

Written evidence submitted by the Highland Council and SCOTSS (DCH0012)

Written evidence submitted by Trading Standards

Delivery Charges in Scotland Inquiry

1. This submission is by David MacKenzie, Trading Standards Manager at the Highland Council and lead officer on this topic for the Society of Chief Officers of Trading Standards in Scotland (SCOTSS). The Highland Council is committed to protecting Highland consumers and businesses against unfair trading practices and recognises the key importance of e-Commerce to the people of the Highlands. SCOTSS is the professional body representing the lead officers for trading standards services in Scottish local authorities and is also committed to fostering fair online trading. The submission is on behalf of both the Highland Council and SCOTSS.

2. Executive Summary

- Consumers in remote and rural areas such as the Highlands regularly suffer problems when buying online, such as: unfair surcharges; false claims about delivery charges; refusals to deliver.
- There is no one solution to resolve these problems: instead a suite of different but complementary initiatives are required to bring about significant improvements.
- Highland Council has been successful in improving the situation for its consumers through constructive engagement between its Trading Standards service and online retailers. Further benefits would result from more involvement from other Trading Standards authorities.
- Trading Standards is in a unique position to be influential due to its strong links to both consumers and businesses.
- Online guidance and advice materials tailored for both consumers and businesses can play a key role in informing all parties and boosting compliance and fairness.
- E-marketplaces have a key role to play in ensuring fairness in parcel delivery through controlling their platform's sellers' actions.
- Many businesses (especially SMEs) blame the carrier companies for setting high surcharges for remote and rural locations. This could go to the heart of the problem.

- Other relevant factors include: postcode anomalies; options for quality assurance schemes; community solutions; industry solutions such as delivery hubs.

Background

3. Trading Standards services in Scotland play a key role in ensuring consumer protection and fair trading in the retail trade. This is carried out through a range of activities including advice and guidance on compliance to legitimate businesses and firm action taken against rogue traders. Trading Standards Officers do not “take sides” on consumer disputes; instead they look to promote solutions which are fair to everyone. This effective “equidistance” between consumers and businesses puts them in a unique position to judge and influence consumer outcomes. Whereas consumer and business groups quite rightly have a focus towards the interests they represent, Trading Standards Officers have an understanding of the needs of both buyers and sellers.
4. The internet has revolutionised retail in a very short time period. Many consumers up and down the UK now use online shopping routinely and regularly. This is particularly the case in remote and rural areas where buyers do not have easy access to traditional “high street” shopping. Highland is one such area. Being even more reliant on the internet than urban consumers, rural consumers are hit even harder when problems arise with online sales.
5. Parcel surcharging based on geography has long been a bone of contention in the Highlands but the rise in internet shopping and direct “distance sales” to consumers have brought it into focus. This has resulted in a significant number of consumer complaints. The main issues raised include:
 - Surcharges added very late in buying process, or even after the sale has been completed
 - False claims, e.g. “Standard UK delivery”, “Free Mainland Delivery” not honoured
 - Excessive levels of surcharge levied
 - Refusals to deliver to remote locations, often after a sale has been concluded
6. Highland Council Trading Standards alone deals with over 100 complaints a year on these subjects, and complaints to Trading Standards on any consumer topic are always the tip of the iceberg. Many more complaints are received at Citizens Advice Bureaux, at the offices of elected politicians both local and national, and by the media. Totalling up all these sources does not even relate the scale of the problem. Living in the Highlands, Trading Standards Officers hear anecdotal stories from people they meet every day: it seems that everyone who buys online from remote or rural locations has a “story” to tell about unsatisfactory experiences with delivery surcharges.

Action by Trading Standards

7. Highland Council Trading Standards Service's approach to this topic recognises that it can cost more to transport goods over longer distances to less accessible locations. Surcharges can be reasonable, fair and necessary. However, in order for delivery surcharges to be lawful, they must be fully transparent and not excessive. There are three main breaches of consumer law that can occur in relation to parcel delivery charges. These are:
 - Misleading claims or "omissions" in relation to online delivery charges: e.g. "free mainland delivery" when large parts of the mainland are excluded; failures to indicate surcharges until late in the buying process, or even after purchase. These are breaches of the Consumer Protection from Unfair Trading Regulations 2008, Regulation 5 and 6.
 - Websites must indicate "clearly and legibly, at the latest at the beginning of the ordering process, whether any delivery restrictions apply". Such restrictions include things like refusals to deliver to certain remote and rural locations. Failure to comply is a breach of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Reg 14(6).
 - Internet sellers must not operate "discriminatory provisions relating to the place of residence of recipients", unless these can be justified by "objective criteria". This is likely to include delivery surcharges which do not reflect the actual extra cost of delivery to a less central location. The legal reference is The Provision of Services Regulations 2009, Regulation 30.
8. The ultimate sanction for Trading Standards is to take a company to court but when dealing with the legitimate trade a consultative approach is preferred where possible. Experience has shown a high level of co-operation from website operators when contacted by Trading Standards over delivery surcharge issues. On some occasions the resolution has been a removal of the surcharges, thus making existing claims like "free mainland delivery" accurate. More commonly, the website graphics and layout will be altered so that any surcharges or delivery restrictions are made fully transparent.
9. The level of surcharge can be more problematical to deal with. Arguably if a retailer is simply passing on the extra charge that is levied on them by their carrier then this is "objective criteria" and therefore lawful. Officers regularly speak to SME retailers who do not wish to apply such high surcharges but feel they have no option.
10. The constructive engagement between Highland Trading Standards and online retailers has borne fruit, with many websites changing their practices for the better. But there is a limit to what can be achieved this way. The work is time-consuming and one authority cannot hope to regulate the whole industry. Other Trading Standards authorities – especially those in the south of England where many UK companies are based – have been unable to give this issue much priority. It does not

really affect their citizens and they have to concentrate their very tight resources on their local priorities.

11. This is a tricky situation. **However, it seems clear that “collaborative enforcement” by Trading Standards on the parcel delivery issues is effective and if ways can be found to increase the involvement of Trading Standards authorities across the UK in this work, the outcome will be significantly beneficial for consumers.**

Business Guidance and Quality Assurance

12. In a modern trading environment, business guidance materials play a key role in ensuring that law and good practice are followed and consumers treated fairly. This “preventative” approach is much favoured by Trading Standards in times of diminishing resources for services. When Highland officers started dealing with the issues around delivery charges, they found that there was no nationally-produced guidance that addressed these issues directly. To fill this gap, detailed guidance was produced by Highland Council. This sought to be comprehensive and in-depth enough to send to the legal teams of large companies. As such it is a little unwieldy and probably not so suitable for advising time-poor small businesses. Recognising the limitations of that document, Highland contributed to Government’s succinct guidance sheet. This is a good basic introduction but lacks any detail. **It is likely that a new business guidance document is needed which contains some useful detail but is still succinct and readable.**
13. Another idea that has been considered for several years on this topic is the operation of a Quality Assurance or “Trusted Trader” scheme of some kind. It was with a view to this that the Statement of Principles on Parcel Delivery was produced, with Highland Council Trading Standards making a significant contribution to that process. This Scottish Government initiative was subsequently adopted throughout the UK. The problem is that although everyone agrees that the Principles are good, there is no scheme or code or system in operation to make them mandatory on anyone.
14. [Appendix 2 of a Highland Council committee report](#) contains a tabulated summary analysis of the “pros and cons” of the different types of “trusted trader” schemes that could be considered. The main problems preventing this happening are that there is no obvious body to run a scheme for internet parcel delivery and little or no incentive for national firms to join any scheme that may emerge. **Despite these difficulties, it may still be possible to improve the consumer experience on internet delivery through a quality assurance or trusted trader scheme.**

Consumer Advice

15. Much of modern consumer law is based on the understanding of an “average consumer”. So, for example the test of whether business information (such as delivery information on a website) is “misleading” is whether consumers in general - on average - would be misled, rather than would anyone in the population be

misled. In this context, officers in Highland have noticed an increase in awareness among remote and rural consumers. Many consumers now know to shop around and are more aware of the possibility of surcharges.

16. However, problems persist and it is clear that consumers need good, up-to-date advice on delivery issues including surcharges: what to look out for and what their rights are in relation to parcel delivery. Good advice already exists on distance selling generally but there may be a lack of consumer information available on this topic specifically. **It is likely that new, targeted online guidance for consumers would be beneficial.** Further, Highland Council has an [online form](#) for Highland consumers to report problems, which is well-used. **It may be useful to roll-out a similar system across a wider part of the country.**

Multi-seller Platforms (“e-marketplaces”)

17. Another important development is the rise of multi-seller platforms which have a key role to play. Many of these “e-marketplaces” seek to ensure either that there are no surcharges, or that surcharges that exist are fair and clearly indicated. When sellers on these platforms comply with the requirements, consumers from remote and rural places like the Highlands are treated fairly. However, problems can arise when sellers seek to circumvent the process by contacting their Highland customers outwith the e-marketplace buying process to add additional delivery surcharges. This information may be hidden in the text for the product description and consumers often only realise about the extra charges when the seller contacts them with an extra bill. Highland Council Trading Standards regularly receives complaints about this.
18. While most e-marketplaces have been positive in responding to Trading Standards on specific examples, **it would be of great benefit to remote and rural consumers if the operators of these platforms took a more “proactive” approach to finding the sellers who are not following the rules and take action.** These operators are in a strong position to ensure that the sellers who use their platform follow their rules. These are rules which are generally good for consumers.

Carriers

19. A regular theme of investigations carried out by Highland Trading Standards Officers is small e-retailers bemoaning the fact that they feel at the mercy of their carrier in applying surcharges. The carrier will impose the surcharges on the e-retailer who feels they have no choice but to pass on the charge to their customers. With the carrier company being a much larger and more powerful organisation, the small retailer is in no position to negotiate better terms with the carrier and must accept the surcharges. This can be a source of considerable frustration to the retailers involved who do not want to lose potential customers in remote and rural areas.
20. These circumstances surrounding the carriers do not involve any breaches of consumer laws and so there is no remit for Trading Standards to contact the carriers

or take any action. Some of the surcharges in question probably reflect actual on-costs and cannot reasonably be reduced without the carrier and/or the retailer being out of pocket. However, there are also many examples where the surcharge seems to be excessive.

21. The following are some actual quotes from retailers in their discussions with Trading Standards Officers:

- (£24.31 surcharge to Highlands): "I use three different carriers and all charge £20 plus to a Highland postcode with a graduation in cost from central belt. I know it looks daft but genuinely we can send abroad cheaper than to Highlands".
- (£14.95 surcharge to Highland): "Prices we pass onto our customers are merely a reflection of what we are charged for delivery to the post codes you listed by various courier companies. Despite the fact that you refer to your area as UK Mainland no courier company does and I believe this should be addressed with the courier companies".
- "We charge £6.95 for standard UK delivery and £16.95 for the Highlands. I can understand why certain parts of the UK feel hard done by regarding carriage costs but this is not necessarily the fault of the retailer and something that should be taken up with the carriers"

22. With the exception of the Isle of Skye, 99.9% of the Highland area is on the UK Mainland (and even Skye is connected by a short, non-toll bridge on a trunk road and so is part of the mainland for practical purposes). Large parts of Aberdeenshire, Moray, Argyll and other mainland areas are also often treated as non-mainland. This seems inaccurate and not reflective of the modern situation. This is particularly the case in relation to places like Inverness, a busy central hub on the A9.

23. The experience of Highland Council Trading Standards suggests that **the carriers may need to explore all the options more comprehensively for delivery to remote and rural areas. It may be that they have not fully explored the options to enable them to reduce costs and ultimately reduce or eliminate surcharges.**

Postcode anomalies and Community Solutions

24. Another recurring theme noticed by Trading Standards Officers is the problem of misunderstood postcode areas. One example is when all KW (Kirkwall) postcodes are treated by carriers and retailers as relating to locations on Orkney and apply surcharges based on travel to an island. In fact, KW1 to KW14 are all on the mainland in Caithness and Sutherland, with only KW15 to KW17 on Orkney. A second, even more localised, example is over postcode IV40, most of which is on the UK mainland around Kyle of Lochalsh, but which also relates to the relatively remote Isle of Raasay, off Skye. This has resulted in all IV40 postcodes being charged remote island rates of surcharge by some carriers and retailers.

25. A better understanding among carriers of postcodes and the details of Highland geography might improve this situation. There also may be a need for a **review of**

postcodes to better reflect the modern world and the role of e-Commerce and parcel delivery within that. Highland Council Trading Standards has suggested this to the Postcode Address File Advisory Board through its Scottish representative.

26. There may be other steps that can be taken to improve matters in an incremental way. **It may be possible for community delivery hubs or locker systems to be developed** (i.e. parcels are delivered to one place within the community and residents from more remote parts of the locality come to the central point to collect their parcels or have a neighbour collect for them). It is not in Trading Standards remit to organise a system of this kind, but there may be scope for community councils or other voluntary groups to consider if this can be done in their area.
27. Similar systems already exist in relation to some consumers and some businesses. For example, consumers living in or near Inverness can benefit from “click and collect” schemes with pick-up in local branches of chain stores. Another is “Convenient Collect”, by which a Parcelforce-delivered item can be collected from a post office for a standard UK charge. **If industry solutions like these can be rolled-out to cover all internet purchases, then many of the problems will be resolved.**

Conclusion

28. In conclusion, despite a variety of actions by different contributors, and various improvements being identified, problems persist surrounding parcel delivery to remote and rural locations, with surcharges chief among them. There is no one “magic bullet” solution but a range of initiatives which can all make important incremental contributions to improving the situation for consumers. These include:
- i) An increase in priority given to the topic by Trading Standards authorities both local and national.
 - ii) Production of new business guidance that is usable by businesses of all sizes.
 - iii) Development of a quality assurance or trusted trader scheme specifically for online delivery matters.
 - iv) Production of new, targeted guidance for consumers and the national roll-out of an online complaints form.
 - v) E-marketplaces to take a proactive approach to tackle unfair surcharging by their sellers.
 - vi) Carrier companies to explore all possible options to reduce or eliminate surcharges.
 - vii) A review of postcodes to better reflect the role of e-Commerce.

viii) Development of community hubs or locker systems in localities across the rural and remote areas.

ix) Increase in industry-led parcel hub solutions towards covering all of the country and all purchases.

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