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Dear Erin

A consultation to establish a consumer body for Scotland

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 trading standards services in Scottish local authorities.

I very much welcome the opportunity to respond to your consultation, and we look forward to working with you and with other stakeholders in Scotland to support and protect Scottish consumers.

I am pleased to outline our responses to the consultation questions below:

1. Do you have any comments on the consumer landscape in Scotland?

- a. We recognise the complexity of the consumer landscape in Scotland as noted in the consultation document, however the key players in that landscape make every effort to improve accessibility for consumers, and there is much evidence that services are there for consumers to the limit of their existing resources. For example, the local authority Trading Standards services (LATSS) that our members represent, have a key role to play carrying out the vast majority of consumer law enforcement in Scotland. That is sometimes through formal measures like prosecutions and civil Enterprise Act court actions, but usually through positive and

constructive engagement with businesses which results in voluntary improvement and assurances of future conduct. Each LATSS has a deep understanding of the consumer environment in its local area, but is also experienced in working collaboratively with other LATSS and other partners across Scotland, often through the auspices of SCOTSS. Trading Standards also works very closely with Citizens' Advice Scotland on advice matters, particularly where the Consumer Helpline is concerned, and that joined up approach to advice, intelligence, and enforcement has been key ever since DTI launched Consumer Direct in Scotland in 2004.

- b. The effectiveness of that partnership in working for consumers is however dependent on the necessary resources being available, and many local authority trading standards services are now operating at or below minimum levels. Any further fragmentation or reductions in capacity could seriously risk the ability to deliver positive outcomes for consumers in Scotland. It is clear that, for any future agency like Consumer Scotland to succeed, there must be a sustainable underlying and joined up framework of advice and enforcement services.
- c. In that regard in particular, SCOTSS has been successful in working with partners in the past for example with Scottish Government, around health priorities, to ensure that local trading standards services are tackling devolved tobacco and nicotine vapour product duties. We would be happy to also assist in any way with any consumer areas.
- d. We very much welcome the recent expansion of the Competition and Markets Authority presence in Scotland, with a significant proportion of the Edinburgh-based team to be working on consumer issues. Local trading standards have a long history of working closely with Office of Fair Trading, and now CMA colleagues, and together we are a strong foundation for consumer protection in Scotland.
- e. We also recognise and value the roles played by CAS and the local CABx in Scotland and think they must continue to be central to the consumer landscape in the years ahead. While CAS is strong on policy and the strategic approach, local CABx provide the vital on-the-ground advice and support, and in many areas CABx are the only physical community-based consumer landscape presence, as most local authorities have had to close advice services through pressure from financial savings. As mentioned above, the existing Consumer Helpline, operated in Scotland by CAS, in conjunction with referrals to local trading standards is a key functioning system that works well, and should be supported by any future consumer body in Scotland.
- f. Trading Standards involvement has also declined in the area of "Conciliation" (sometimes referred to as "2nd Tier Advice"), i.e. where a Trading Standards officer mediates between a consumer and a business regarding an individual (usually civil) dispute. While not all LATSS are in

a position to provide conciliation services it is consistently seen as being a LATSS function that the public most appreciate in terms of customer satisfaction. With an increasing complex market place the value of LATSS assistance to elderly or vulnerable consumers in this area should not be overlooked.

- g. Both the Scottish and UK Governments have expressed strong support for the operation of ADRs to solve individual consumer disputes. In practice, ADR works well in a small number of industries, generally where companies are legally obliged to co-operate with an ADR (e.g. financial services). For most consumer contracts, there is no compulsory ADR and most businesses simply refuse to co-operate with ADRs. This urgently needs attention and we hope that the Scottish Government can work with its UK counterparts to improve the effectiveness of ADRs in Scotland.
- h. One other part of the landscape we feel can be a key consumer benefit, is the provision of assured trader schemes – almost half of Scottish local authorities provide these schemes through their trading standards services, for example Trusted Trader, which was established in 2005. In order to join these schemes, businesses are required to meet strict criteria with regard to their trading practices thereby enabling consumers to use them with confidence. Where issues do arise there are robust redress systems in place to resolve them. A key aspect of the schemes is genuine and verified customer feedback which is displayed for prospective new customers to view and assess which trader is best for their needs. While many local authority schemes are very successful the landscape is admittedly patchy and so there is no recognisable local authority trader registration scheme “brand” which consumers recognise. SCOTSS is seeking to address this through a Scottish assured trader ‘portal’ which will provide a simple interface for consumers to find local traders which are trusted by trading standards. We are happy to discuss this initiative in more detail in due course.

2. Do you agree with the proposed functions of Consumer Scotland?

- a. In the context of the limitations of devolved competence regarding consumer affairs, we think that the proposed functions for Consumer Scotland are the right ones. An overarching consumer body with a Scottish focus will be able to raise the profile of consumer matters in society and in Government. But more importantly, we support the focus on devising and proposing specific solutions to problems. This has the potential to give consumer advocacy more “teeth” to effect change.
- b. We welcome the recognition in the consultation document of the central importance of local trading standards services to the future consumer landscape in Scotland and we look forward to working closely with Consumer Scotland. LATSS have the powers, authority and expertise to make a really positive impact although we caution again, (as mentioned

in 1b above) that a sustainable framework for advice and enforcement will be key to the success of Consumer Scotland.

3. Which powers and duties would you like Consumer Scotland to have, in order to carry out its proposed role?

- a. The main power is described in the consultation document: that to require information from businesses, organisations and individuals. We agree, and think this is vital for Consumer Scotland to be effective. If responses to requests for information are voluntary, it is very likely that they will be refused in some key instances. Potentially just as damaging would be partial responses that omit important information.
- b. In terms of duties, we think that Consumer Scotland should have clear obligations, measured both by outputs and outcomes (e.g. "conducting at least X investigations a year"). We also think that when a Consumer Scotland investigation leads to specific recommendations for action, the organisations involved should have a duty to respond, explaining why they are or are not taking the recommended action.
- c. We welcome the proposal for Consumer Scotland to have formal arrangements with public bodies, supplemented by strong informal connections with others such as through memoranda of understanding. SCOTSS would seek to have early discussions with Consumer Scotland to form such links between the two organisations.

4. What are the criteria that would constitute a specifically Scottish consumer issue?

- a. This is a complex question and a topic that requires some detailed consideration. One point we would make is that Consumer Scotland should not limit itself to issues that are Scotland-only (or nearly Scotland-only) such as the examples of solicitors and internet delivery surcharges given in the consultation document. We agree that these would indeed be ideal topics for Consumer Scotland but there should also be scope to include subjects which affect the rest of the UK but which, for whatever reason (e.g. political, social, cultural), there is a clear feeling amongst stakeholders that something should be done in Scotland.
- b. Examples of this might be
 - i. Private car parking, a problematic industry throughout the UK, which has seen higher levels of response in Scotland, through for example, the SCOTSS enforcement project, Transport Scotland's policy work, and activity at Holyrood with a widely-supported Member's Bill.

- ii. Internet based harm, again prevalent across the UK, is perceived as being tackled with a stronger focus in England, so this in itself could be a specifically Scottish issue, where a more joined up approach from partners such as trading standards and Police Scotland could be utilised.
- c. We would highlight in the context of this question, the various enforcement projects that SCOTSS coordinates annually, as many will be of interest to, or could be initiated by, any new consumer body in Scotland.

5. Which criteria might Consumer Scotland consider when assessing the level of harm needed to be reached before an investigation is pursued?

- a. This is another important aspect that needs some detailed work as part of the setting up of Consumer Scotland. We would urge a broad and sophisticated approach to assessing harm. It may be economic, health and safety, environmental or even "moral" (e.g. underage sales). It may involve high levels of individual detriment (e.g. doorstep crime) or very high numbers of instances of smaller amounts (e.g. delivery surcharges). The effect on vulnerable consumers must be a central consideration (e.g. scams on the elderly or unfair rented housing contracts for low-income tenants). At the same time, Consumer Scotland must act for the whole community and also address more mainstream concerns (e.g. used cars or mobile phones).
- b. In addition to the assessment of harm or detriment, Consumer Scotland must closely consider the prevalence of an issue and likelihood for future repetition. This must involve detailed discussions with all stakeholders and exhaustive checks on all possible sources of intelligence about consumer problems. These sources include (but may not be limited to): Citizens Advice Consumer Service complaints database; LATSS and TSS records; CAB records; sector regulators like Ofgem; formal intelligence from Memex (consumer crime intelligence system) and SID (police intelligence); ADR providers; UK consumer players like Which? and Resolver; all other law enforcement agencies such as HMRC and SEPA; related local authority services such as Environmental Health and Planning; community organisations; charities; NHS and social care providers; traditional and social media; open source online, e.g. discussion groups and ratings sites.

6. Are there additional functions you think Consumer Scotland should have to allow it to deliver impacts for consumers in the current landscape?

- a. Yes, as suggested above we see little distance between Consumer Advice and Advocacy, which are devolved responsibilities, and Redress, which

remains reserved. We feel it would make sense to do whatever can be done to add this, if even informally, to the Consumer Scotland toolkit.

- b. From a trading standards perspective, redress for the consumer where they have a justified complaint, is a logical extension to the advice provided or enforcement action taken. Historically, local services had the capacity to engage with local businesses on behalf of the consumer or consumers and resolve issues without need for recourse to the legal system, or indeed businesses can be pursued under the Enterprise Act 2002 for consumer redress, so such work is already part of the local authority toolkit albeit that the circumstances in which we can bring it to bear to the benefit of the consumer are limited.
- c. In terms of 'access to justice', we also believe there is merit in considering the establishment of a simplified 'consumer court' type system, which would be within the Scottish Government's competence to establish, and it may also be worth considering a simplified Scottish ADR system that works more effectively for Scottish consumers.

7. Are there any additional functions Consumer Scotland should have that will enable it to adapt and respond to future consumer challenges?

- a. It may be advantageous for Consumer Scotland to have a coordinating or even directing role in relation to the other agencies, including local authority services, which would greatly strengthen its ability to 'see things through', however we recognise that this would be a significant power that may not be possible under the current devolved arrangements.
- b. Consumer Scotland should also ensure it has access to intelligence from the econsumer.gov portal, of which CMA is the UK's member agency, to ensure that emerging online threats are recognised early.
- c. The Scottish Government's original description of the 'Four Pillars' seemed to set out what was needed to allow it to adapt and respond to these challenges. In order to be as effective as it would hope to be, Consumer Scotland should seek to influence all four, including enforcement and redress.

8. What are your views on the current consumer advice system? How could it be strengthened?

- a. In terms of advice provision, we very much value and appreciate the good work carried out by the Citizens' Advice and Citizens' Advice Scotland Consumer Helpline through its telephone helpline and online advice service. That service was launched first in Scotland in 2004 by the then Department of Trade and Industry, very much through the help and advice of SCOTSS, and has proven to be a high quality and advanced advice service, helping consumers across the UK. One of the key

elements for local trading standards is the joined-up approach between advice and enforcement and the transfer of intelligence.

- b. That service is not equipped to carry out face-to-face advice however and this gap is only partially filled by local CABx and some LATSS. Some CABx are able to be fairly active on consumer issues, while some others are so busy with welfare, debt and housing issues that it is difficult for them to provide an effective face-to-face consumer advice service. While we are not advocating a return to the days when local authority trading standards services ran busy High Street advice centres across Scotland, we do think that the Scottish Government should consider options for increased face-to-face consumer advice. Such advice can be particularly useful for vulnerable consumers such as the elderly and disabled, and it is also effective when consumers have detailed documents which need to be examined before proper advice can be given.

9. What are your views on how the Scottish Government could improve how it commissions and funds advice to individuals?

- a. Firstly, we note the report of Blake Stevenson on the provision of publicly-funded advice services in Scotland, published in February this year. The findings of this report need to be considered carefully in the context of Consumer Scotland.
- b. We also welcome the pilot collaboration between the Citizens Advice consumer advice provision and Resolver, and we await the outcome of that with interest. Clearly Consumer Scotland will need to embrace any improvements in technology that might assist engagement with Scottish consumers, or improve delivery of advice services.
- c. We feel the Scottish Government has a clear duty to identify the most effective organisations to provide the consumer advice etc. framework that Consumer Scotland will need to operate, and make sure these organisations are fit for purpose and sustainable. Advice providers could, for example, be asked to demonstrate their competencies and report on outcomes for consumers, whether this is in terms of resolution, redress or education.
- d. We would recommend an examination of how local trading standards services could be reinvigorated to continue to play a leading role in the consumer landscape in Scotland. Building and linking the existing advice, advocacy, redress, and enforcement organisations in Scotland, and using the built-in competence and experience they have, is surely the most effective way of securing the future for Scottish consumers. Although funding to local authorities is un-hypothecated, there may be ways to ensure that funding is used to meet government priorities at the same time as supporting local services.

10. How can consumer advocacy develop greater capacity to bring change for consumers?

- a. We believe that CAS does an excellent job in its current consumer advocacy role. The proposals indicate that this will continue and will be complemented by both further advocacy and efforts to implement change by Consumer Scotland. This seems in principle to be a good model.
- b. We would also support the creation of new consumer fora, perhaps based on the model of the Water Industry Customer Forum.
- c. There is no doubt that a louder voice advocating for Scottish consumers would focus minds. If Consumer Scotland takes on this role and provides evidence-based reasoning for its campaigns this would undoubtedly bring benefits for consumers.

11. What are your views on whether there should be a duty on public authorities to consider the impacts on consumers of policies or decisions?

- a. This is a bold and innovative idea which we fully support. Public bodies have become accustomed to factoring in considerations such as environmental and equalities impacts into their decision-making and there is very wide acceptance that these are in the public interest. We think that a strong case can be made for a similar duty surrounding consumer impacts and we would urge the Scottish Government to develop this idea further. We would be happy to assist in that work where we can.
- b. As is recognised in the consultation however, care would have to be taken with this proposal to safeguard against unintended consequences, where local authority priorities are concerned. Again SCOTSS would be pleased to assist where we can.

12. Beyond those actions set out in this section, how should Scottish Government use its resources and powers to improve outcomes for consumers?

- a. As discussed under 1g above, we think that the effectiveness of ADRs across Scotland and the UK is very patchy and urgently needs to be addressed. We responded in those terms to the recent BEIS Green Paper on Consumer Markets. We think that this would be an ideal topic for an early Consumer Scotland investigation, in terms of a UK issue that Scotland has decided to do something about (see answer to Q4 above).
- b. Complementarily, we think the Scottish Government could consider trying to tackle ADR problems through the Scottish justice system. Although many aspects of ADRs are reserved matters, the courts are a matter for

Holyrood. It may be possible to have a “consumer court” to deal with relatively low value consumer issues in a manner that is very user-friendly and largely at-a-distance and online. It would of course need to be compulsory for businesses to engage with this if it were part of the formal justice system. It would have to be even simpler and more user-friendly than the Sheriff Court Simple Procedure and there would have to be safeguards allowing referral and appeal to traditional courts. But it may be possible to design something where 99% of the cases are resolved through straightforward, at-a-distance processes. We recognise that this would be a challenging proposal to achieve, but significant improvement on the current ADR system failure would be a very considerable achievement.

- c. Another suggestion would be to examine the CAS managed ‘In Court Advice’ projects, which attempt to resolve consumer complaints then take a Simple Procedure if necessary. These could be expanded to allow one for each Sheriffdom operating consistently across Scotland, providing support for consumer actions. Oversight could be transferred to Consumer Scotland.

I hope this response is helpful, and if you wish to discuss any points or any other matters in further detail, please do not hesitate to contact me. Please feel free to publish our response on the Scottish Government website if appropriate.

Yours faithfully

Sandra Harkness
Chair SCOTSS