

[Modernising Consumer Markets: Green Paper](#)

Department for Business Energy and Industrial Strategy

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.

A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 250 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.

This response has been composed by Craig McClue, Andy Allen, Peter Stonely, and Ben Richards. Should you have any queries or wish to discuss the response please do not hesitate to contact policy@tsi.org.uk

Modernising Consumer Markets

CTSI Executive Summary

CTSI represents the trading standards profession across the UK. As such the potential to strengthen the local and national enforcement framework is the paramount concern in our response. Our main point can be summarised as follows -

While landscape changes have led to improved co-ordination they have not yet alleviated the huge impact of cutbacks on local trading standards. This represents a serious erosion of the foundations on which the whole system of enforcement is based – especially as national bodies draw on the skills, competencies and experience of local authority staff. Intelligence gathered at a local level is vital for national bodies to understand risk and to gear their activities accordingly. This loss fundamentally damages the entire system and is not addressed by the green paper.

We share the paper's ambitions for a regulatory and competition framework that meets the challenges of the future, ensuring consumer rights are effectively enforced at both the national and local level. We believe however that any failure to consider a holistic approach, one that also addresses the increasingly degraded capacity for local enforcement, intelligence and market surveillance, means these ambitions will not be realised. This is especially true as we face an uncertain regulatory future outside the EU.

Chapter 4 -

Strengthening the local and national enforcement framework (question 16)

- We welcome that the government aspires to have “*a whole system of consumer protection that can provide a robust response to both local and national threats*”
- The proposed framework set out in the green paper is a positive initial step, however, it does not go far enough to resolve the issues facing the consumer protection system (as highlighted by the NAO).
- In particular, the impact of local trading standards cuts of 50% is not addressed and the government needs to better define how local services can be sustained under any new framework.
- In our view the government must, via whatever national accountability framework they chose, set out a roadmap by which services can be combined to create larger services: defining the role that trading standards is expected to fulfil at a local level.
- In principle CTSI supports the proposal of a national enforcement body (or bodies) with legal standing and backstop powers.
- Accountability for any national bodies is crucial, as is clearly defined responsibilities and relationships with local services and other national bodies. We would suggest

accountability should go further and be defined as ‘whole system accountability’ ideally in the minister’s responsibility.

- The green paper provides an opportunity to align our regulatory and enforcement capability to face new challenges, particularly those brought about by our imminent exit from the EU.

Improving ADR

- Low trader engagement with ADR is currently the biggest weakness. This could be improved by modifications of the trader information requirement, better enforcement work and increased work by the competent authorities and BEIS to improve both trader and consumer awareness.
- Consumer confusion or a lack of awareness are also significant problems and the current mechanisms for directing consumers around the ADR environment, the CitA helpdesk and the ODR platform, are not sufficient.
- Greater funding would allow the competent authorities, to deliver a more robust approval and, in particular, a more robust ongoing monitoring of approved ADR bodies.

Civil Fining Powers

- We welcome the introduction of fining powers to the regime of civil enforcement. We believe this will complement the current enforcement powers of injunction and enhanced consumer measures especially redress and compliance. Regardless of powers, the lack of resources applies equally to criminal and civil law enforcement and that may render the changes less impactful at the local level.

Chapter 2 – Better outcomes in regulated markets

- We support the use of digital technologies and data portability in regulated markets where they can prove to be effective in benefitting competition and choice for consumers. We remain concerned that liberalising data may not fully benefit the mainly vulnerable consumers resistant to switching - and care needs to be taken to ensure they are not targeted by scammers in a data liberal market.

Chapter 3 – Digital markets that work for consumers

- We think the green paper is right to focus on the future challenges and opportunities presented by the increasingly digital nature of consumer markets. We support measures that promote the benefits of digital technologies and new platforms for consumers where they adequately protect personal data. Key to this is transparency. Not only in terms of how personal data is used to target and offer goods and services, but in terms of how consumers are made aware of their contractual obligations when buying online.

Chapter 2 - Better outcomes in regulated markets

1. In which regulated markets does consumer data portability have the most potential to improve consumer outcomes, and for what reasons?
2. How can we ensure that the vulnerable and disengaged benefit from data portability?
3. How can we ensure these new services develop in a way which encourages new entrants rather than advantaging incumbent suppliers?
4. What is the best way to publish performance data so that it incentivises firms to improve and can be used by consumers when taking decisions? Should firms also offer discounts or compensation for poor performance?
5. Is there a need to change the current consumer advocacy arrangements in the telecommunications sector? If so, what arrangements would be most effective in delivering consumer benefits, including for those who are most vulnerable?

Chapter 3 - Digital markets that work for consumers

6. How can the government support consumers and businesses to fully realise the benefits of data portability across the digital economy?
7. As technology continues to develop, how do we maintain the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights?
8. What challenges do digital markets pose for effective competition enforcement and what can be done to address them?
9. Is the legal framework that covers consumer-to-consumer transactions appropriate to promote consumer confidence?
10. In what circumstances are personalised prices and search results being used? In which circumstances should it not be permitted? What evidence is there on harm to consumers?
11. Should terms and conditions in some sectors be required to reach a given level of comprehension, such as measured by online testing?

Chapter 4 – Improving enforcement of consumer rights

12. How can we improve consumer awareness and take-up of alternative dispute resolution?
13. What model of alternative dispute resolution provision would deliver the best experience for consumers?
14. How could we incentivise more businesses to participate in alternative dispute resolution?
15. Should there be an automatic right for consumers to access alternative dispute resolution in sectors with the highest levels of consumer harm?
16. What changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers?

Chapter 2 – Better Outcomes in Regulated Markets

1. In which regulated markets does consumer data portability have the most potential to improve consumer outcomes, and for what reasons?

CTSI Responses

Trading standards services do not have substantive enforcement roles in regulated markets - however in the context of our important local enforcement role and in the broader interests of consumer protection we would make the following observations and comments.

Data portability is an important data subject right as outlined in the General Data Protection Regulation¹ and in theory should allow consumers to transfer their information seamlessly between data services to their advantage. The paper outlines that in certain regulated markets there is an inertia to switching suppliers that leaves some consumers - typically vulnerable consumers - subject to discriminatorily prices that are unjustifiably higher than the supply cost base should dictate. This inertia is particularly prevalent in the energy sector where 57% of customers remain on a high standard variable tariff (SVT) and are not benefitting from the effects of competition. The data portability requirement that stipulates that data can be transferred to a new 'controller' at the request of the 'subject' should reduce barriers to switching and make the market more competitive.

However, this may not address the actual reasons for the inertia to changing suppliers, particularly amongst vulnerable consumers who are not as digitally articulate as other consumers. These reasons require more research but may lie in mistrust in the process; perceptions that the process is slow and complex; cynicism of the actual benefits from switching; or even status quo bias.² The energy market cap on SVTs is a positive step to ensure that there is a limit through which energy companies can exploit an inert customer base. It is also the energy market that seems the most likely to benefit from data portability where it will streamline processes, reduce switching barriers and enhance competition. However, this must not be at the risk of data security issues and care is needed to ensure the principles of data security are not at risk from a liberalisation in data sharing.

2. How can we ensure that the vulnerable and disengaged benefit from data portability?

Where consumers are reluctant to switch it is (according to research) based on a number of factors –

“The perceived costs and benefits of switching are associated with three key variables: (i) whether consumers believe they are currently on the cheapest tariff, (ii) whether they have difficulty in understanding their energy bill; and (iii) the perceived difficulty of switching. Perceived complexity of energy tariffs could prevent consumers from realising the potential gains of switching, while the cost of the switching process itself will also act as a deterrent. Improving the convenience of switching and

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

² <https://www.bbc.co.uk/news/magazine-14989860>

making it easier to understand both the costs and benefits of switching is essential for removing some of the obstacles to switching.”³

It would appear from this research that the reasons consumers fail to switch can be down to the complication of the information choices with which they are presented and a proliferation of different tariffs across suppliers adds to this complexity. Accordingly, in order to benefit from data portability there needs to be actions which make the switching choices clearer and more straightforward for consumers. Where vulnerable consumers are a defined customer base they should be presented with more concise switching options that will mean they are perhaps more likely to engage in switching and can then take advantage of better deals and a refined switching process enhanced by data portability.

It is also of great concern to CTSI that initiatives on data portability should not lead to opportunities for scammers to target consumers, especially vulnerable consumers, through misleading information about smart technologies and data portability. The Open Banking initiative that commenced in 2018 will be a good barometer of the risks of portability as data (particularly personal financial data) is a key target for those seeking to scam consumers.

As a first step the recommendations of OFGEM’s report into vulnerable consumer in the energy market should be implemented in full⁴

3. How can we ensure these new services develop in a way which encourages new entrants rather than advantaging incumbent suppliers?

This is a question for competition authorities and market regulators. Howsoever new data services and smart meter technologies develop, care must be taken to ensure that consumer interests are at the heart of new technologies and that incumbent suppliers cannot abuse dominant market positions through the consumer data they hold. This will mean examining the market barriers to entry around data portability. The government has a role to play in simplifying the policies around environmental and social obligations, market transparency and stability that will encourage new entrants and innovative new suppliers.⁵

4. What is the best way to publish performance data so that it incentivises firms to improve and can be used by consumers when taking decisions? Should firms also offer discounts or compensation for poor performance?

Despite the financial benefits and awareness of the ability to switch suppliers, consumers remain inert to taking advantage of the system. In as much as price is a consideration in these decisions, so too are issues such as good customer service and environmental, corporate and social responsibilities.

³ <http://www.eprg.group.cam.ac.uk/wp-content/uploads/2015/09/1515-PDF.pdf>

⁴ https://www.ofgem.gov.uk/system/files/docs/2017/10/consumer_vulnerability_report_web_003.pdf

⁵ <https://www.frontier-economics.com/documents/2011/01/frontier-report-competition-and-entry-in-the-gb-electricity-retail-market.pdf>

Consumers are likely to be incentivised by personal experiences of service failure to switch, however there should be a clear and concise means of rating competing suppliers to allow for informed choices. Therefore, we would agree that there should be the use of performance metrics or scorecards to highlight the best and worst performers across a range of key factors such as price, service quality and complaints. We believe this should be an independent assessment by regulators (other than private price comparison websites) and that the performance information should be consistent, clear, concise and easily understood across the market.

Where firms fail to meet minimum standards of service we agree that there should be automatic compensation offered to the affected consumers.

5. Is there a need to change the current consumer advocacy arrangements in the telecommunications sector? If so, what arrangements would be most effective in delivering consumer benefits, including for those who are most vulnerable?

No comment.

Chapter 3 - Digital markets that work for consumers

6. How can the government support consumers and businesses to fully realise the benefits of data portability across the digital economy?

CTSI Responses

The digital economy is an 'instant' economy with transactions taking place at the press of a button. It is, therefore, disappointing that data portability regulation allows one month to switch a service when data needs to be transferred. This will, inevitably, lead to consumers having to make a change in stages with some time passing between each one - this will cause inconvenience to consumers and will put many off, thus missing the benefits of data portability.

The reality is that many businesses are able to accept data coming in without delay, bringing customers on stream immediately, whilst taking the one month allowed to support a process when a customer is leaving them. Government needs to reconsider whether the current one month time allowance is more of a deterrent to data switching and could be reduced considerably.

On the other hand, a consumer's privacy is important and any switching process must have clear information regarding data privacy allowing the consumer to take a decision regarding what information is to be, or not be, transferred.

7. As technology continues to develop, how do we maintain the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights?

Technical innovation must be firmly balanced with the priority of maintaining strong privacy rights. We have recently seen with the misuse of social media data for political purposes that major technology platforms are sometimes unable or unwilling to adequately protect the personal data they hold.

It is not sufficient to have clear rules in place without enabling regulators, such as the ICO, to keep pace with this fast-moving technology. The government must provide adequate resources for the ICO to be able to police the data privacy rules and be strong enough, and knowledgeable enough, to take action against the technology giants where need arises.

8. What challenges do digital markets pose for effective competition enforcement and what can be done to address them?

As the paper outlines, the use of sophisticated algorithms in digital markets to match prices with competitors can have the 'unintended' consequence of creating anti-competitive price fixing. There is also a requirement that the personal data harvested by large search engines and social media platforms is used transparently and fairly. The CMA needs the resources and technological ability to

detect and investigate very complicated digital market technologies. The CMA's digital forensics unit and the new specialist digital, data and technology team will be key in tackling the issues raised by the digital economy and big data.

9. Is the legal framework that covers consumer-to-consumer transactions appropriate to promote consumer confidence?

In recent years there has been the huge rise in the so-called collaborative or peer-to-peer economy and an increase in consumer to consumer (C2C) contracts as they 'share' everything from property to car journeys to appliances and domestic services. It has been argued such innovative sharing of resources has environmental benefits through the reduction in demand and consumption of new goods.

These new services are largely facilitated by advances in digital platforms and are challenging the traditional business to consumer (B2C) contractual models in the economy. While the traditional B2C contracts contain many obligations to protect the consumer, there are less statutory protections for consumer 'buyers' in C2C contracts. That is not to say that C2C contracts are solely based on *caveat emptor* as there are implied term obligations to comply with descriptions made in C2C contracts.⁶ This is an important obligation as most online peer to peer contracts are sales by description.

While it may seem logical to extend the obligations for C2C transactions so that they are treated the same as B2C in terms of buyer's rights, that may not address the rights of the consumer as the seller.

At the moment business sellers have a strict liability for what they sell, it is irrelevant whether or not the trader has checked the goods or has the expertise to do so. Coping with customer returns, for faulty goods, is part of the business model and is reflected in the margins that are built into their pricing structures. Therefore a well-managed business should have the capability to handle complaints regarding faulty goods whilst covering any costs incurred.

A genuine consumer sale is usually a 'one-off' for both parties and perhaps the priority should be to educate consumers of the risks they face when buying from private sellers and online platforms. This risk is reduced through the use of platforms where, through feedback, service standards and return policies, both parties are aware of their rights and responsibilities when using the platform and the consequences for breaching the contract. What is also perhaps unclear is the level of detriment suffered by consumers in C2C contracts, either as sellers or buyers. In the absence of substantive evidence of the real harms caused it is questionable whether there is any need for legislative change.

We must also be clear that it can be difficult to identify whether a 'consumer' is actually a trader perhaps working to deprive consumer purchasers of their legitimate rights. Platforms may have categories of sellers that will include businesses, however it is also unclear how robust they may be in clarifying with 'consumer' suppliers that a certain frequency and volume of sales will qualify them to be defined as a business under consumer law. That too may be a risk to consumers who genuinely

⁶ <http://www.legislation.gov.uk/ukpga/1979/54/section/13>

believe they are acting in a private C2C capacity but legally may in fact be held to the standards required by a business/trader.⁷

Also, giving consumers the same rights when they buy C2C as B2B does not address the underlying problems of redress when the seller is not properly identified. Enforcers such as trading standards face real limitations when identifying and investigating online sellers through some of the major platforms. Therefore, irrespective of suggested legal changes there should be a responsibility for online platforms to hold clear (and verified details) of the name and address of the seller. Consumers should be able to access this information if the platform's own complaints procedure has not led to a successful resolution.

It should also be considered that amending the legal framework for C2C contracts may not affect the enforcement of international platforms and contracts that are increasingly created between consumers beyond the UK and EU.

CTSI accepts it is hard to define but, leaving consumer rights law as it is, perhaps government should attempt to further clarify the definition of when a seller is deemed to be a trader. This could be based upon:

- Number of transactions
- Repeated selling of the same items.

10. In what circumstances are personalised prices and search results being used? In which circumstances should it not be permitted? What evidence is there on harm to consumers?

There is much more evidence and research needed in this area. The most up to date findings are those of the OFT'S "The economics of online personalised pricing" in May 2013⁸.

With developments in technology and data algorithms this practice could potentially have since become more widespread and detrimental to consumers. There is already strong evidence of such practices in the travel and accommodation sectors.

The OFT found that personalised pricing could have both benefits and detrimental impacts however, competition was the key issue as to whether prices were personalised in a fairer way and the more competitive the market the more likely there were to be benefits for consumers, but not exclusively.

Key to this issue is transparency. If consumers openly faced price discrimination in retail premises, buying everyday items such as newspapers, coffee or clothes for example, they would probably feel that the practice is unfair.

⁷ <http://www.legislation.gov.uk/ukpga/2015/15/section/2/enacted>

⁸ http://webarchive.nationalarchives.gov.uk/20140402154756/http://oft.gov.uk/shared_oft/research/oft1488.pdf

In online markets consumers are becoming more aware that they are targeted by specific goods, services and prices depending on their online purchasing habits and social media usage. However, they are perhaps unaware to what extent this occurs and the factors that are used to segment and personalise the market. If this was more transparent then perhaps the perception that it was unfair would lessen. There is a need to educate consumers on the tactics used by online markets and how to avoid personalised marketing, by for example, frequently deleting browsing histories and cookies.

There are also questions in relation to the veracity of limited supply or scarcity claims (eg. “5 people are looking at this; or only 1 seat left at this price”).

In summary follow-up research from the OFT’s initial examination of this issue would be helpful in determining the extent to which personalised pricing occurs; the factors used to calculate personal prices; the extent to which it is fair for consumers; and whether a regulatory response might be required.

11. Should terms and conditions in some sectors be required to reach a given level of comprehension, such as measured by online testing?

CTSI agree that most consumers do not read terms and conditions, quite often any enthusiasm to do so is stifled by their sheer volume and complexity.⁹ We also agree that this can lead to significant detriment when they are then held to a term that causes them detriment, especially when it is something they would never have knowingly agreed to. The use of key fact statements, such as those we have seen in the insurance and finance sector, shows good practice as an upfront opportunity for consumers to make themselves aware of the key facts. Where possible we would like to see prominent key terms being a prerequisite for consumer contracts and the reasonable comprehension of contracts terms as a test that should sit alongside the current tests of fairness and legibility.

CTSI would also welcome the involvement of the Behavioural Insights Team because conventional solutions have not resolved all the issues and an approach based upon consumer behaviours could produce innovative solutions.

⁹ http://webarchive.nationalarchives.gov.uk/20140402172855/http://oft.gov.uk/shared_oft/market-studies/consumercontracts/oft1312.pdf

Chapter 4 - Improving Enforcement of Consumer Rights

To ensure consumers can easily get redress when things go wrong and that consumer rights are effectively enforced. We are seeking views on:

- *how we can improve consumers' awareness of alternative dispute resolution and their experience of the process*
- *how to improve consumer access to alternative dispute resolution*
- *how to support local and national enforcers to work together to protect consumers*

We will also give civil courts the power to impose financial penalties on companies for breaches of consumer law

CTSI Responses

We welcome the Government's move to increase the use of Alternative Dispute Resolution (ADR) and look at how to increase its uptake. This is a timely question due the well publicised figures such as 56% reduction in trading standards resources since 2009¹⁰ and with many more cuts to come to local authority budgets, we need to look to other sources of redress. ADR is typically thought of as 'getting money back for consumers or correcting an action' however ADR should be used as a business development tool. Effective monitoring of ADR trends can show where the problems are in a market and use them to direct and educate businesses.

In areas where there are traditionally high levels of detriment such as House Fittings and Appliances and transport¹¹ which have generated over 200,000 complaints between them there is no statutory requirement for ADR (with the exception of certain transport sectors). We believe that compulsory membership of ADR as there is in certain areas, such as consumer renewable energy solutions and real estate works well. The consumer will get fair redress and the business will be incentivized to raise standards in order to avoid being involved in complaints.

12. How can we improve consumer awareness and take up of alternative dispute resolution?

We believe that ADR schemes should be closely linked to consumer advice and education. Consumers should feel that membership of an approved ADR scheme or Ombudsman is a driver of choice as they feel that they will be protected before, during and after purchase. Traders should be proud to be members of a scheme and prominently display it in marketing literature, at the point of sale etc. It should be noted that the Consumer Rights Act 2015 places specific obligations on traders to declare membership of a code of conduct or ADR scheme.

CTSI surveyed 30 approved bodies, in the unregulated sector and 22 bodies responded. 50% of the respondents had the view that the ADR legislation was not given adequate publicity by the authorities

¹⁰ <https://www.nao.org.uk/wp-content/uploads/2016/12/Protecting-consumers-from-scams-unfair-trading-and-unsafe-goods.pdf>

¹¹ <https://public.tableau.com/profile/citizensadvice#!/vizhome/ConsumerAdviceTrendsApril2018/Cover>

prior to implementation and in the two years of operation. The general opinion is that more government involvement in promoting the legislation and carrying out information campaigns for businesses operating in the non-regulated sector would be good practice.

The survey also showed - 45% of the respondents reported an increase in complaint volume, 1% reported they had seen a decline in complaints received and 54% of the respondents did not report any significant change in numbers.

Many respondent ADR bodies have reported an increase in volume of enquiries (rather than complaints) as a result of misunderstanding of the requirements, because of traders' failure to understand the information requirements that meant consumers were incorrectly signposted to their service when the trader did not intend to use their ADR service. This issue has been consistently fed back directly to CTSI since the introduction of the ADR legislation. Many have also highlighted the Citizens advice help desk service as being inadequate to deal with this consumer/trader confusion and some have indicated they believe the function to be further confusing understanding with over simplified or incorrect signposting.

CTSI suggests two possible actions to help address the issues:

- Move the trader information requirement to the point of sale. This might be physically displayed in stores or places of business, on receipts or, for an online store, at the checkout. This would have the effect of bringing consumer familiarity of the existence of ADR. We suggest that a prescribed form of words be used when a trader does not, may not or will use ADR. CTSI has had considerable experience where the wording used to meet the current trader requirement has been either unclear, misleading or constructed to highlight the trader's customer service and hide the fact that they are, in fact, unwilling to use ADR. A clear concise wording may improve understanding of the mechanism. The wording should contain a link to the Competent authority or BEIS websites with a fuller explanation of the principles and mechanisms behind the approved ADR mechanism.
- This requirement would presently have to be an additional requirement of ADR regulations as the current legislation is based on a directive that places the requirement at the point of dispute. CTSI would support leaving this original requirement and adding the suggested additional requirement. In light of the UK's exit from the EU CTSI would still support the double requirement but would also, if burdens upon business, were identified as an issue, support a point of sale information requirement over one at the point of dispute.
- The Competent Authorities could take a much greater role in promoting consumer and trader awareness. There is currently little budget allocated to this but as the bodies specialising in understanding the consumer ADR environment, the competent authorities are best placed to drive consumer awareness and trader education.

13. What model of dispute resolution provision would deliver the best experience for consumers?

Where the consumer is willing to use ADR CTSI has identified a number of areas of improvement:

Low value complaints seem to be a particular issue where the cost of ADR generally means traders are even less willing to engage with ADR than in higher value complaints.

The CitA helpdesk often confuses consumers by signposting to ADR at too early a stage or when the trader is unwilling to engage in ADR. This has led to considerable workload for ADR bodies in dealing with enquiries with no possibility of getting any income from the traders. At least one approved body has dropped their approval as the number of incorrectly signposted consumer made their operational delivery unsustainable.

In many sectors there is little or no evidence of traders engaging with generalist, non-sector specific ADR bodies. This limits the consumers ability to access ADR.

Where consumers are put through layered or triaged processes the level of complexity and cost is often appropriately reduced. However, many ADR bodies struggle to reduce their cost, for cases that have progressed to higher levels of complexity, sufficiently to meet the requirements of a nominal charge as laid down by the current legislation. This means the consumer is often either put off by the potential overall cost, or once a certain level of complexity is met, is redirected to a non-approved scheme that is capable of dealing with the complexity but will do so without oversight by a competent authority and at much greater cost to the consumer.

If you look at some of the ADR schemes they were started by trade associations who had an interest in raising standards and driving rogue traders out of their markets. For example, the Motor Ombudsman was created by the Society of Motor Manufacturers and Traders (SMMT). This brings with it high levels of expertise and we believe that sector specific ADR is good for the consumers. It brings high levels of technical knowledge and industry expertise that generalist ADR schemes may lack. For example, HIES Scheme provides dedicated ADR officials who are knowledgeable in small scale renewable installations and if necessary they can invoke access to technical experts who can carry out inspections.

Consumers should feel confident that their ADR provider is independent and not in the control of any parent company or industry influence. CTSI ADR approval is important here to demonstrate this as a large part of the ADR application is demonstrating independence from members.

We also think that multiple ADR schemes is good for consumers and businesses as competition amongst schemes leads to better ADR schemes and more choice for members.

CTSI suggests these possible actions to help address the issues:

- Ideally all ADR would be fronted with a single gateway that would explain the process, ensure the compliant was suitable for ADR, explain the necessary pre- ADR steps and assist in identifying an ADR body. Where ADR bodies only provide ADR to an identified list of traders

the gateway service would have easy access to this list. Clear and appropriate signposting would greatly improve the experience for many consumers.

- Consider the introduction of a single mechanism to deal with complaint below a certain value. This might be as simple as the addition of an informal mediation process delivered by a specialist contact centre with the centre contact traders once the consumer has followed a number of steps to try and resolve the complaint themselves. Initial legal advice and advice on steps to be followed could be given by the CitA helpline before passing unresolved complaints to a specialist service. The current European Consumer Centre operates in this way and of 16,000 enquiries in 2017 around 1000 went on to need this form of informal mediation. Success rates for the ECC service, when operating in this way, fluctuated between 50-70% and the service enjoyed 85% customer satisfaction.
- Another mechanism that might be of use in this might be a 'Resolver' type on line tool where advice on the legal position and assistance in complaining to the trader is delivered through a software solution. This mechanism would be used to front a physical contact centre dealing with those complaints that need further mediation or consumers who have difficulties using the online solution. CTSI operates the single point of contact for the EUs online dispute resolution platform this is merely a mechanism for directing to ADR bodies and is not itself a mechanism for delivering ADR. As many consumers do not understand ADR and its uses, even this simple signposting function causes confusion.
- CTSI believes the principle knowledge and skills necessary to deliver an effective ADR service are the generic skills of complaint handling and the delivery of various ADR mechanisms. Several approved bodies have argued that industry specific knowledge is required in order to effectively decide disputes. Whilst this is generally not necessary, it may make dispute handling more effective and industry knowledge may be particularly effective in reducing need for expert evidence and therefore additional cost. The suggested downside of having industry specific knowledge is the potential for independence to be reduced but CTSI believes this could problem could be managed by strengthening the approval criteria and the mandate of the Competent Authorities. Increased reporting criteria covering the profile of complaints and published statements as to how independence has been protected would be helpful in this regard.
- CTSI believes that approved ADR should always be mostly paid for by the trader but does not believe the mechanism should always be free to the consumer. Fees should always be considerably less than using the court system and ADR bodies should be required to do more to make this comparison when listing their charges. Similarly, CTSI considers the requirement on ADR bodies to complete cases within 90 days to be appropriate and workable in the vast majority of cases. Cases extending longer than 90 days should be very exceptional and all cases that take longer than this should be highlighted to the relevant competent authority to allow proper monitoring of the use of the 'exception'. Again, it would be helpful in building consumer awareness and confidence if ADR bodies were assisted and required to publish their completion times for cases in comparison to the handling times of the court service.

14. How could we incentivise more businesses to participate in alternative dispute resolution?

50% of our survey respondents, 11 of 22 ADR bodies in the unregulated sector, had the view that the ADR legislation was not given adequate publicity by the authorities prior to implementation and in the two years of operation. The general opinion is that more government involvement in promoting the legislation and carrying out information campaigns for businesses operating in the non-regulated sector would be good practice.

In completing this response CTSI also met with 8 approved ADR bodies and again divided feedback on this topic. About 50%, comprising of mainly trade associations or membership bodies, did not experience a problem with business participation as the trader information requirement was already contained in their codes of practice. The remaining 50%, all operating outside trade associations, indicated that many traders (mainly SMEs) were unaware of the legislation and the trader information requirements. They noted however that many traders were aware of their obligations under the ADR Regulations but simply did not wish to engage in the process.

In delivering its competent authority role CTSI found that traders mandated to use ADR by law or membership of a trade association were generally more informed on their legal obligations under the ADR legislation and generally more willingly engage with the process.

The ADR legislation did not lay down any concise definition or guidance on what could be termed a nominal charge however it was clear, that the spirit of the legislation intended that ADR be provided free of charge to consumers with a nominal charge allowed in particular circumstances.

The issue of nominal fees was a contentious one and was widely discussed with half of surveyed ADR bodies, of the opinion that no charge to the consumer would have a detrimental effect on the quality of service they would be able to deliver. One approved ADR body argued that in order to ensure continued access to expert ADR officials, the government may have to subsidise the service to ensure it can be offered to the consumer free of charge. In the absence of this subsidy, it would need to offset its costs by charging traders a higher fee to use the service. Having a high entry cost to traders to use the service clearly has an impact on a business's decision to use ADR. The question does need to be asked whether insisting on a free procedure for consumers is having a detrimental effect on take up on small and micro businesses and those traders not members of a trade association, where the membership fee often covers the cost of use of the ADR scheme. The cost of using ADR for these traders can be high and may potentially cost more than defending a case in the Small Claims Court.

In 2017 confusion and disagreement around the interpretation of 'nominal' saw CTSI seek legal opinion. The legal opinion received agreed with CTSI that the spirit of the legislation intended for ADR to be provided free of charge and where a nominal fee was charged, it should be so low that it would be considered a token and not in any way proportionate to the claim. It was agreed that considerations of cost, should not be a barrier to a consumer's decision to access ADR as this would defeat a key intention of the legislation, which was to ensure the availability of an ADR provider in every consumer sector.

Based on the above opinion, CTSI have made it a more specific condition of approval in recent applications that ADR bodies need to ensure that the service offered to consumers is provided at a truly nominal charge.

One considerable barrier to trade association delivery of approved ADR is a lack of clarity around the meaning of ADR. Many trade associations deliver informal processes that assist both trader and consumer in resolving disputes and this is often the mechanism to which the parties initially hand their complaint. Without the legislation making it clear that such mechanisms can be approved as ADR, as long as they meet the quality criteria, many trade associations do not recognise that they could be approved or that this might have benefits to their members in meeting the trader requirement.

CTSI suggests these possible actions to help address the issues:

- Introduce a higher cost to consumers to help reduce the amount paid for by the trader – in light of low take up by business, it's not clear if the 'nominal fee' requirement is actually beneficial to consumers. CTSI suggests exploring introducing a low maximum fee linked to a reference point, most likely to the cost of taking the same case to court. Whilst the European legislation still applies it may be necessary to stretch, rather than ignore the requirement to be nominal but a reference point of the court charges scale (minus and additional application and processing fees) with a requirement to be no more than for example, ten or twenty percent of the relevant court fee. With the ADR mechanism meant to be a less costly alternative to court this comparison seems appropriate. With some cost placed upon the consumer this would allow ADR bodies to charge a little less to businesses. This would also help reduce vexatious and frivolous consumer actions and, perhaps encourage consumers to access advice services before pursue ADR.
- Move the trader requirement to pre-purchase/point of sale. – CTSI understands that the requirement on a business to tell consumers that there is a relevant ADR but that they are choosing not to use was seen as negative statement that traders might try and avoid by using the mechanism. It is CTSI's opinion that moving or adding a trader requirement near to the point of sale would, as well as raising consumer awareness, create an opportunity for the consumer to build this information into their buying decision and therefore would become a much greater reason for businesses to use ADR. There is currently no enforcement by the trading standards service of the trader requirement. In reality the service is being asked to show that the trader didn't tell the consumer about ADR and this can be seen as being difficult. If the trader requirement is moved to a physical statement on the traders website, invoices or receipts this becomes much easier to 'sweep' and to therefore enforce. A higher likelihood of enforcement will make traders more likely to deliver the trader requirement and this would increase the importance of avoiding the 'negative' message of not using approved ADR
- The trader requirement should be delivered in a prescribed form of words – CTSI has seen many attempts to comply with the trader requirement that have arguably met the requirement but have managed to water it down to be the extent of being no driver to use ADR. Paragraphs aimed at meeting the requirement are often dressed up as ADR not being used because the businesses customer service is much better, the 'negative' message being negated, turned into a positive or at least reduced. A prescribed form of wording and

placement would avoid this problem and again make enforcement easier.

- Simplified/cheaper mediation model for complaints below a certain financial claim – again any mechanism that lowers the charge to the trader should be considered as long as it still delivers a cost effective and meaningful service to consumers.
- BEIS to be clearer that the trade association model is capable of being an ‘approved’ model - assistance with clarity over the definition of ADR. Working through trade association is something that many traders, in unregulated sectors, already do. They may be more likely to use schemes delivered by brands they are aware of. In some sectors it maybe that registration with or membership of a scheme, for example gas safe registration of glass and glazing federation membership, is very common and adding ADR to these mechanisms may encourage take up. In many sectors there are exiting trade associations that already deliver ADR for their trade members but these mechanisms are not checked for compliance with any criteria and the bodies are not monitored for independence. CTSI is of the opinion that a clearer definition of what is, for the purposes of approval, ‘ADR’ would assist in encouraging trade associations to seek approval and therefore to drive up the quality of such schemes and bring many more traders into compliance.
- Government could consider making it mandatory where there is access to Government subsidies or support that traders should be a member of a recognized ADR scheme. An example of where this works is in the consumer renewables market. To access various Government incentives consumers must use a trader who is a member of consumer code, which then provides a route to ADR.
- Trade associations should be encouraged to look at their own industries and be encouraged to keep rogues out through providing access to approved ADR.

15. Should there be an automatic right for consumers to access ADR in sectors with the highest levels of consumer harm.

We believe that the current model doesn’t work, where in many sectors trader participation in ADR is voluntary and that there should more sectors where ADR is required. It is disappointing to note from this consultation under point 145 that:

“The Consumer Ombudsman, which offers its service in sectors where participation in alternative dispute resolution is voluntary, received 5,600 complaints in 2017, but businesses agreed to participate in only 6% of cases”

There should be defined sectors where traders must be members, and these sectors should be where there is most consumer detriment.

CTSI suggests these possible actions to help address the issues:

- ADR should be made both mandatory and its decisions binding in problem sectors.
- Consideration should be given for have bespoke requirements placed upon the approved ADR when operating in such a sector - In some sectors for ADR to be effective, it will not be sufficient to merely make the process mandatory, the requirements placed on the ADR body may have to be customised. There are currently approved bodies in some sectors that have wide take up but where their presence fails to offer practical redress in common situations. In many the problem is industry practices, for example, in the car hire industry the consumer is often left trying to recover money take for damage which the consumer argues they did not cause. In this case the burden of proof is placed upon the consumer and the industry does not operate in a way to allow the consumer to have this proof. In these instances, for a mandatory body to resolve the issue the requirements of the ADR body may need to be required to operate in a specified way, for example, with car hire damage, to reverse the burden of proof to require the trader to prove the consumer did cause the damage.

16. What changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers?

Background

The Chartered Trading Standards Institute (CTSI) welcomes the chance to contribute to the policy making process to this consultation. As our profession endures huge resource cuts at a local level, contemplates the impact of Britain leaving the European Union, and acknowledges the shift in consumer habits to online markets - this consultation comes at an important juncture for consumer protection in the UK.

The paper sets out the challenges for robust enforcement of UK consumer law and begins to set out potential responses. It makes clear that enforcement is beneficial to ensure consumers are protected and that businesses benefit from fair markets and effective competition.

While the paper seeks views on strengthening the national and local enforcement framework it proposes one substantial change via –

‘a strong national body with statutory powers and duties that could provide leadership and specific expertise and lead on complex national enforcement where necessary’.

Through initial conversations with stakeholders this suggests National Trading Standards (NTS) having a formal legal status and accountability with access to enforcement powers. These would be primarily as a backstop, with enforcement continuing to be commissioned through local authorities, but would allow support where required, providing insurance against legal challenges and risks that may jeopardise important national cases.

CTSI have based this response on our interpretation of the proposal and its impact on resolving specific issues and wider problems within the consumer protection landscape. As part of CTSI's response we have consulted within the profession to guide our thinking.

Loss of frontline trading standards staff.

CTSI have year on year been gathering evidence into the cuts trading standards services are suffering at a local authority level. Over the past nine years our evidence shows an overall cut in frontline officers of 50%. This evidence has been cited in the green paper and a number of other reports by both central government and independent bodies over the past three years.¹²

While national initiatives have led to increased co-ordination they have not yet alleviated the impacts of cutbacks on local trading standards.

This represents a serious erosion of the foundations on which the whole system is based – especially as national bodies draw on the skills, competencies and experience of local authority staff. Intelligence gathered at a local level is vital for national bodies to understand risk and to gear their activities accordingly. This loss fundamentally damages the entire system and is not addressed by the green paper.

Services have responded in a variety of ways by exploring shared service agreements with neighbouring authorities¹³ and even the innovative use of volunteers¹⁴ however there has been little or no progress in halting the decline.

While the paper recognises the importance of enforcement it fails to fully mention the significant value local trading standards services add towards business compliance. This takes many forms from informal advice through to government sponsored initiatives such as primary authority. The loss of frontline trading standards expertise significantly reduces the value of business advice across the UK.

Solutions

As a response to these challenges in 2015 CTSI set out a vision on how trading standards should be set up in the UK. This called for more than 190 units of trading standards to be brought together in larger, better resourced, units of delivery – and crucially that central government should lead on this process as there is little incentive for local authorities to make this change unilaterally. We maintain the view that larger, strategic services would be a substantial improvement and that the green paper should consider (perhaps in its white paper form) how to fulfil this. There is a broad consensus amongst stakeholders¹⁵ that larger units (though not the route to this taking place)

¹² <https://www.nao.org.uk/wp-content/uploads/2016/12/Protecting-consumers-from-scams-unfair-trading-and-unsafe-goods-Summary.pdf>

¹³ <https://new.devon.gov.uk/impact/tradingstandards-sharedservices-extension/>

¹⁴ <http://safercornwall.co.uk/national-recognition-for-cornwalls-trading-standards/>

¹⁵ <https://www.local.gov.uk/sites/default/files/documents/lga-trading-standards-rev-b20.pdf>,
https://www.tradingstandards.uk/media/documents/news-policy/strategy/final_joint_statement_on_the_state_of_trading_standards_in_2015.pdf,

would improve the provision of services while retaining the valuable local link within the current system.

The process of devising the vision was guided by principles by which service delivery should be measured. We contend these should remain as continued benchmarks by which any structure that comes from this green paper should be measured by.

Services should -

- Be accountable to the citizens and businesses they serve to ensure they address current concerns and the needs of local communities
- Be visible to consumers, businesses and policy makers to ensure the contribution of services is recognised and valued
- Support and value a professional and skilled workforce
- Ensure that services are intelligence led and are able to deploy resources to maximise impact
- Be driven by strong leadership are able to give strategic direction to the service and make a contribution to issues that impact at a regional and national level

National enforcement body(s) - Strengthening Enforcement

CTSI support the move to create a strong but accountable national body (or bodies) with statutory powers and duties and a distinct legal status. We agree it could provide leadership and specific expertise to lead complex national enforcement cases when necessary. As a minimum this will allow for the mitigation of the risks of prosecution faced by local authorities, particularly when they are confronted with legal challenges by well resourced operators.

The commissioning model - where NTS works with local services through specialist teams tackling national issues - has led to significant successes. However, one weakness of the system is that risks in large cases can create a disincentive for action where financially restrained authorities face the legal liability and significant costs for prosecutions. This can be exacerbated if the majority of detriment does not fall within that local authority's boundaries – with locally elected decision makers accountable only for risks to their local constituents.

Powers

We agree that any new body(ies) will require specific robust powers, however this should be closely tied to transparent guidelines for their use and accountability in agreement with local services. The powers should be proportionate to the backstop function and must reflect the risk they share with trading standards teams. The powers should be flexible enough to allow the consideration of prosecution for appropriate cases and should have the full range of civil enforcement powers that

come from being a domestic enforcer under the Consumer Rights Act 2015¹⁶ (Soon to be augmented further by civil fining powers as outlined in the green paper).

Coordination

A major question is how a legally constituted national body should interact with local authorities. We envisage the majority of this will be to facilitate co-operation between local authorities and the national entity. This would take place on a similar basis to current operations with intelligence analysts, dedicated teams, and tasking funding being the main levers.

However, there are circumstances where there will be value in allowing the national body to take over responsibility for action. For example where there is a significant national risk (such as a major consumer fraud suddenly originating from one source) that would require national co-ordination. Critical to this would be the accountability of the system (covered below).

Accountability

Where there is a new national framework with a legally constituted body(ies) tackling enforcement there is a need to consider how they are made accountable.

CTSI believe this should go wider than considering how national bodies should be made accountable but should ensure the link to local work can be overseen.

One of the overriding issues of the current system is that accountability through statutory duties is held in 190 plus authorities trading standards constitutes less than 0.5% of local government spending on average. This means limited incentive for local authorities to take into account national issues.

While this paper is looking at constructing a new accountability framework this should not be overlooked. CTSI would prefer that there is a move towards 'whole system accountability' that offers a national focal point to monitor local authority activity and if necessary step in where gaps in provision appear.

Within this structure it may be possible to set out a pathway by which authorities could consider merging services, facilitating challenging discussions at a local level, potentially in parallel with other devolution efforts such as the move to metro mayors.

Further, to avoid conflicts of interest between policy setting and enforcement we would advise that a clear division between delivery (the enforcement of consumer law) and policy (the setting of guidelines) is created.

Clarity on Roles/Responsibilities

If a new statutory body is created there is a need for clarity as to respective roles and responsibilities with other national consumer bodies and local services. At present the CMA has a distinct role to

¹⁶ <http://www.legislation.gov.uk/ukpga/2015/15/schedule/5/enacted>

ensure competition in markets for the benefit of consumers, tackling anticompetitive practices and market abuses of dominant positions as they arise. The CMA also has consumer enforcement powers and has set out how it will use them and under what circumstances.

“Most of the CMA’s enforcement powers are shared with other agencies. The CMA cooperates with them to ensure that action is taken in each case by the most appropriate body. TSS (Trading Standards Services) are the lead enforcers of the CPRs with a duty to enforce them, while the CMA has a power to enforce them and may take the lead in particular kinds of cases” CMA - Consumer Protection Enforcement Guidance¹⁷

The CMA has also said that it will take action where, “breaches of the law point to systematic failures in a market” or where, “changing behaviour of one business would set a precedent or have other market-wide implications” Through agreement with any new statutory body (perhaps via the CPP and the national tasking group) there will be a need to clearly delineate responsibilities for action on national cases to ensure the most appropriate agency response.

The government has also recently set up the Office for Product Safety and Standards (OPSS) which has a national role to strengthen the UK’s product safety regime. While OPSS made no changes to the roles and responsibilities of local authorities or other market surveillance authorities, it has a coordinating role and provides a number of specialist services centrally to support consistent national enforcement, including aspects of product testing and technical expertise. Consideration is needed as to how OPSS will work with any new national enforcement body for coordinating actions and sharing intelligence from local teams. For example where a large consignment of counterfeit goods might also be unsafe creating consumer safety risks there will need to be consider a ‘best agency’ lead response.

Trading Standards in Scotland

Local trading standards services in Scotland have also suffered considerably from cuts in resources. In 2013 an Audit Scotland examination of the system in 2013 warned that,

*“the long-term viability of councils’ trading standards services is under threat and urgent action is needed to strengthen protection for consumers”.*¹⁸

Since that review there has been little action to rectify falling numbers. A 2017 proposal for council leaders to look at the future workforce pressures for trading standards and develop a proposal for securing and training the future workforce has yet to be formulated.

In terms of national enforcement, following the landscape review Trading Standards Scotland (TSS) was formed from the legacy scambusters and illegal moneylending teams and augmented by an e-Crime and intelligence function. Local services feed intelligence into TSS that allows for regional and national cross authority (level 2) problems to be identified and tackled. The green paper

¹⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/546521/cma58-consumer-protection-enforcement-guidance.pdf

¹⁸http://www.audit-scotland.gov.uk/docs/local/2013/nr_130131_protecting_consumers.pdf

erroneously describes the arrangement that TSS funds local services to take action. TSS has a distinct enforcement team that tackles level 2 cases, filling enforcement gaps that are better dealt with through a national response. Any powers need to be delegated from local authorities to TSS. This has proven challenging as local ownership and accountability for enforcement powers has left services reluctant to authorise TSS's national enforcement function. The introduction of GDPR also brought this issue into focus as authorisations are necessary for the sharing of intelligence. There has also been issues in terms of civil enforcement as TSS are not a 'domestic enforcer'¹⁹ meaning the full range of enforcement options are not directly open to the national team.

CTSI would support a BEIS led stakeholder assessment of the national framework in Scotland to find solutions for more effective enforcement coordination and cooperation. Any solutions must prioritise protecting consumers and better supporting the local workforce and its links to national teams. There is a need to remove enforcement barriers and provide clarity as to the efficacy of the national resources benefitting the whole system, including local services, system accountability, and the challenging use of local and national enforcement powers.

The landscape for consumer protection in Scotland is also changing, with the Scottish Government announcing consultative plans to create a new investigative body called 'Consumer Scotland'²⁰ as follows -

"This consultation is seeking to gather views on the proposals for a new consumer body, called Consumer Scotland. This will be an investigatory body, tasked with carrying out a strategic review of consumer welfare to identify areas of harm that require in-depth inquiry to identify causes and recommend solutions."

Many questions arise as to how this new body will fit into the wider investigative landscape and it is important that the whole system works in the interest of Scottish consumers.

Cross Border Enforcement - UK leaving the EU

In 2019 (and subject to a transition period until the end of December 2020) the UK could have a very different regulatory relationship with the remaining EU 27 and any new trading partners. Much has been made of the possible divergence from EU regulations in the interests of UK businesses and consumers²¹. However, regulation without enforcement, business guidance and market surveillance is rendered ineffective. In that regard, local trading standards services provide a vital function, advising and checking local businesses while ensuring national operators receive consistent advice through Primary Authority relationships. CTSI are encouraged and support the government's aim of 'no less protections' for consumers after Brexit, however we are concerned that EU reciprocal networks for intelligence sharing and enforcement cannot be unilaterally recreated by the UK. We are also concerned that the capacity at the local level for regulatory enforcement and market surveillance is becoming too degraded to be effective. We suggest that any examination of the local

¹⁹ A domestic enforcer by virtue of Schedule 5 of the Consumer Rights Act 2015 can use the powers of the civil enforcement regime set out in part 8 of the Enterprise Act 2002.

²⁰ <http://www.gov.scot/Resource/0053/00537918.pdf>

²¹ <https://www.ft.com/content/22b4bc26-1993-11e8-aaca-4574d7dabfb6>

and national enforcement framework is aligned to the resource challenges for regulatory systems after Brexit.

Any new national and local enforcement arrangements must take account of the patterns and changes in consumer markets and the direction of commerce. There is a need to ensure that local and national enforcement is aligned to the increasingly digital nature of consumer harm. It will be essential to ensure enforcers have the resources and required skills to tackle online frauds, scams and other forms of cybercrime that can often originate from outside the UK and EU.

In that respect it also important that frameworks for EU and wider enforcement and cooperation are maintained and that the UK plays an international role in enforcement relationships with organisations such as [ICPEN](#).

Civil Fining Powers

CTSI welcomes the introduction of civil fining powers for consumer enforcers such as the CMA and local trading standards services. We agree that criminal prosecution should be retained as appropriate for the most flagrant breaches of consumer law that cause the most detriment. An extension of the regime for civil penalty powers would be a welcome addition to the sanctions available to tackle infringements of consumer law. At the moment the ability for enforcers to seek injunctive action and require enhanced consumer measures including collective redress, compliance actions or consumer information gives a number of valuable options. As consultation with the trader is statutorily required in civil enforcement, the broadest range of sanctions, including the ability to seek financial penalties will greatly improve the incentives for the trader to engage and comply during the consultation period.

It should be noted however, that there are significant financial risks in civil procedures and this may prove a disincentive to local authorities taking action via this route. To be effective there is also a need to ensure that local service capacity is supported and that funding is made available for officers to receive training on any new enforcement measures.

As civil enforcement measures are considered, CTSI would encourage the government to consider empowering local trading standards services with greater flexibility to issue administrative fixed penalty notices for lower-level compliance failures. Such sanctions are used effectively in other areas and can effectively deal with issues where neither prosecution nor formal civil enforcement is proportionate.

CTSI

July 2018