

## Examiner's report

### CTSI Professional Competency Framework

#### Stage 1: Unit 2 Business and Consumer Legal Framework Examiner's Report September 2020

##### General

11 students sat the examination and all passed, which is extremely encouraging. Marks ranged from 42 through to a stunning 90%, an exemplary paper! Because of the minimal number of students, commenting on individual marks per question is not significant except where certain points justify it.

No one answered questions 1 and 6. These clustered answers around questions 3, 4 and 5 as everyone answered Q.3 and 10 answered Q.4. and 9 answered Q.5.

Part B was similar with everyone answering Q7 but a differing choice for their second part B Question.

One pleasing aspect was the more widespread use of a plan for their answers, this led to more structured answers, in the main, only a couple failing to answer a part of a question. An improvement on previous years.

##### Section A

**Q1** What is a super complaint? No-one answered this question.

Defined by section 11(1) of the Enterprise Act 2002 (EA02), is a complaint submitted by a designated consumer body that 'any feature, or combination of features, of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers'. The features of a market may refer to:

- The structure of the market concerned, any conduct of one, or more, persons who supplies or acquires goods or services in the market concerned.
- Any conduct relating to that of any person who supplies or acquires goods or services.
- Bodies designated by the Secretary of State for Business, Innovation and Skills under section 11(5) EA02 can make a super-complaint. Section 11(6) requires that those designated will be bodies who appear to the Secretary of State to represent the interests of consumers.
- The possible outcomes of a super-complaint include:
  - taking enforcement action under competition or consumer law
  - agreeing voluntary changes with the industry
  - launching a market study into the issue
  - making a market investigation reference
  - recommending action by the government, a regulatory body or other organisation
  - finding the complaint requires no action
  - finding the complaint to be unfounded

Super-complaints have also been introduced for the financial markets in the UK under the Financial Conduct Authority (FCA). Certain consumer bodies may complain to the FCA about features of a market for financial services in the UK that may be significantly damaging the interests of consumers.

Examples made by the CMA include excessive charges for repeat loyal customers in the insurance and broadband markets, OFT V Abbey National and others.

Q2 Three students answered this question.

- a) Different authorities vary widely due to geographic location, local needs/priorities, funding, staff levels and specific problem areas.

Geographic location:

A rural location could mean that there may be a focus on animal health provision and enforcement. The duties of an authority can vary depending on whether it is a county or unitary authority. County authorities will carry out duties under Food Safety Act whereas a unitary will not, these functions will be done by EHOs. The makeup of an area will determine the industry within it and this leads to a focus.

For example, those with many food factories may need food specialists to offer Primary Authority advice to local industries. Coastal resorts, that rely on tourism may specialise in looking at the safety of holiday accommodation and ensuring local businesses are compliant so that tourists are not ripped off. Local needs and priorities will affect the functions carried out. Funding can limit the ancillary functions that are carried out. Some local authorities identify priorities that must be carried out and others are ignored. Some local authorities may have more vulnerable people and this can be made in to a priority to identify no cold calling zones and a quick reaction team to attend any reported incidents as soon as they are received. The local authority grant is not the same for all districts and counties and some who receive less will be restricted. The level at which TSS finds itself can also be a huge factor. Any section at level 5 or 6 will be lucky to get crumbs off the table and invariably will often be too low to influence policy. For example, some authorities in the North find themselves in Engineers or Fire Services departments who have no idea what TSS does or how they operate. Trying to influence a HOD from a 6th tier level can be nigh on impossible and a paucity of resources will decrease the effectiveness of the service offered.

- b) Statutory functions are, in the main, those that local authorities must carry out Weights and Measures, CPRs, to name but two.  
Non statutory duties are those by definition that are not mandated by law. For example, consumer advice, talks to local schools and colleges, referral to Primary Authority. Aspects of the Road Traffic Act such as overloading are not mandatory but the local authority can opt to enforce the provisions.
- c) Devolved governments have brought in differing aspects of consumer protection, for example there is no National Trading Standards in Scotland although they have something similar with limited functions. Police enforce under age sales of alcohol. The Services work in partnership through Wales Heads of Trading Standards (WHoTS). Trading Standards in Northern Ireland is a civil service function and, as such, part of Central Government. In the rest of the UK it is a local authority function. Perhaps one current area of diversity are the different aspects of Covid 19 enforcement and interpretation that have varied throughout the devolved nations.

**Q3** The most popular question in Part A, as every student attempted it. Most answers were above average and a couple were excellent.

I expected the students to give a brief outline of the PA system and how it works, comparing assured advice to generic advice that used to be issued under the Home Authority Principle or free advice that some authorities offer. Assured advice is essentially guaranteed so that if a business follows such advice then the business cannot be prosecuted or penalised by another local authority. As demonstrated by Hull City Council V Newcastle Council, aka the Greggs case. For the payment of a reasonable fee, then the business gets a “get out of jail free” card. It does not prevent the business being prosecuted if they fail to follow the advice provided under the PA agreement. Advice can be provided in any area of trading standards expertise such as metrology, food, Animal health and welfare, pricing, etc. This can be very specific advice on the suitability of equipment, or advice relating to product development in food, product safety of equipment or toys for example. So that a company knows how to label a new product, if it can legally be sold, what it could be called and any possible warnings that need to be included; right through to marketing.

**Q4** There are a number of differing types of business entity. The main 4 are Sole Trader, Partnership, (Private) Limited Company and Public Limited Company PLC. However, there are also Limited Liability Partnerships, Community Interest Companies, Industrial and Provident Societies and Private companies can be broken down to those limited by shares, or guarantee. As the question did not limit the answer to any specific number of entities, the view was taken that full information on the Big 4, as it were, could gain 10 marks, equally a lesser amount of information on all 8 could also net the examinee 10 marks.

There is no real need to give a breakdown of information on this question as any decent internet search will provide competent answers.

Generally, well answered, students picking up valuable marks with well-presented answers.

**Q5** Whilst on or two struggled to put together a coherent answer many managed good marks on this question highlighting the benefits of trade association membership.

Benefits of a trade association:

Networking

Trade associations are filled with potential contacts, clients and partners who can help the business. The members of trade associations are able to build long-term relationships and partnerships that are mutually beneficial. They can share ideas, strengthen ties, and make connections that would not be possible without the association.

Training and Education

Continued education and development is crucial in getting to the top of any industry. This is especially true in any industry that involves a high level of technology. Professional associations usually hold events with seminars, workshops and classes that help members to learn and grow in their profession.

Certification

In addition to the usual training and education provided by professional associations, many organizations provide certifications and licensing programs that are not available to non-members. The certifications and licenses provide a level of prestige and reliability in the minds of clients and customers.

Influence

One of the key benefits of joining a trade association is the ability to support the organization and possibly influence legislation that affects the industry. The combined resources of the members of an association can be used to lobby lawmakers and sway public opinion more positively towards the goals of the association.

#### Information

Membership means immediate access to any news or developments that affect their business and the industry. Associations generally provide newsletters, email updates and informative resources that help its members stay on top of recent developments in the field.

#### Best Practices

Any line of work has a specific set of best practices that is vital to efficient, quality work. Especially for anyone new to the industry, membership in a trade association is vital to learning these practices and performing the best work possible.

#### Exchange of Ideas

Not only do members have access to information about updates to the industry, they can also play a large role in determining these changes. Trade associations provide a forum for members to share ideas and develop new ways to improve the industry. This allows for more experienced members to help newer ones grow, and provides the opportunity for all members to share innovative ideas that can help the association.

#### PA agreements

An association can be a member disseminating information to its members. They can also use common ADR agreements or services or provide their own as part of the association.

**Q6** Feedback can be obtained by the use of complaints and compliments, through Websites and feedback sheets given to traders following inspections and visits. The organisation can also determine if it meets its own KPI objectives. Measure customer service performance, by using various aspect of social media including e-mails letters and telephone calls. Asking them to highlight how you meet/don't meet their requirements.

Invited audits by other local authorities; carrying out a swot analysis.

It may be that you published inspection plans and targets for PA visits obtaining feedback from businesses as to how you performed in respect of these partnerships.

You may also have other published objectives, or targets for example setting up "No cold calling zones", links with banks, building societies for rapid response teams for vulnerable consumers.

Number of priority visits carried out on target.

Invite feedback through general discussion on visits. Many authorities have twitter accounts and other social media, which can be a useful source of feedback.

All feedback is good especially if it is more than a tick box exercise. It can point out the good and bad elements of a service. Sometimes it is difficult to see where we are both good and bad whereas a critical friend or outside entity can do this dispassionately.

We get wrapped up in carrying out our job, without recourse to how we do it and if those we regulate benefit from what we do.

Poor feedback could indicate we are not setting the right priorities. Good feedback can show the reverse of that. Obtaining feedback from those who have not complied can also be good.

Businesses that were advised of the law, or those that benefitted from a training course, rather than a fixed penalty notice, or other penalty. For example, those who were selling to under age children without being aware of the due diligence they could take to avoid recriminations.

## Section B

**Q7** A good range of marks from 11 up to 30. The latter of which was a rather splendid answer.

- A) First check on your database and any other intelligence you may have access to, for the results of any previous visits. Has it received any advice, has it been in the hands of the owners for a long time, do they have any history of compliance/non-compliance? Have they recently changed hands? Is your own website up to date with information for such businesses, or do you have a link. Do they have a good management system, are the staff trained do they all have food handling certificates at the appropriate level?

It is a food shop so you will need appropriate PPE, for working behind the counter . Given the lack of information you may need to take a sampling kit to take a sample of the products to determine if there are any undeclared allergens or additives. Handouts, if you have them, or be familiar with the labelling requirements for the type of products they supply also have any website details, e.g. Business Companion, available so they can be referred to such info. on line. Brush up on your own knowledge of Food Safety Act and FIRs, specifically allergen information required to be declared.

- b) In 2017 the Dept for BEIS published the Growth Duty under section 110(6) of the Deregulation Act 2015: This should be linked to the Regulators' Code 2014 and any enforcement plan of the local authority.

Regulators should ensure that their officers have a level of understanding of the business environment, their business community, individual businesses, and the impact of regulator activities on them that is appropriate to their duties and responsibilities, enabling them to deliver a risk-based, proportionate approach in their day-to-day activities. Appropriate steps that a regulator may take to ensure competency include: incorporating an understanding of business into recruitment considerations, induction programmes and early training; considering business understanding as part of the performance management of staff, including in setting objectives; supporting improvements in business understanding through the provision of staff development and training; and sharing relevant information and good practice in relation to business understanding.

Regulators should ensure that their officers have a level of understanding of the growth duty that is appropriate to their duties and responsibilities and that they understand how the regulator delivers its activities in accordance with the duty, including that they understand that the growth duty is applicable in relation to individual activities and decisions.

The Regulator's Code:

Regulators should ensure that they understand the current and developing business environment, and where their business community sits in that environment. Factors that may contribute to the regulator's understanding include:

- A. awareness of the current economic environment in which businesses are operating;
- B. awareness of economic, social and technological factors likely to drive changes in the business environment;
- C. knowledge of how regulation impacts on growth in both a positive and negative way.

The Regulator's Code laid down basic principles of how Regulators should carry out their duties by laying down six principles. The relevant parts pertaining to this visit are 1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow 1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity. It also overlaps with the Growth Code in ensuring Regulators have the necessary skill and knowledge to carry out their duties.

2. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. Regulators should provide advice and guidance that is

focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.

3. Regulators should ensure that their approach to their regulatory activities is transparent. Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.

Relating these guidelines to the visit then the Officer should have been understanding of the business needs of the shop and come back when it was less busy. His manner was brusque and unhelpful. He should have introduced himself and offered to give assistance and information on how to comply. If this is a new business then they will not necessarily be fully aware of the law and handing out guidance leaflets, giving advice pointing out helpful websites and perhaps spending time explaining the Regulations would be a better approach. Treating those running the business with respect and tolerance will produce far better results than anger and obduracy. It also borders on bullying using your position to do so.

To shout at the manager in front of their staff and customers demeans that person in the eyes of the staff and gives the wrong impression to the customers, it could reduce repeat business. Being helpful and understanding is part of the job and also expected under the two Codes highlighted above.

**Q8** 3 students attempted this question two were reasonable one was excellent.

First the student may have their own local authority approval scheme they may also be aware of other local authorities who have such schemes.

A simple Google, or similar search engine, will also produce different schemes. Such a search will often not reveal local authority schemes. But contacting or messaging other local authorities would produce results. The majority that will come up will be sponsored sites on the search engine and therefore Trusted traders type schemes and 'Which' will usually be near the top. Those that have been going for some time and can afford to pay the fees to be highlighted.

The difficulty with many of the schemes is to determine which are genuine and which are in it purely for the profit.

It is important that businesses are audited or vetted by some form of recognised body such as Trading Standards or an independent third party. Hence, their schemes would be top of the list, as they have no axe to grind and, hopefully, carry out regular audits to determine if the business follows up on complains and resolves them to the customer's satisfaction. CTSI run their Consumer Code Approval Scheme, similar to a trusted trader, where Associations apply through a 2-stage application to determine if they and their members are compliant and follow up complaints and resolve them. They must also have a recognised Alternative Dispute Resolution provider in the event that the trader and consumer cannot agree on a solution.

Some schemes, such as "Which" are audited. The Traders in their scheme are audited by an independent person. There are one or two similar types of scheme run throughout the country one of which was audited by East Sussex, so there must be others.

There are trusted trader scheme that rely on customer feedback. The trader advertises that they are a member of the scheme, they then carry out a job and ask the customer to feedback on how they performed. The trouble with these schemes is that one is never sure whether a trader would give the

customer a feedback sheet if they did not do a good job or there was a dispute. Is there any form of vetting procedure for the trader to register in the first place and what, if any, are the sanctions for someone who does not perform their work to a satisfactory standard? Most of the audited schemes by CTSI and TSS, also Which, would eject and unsatisfactory trader from their scheme and they are no longer allowed to display any relevant, related logo.

I would expect the student to set out a letter head with address (it should really be fictional providing their office details).

I would expect the student then to highlight those that are most reliable, and why, to the consumer. So TSS approved schemes, CTSI and audited schemes by TSS and those such as Which would come recommended with a caveat that whilst other schemes may be good there is no independent audit to give peace of mind to consumers. The letter should also include contact numbers for the local authority and links to sites where further information is provided. Any downsides such as non-audited schemes should be pointed out.

**Q9** Two students attempted this question. Sadly their knowledge of OPSS was limited, one failing to pick up that they looked at product safety.

a) The OPSS is a part of The Department for Business Energy and Industrial Strategy. They provide specialist services centrally to support consistent national enforcement, including aspects of product testing and technical expertise. Specifically, its responsibilities will cover general (non-food) consumer product safety, including:

- National Capacity for Product Safety and Technical Regulation including product recall. Example would include the recent problems over the Whirlpool problems
- Policy Development - Product Safety, Metrology and Regulatory Delivery. The Regulators Code emanated from the forerunner (Regulatory Delivery) of OPSS, they also hold the UK secondary standards of weight and measurement and provide Tertiary standards for comparison with W&M Authority Local Standards.
- Primary Authority. The policy was developed at OPSS, or LBRO as it was named then and they maintain the Register and provide the dispute service as well as updating policy.
- Industrial Strategy commitments to local better regulation via codes such as Regulators and Growth Duty
- Technical regulation on behalf of government. Weights and Measures and product safety Regulations being examples
- Approval of types of utility meters and provision for accuracy testing. For example, EU pattern of approvals for petrol pumps and bulk flow meter measuring systems
- EU Exit preparation for technical regulation ongoing to ensure all Regulations are capable of being enforced at the end of the Brexit period of one year from 31 January 2020.
- International regulatory delivery links with European and international standards organisations for recalibrating as technological advances allow, the mass standards and measurement of length and derived standards.
- NMO Technical Services Provision of comparison for local TSS to re certify Local Standards with or without an error statement.
- Standards and accreditation policy. As Standards are updated then such policy has to be drilled down to local TSS and to business and industry.
- Business insights through our Business Reference Panel and others

- Sponsorship of British Hallmarking Council, self-evident to maintain the integrity of hallmarking throughout the UK
- They also have enforcement capability in specialist areas such as: recycling of batteries, energy management systems, 'white goods' recycling, enforcement of the import of wood from endangered areas, enforcement of ivory resale.

b) It should have been relatively easy to link most of the above functions to what TSS do on a regular basis.

In terms of the of **disadvantages**

OPSS provide the PA system which provides specialist tailored advice, on payment of a fee. This means that the authority needs to have officers who are experts in the relevant area. This will suit large authorities more than smaller Unitary authorities. Many local authorities only have a handful of staff. It is almost impossible for these staff to develop the specific expertise and knowledge of the subject area to attract a PA agreement especially from a large National or multi-national business. This means these LAs are at a financial disadvantage.

The cost of running a Standards/metrology Laboratory is high and requires qualified staff to provide many of the testing skills. Small local authorities have had to abandon the running of such labs first because they do not have enough qualified staff and secondly because the cost of maintaining the lab and getting Local Standards referred against Tertiary Standards is costly. Hence these small authorities need to set up agency agreements with other local authorities.

Pattern approval of Weights and Measures equipment is now provided on line, again at a cost, such a cost can be disproportionate to small authorities.

**Advantages,**

The last two areas are also an advantage to TSS, as OPSS provide a service which tests metrological equipment and then published a pattern of approval for EU and UK equipment that is used by officers when testing Weights and Measures equipment in service.

The PA system has allowed many authorities to provide invaluable assistance to businesses of all sizes. Some authorities have become rather specialised in this area and offer specialist officers in a broad area of expertise. This provides a healthy income stream for those authorities able to capitalise.

Having a testing service provides traceability to National Standards for local authorities and their Local Standards and testing equipment, allowing for confidence in the accuracy of their measurements and testing services.

Policy is also developed through OPSS which often allows TSS authorities to feed up the chain in to areas that need expanding or reviewing.

**Q10** 6 candidates answered this question with varying degrees of success although none scored below 10 marks and a couple were in the twenties.

NTS are funded by BEIS more specifically by OPSS within BEIS. Their work extends across many areas. Money is also received from the Financial Conduct Authority to run the money lending team.

National Trading Standards was set up in 2012 by the Government as part of changes to the consumer protection landscape, to provide leadership, influence, support and resources to help



combat consumer and business detriment nationally, regionally and locally. It brings together trading standards representatives from England and Wales to prioritise, fund and coordinate national and regional enforcement cases. NTS fund national teams that are hosted within local authorities in regions throughout England & Wales

They provide specialist teams and helps local authority trading standards services work together to enforce consumer law against national and regional threats to fair trading and provides support for strategic decision making in other areas of work that NTS have been commissioned to have a role

The National Trading Standards Scams Team helps tackle mass marketing scams and disrupts the operations of perpetrators behind mail scams. It works in partnership with agencies across the country to identify and support victims of mass marketing fraud. The team provides guidance, best practice and establishes a centre of excellence to assist local authorities in supporting local victims and taking local enforcement action.

The Scams team launched an initiative with Royal Mail and Trading Standards Scotland to create a new process for cancelling the contracts of companies that send fraudulent mail. So far over 6,000 items of mail have been returned as part of the operation in the UK and more than £186,985 has been returned to victims.

They also provide funding for call blockers to be installed in the homes of vulnerable people Friends Against Scams is a National Trading Standards Scams Team initiative that aims to protect and prevent people from becoming victims of scams by empowering communities to... 'Take a Stand Against Scams.' It is designed to highlight the scale of the problem, change the perceptions of why people fall for scams and make scams a community, regional and national topic.

### **Trading Standards Scotland (TSS)**

Is the national team in Scotland. Funded by Department for Business Energy & Industrial Strategy (BEIS), managed by the Convention of Scottish Local Authorities (COSLA); the representative body of local government in Scotland.

TSS has a duty to coordinate and enforce cross boundary and national casework as well as undertake the specialist functions of tackling illegal money lending and e-crime. It is a resource intended to add capacity to local authority trading standards teams in these areas of activity. TSS has also developed an intelligence gathering and analysis function. This allows the national team to identify a picture of Level 2 criminal activity (activity that takes place across council and/or national boundaries) and has implemented a tasking and coordination process to determine the allocation of resource to tackle it.

For the financial year (2019/20), TSS has chosen to focus on seven specific problem areas:

- Doorstep Crime
- Misleading Energy Marketing
- Illicit Puppy Trade
- Counterfeit Goods Online
- IPTV (Illicit Streaming)
- Mobility Aids
- Secondary Ticketing

As an integral part of COSLA, TSS is at the heart of policy development for local government and works closely with a number of partners including Police Scotland, the Society of Chief Officers of Trading Standards Scotland (SCOTSS), Advice Direct Scotland, Citizens Advice Scotland and Scottish Government to strengthen protection for Scottish consumers.

They also have an illegal money lending unit, provide business advice and education