Ombudsman Service (FOS), but many others are not. We think this is because FOS is compulsory and well-funded while few other ADRs have both of these characteristics. At present, there are very large gaps in effective ADR coverage across consumer markets, with the vast majority of consumer purchases not being covered by an effective ADR system.

The experiences of Scottish Trading Standards officers shows that the lack of effective ADR options can be particularly detrimental to vulnerable consumers, who are less likely to be able to use other processes such as robustly debating the issues with the trader involved or taking court action. We note also that the notion of "consumer vulnerability" is an evolving concept, see Q46 above regarding the notion that all consumers can be "vulnerable" at certain times. We think that sectors that can be easily identifiable as being connected to typical periods of "temporary" vulnerability (e.g. funeral services, care homes) need specific consideration for having mandatory ADR.

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?

We have already said that all current evidence suggests that ADR must be mandatory to be effective. Therefore, we welcome the move to compulsory ADR in more sectors. We also think that the criteria listed on page 123 of the Consultation are well-founded and we support this general approach to identifying suitable sectors. Further, the choice of motor vehicles and home improvements makes good sense to Trading Standards officers: these are consistently the most common topics for complaints to Trading Standards, and both sectors often involve "big ticket" purchases, with high levels of detriment when things go wrong. In fact, we think that the proposal to make ADR in these sectors mandatory has the potential to make a bigger contribution to both fairness and the good functioning of consumer markets than anything else in the Consultation.

However, we think it is important to stress that this must be implemented fully and effectively. It will need significant funding, a detailed plan and real commitment from Government. Many of the businesses involved are small and localised: second-hand car dealers, motor repairs, plumbers, builders, electricians. It will require considerable effort to get these businesses into a mandatory system and cooperating with it. There must be sanctions for those that do not cooperate and funding to enforce those sanctions. At the same time, businesses must be treated fairly and not presented with unreasonable and unfair burdens.

Local authority Trading Standards services are close to their local communities and the consumers and businesses who buy and sell there. As such, they are well-placed to contribute to the necessary development of the plan to implement mandatory ADR in these sectors. In the Scottish context, SCOTSS can coordinate this contribution and would welcome being consulted on, and appropriately included in, these developments.

Additionally, we think that any implementation of compulsory ADR should have its effectiveness in practice analysed to determine whether the provisions should be permanent.

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?

Ideally, consumers would prefer ADR to be free to use, and the example of FOS shows how a free system can work well. However, we recognise that FOS is funded by the finance industry and it may not be so easy for very different sectors like cars and home improvements to be fully funded through levies paid by the businesses involved. It may be that a small usage fee for consumers is justified, as long as businesses are also making a contribution and the fees are not off-putting or unreasonable. The fees should certainly be less than court fees. Another consideration is the timing of fee payment: i.e. should it be upfront before the process, or payable after the process is complete? Much more work is required on the details of this.

Q71. How can government best encourage businesses to comply with these changes?

As with any regulation, it must be combination of "carrot and stick". On a daily basis, Trading Standards officers emphasise to local businesses that ongoing success in consumer markets can only be achieved by treating consumers well and seeking excellence and best practice. This should include participating in ADR in good faith. However, those who cannot be persuaded must be brought into line through effective sanctions, or the system will be fatally undermined.

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?

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?

No response.

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?

This question offers SCOTSS the only opportunity to respond to 'Chapter 3 – Consumer Law Enforcement' of the consultation, specifically paragraphs 3.108 to 3.115 covering Trading Standards Enforcement. Scottish local authority Trading Standards Services (SLATS) discharge this function at local level, and it is disappointing that this consultation provides no fresh proposals to address the cliff-edge we face in Scotland (and I'm sure in England & Wales) in terms of the well documented lack of capacity and resilience within these services.

In setting the scene on page 128, the consultation states that '…LATSS…tend to focus almost entirely on enforcement against criminal behaviour'. Respectfully, this is not the case. We also investigate and act against systematic breaches of the civil law using the Enterprise Act 2002 (EA2002); it can also be effective in dealing with criminal offences which are low level or of a more technical nature. This has proven to be an effective tool in the SLATS arsenal, and it is used when it is likely to be the

more effective route in achieving compliance and getting redress for consumers using the ECM provisions.

Trading Standards Scotland (TSS) – construction, role & relationship with SLATS

Before addressing this question, we must point out that the operating model used by TSS set out in this consultation is incorrect: TSS is not a simple replication of The National Trading Standards (NTS) approach in England and Wales, it is a fundamentally different delivery mechanism, namely a separate team employed by the Scottish local government association COSLA with no intrinsic statutory basis. It is disappointing that BEIS does not understand this given that they set up this model and continue to provide the major part of the funding for TSS.

Furthermore, in paragraph 3.112, the consultation states that

'The reason neither [NTS & TSS] takes direct enforcement action themselves is because neither has the legal status to be given enforcement powers, so their responsibility is to support others in taking cases.'

This is simply not the case. TSS has responsibilities set out by BEIS and the Treasury and this includes carrying out its own investigations/casework. The well understood but unaddressed issue is that TSS has no statutory basis for any of this work. It follows directly that TSS in of itself is not a 'competent authority' in terms of Part 3 of the Data Protection Act 2018 and the potential issues around data sharing that brings with it have not been helpful. This was recently resolved to a limited degree by Glasgow City Council who authorised all TSS staff as if they were officers of Glasgow City Council. This was the only solution Scottish authorities could find and it has taken over 8 years to put in place. However, it does not address the fundamental issue here and may yet be the subject of legal challenge.

We are of the opinion that if this is truly how BEIS expects TSS to function and interact with SLATS then BEIS should take steps to change it and move TSS to a commissioning model similar to that of NTS. This was the preferred position of SCOTSS when we responded to the 2018 Green Paper, and this remains our position. This would provide the basis for the most efficient working relationship for TSS and SLATS in tackling national breaches of the criminal and civil law. Alternatively, if BEIS is content with the current delivery model for TSS then it must take steps to ensure it is fit for purpose, the most effective option for which would be to put TSS on a statutory footing as some sort of public body.

Given this, we would point out that, contrary to the assertion in paragraph 3.6, TSS does not have a role in supporting SLATS in the large, complex cases. The TSS remit covers illegal money lending casework, cross-border scams and doorstep crime, and Intelligence. They also identify their own priorities that may or may not overlap with those of SLATS. Through the Tactical Tasking process, SLATS can pass a cross-border issue to TSS but if it falls within these disciplines, otherwise TSS has no expertise or locus. If a cross-border case is passed to TSS to deal with, then they deal with it in its entirety. There are occasionally cases where TSS seeks the support of a SLATS but that is the exception rather than the rule.

Current position of SLATS & lack of Consideration

Even if there were effective and efficient working relationships with TSS and SLATS, the fact is that officer numbers within some SLATS are at such critically low levels that there are barely any officers with whom TSS could work. At present, 21 SLATS employ 8 officers or less, which as Audit Scotland pointed out in 2013, 'Trading standards services with eight staff or fewer have insufficient flexibility

to deliver a full range of services' and that 'Urgent action is needed to strengthen protection for consumers…'.

These 21 SLATS are failing to deliver on the most basic of regulatory duties, never mind work on large, complex cases. They cannot carry out their statutory duties to ensure that markets work correctly; they can't ensure that they are 'delivering competitive markets that work for consumers'.

The December 2020 Penrose Report is quoted extensively in Chapter 3 as justification for the need for the changes proposed for CMA powers. SCOTSS supports these proposals as necessary and proportionate. However, references to Penrose and the recommendations it makes in respect of local authority trading standards services are completely ignored in this consultation.

- Page 44 of Penrose calls for '...Stronger Trading Standards' and points out that TS services have 'an essential role' but have been 'hollowed out' in some local authorities. These stark observations have been completely ignored in this consultation.
- Another key recommendation of Penrose is that the government should 'create a new statutory duty for minimum standards in LATS' and 'provide ring-fenced resources so they can deliver'. Again, the consultation is silent on this.
- The stated aim of this consultation is the 'unlocking the potential of consumer enforcement' and this being 'key to improving productivity through more competitive and effective markets'.

That being the case, BEIS cannot ignore the perilous position of SLATS. Our services are the cornerstone of market surveillance, business advice and support, and enforcement at a local level and a key partner of the CMA, amongst others, in assisting them with their national casework. Also, the intelligence gathered at local levels by SLATS is a key source of material informing the casework of TSS and partner organisations across the UK such as HMRC, FSS, and OPSS.

The need for steps to be taken to address these issues is well known and has been documented by SCOTSS, Audit Scotland, COSLA and the Improvement Service in Scotland. The latest SCOTSS Workforce Survey calculates that there are a total of 253 staff employed in SLATS, of whom 240 are qualified officers. Of these, 54% are over 50, with 58% of TSOs (DTS or equivalent) over 50 and only 4% under 30.

With the goal of doing the best with what we have, SCOTSS plays its part in supporting SLATS by providing national coordination including for reserved matters. We also provide a conduit to SLATS for the Scottish and Westminster governments (SG & WG) where they have particular issues they need SLATS to address.

We are working with colleagues in OPSS to coordinate enhanced market surveillance of imported consumer goods through Scotland's ports in the context of Product Safety, and HMRC to make sure the objectives of 'Operation Cece Scotland' in tackling illicit tobacco supply are achieved. This includes ensuring the funding for these activities reaches participating authorities. On behalf of the SG, we are delivering on their ongoing Health and Community Safety agendas through our ongoing coordination of Tobacco and NVP enforcement and Firework Safety regulation introduced in June 2021. These workstreams also involve funding provisions which SCOTSS have negotiated and will ensure is channelled directly to participating SLATS.

SCOTSS is well positioned to carry out this role as our members are those who manage each of the SLATS. However, we have little influence on local authorities when it comes to their provision of

their TS services. This is where the SG, WG and Scottish local authorities must collectively decide whether they are going to reinforce the TS profession or let it continue to wither on the vine.

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?

SLATS understand the need for businesses to be informed and advised on their responsibilities under existing legislation and what impact forthcoming changes will make. We fully support the role of CTSI in providing the 'Business Companion' information service and it has been proven to be a valuable source of information for all sizes of business. We are impressed also by the quality of advice and information that the CMA delivers in specific areas.

SCOTSS also believes that locally operated assured trader schemes such as "Trusted Trader" play a valuable role in strengthening links between enforcers and business, and serve to educate businesses, especially small businesses, as to their rights and responsibilities and often in sectors that would not normally come into contact with local authority enforcers. SCOTSS has sought to link separately operated schemes in Scotland through a consumer portal www.approvedtrader.scot that makes it easier for consumers to find the service they need across a wider area, and also increase awareness of consumer protection law in a very cost effective and non-regulatory manner.

The Primary Authority approach has never really gained much traction in Scotland and because of a lack of capacity within local trading standards services we doubt it could be facilitated at this time.