

## **BEIS Consultation**

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

## **Chartered Trading Standards Institute Response**

**October 2021**

## **About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is the professional membership association for trading standards in the UK. Founded in 1881, we represent the interests of trading standards officers and their colleagues working in the UK.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence-based policy advice to support local and national stakeholders including central and devolved governments.

Following a Government reorganisation of the consumer landscape, CTSI are responsible for business advice and education in the area of trading standards and consumer protection legislation. To this end, we have developed the [Business Companion website](#) to deliver clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI are also responsible for the [Consumer Codes Approval Scheme](#) which facilitates high principles of assisted self-regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

CTSI is also a key member of the [Consumer Protection Partnership](#), set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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***A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 260 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. Since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.***  
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This response is submitted by The Chartered Trading Standards Institute (CTSI) with input from Heads of Service, CTSI Vice Presidents, CTSI Lead Officers and CTSI Branch Members. Should you have any queries or wish to discuss the response please do not hesitate to contact Laura Kane, Interim Head of Policy [laurak@tsi.org.uk](mailto:laurak@tsi.org.uk).

## Introduction

CTSI welcomes the opportunity to comment on this important paper and the recent increases in consumer detriment, vulnerability and uncertainty for business witnessed by CTSI and our consumer protection partners would point to the urgency of these reforms.

We have not answered all questions but have focussed on those areas of most direct interest to our organisation. Our view is that the paper addresses some of the very important issues that are long overdue for discussion and makes good proposals in many areas. However, it does not look widely enough at the structural aspects of trading standards that are so critical to ensuring that consumers are protected, and directly underpin what the paper sets out to achieve. This gap is addressed below and also in the responses to individual questions set out in the consultation.

The gap that the paper does not address is multifaceted. Consumer protection in today's world has a number of interdependencies. Whilst the paper rightly recognises the importance of the CMA, NTS and business education in protecting consumers and creating a level playing field for business, it lacks focus on the role of trading standards within the consumer protection eco system in the UK at a local, regional and national level.

Effective trading standards is intrinsically linked to building back better, helping consumers feel confident and businesses to engage in fair transactions both in the UK and internationally. At present, trading standards and other regulators are witnessing increasing levels of consumer vulnerability. The long tail of the economic and social consequences of the COVID-19 pandemic have caused extenuating circumstances for UK consumers and business and unfamiliar and uncertain territory in the trade of even the most basic of consumer goods and services. Whilst most if not all consumers have faced vulnerabilities during the pandemic, there is a need for a joined up strategic focus to tackle consumer vulnerability where the most consumer harm exists.

Trading Standards stands on the front line of protecting consumers from adverse transactional experiences that sap their confidence. Unfortunately, there are indicators that there is a lack of confidence among consumers about the consumer protection system. A recent CTSI [Consumer Confidence Survey](#) found that 56 per cent of consumers believe that current consumer protection laws are unfit for stopping negative experiences. Further, 51% said that public services protecting

consumers from scams are underfunded. These are indicators that the first line of consumer protection in the UK is failing and this needs to be addressed.

Any healthy economy needs a transparent consumer protection ecosystem for businesses, with consumers deeply informed of their rights alongside robust law enforcement. That system has become increasingly fragmented over the past decade, partly out of necessity due to newly emerging and complex markets, and partly a result of government decisions.

We know that trading standards services are working as hard as they can to make the local part of the system work, but as always, with fragmented systems, gaps emerge, and with continued resourcing reductions, those gaps enlarge. As organisations are forced to sharpen their focus on core priorities, combined with unclear jurisdictional boundaries, we witness those gaps enlarge with the result of increased consumer detriment, which in turn leads to significantly reduced consumer confidence.

Moreover, we now live in a time of rapid and essential change, with the move to 'Net Zero' and we are concerned that trading standards does not have the infrastructure in place to help achieve that agenda in a fair and equitable manner. New initiatives, without fully funded regulation causes problems for consumers. We have welcomed the Guidance for business produced by the CMA on Green Claims for example, but we are concerned that the infrastructure is not in place to support businesses who are trying to comply yet do not have the resources to understand the legal requirements. These businesses rely on advice from their local trading standards service. In addition, there is little provision for the enforcement necessary to tackle out and out rogue practices in this burgeoning area of unfair business activity as they emerge.

## **Resources**

To build back better and reach net zero carbon emissions, CTSI fully supports the changes needed in the consumer protection system to enable both business and the UK economy as a whole to achieve these important agendas, having consumer confidence and business support at the forefront. We fully believe trading standards can sit at the heart of this reconstructive work and embrace the changes needed to achieve environmental sustainability. However, we hold deep concerns as to how these essential and important government priorities can be achieved with resources that are not sufficient to serve consumers and business at a basic local level, which is discussed further below.

CTSI survey data shows that since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period. However, what we also know is that trading standards has proven itself as a dynamic and agile profession able to amplify the limited resources it does have. We have seen evidence of this recently during the COVID-19 pandemic with how trading standards services have mobilised to support the UK communities they serve.

A CTSI [infographic](#) highlights this work, and we consider this to be one example of the value for money of trading standards, given what was achieved during this critical time with the limited resources available. Trading standards were able to protect and support the public, businesses and local authorities by quickly retraining, regrouping and collaborating with environmental health and other local government colleagues to step in wherever needed to support the COVID-19 response. Due to the strain on business and the UK economy as a whole, the trading standards emphasis was on close collaboration with business to ensure compliance via support, advice and guidance.

Whilst trading standards is making great use of the resources it has, there is a clear need to take a strategic perspective that looks at how all the different elements of the consumer protection ecosystem interact effectively in a coordinated way. All layers of that system are critical - the national, the regional and the local, and we also know that the national does not work without the local. As an example, we are aware that the post-pandemic consumer vulnerability has increased, and this needs to be addressed in a way that can better support local economies and build community resilience. At a national level, more could be done to tackle online fraud and scams, which more consumers may now fall victim to, due to situational vulnerability caused by the COVID-19 pandemic.

Trading standards enforces over [260 statutory duties](#) with officers bringing their skills and expertise to bear on a wide range of issues impacting consumers and businesses. The day-to-day work of trading standards includes everything from fair trading and e-commerce enforcement through to legal metrology, product safety and intellectual property regulation. That is alongside food chain and rural enforcement roles in areas such as feed and food, animal health and welfare and agriculture. The routine, day to day work of trading standards is rarely in the spotlight but makes an important contribution to a range of local and national priorities.

Trading standards' enforcement remit is increasing and in the last two years a diverse range of new responsibilities have been added with the ban on microbeads

in cosmetics; the sale of materials for wood burning stoves; the proposed ban on plastic straws, drink stirrers and cotton buds; the ban on tenant fees; the requirement for electrical safety certificates for privately rented homes; a ban on energy drinks; the introduction of calorie labelling in restaurant chains, the sale of knives and acids and the administering of botulinum toxin. The COVID-19 pandemic also brought about new requirements on trading standards to enforce business closures, track and trace and private testing requirements.

The addition of new enforcement areas has not been married with additional resources. The limited resources available to trading standards drive the need for trade-offs and prioritisation between competing local and national priorities. While services typically aim to be intelligence led, the need to continue with traditional areas of work (for example, food, product safety and metrology) can create challenges in most effectively targeting work.

Trading standards services report the need to 'raise the threshold' on the cases they can take. This necessarily creates a lower standard of accepted business behaviour with all the inherent risks to increased consumer detriment this implies. We see this as a direct risk to consumers in the UK, with trading standards services unable to adequately serve the communities within which they sit.

A [recent report](#) by Unchecked provides an example of the impact that a lack of sufficient trading standards resource has had on the enforcement of consumer product safety regulations.

Funding for trading standards functions is predominantly via the non-ringfenced local authority block grants. Given that these functions are relatively small within local authorities, it can be difficult for additional funds to find their way into trading standards budgets. Although we acknowledge the pitfalls associated with ringfencing of local Government funds by central Government, without the ringfencing of funding to trading standards, the money can easily disappear into other parts of local authorities. Funds often get taken up by more high-profile priorities such as adult social care and children's services when budget settlements generally prove difficult for local authorities on the whole.

To secure additional funding, trading standards need to be pro-actively aligning their service delivery plans to meet current government priorities such as 'Build Back Better', 'Net Zero' and reducing organised crime, particularly where there are time limited additional resources which can be claimed to support these objectives.

As we have noted above, these government agendas are of high importance and should be prioritised. The concern we have is cyclical in nature in that the need to meet these priorities drives the reduction in proactive and routine regulatory work because the capacity does not exist to do both. This then will have a long-term impact on compliance, leading to poorer outcomes for consumers and more enforcement issues, as well as undermining trading standards' ability to effectively support these larger agendas.

We have set out below our suggestions as to how new additional funding could be allocated so that it gets to the right place within local authorities for larger national cases. However, this should not take precedence over maintaining effective local trading standards services that can contribute to reduced consumer detriment, protecting the vulnerable and building stronger local economies through creation of level playing fields.

The local authority infrastructure is crucial for the delivery of trading standards and the local knowledge, links with other local authority services and democratic accountability is important. However, where there are new functions and funds for trading standards work, CTSI would support a more direct route, such as commissioning, for these funds to reach trading standards and be apportioned to the areas where there is the most need in terms of consumer risk and detriment. A commissioning model for new work was supported by all Heads of Service Groups in feedback gathered to this consultation. However, care needs to be taken with the devolved nations and how any consequential funding rules might be applied.

If new burdens funding were to be provided via local authority grants, it would be highly desirable for this to be accompanied by, where possible, a Governmental statement of intent to ensure funding reaches the right departments.

Similarly in situations where funding subsequently goes into block grants, it is highly preferable for the initial funding to be provided via the commissioning model. This ensures that there is a firm evidence-based spending profile for all future funding, by whichever method that is provided.

We have seen a commissioning model working well with National Trading Standards (NTS), which has a proven track record of commissioning trading standards work for many Government Departments and has the infrastructure and trust within the trading standards system. CTSI supports the funding that has been provided to NTS and the benefits and impact of that work have been widely recognised. However, it is important to note, that while this funding is important and could bring enhanced

benefits if increased, it does not replace the resilience that has been lost at the local level over the last ten years. It is also possible to commission via other routes, via established regional groups or to individual local authorities.

We would support the Association of Chief Trading Standards Officers (ACTSO) and NTS proposals for regional funding in England and Wales and would leave the specifics to NTS. Local authority trading standards services can no longer maintain the expert legal knowledge across the broad trading standards spectrum. Access to this expertise on a regional basis is a sensible approach.

The position in Scotland differs and would need to be discussed directly with Trading Standards Scotland and SCOTSS. Trading Standards in Northern Ireland is funded differently, via the Northern Ireland Civil Service which brings some advantages in terms of resources. However, this Service faces its own unique risks and challenges, in particular, EU Exit and the NI Protocol and the possibility of future divergence.

CTSI would strongly recommend that any funding provided must be sustainable in nature, whether commissioned or provided via the regions. Short-term funding, especially anything less than three years, is difficult to make effective, especially given the current issues with securing appropriately competent officers which is discussed below.

## **Workforce Issues**

According to the [CTSI 2018/2019 Workforce Survey](#), there was a loss of 99.4 full time qualified (meaning individuals holding a professional trading standards qualification such as DCATS, DTS, CTSP or equivalent) trading standards posts (across the 78 services that responded to the 2017 and 2018 surveys). This is the equivalent of 10 trading standards services worth of cuts, and comes on top of the 50 posts lost according to the [2017 CTSI Workforce Survey](#).

The average number of qualified trading standards officers per authority is 9.4 full time equivalent (FTE), but 53 of those responding to the 2018/19 survey had a total of less than 6 qualified officers. Many trading standards services have less than 5 full time equivalent staff and only one fully qualified trading standards officer. In the 2018/2019 survey, only 44% of those heads of service who responded felt that they have the expertise to cover the statutory duties placed upon their services. This is a large change from 2017, when 70% said they could cover these duties, while 30% said they could not.

In interviews, the report comments that a smaller service summed this situation up as being, "...on a knife edge...", and, "having the team members now to fulfil the



role, but going forward they are ageing as a team with little confidence in being able to recruit new staff'. Due to the complexity of the work of trading standards, and the varying priorities between services, CTSI has avoided stating a minimum number of staff that are required to protect consumers.

According to the CTSI Workforce Survey 2018-2019, more than a third of trading standards officers have over 20 years' post-qualification experience, with 12 per cent of the workforce having less than five years' experience. This confirms that an ageing trading standards workforce is a threat to future professional capacity, a concern expressed by many of the heads of service interviewed.

Whilst there remains a great deal of experience within the trading standards profession, at the time of the survey there were only 50 trainee trading standards officers currently in post, and 21 planned for 2019/20. This may reflect the lack of funding for training, with the average training budget per service being less than 2 per cent. Seventy per cent of heads of service were, however, interested in appointing an apprentice. Low numbers of planned trainee posts and falling training budgets mean that maintaining skills and preparing for the future was seen as a challenge for many services.

The ageing workforce within trading standards creates the prospect of potential skills shortages in the future, but the number of trainees entering the profession is arguably insufficient to mitigate this risk. Obtaining professional qualifications takes time and resources, so steps must be taken now to address this issue going forward.

We welcome the work from the Department for Levelling up, Housing and Communities Regulatory Services Capacity Review which recognised these stresses. We hope the Department progress with a Spending Review bid for £14 million investment in environmental health and trading standards trainees. As an example, TS Wales are working with public protection colleagues to set up an RCO Apprenticeship and have submitted proposals to Welsh Government. The creation of a support role at national level in Wales would enhance this offer and encourage, particularly smaller authorities, to invest in trainees and apprentices knowing that they did not have to also resource the support, coordination and administration functions.

CTSI is currently undertaking a review of the workforce and qualifications and considers it imperative that professional standards and competence are maintained across the UK no matter the size/shape of local authority structures in any area.

Across England and Wales, investment is needed regionally to support these new entrants in coordinating the complex training demands to fulfil the courses, share best practice and create a good support network for new recruits into the trading standards workforce. There is a concern for new entrants to the profession during the pandemic who have not been able to access face to face training methods. A regional approach to training and professional development could provide benefits in cost reduction and enhance local and regional professional liaison.

There is a specific key need for investment in assessors, potentially via contracting in this expertise from other local authorities.

We hope all of these elements will add to the resilience and retention of new staff. We also know that concerns about the lack of ability to sustain support for a trainee/apprenticeship may be acting as a disincentive to those authorities who do have funds available to take the first step and recruit a trainee/apprentice.

In terms of support for online/e-crime issues, the changes to consumer markets that have accelerated during the pandemic, pose enforcement challenges to trading standards locally, regionally and nationally as more and more commerce is conducted online. Websites and social media are now a feature in almost all consumer protection cases, even where the harm may ultimately occur offline, such as consumers' increasing reliance on the internet when identifying suitable tradespeople. The NTS eCrime Team provides expert forensic analysis services, partnership and coordination work that is focussed regionally and nationally. However, local authorities advise that when conducting some enforcement work, it would be of benefit to be able access expert advice on preparing for enforcement action, triaging and the seizure of digital devices on site alongside general advice on enforcing online issues.

Heads of Service Groups also advise that they would benefit from having regional experts in certain fields. These are likely to depend on current demands from region to region and also identified skills gaps. Examples raised have included expertise in energy efficient regulation and legal metrology.

## **Competition Policy**

We have no comments on the specifics on competition law but recognise the crucial interplay with the work of the CMA and the importance of a strong and robust competition regime in ensuring a fair and equitable trading environment which trading standards operates in, enforcing consumer law and providing business advice.

## Consumer Rights

**Q30. Do you agree with the description of a subscription contract set out in Figure 8 of this consultation? How could this description be improved?**

There was full agreement with the definition in feedback received.

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

Traders are already required to give pre-contract information but there is currently a tension between transparency and clarity and this is causing confusion. We therefore suggest that there should be a requirement for a set of key bullet points to be provided up front, with the option to access more detail if consumers so choose. Consumer behaviour needs to be considered in how this would be provided to ensure it is read and understood.

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

All businesses should be required to get full explicit consent at the end of any renewal point and the end of any low cost or trial period.

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

All businesses should be required to get full explicit consent at the end of any renewal point and the end of any low cost or trial period.

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

All businesses should be required to get full explicit consent at the end of any renewal point and the end of any low cost or trial period. If this were implemented, the question of reasonable timeframe in this question would not arise.

If there were to be a timeframe, it would be difficult to determine what is reasonable given the variances in the nature and duration of these types of contracts, and the range of circumstances as to why a consumer would be inactive.

**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)?**

There was full agreement on this.

**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?**

All businesses should be required to get full explicit consent at the end of any renewal point and the end of any low cost or trial period. If this were implemented, the question of reasonable timeframe in this question would not arise.

**Q41. Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why? (Question 41)**

Notwithstanding the response to questions 34,36,38 and 40 above we do recognise that there may be a small limited number of services, e.g. home and car insurance, where auto-renewal may be beneficial in terms of protecting consumer interests.

However, these are also markets where consumers are often subjected to loyalty penalties and this is an area that needs to be addressed.

In terms of contracts for medicines any exemption would need to be very tightly defined to preclude complementary medicines and the like from falling into such a category.

**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?**

C was the preferred option here with the sentiment that we would not want UK consumers to be less well protected than consumers from the EU.

**Q44. What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'?**

Government Guidance would be needed, compiled using trading standards expertise, detailing the steps that are considered to be reasonable and proportionate here and mirroring existing standards in consumer law. The Government will also need to consider to whom and to what extent this Guidance will apply as rules may

need to differ dependent on the size of the business with SME's potentially following a less stringent regime than multi-national companies. It was noted that larger multinationals may have the technology and resources more readily available, and could take a responsible approach themselves without the need for regulatory intervention.

Suggestions on checks that could be carried out included human intervention for example - interviewing a sample batch; record keeping and auditing and use of artificial intelligence and algorithms. Business could ensure that reviews are completed by consumers that can verify and demonstrate their knowledge and use of the product. Before submitting a review, the consumer should be able to provide contact details or similar and evidence that that they have used the product. Checks should be documented and carried out in line with recognised due diligence and reasonable precaution practices.

CTSI notes that there are consumer organisations such as Which? who may be able to provide guidance on how verifications of reviews could be conducted, based on the system in place on their Trusted Trader Scheme.

**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?**

There was full agreement for this proposal.

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

All were in strong agreement with the first part of the question. In terms of the second question on how best to address this, whilst education is hugely important there also needs to be a recognition of the nuances around vulnerability. 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.

Additionally, those being manipulated are not aware at the point of the incident that this is happening to them as some of the techniques are so subtle that even the most circumspect consumers may not be aware. 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.

CTSI has recently published [Business Companion Guidance](#) to help business identify and deal with consumer vulnerability.

Consumer education on this subject would be preferable to further enforcement.

**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?**

There was full agreement that Government and/or regulators should do more in both these areas. Drip pricing is detrimental to consumers as the trader relies on an attractive ‘headline’ price to draw consumers in, only for the true picture to come to light later when the consumer has made some commitment, at least psychological, but also often by curtailing their product search, ordering a product and/or paying for it. At a local level, trading standards isn’t equipped with the requisite resources to tackle this or take on some of the large/powerful traders involved in these practices.

Other practices that ought to be addressed more widely include:

- Consumers having to provide significant personal information before being quoted delivery charges. Delivery charges should be transparent and accessible without creating an account, especially as consumer data is a commodity.
- Auctions, both online and in person, charge fees over and above the hammer price, even though an auctioneer is agent for the seller and not the buyer, and even though the seller pays a commission. This practice allows the quotation of unrealistically low non-inclusive ‘guide prices’, drawing in potential buyers, which then draws in potential sellers, yet buyers are unlikely to adjust their bids fully to take into account these charges.
- VAT-exclusive prices to consumers are widespread.
- Restaurants often fail to include ‘service’ in their headline price. Headline prices for such services, whether on-site or via online menus and booking systems, should include the service element, as that is the essence of the offer. Indeed, without service, it is just a grocery or takeaway.

**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?**

Trading standards services provide advice on compliance and with appropriate resources can play a consistent supportive role to UK business which would reduce uncertainty. Advice on compliance acts as a preventative measure in terms of reducing consumer detriment and business liability for inadvertent breaches.

Feedback from the profession indicates that on the most part, businesses want to

comply but may need support to do so, particularly small and medium sized enterprises (SMEs). Due to the limited resources trading standards services face, this is often not possible.

The ability for business to have consistent contact with local trading standards services could go a long way in reducing uncertainty, alongside the materials available for businesses to consult online such as CTSI's Business Companion website. This website provides simple concise free of charge business advice, best practice guides alongside checklists and step by step guides to simplify complex consumer law. This works alongside the CMA's authoritative interpretation of consumer fair trading law and its provision advice and open letters to larger trading sectors.

CTSI recognises the need to reduce the burdens on business in the current climate however we consider there should be a measured approach to avoid an increase in consumer detriment and pockets of high risk or real harm and even tragedy emerging as an unintended consequence, such as we have seen in Grenfell. CTSI would be keen to engage with Government on changes to legislation to provide perspective from a practical enforcement perspective and also from a viewpoint of consumer risk. Suggested areas for simplification and clarification are set out below.

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 buyers' 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 with 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 the Consumer Protection Regulations 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.

There was widespread agreement that the use of Fixed Monetary Penalties should become more firmly established to ensure a consistent approach with criminal sanctions for non-payment and more serious enforcement routes to be subsequently available where a case merits it. This would aid an easy understanding of local authority regulation from the business perspective.

In terms of simplification issues, we would ask that updates to legislation include clearer referencing to the actual legislation it amends. More consolidation of the main piece of legislation, rather than numerous additional amending regulations would be a great help to both business and regulators.

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

We would ask that Government take cognisance of the significant unintended consequences of piecemeal de-regulation such that if there is a package of measures, they must be considered and assessed together to ensure the interconnectivity of consumer protection measures is known and understood.

**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?**

It is felt that the Consumer Contract Regulations could be simplified as they are unnecessarily burdensome, referencing the point raised in response to Question 31 on transparency versus clarity.

Further, we would like to remove the requirement under the Consumer Rights Act to provide an Entry Notice to businesses by trading standards to conduct inspections. Currently these need to be provided 48 hours before a routine inspection or on the day of a non-routine inspection. Most businesses don't understand what the notice is for or why they are being given it and it creates an added layer of bureaucracy for enforcement authorities and the businesses. It also creates duplication with issuing of Notices of Powers and Rights under the Police and Criminal Evidence Act Code B requirements when powers are used.



**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?**

There was widespread agreement that this protection should be provided, with this forming part of the Financial Conduct Authority’s regulatory remit.

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

This was identified as a multifaceted issue that should be prioritised. This applies to all types of “set aside” schemes, where payments are made until the purchase price has been paid and the consumers get the goods or service; examples include prom and wedding dresses, car servicing plans. In these situations, if the business ceases trading, the consumer is merely added to the list of creditors with little or no comeback. In relation to home improvements, many of the worst situations where home improvements go wrong arise where the consumer has made significant or complete payment up front. Government could aim to stimulate the market in low-cost Escrow, such as that provided by Transpact, as a way of protecting consumer prepayments for home improvements and other services.

The travel sector and home furnishings were also identified as there is often a period of up to three months or more before an item is delivered. The longer the period between paying for a product and the length of time for delivery the greater the risk for consumers. Some recent COVID-19 affected experiences in the holiday, travel and leisure sectors have also brought this into focus. We would recommend that detailed research 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?**

There was full agreement that this practice is becoming more common and that further work needs to be done to protect consumers better and raise the awareness of this risk.

In practice, this means that instead of there being a risk that the trader will fail to perform a contract, thereby giving the consumer the right to damages, there is simply

a risk that the trader will refuse to make a contract, transferring all the risk of non-performance (up to the point that the contract has in effect been performed) onto the consumer. When a consumer places an order, they are committing a payment to the trader even if it is not taken immediately and that payment can then be taken unilaterally by the trader.

The consumer therefore stops shopping around and may, if the trader refuses to make the contract, have missed out on buying the product elsewhere. They may also miss out on a favourable price promised by the trader. Furthermore, they will have handed over personal data and this will have a value to the trader. If the product is needed by a certain time, the consumer may find themselves subsequently pushed into making a suboptimal rush purchase when the trader refuses to make a contract. Further, the consumer will not get Consumer Credit Act section 75 rights when paying by credit card until a contract is made. Nor will they get the statutory right to cancel the contract. Although they can simply withdraw, there are no specific rules on how the trader must deal with this (for example, setting a deadline to refund the payment) and this whole area needs to be addressed by Government.

## **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?**

There was agreement with this proposal as well as an equivalent need to ensure effective intelligence sharing and strengthening the strategic relationship between CMA and trading standards to improve consumer protection at a local and national level.

### **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?**

The benefits should be a quicker system that prevents consumer detriment but we would leave it to the CMA and business community to comment further on this matter.

However, we would highlight a concern that there is no mention anywhere in the Paper of the significant impact that trading standards (as opposed to CMA) initiated Enterprise Act work can have in reducing consumer detriment. It is the process itself that brings compliance as all the 'early' work that is done around discussing whether an Order is needed is a vital tool in its own right. Thus, the fact that there are few Orders made is not an indication that this mechanism is not working, and this fact is

not recognised anywhere in the Paper which focuses solely on trading standards criminal enforcement work.

**Q60. Should sector regulators (OFGEM OFCOM etc.) civil 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?**

There was agreement with this proposal and also the suggestion to consider a wider duty to co-operate between regulators.

**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?**

Yes, the proposed fines for non-compliance with information gathering powers would incentivise compliance. Currently, a Court can order compliance with information gathering requirements, but the subject of the information gathering requirement does not suffer any immediate penalty for non-compliance, so there are numerous instances where they simply choose not to comply. This significantly hampers investigations. The penalties would likely be used as more of a threat to try and obtain compliance, but would be a sanction that could be sought where non-compliance continued.

**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?**

2 key points were made here:

- It is important that fining is punitive so that it is not just treated as a “business expense”.
- Making undertakings enforceable in their own right and introducing monetary penalties for breaches of undertakings would best incentivise compliance (a combination of options 2 and 2A was the agreed choice).

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

We support this being included as an option for traders but believe it should not be a requirement. Admitting liability would open up the possibility of redress claims and would serve as a significant deterrent to the trader engaging in this process. This in turn would mean creating a need for Courts to resolve.

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

CTSI would want to work with BEIS on practicalities, risks and benefits. There needs to be close links between ADR processes and small claims processes. Current legislation needs to be tightened to ensure that all ADR bodies have to commit to assisting vulnerable consumers access to ADR as part of the approval process.

Mandatory ADR works in the financial sector as if you don't pay you lose authorisation. If it is not compulsory, enforceability becomes an issue as there are no incentives to comply.

More detail on the delivery of ADR is included in a separate response by CTSI's Competent Authority Team.

**Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?**

The right resolution is more important than fixed time limits but there does need to be some boundary to avoid unacceptable delays. More detail on the delivery of ADR is included in a separate response by CTSI's Competent Authority Team.

**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?**

The legislation requires more definition. Currently BEIS believes that informal discussions between trade associations and consumers to resolve disputes should be covered however, if this is the case, the law could make this clearer so trade associations are clear of their responsibilities and clear of the mandate of Competent Authorities.

More detail on the delivery of ADR is included in a separate response by CTSI's Competent Authority Team.

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

We would recommend more frequent auditing, at least annually. There should also be additional powers for the Competent Authority to request information from scheme members and also a provision for flexibility and a "duty to cooperate" with Competent Authorities when there are emergencies such as the pandemic.

More detail on the delivery of ADR is included in a separate response by CTSI's Competent Authority Team.

**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?**

In principle the desire for mandatory ADR schemes in sectors that cause much detriment (such as used cars and home improvements) is understandable. In relation to used cars, this should be supported.

However, if it is decided to proceed on the Home Improvement Sector then further thought needs to be given as to how the huge number of SMEs and microbusinesses that work in this arena are to be educated and supported to join and how to make the most of an ADR scheme in such a complex sector. E.G. via the use of decisions that are "binding in absence". The risk is that a failing mandatory ADR scheme could be more problematic than the current landscape.

There was some suggestion around possibility of extending mandatory ADR to the travel and holiday sector. It was noted that BEIS have departmental jurisdiction in relation to this sector, but that due to the nature of complaints and well-established network of travel agents already in existence via ABTA and others, mandatory ADR could be a logical and beneficial tool for consumers, especially in light of the issues that have arisen in the last 18 months.

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. Sectors that can be easily identifiable as being connected to typical periods of "temporary" vulnerability (e.g. funeral services, care homes) could warrant specific consideration for having mandatory ADR.

We would ask that trading standards be closely involved in shaping the detail on the practical implications of mandatory ADR.

**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?**

Nominal fees on the face of it are better for consumers as in practice this often means no fees. However, pushing the entire burden, into unregulated sectors, is likely to mean small businesses may be reluctant to join ADR schemes. More detail

on the delivery of ADR is included in a separate response by CTSI's Competent Authority Team including a response to question 71.

**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?**

Broader and effective ADR schemes should limit the need for wider collective consumer redress which is complex and expensive to achieve.

**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?**

There is a clear need to identify, prioritise and manage the risks within the consumer protection system to get funding the right place. The current NTS/TS system is well embedded and has delivered good results but the sustainability of the system as a whole must be managed.

In terms of the subject matter of these larger cases, we are aware that there has been a significant shift towards trading standards cases being fraud based such that there is now huge overlap with the work of the Police.

We are aware of the difficulty in local authority trading standards services with taking on larger cases without risk mitigation actions in place and would support NTS proposals relating to insurance/indemnity options. The provision of multi-year funding would also help mitigate some risk associated with very large cases.

It should be noted that there are different legal funding positions in England and Wales as opposed to Scotland. Trading Standards Scotland is not a direct replication of NTS. A large proportion of NTS funding is used for legal fees whereas in Scotland the different legal position means this cost is not borne by trading standards but by the Procurator Fiscal.

In Northern Ireland, there is no formal arrangement with NTS which is a weakness in the consumer protection environment in NI. An ad hoc arrangement that could be withdrawn is not viable when attempting to tackle detriment that may exist at a national scale or that may have cross-boundary implications.

**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?**

Local trading standards are supporting local growth and businesses including via Primary Authority relationships which cannot be provided centrally. We are aware that local trading standards services regularly utilise the Business Companion website as a point of reference and often signpost businesses to Business Companion to aid compliance and prevent legislative breaches.

Further investment could be made to Business Companion to widen it from its current regulatory compliance and sector specific focus into more areas of business education and awareness raising.

Business Companion does not currently cover Northern Ireland (NI) which, however a link to NI Business Info is provided as a level of support. Prior to the NI Protocol was less of an issue due to the similarity with GB legislation. As consumer law is devolved in NI, it could now theoretically be changed. Also, post EU Exit, although consumer protection is not covered by the Northern Ireland Protocol, some other regulatory areas are. This further complicates the issue and the risk of future legislative divergence between UK and EU law could mean sections of the Business Companion not only do not apply to NI but also provide information that would be incorrect in this region. This could be remedied with further funding to ensure that NI receives the level of support as GB from Business Companion.

Trading standards also makes great use of the CMA's authoritative interpretation of consumer protection legislation and sectoral advice when engaging with businesses and consumers. The CMA's COVID-19 cancellations and refunds work allowed for action to be taken by trading standards in a period of legal uncertainty and provided real and tangible results for consumers.

## **Additional Comments**

- There was much support for an extension to time limits for both CPR and CCR Regulations. If changes are to be made to these 2 pieces of legislation as a response to this consultation, we would ask that consideration be given by Government to time limits also as they are currently unworkable for serious cases.
- There was also widespread support for explicit powers for trading standards to carry out website takedowns. Currently officers have to ask the website host and we would ask for the initiation of a discussion with Government to begin to formalise this activity as a legal power.
- Officers would also like to be given authorisation to enforce the Fraud Act which they currently do not have.

- In terms of intelligence, there is a concern that there is insufficient access to information on consumer detriment. Feedback received suggests that more needs to be done to address how trading standards can access intelligence, including data sharing with non-public bodies, which could be made simpler and easier to access. An example provided was a mechanism whereby consumers can report an issue without needing to engage in receiving advice.
- It was suggested that if local authorities and the courts were to become more familiar with using pre-trial and post-conviction processes, like Proceeds of Crime and Criminal Behaviour Order processes, we would all achieve better outcomes. We therefore request that consideration be given by Government to a broadening out of these approaches in order to achieve these benefits.
- There should be specific legislation for trading standards in relation to online harms. There is a concern that there are areas of online harm related to consumer protection issues which have not been included in the Bill e.g. online fraud from scams. However, there is also the suggestion that these harms would be better dealt with as an amendment to existing legislation – e.g. CPRs, or in a separate piece of legislation. CTSI would welcome engagement with BEIS on where these important consumer protections best fit as it is clear that action is needed given the surge in online transactions and related misleading claims and scams. A recent [CTSI survey](#) revealed that 5% (over 2.6 million) of UK adults online were scammed since the first COVID-19 lockdown in March 2020.
- There are a number of concerns and recommendations for improvement in relation to travel law, but we understand this is a separate work area outside of this paper and CTSI has given feedback to the relevant teams involved.