COSLA

Trading Standards Scotland

COSLA/Trading Standards Scotland

Response to:

Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers

We welcome the opportunity to respond to this consultation on reform of competition and consumer policy. However, we are disappointed at the lack of consideration of the overall landscape for consumer protection and, in particular, to local trading standards services and the important role they play in making the whole system work well. The consultation focuses very much on the "top tier" of enforcement, the CMA, but that will only operate well if it is supported by strong and effective local enforcement. Ideally any reform of competition and consultation policy will look to build a collective approach to tackling consumer issues and supporting economic development, however this requires adequate resources at a local level. Local trading standards services have been declining for over a decade for several reasons. There is a lack of new entrants to the profession and more needs to be done to address this before staffing levels become critical. The most workforce survey conducted by the Society of Chief Officers for Trading Standards in Scotland shows that nearly 60% of qualified trading standards staff are now over 50. There have also been further reductions in unqualified staff since the last survey in 2019 and some vacancies have been deleted. There are now 21 out of 31 services in Scotland with less than 8 staff, compared with 15 such services in 2013. Audit Scotland have previously identified 8 as the benchmark for a small service and found that such services performed worse overall than larger services and had little capacity to improve or develop their services.

We are supportive of what are moves to strengthen parts of the system specifically the introduction of an administrative model for the CMA and economic regulators. We believe this will facilitate faster more effective action to address consumer issues. The proposals to tackle issues with regards to subscription traps and fake reviews are also welcome. Subscription traps have been causing widespread consumer detriment for years and ensuring sufficient pre purchase information is provided to consumers and cancellation is as easy as signing up will help to address this. Fake reviews are causing increasing issues for consumers and can have a profound effect on their transactional decisions leading not only to consumer detriment but also a detrimental effect on competitors in the market. We include for information a case study on a recent investigation conducted by TSS where the business used fake reviews to increase their profile and share of the market.

The consultation has an emphasis on enforcement, which whilst welcome we feel that this needs to be matched with in investment in consumer education and empowerment. Consumers who know

what their rights are and how to exercise them are a large part of ensuring that consumer markets function well. There could be improved information on how these reforms will make a difference to consumers.

We have a close working relationship with the CMA and have collaborated on several areas of work where we have a joint interest such as the secondary ticketing market and parcel delivery surcharging. We will continue to build and develop this close working relationship as the proposed reforms are developed but would welcome further discussion on how the CMA fits within the wider consumer landscape and how we can ensure that all of that landscape functions well.

TSS has no legal enforcement status to take forward either criminal or civil actions. Solutions have been found to deal with that issue, but they are not ideal. We would have welcomed further discussions on how TSS could have been given a status that conferred on them their own powers as suggested in the Green Paper – Modernising Consumer Markets. We believe there are potential solutions to this issue which stop short of making TSS a public body and would welcome further discussion on this. Despite the issues caused by the lack of legal status TSS has performed well since its inception and has matured into a team that works well across intelligence, enforcement, prevention and disruption functions making a measurable difference in reducing consumer detriment in Scotland.

We would also like to see some thought given to how the Consumer Protection Partnership can have a stronger role and presence within the landscape.

Responses to questions

Chapter 1 – Competition Policy

We have no response to make to the questions in chapter 1.

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 agree with this description. This is what an average consumer would understand by the term subscription contract. However, some of the most common subscription contracts are streaming services which could perhaps be specified under digital content. There are also a number of subscription contracts that relate to the provision of clothing. Whilst we do not feel it is necessary to cover every type of goods, service or digital content that may be provided on subscription in the definition it is important that there is enough of a breadth that it is clear for consumers.

We would appreciate clarity on whether the new requirements apply to all consumer contracts for goods, services and digital content, with regulated sectors having further specific obligations on top of the generic obligations? Or would there be a clear distinction between obligations for regulated sectors and non-regulated sectors?

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

We do not feel that these requirements would be difficult for traders. However careful consideration must be given to what is meant by prominent in the case of web pages or apps. What device a consumer is likely to read the information on should also be considered as this can have an impact on prominence.

Clarity around 'clear and prominent' would be beneficial for traders and enforcers to ensure a level playing field. Failure to do so would likely lead to some traders taking less action than others to comply.

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

It would make it easier for traders as it introduces clarity on what and how information is to be provided.

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

This introduces additional administration for traders in keeping track of whether consumers have or have not taken out a contract with auto renewal. However, there is benefit to the trader in providing clarity of service to consumers which mean that there are less likely to be contractual disagreements to be resolved.

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

The second option as it is in wider in scope, therefore, offers better consumer protection.

Q35. How would the reminder requirement impact traders?

No comment

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?

Traders should have to secure explicit consent to continuing the subscription at the end of a free trial or low-cost introductory period. This ensures that consumers are fully aware of the circumstances. Without explicit consent there is a risk that a consumer has not seen the communication from the trader.

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

No comment

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

This would depend on the nature of the subscription and the frequency of supply of the goods, service or digital content.

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, this is often 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, this suggested approach would make it more likely that a consumer could cancel a subscription service that they no longer wanted without finding themselves having paid for longer than they would have liked to.

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 comment.

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?

We feel the adoption of (a) would unfairly penalise legitimate business, seeking to enhance their visibility and reputation through prompting real customers to submit genuine reviews.

We would support (b) or (c), however evidencing that a reviewer did not receive a product/service, or has been paid to write an untruthful review, is very difficult and will continue to be so. Enforcement would need to be targeted towards the trade in false reviews and therefore may only have a limited impact. It is likely these steps would either push the arrangement of false reviews further underground or result in reviews being offered/commissioned with explicit reference to a product or service being provided so as not to appear entirely false, when that product/service may not in practice actually be provided.

The growth of digital and social media needs to be considered given that such platforms are now used to produce creative advertising in everyday e-commerce. In particular it is commonplace for social media "influencer" businesses to share product 'reviews' and 'collaborations', many of which have been commissioned or incentivised.

The wording of the proposed prohibition would need to be carefully considered so as to permit the commissioning of reviews from genuine previous customers, or advertising from influencers which is delivered in a transparent way, whilst still effectively prohibiting the commission or placement of false reviews or reviews which lack the necessary transparency.

Consideration should be given to the wording of any specific prohibition capturing both parties involved in a transaction over false reviews; making it unlawful for any person to offer to write or to write a false review for payment or reward, as well as offering to procure or procuring a false review for payment or reward.

Consideration should also be given to enforcing greater diligence from platforms which publish reviews, for example to

- Better verify user accounts/reviewers before their content become active;
- Act to clearly flag or remove reviews which appear to be false on the basis of IP address, content or account activity;

- Provide greater transparency by clearly detailing, where positive or negative reviews have been removed or filtered, the reasons for this and the number of reviews in question;
- Clearly flag or disclaim businesses which appear to be misusing systems, either by falsely creating positive or suppressing negative reviews;
- Report suspicious activity and share evidence of it with enforcement authorities

As well as capturing the *publishing* of adverts offering to write or procure false reviews within the banned practice (subject to a due diligence defence).

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?

As above, the adoption of option (a) is likely to adversely affect all business, but perhaps most significantly so small and micro businesses as they perhaps rely more heavily on online reviews, rather than a large advertising budget, to attract new custom. By nature, online businesses are perhaps more likely to benefit from online reviews, however their importance to offline businesses should not be underestimated, particularly in the services sector.

If complied with then options (b) and (c) are likely to result in a much more level playing field for all concerned, whilst reserving the ability for legitimate business to boost their visibility and reputation through genuine reviews. It is unlikely that these steps would significantly negatively affect legitimate business of any size, however the difficulty in evidencing and enforcing false reviews may mean that non-compliance is high and the benefit to consumers from any changes is therefore minimal.

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?

As indicated above under Q42, we believe consideration should also be given to enforcing greater diligence from platforms which publish reviews, for example to

- Better verify user accounts/reviewers before their content becomes active;
- Act to clearly flag or remove reviews which appear to be false on the basis of IP address, content or account activity;
- Provide greater transparency by clearly detailing, where positive or negative reviews have been removed or filtered, the reasons for this and the number of reviews in question;
- Clearly flag or disclaim businesses which appear to be misusing systems, either by falsely creating positive or suppressing negative reviews;
- Report suspicious activity and share evidence of it with enforcement authorities

Whilst we would be unable to comment in detail on the likely cost of such measures, we understand that some review platforms have means in place to undertake the above work, largely through automated computer software.

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?

Yes, as above under Q42. Consideration should also be given to making it unlawful to publish such adverts (subject to a due diligence defence).

Case Study:

Trading Standards Scotland has recently been investigating a case which, amongst a variety of other concerns, involved suspicious activity in relation to online reviews.

Consumers reported that complaints made against the business went unaddressed and in some cases it was only the placing of a negative online review which prompted a response. That response often saw consumer redress being made conditional upon the removal of the review, which restricted the consumers' ability to exercise their rights and warn others about their experience.

In some cases, consumers complained that their review was falsely flagged by the business as not being from a customer of theirs. This was further supported by findings from the review platform, which had warned the business about misuse of the function they provide to flag false reviews. Whilst this can be argued to be unfair commercial practices, it may be worthwhile specifically considering these as specific banned practices.

It was also noted that a large number of positive reviews relating to the business in question, had been placed by user accounts with very little information, which had only placed one single review. , Equally, suspicious reviewing patterns were noted, whereby reviews were placed by accounts which had reviewed multiple trading names of the same business in close succession, or reviewed multiple businesses operating in the same field in close succession, indicating it was unlikely a consumer had procured the goods/services in question.

Further enquiry has been made into the suspicious reviews, under the Investigatory Powers Act, to try and ascertain if misleading practices can be evidenced to a particular person or persons. This has not, however, been a quick process. Furthermore, the adoption of basic technical measures such as the use of Virtual Private Networks to mask IP addresses, may make it practically impossible to evidence a link back to the person responsible for the suspicious activity.

Thankfully in this case action has been taken to warn consumers of the suspicious activity and many suspect false reviews have been removed, however in the event that a platform fails to act proactively to police the content it publishes, this kind of reviewing activity will continue to mislead. For this reason, we suggest greater responsibility also be placed not only on businesses which benefit from reviews but also on the platforms publishing them, or facilitating the trade in them.

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?

Knowledge of these techniques will vary both in terms of the use of such techniques, the types of techniques and how to counteract them. This is a concern that we would want to see addressed as current practices affect the ability of a consumer to make a properly informed choice. This also impacts on competition as larger, better resourced companies may be able to make better use of behavioural techniques to influence consumer behaviour. This type of activity could act as a barrier to enter the market for some firms.

TSS deals with a wide range of both consumers and business practices. There is a general sense from consumers of disappointment and a feeling of being duped where a business has not been transparent and honest with them. It seems that where a business lacks transparency there is a general desire for a change in the practices of that business by consumers, towards improved

credibility. Therefore, in terms of behavioural techniques, where a consumer is unaware of such influence, it is likely a concern which consumers would like to see addressed.

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?

Yes, however careful consideration must be given to how these problems should be tackled and at what level. All businesses regardless of size could potentially engage in these types of practices and these business practices are not solely undertaken by large companies, therefore, consideration should be given to the practical enforcement options and resources available to lower tier regulators, such as trading standards, that are responsible for dealing with the smaller business which fall out with the remit of the CMA and other economic regulators. These behaviours would unlikely justify criminal prosecution, so regard should be had for other enforcement options in the case of continual non-compliance by a smaller business, as the business practices would be detrimental to individual consumers and competition, albeit on a smaller scale.

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?

Yes.

The difference in protection from consumer rights where a consumer purchases from another consumer, rather than a business, is of consequence, therefore, greater clarity on multi-seller platforms around the status of sellers would be beneficial for consumers.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 are overly complex and difficult for traders, consumers and enforcers to comprehend and apply. They provide strong protection for consumers but require to be simplified and improved for better effectiveness.

Schedule 1 of the Consumer Protection from Unfair Trading Regulations contains few practical options for enforcement. The Schedule is weighted heavily to a European perspective of consumer protection and some paragraphs are overly restrictive, resulting in little practical protection for UK consumers. There are many examples of unfair trading practices which fall foul of the tests laid out in regulations 3,5,6 and 7 but could be included within Schedule 1.

There is a need for further consolidation of consumer protection laws in places, the framework is too piecemeal.

Q49. Are there perverse incentives or unintended consequences from our existing consumer law?

No comment.

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 mentioned in question 48, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 are unnecessarily burdensome.

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.

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

Sectors where prepayments are large, such as home improvements or weddings. The impact of COVID 19 has highlighted the need for further research and work to be undertaken around prepayment protections.

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

We do not hold this type of information.

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?

No comment

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?

Yes. The introduction of an administrative model should improve the speed of response with which the CMA can tackle issues and should lead to better outcomes for consumers.

Q56. What would be the benefits and drawbacks of the CMA retaining the same or similar enforcement scope under an administrative model as it has under the court-based, civil enforcement process under Part 8 of the EA 02?

No comment

Q57. What processes and procedures should the CMA follow in its administrative decision-making to ensure fair and proportionate administrative decisions?

No comment

Q58. What scope and powers of judicial scrutiny should apply in relation to decisions by the CMA in consumer enforcement investigations under an administrative model?

No comment

Q59. Should appeals of administrative CMA decisions be heard by a generalist court or a specialised tribunal? What would be the main benefits of your preferred option?

No comment

Q60. Should sector regulators' civil consumer enforcement powers under Part 8 of the EA 02 be reformed to allow for enforcement through an administrative model? What specific deficiencies do you expect this to address?

Yes. This will allow sectoral regulators more flexibility in their approach.

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 believe that fines would incentivise compliance and lead to swifter action, as opposed to court action, which is currently required.

It would be beneficial for local authority trading standards services to also have the power to fine for non-compliance, albeit through the courts, which is how we have interpreted paragraph 3.44.

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 would support Option 2 in conjunction with Option 2A. Making undertakings enforceable in their own right would be an important and effective addition to the current system. These measures taken together would strengthen the status of undertakings and make them more effective in incentivising future behaviour that complies with consumer protection laws.

The introduction of these provisions would be beneficial to all regulators using Part 8 of the Enterprise Act 2008 including trading standard services.

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

Whilst we can see the benefit of including admissions of liability by the trader in an undertaking, we are of the option that this would mean more cases going to a court process before agreement was obtained. This would slow down the whole process and make it more costly.

That is not to say that active consideration cannot be given to securing such an admission for individual cases, however we do not believe it should be compulsory.

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)any 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.

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

In general, ADR in the regulated sectors provide good support for vulnerable persons. For unregulated sectors, the support is not as strong. We suggest more onus on ADR providers within unregulated sectors to follow models found within the regulated sectors for supporting vulnerable persons using ADR.

A single portal for accessing ADR would make it much easier for all consumers to access ADR. With a simple set of initial questions consumers could be directed through to the correct provider. Having one ADR provider in each sector would facilitate this approach.

A mandatory ombudsman scheme should also be established for retail purchases that are complex or over an agreed value.

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?

Overall we believe shorter time scales for resolving consumer issues before referral to ADR schemes should be introduced. However, it is important that a degree of flex is built into this system to allow for circumstances where the case is particularly complex. This will rely on businesses communicating well with consumers in relation to any delays and recording this so that if necessary this information becomes part of the ADR process. Inclusion within individual ADR schemes of guidance on what will constitute a complex case would support this approach.

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?

There is a stark difference in resources between competent authorities for unregulated sectors and regulated sectors. Competent authorities within the regulated sectors are well-resourced and have appropriate powers to effectively oversee their ADR schemes. The resources and powers of the competent authority for most ADR schemes in the unregulated sectors, CTSI, are far from those within the regulated sector. CTSI requires further resource and power in order to strengthen its role as a competent authority and improve overall standards and oversight of ADR bodies.

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

Advice Direct Scotland advises consumers of their right to ask a business to use an ADR scheme and provides template letters to do so. This is a positive step for consumer protection, yet TSS is aware that such requests for ADR are often refused by the business in the unregulated sectors, leaving the consumer feeling helpless. To improve confidence in ADR schemes, a significant amount of improvement is required, primarily in the unregulated sectors.

The ADR landscape should be simplified and strengthened. We suggest this could be achieved through a reduction in the amount of ADR providers to one or two per sector, bringing in clearer delivery standards, improved transparency through better information sharing and reporting, better resourcing of competent authorities for unregulated sectors, working towards improving independence of ADR schemes and the creation of a portal that provides advice on ADR as well as directing to ADR schemes.

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?

Yes.

ADR works best when mandatory, so we would welcome this proposal. However, careful consideration must be given to how this would be implemented and enforced. If local authority trading standards service were to be tasked with contributing to the implementation, they would need support and clear direction from Government in order to ensure compliance and a level playing field. We therefore welcome the Government's proposal to work on considering a range of options that will incentivise compliance and encourage businesses to use ADR.

On a 'per case' basis incentivises the business to keep case numbers low, best protecting consumers.

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?

A nominal fee could be beneficial for ADR schemes in terms of improving resources and should not deter consumers from using a scheme.

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

Increased awareness of the benefits of ADR for business, a less complex landscape, improved standards and oversight would all encourage business to comply.

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?

Opening more routes to collective redress is a positive step and we support it. Consumers would benefit from the collective support of other consumers, and private and consumer organisations. Court action is difficult to navigate for consumers which deters many from going down that route so collective actions could provide redress for those who would not have received it otherwise. Enhanced Consumer Measures under the Enterprise Act 2002 provide an excellent tool for enforcers to gain collective redress for consumers, but not all poor business practices can be addressed by regulators, therefore, this help to would fill a void.

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?

We believe that it would have a positive impact, benefiting consumers and contributing to a level playing field for business. It could relieve some of the burden on public bodies to seek redress for consumers and strengthen access to justice for consumers.

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?

Firstly, we feel the scope of this question is too narrow and that the work being done by both TSS and local trading standards services using civil enforcement is being overlooked. Often a civil approach under Part 8 of the Enterprise Act 2002 will result in better outcomes for consumers theoretically because of the speed with which such actions can be taken, the effect on future behaviours of problematic traders and because of the ability to use enhanced consumer measures. Consideration of how TSS can work best alongside local trading standards services should therefore consider how that can be done under both civil and criminal provisions.

It should also be noted that the information given in the consultation document is not an accurate reflection of how TSS currently operates. TSS do not work in partnership with a lead authority on criminal cases investigations are allocated to TSS through a tasking and referral process involving regional representation from local trading standards. TSS conduct the investigations autonomously but with the awareness of the local authority services. TSS staff are appointed as duly authorised officers by Glasgow City Council allowing them to use the criminal enforcement powers under the Consumer Rights Act 2015 across Scotland. The Crown Office and Procurator Fiscal Service recognise TSS as a distinct specialist reporting agency. For civil cases, as TSS is not a general enforcer under the Enterprise Act 2002, a lead local authority is required in order that TSS can operate under their powers and that the local authority can undertake any necessary court proceedings. This can make the process of taking civil actions more laborious and time consuming than it would be if TSS were

themselves general enforcers. We provide further information on a potential model to resolve some of these difficulties below.

For TSS and local services to work together effectively requires collective responsibility for consumer law breaches, both civil and criminal. For maximum effectiveness there must be suitable governance and accountability within this system. The tasking process that is currently in place is designed to build that collective responsibility however there are issues with delivery which are caused by several factors outlined below.

It would be remiss of us not to point out that this consultation does nothing to address the issues being faced in relation to resourcing of local trading standards services or provide guidance on how those services should be prioritising their resources. The decline in the trading standards service has been well documented across several reports and reviews[1]. The effectiveness of how the national team works with the local is fundamentally dependent on there being sufficient resources at the local level. Without effective local services gathering intelligence on how local traders operate and the problems being encountered by consumers it becomes far more difficult for the national team to identify those traders that are causing widespread consumer harm and take appropriate action against them. The lack of local resource can also mean that a trader who requires support and advice to prevent them becoming problematic to consumers are not receiving that support at an early stage and go on to cause widespread harm when this could have been prevented.

In Scotland both the national team and local services will use a mixture of both criminal and civil enforcement powers to tackle problem traders and businesses. There are a number of reasons for this, not least being the fact that in Scotland all prosecutions must be instigated by the Crown Office and Procurator Fiscal Service. Trading standards have struggled to get consumer protection cases taken forward by the Crown and when criminal proceedings are instituted there can be long delays before the case get to court during which time the trader may still operate and continue to cause detriment. Securing undertakings under the Enterprise Act can be an effective alternative to criminal action as it should not only be quicker but should impact on future as well as current behaviour. The enhanced consumer measures also provide a useful route to securing redress and to put in place a framework for monitoring of the business going forward. However, use of the Enterprise Act varies across the country and can depend on resourcing levels within legal services as well as the trading standards service. Following a consultation exercise with stakeholders, including the Society of Chief Trading Standards Officers in Scotland (SCOTSS), TSS and SCOTSS are now working to scope the potential to put in place a centralised resource to take forward civil actions. The aim of having a dedicated resource would be to build expertise and to expedite the process ensuring that greater and more effective use was made of Enterprise Act Part 8 provisions in Scotland. These discussions are at an early stage and to some extent depended on the content of this consultation paper. Additional financial resource would be required to take this work forward.

The grant funding arrangements for TSS mean that funding is allocated on a year-on-year basis, although an indicative figure will usually be provided for the duration of a spending review period. This lack of certainty over budgets hampers longer term strategic planning and introduces an element of risk for COSLA as the host of the team. TSS would be more effective if multiyear funding arrangements could be put in place as this would allow for better planning and facilitate longer term projects. It would also give TSS and COSLA the ability to develop resilience and contingency measures and better manage risk.

[1] Audit Scotland 2013 – Protecting Consumers, NAO 2016 – Protecting Consumers from scams, unfair trading and unsafe goods, CTSI Workforce survey 2019, Penrose Review - 2020

Where BEIS has a priority area that they feel would benefit from focus and resource at a local level TSS provides a vehicle for commissioning of work in that area. TSS have already operated this model with the Scottish Government in relation to a project to tackle new psychoactive substances and to support the dissemination of call blocking devices to vulnerable consumers. Consideration should be given to formalising this commissioning role for TSS in particular to support work being done under the auspices of the Consumer Protection Partnership.

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?

We do not feel in a position to comment on whether what is currently provided meets businesses needs but would advocate that some research is conducted to establish this. A digital first approach should be taken to delivering advice and guidance making it as easy as possible for businesses to help themselves. In Scotland the Business Gateway and Federation of Small Businesses websites would be an ideal way to disseminate this content. The Business Gateway newsletter has c40,000 subscribers demonstrating the reach that this service has.