

BEIS Consultation

Reforming the framework for better regulation

Chartered Trading Standards Institute Response

September 2021

About The Chartered Trading Standards Institute

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

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

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

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

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

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

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

A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 260 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. CTSI's workforce survey data shows that since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.

Should you have any queries or wish to discuss the response please do not hesitate to contact Laura Kane, Interim Head of Policy laurak@tsi.org.uk.

Introduction

We welcome the opportunity to comment on this consultation. We have not answered all questions but have focussed on those areas of most direct interest to our organisation.

Question 1: What areas of law (particularly retained EU law) would benefit from reform to adopt a less codified, more common law-focused approach?

Question 2: Please provide an explanation for any answers given.

Question 3: Are there any areas of law where the Government should be cautious about adopting this approach?

Question 4: Please provide an explanation for any answers given.

In response to Questions 1-4, CTSI acknowledges the need to help business, and the UK economy as a whole to build back better with business support a key element. We do not believe though that a common law/case law approach will necessarily reduce burdens on business. Whilst this approach may be advantageous for larger businesses, it may result in increased costs and burdens to micro-businesses and SMEs in particular, who have less available resources for ongoing advice, support and legal interpretation and representation. A clear legal position with advice available from trading standards at a local level would support these types of businesses who are aiming for compliance but may not have the resources to understand and implement the legal requirements. The drive to find ways to simplify business compliance must be considered in the round, together with the impacts on regulators and consumers.

In terms of regulation, a common law/case law approach would add burdens to local authority regulators to provide advice, and ensuring advice is consistent at a local level may prove difficult. We have seen evidence of this during the COVID-19 pandemic, when there was no prescribed “price gouging” offence and a range of advice was provided by local authorities. Local authorities may also face more risk of legal challenge and may be unwilling to proceed with cases or advise businesses due to the risk caused by uncertain legal territory and a lack of prescribed standards.

Effective trading standards is intrinsically linked to building back better, helping consumers feel confident and businesses to engage in fair transactions both in the UK and internationally. At present, trading standards and other regulators are witnessing increasing levels of consumer vulnerability in the UK over the last two years. The long tail of the economic and social consequences of the COVID-19

pandemic have caused extenuating circumstances for UK consumers and business and unfamiliar and uncertain territory in the trade of even the most basic of consumer goods and services. It would be our view that adding more uncertainty via a common law or case law approach to regulations could further exacerbate consumer vulnerability and business instability.

Unfortunately, there are indicators that there is a lack of confidence among UK consumers about the consumer protection system. A recent CTSI Consumer Confidence Survey found that 56 per cent of consumers believe that current consumer protection laws are unfit for stopping negative experiences. Further, 51% said that public services protecting consumers from scams are underfunded. These are indicators that the first line of consumer protection in the UK is failing and this needs to be addressed. We do not believe that adopting a common law/case law approach will increase consumer confidence and in fact it may cause increased risk to consumers, with adverse experiences sapping consumer confidence.

The specific risks likely lie most in areas with current technical standards, for example, product safety, construction products, food products, and animal health and welfare. As a practical example, currently toy safety regulations require compliance with standard EN71. If this were to be replaced with a general principle that all toys should be safe, with no reference to relevant standards, and left it to the Courts to determine, there is then no base line for manufacturers and importers to operate, leaving more room for rogues to step in.

From experience of trading standards staff who advise businesses, codification gives certainty to businesses. We know that businesses want things to be straight forward, plain and with obvious routes to comply. Trading Standards as a profession share this desire, and in our response to the recent BEIS consultation on reforming consumer and competition policy, examples of where the law could be simplified/clarified have been provided. CTSI has been working recently with BEIS and DFT on travel law reforms and providing in depth practical advice on how legislation could be simplified and improved and we feel this is a preferable approach. CTSI has a network of subject area legal experts and we would wish to engage should there be any changes to the UK consumer protection framework so that we can input that practical expertise.

The Consumer Protection from Unfair Trading Regulations 2008 are, to some extent principles based, but even this legislation includes specific offences for banned practices. The reform consultation by BEIS is proposing to add additional specific requirements to these regulations which we wholly support. Given this approach has

been necessary in a general piece of consumer legislation, it is difficult to envisage how a purely principles-based approach would work in the more technical disciplines outlined above.

Question 5: Should a proportionality principle be mandated at the heart of all UK regulation?

Question 6: Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

Question 7: If no, please explain alternative suggestions.

In response to Qs 5-7, proportionality is already at the heart of trading standards regulation. Trading standards services work to make the best use of limited resources available and recognise the need to reduce burdens on business. Trading standards work is generally intelligence driven and with a focus on collaboration with other regulators and with business to provide support, advice and guidance, only using formal enforcement as a last resort.

CTSI is not aware that the precautionary principle has stifled innovation and would wish to better understand the evidence for this statement:

“...in practice, the precautionary principle can also sometimes result in the stifling of innovation or persisting with outdated practices that are not in line with more up-to-date scientific thinking or technological advances...”

Question 8: Should competition be embedded into existing guidance for regulators or embedded into regulators' statutory objectives? a. Embedded into existing guidance b. Embedded into statutory objectives c. Creating reporting requirements for regulators d. Other (please explain)

Supporting businesses through advice and guidance and ensuring a fair and safe trading environment is part of the operational approach of trading standards services and the Regulators Code ensures that this is done in an appropriate way for businesses.

Question 11: Should the Government delegate greater flexibility to regulators to put the principles of agile regulation into practice, allowing more to be done through decisions, guidance and rules rather than legislation?

CTSI would support agile regulation, particularly in the context of the rapidly shifting online trading environment, changing nature of consumer vulnerability and the move toward Net Zero. Guidance can provide flexibility but guidance in the absence of robust legislation can pose similar risks as outlined in the response to Questions 1-4

above. Trading standards services across the UK already operate flexibly, collaboratively and proportionally. A great degree of agility has been evidenced during the COVID-19 pandemic when trading standards, in collaboration with environmental health and other local authority colleagues, stepped outside of normal functions, responding to the needs of local authorities, business, consumers and the public at large, swiftly adapting to help deal with the multifaceted challenges caused by COVID-19.

As set out in CTSI's COVID-19 infographic¹, trading standards teams worked to help those most vulnerable in society; promote awareness of COVID-related scams; tackle consumer complaints relating to travel and wedding cancellations and found ways to deal with price gouging in relation to the sale of high demand products on online market places. In just one example, a trading standards imports team in the East of England examined almost 15,00,000 PPE items, with a significant proportion deemed unsafe or non-compliant and prevented from reaching users.

We have seen this agile response by trading standards time and time again, such as in the fuel crisis in the 1970s, the BSE crisis in the 1990s, the Foot and Mouth outbreak in 2001, and latterly the Grenfell Tower tragedy bringing unsafe electrical and construction products into focus. It would be CTSI's view that the importance to Government on maintaining a strong and robust, risk-based consumer protection system should take precedence over a move towards a common law approach to regulation.

Question 12: Which of these options, if any, do you think would increase the number and impact of regulatory sandboxes? a. legislating to give regulators the same powers, subject to safeguarding duties b. regulators given a legal duty c. presumption of sandboxing for businesses

Question 13: Are there alternative options the Government should be considering to increase the number and impact of regulatory sandboxes?

Question 14: If greater flexibility is delegated to regulators, do you agree that they should be more directly accountable to Government and Parliament?

Question 15: If you agree, what is the best way to achieve this accountability? If you disagree, please explain why?

¹ <https://www.tradingstandards.uk/media/documents/news--policy/covid-infographic-2021/covid-infographic.pdf>

Question 16: Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?

Question 17: Should there be independent deep dives of individual regulators to understand where change could be introduced to improve processes for the regulated businesses?

Questions 12-17 seem to be applicable only to areas where there is a single regulator. It is difficult to envisage how such principles could apply to local regulation.

Question 29: Which of the four options presented under paragraph 3.5.4 would be better to achieve the objective of striking a balance between economic growth and public protections? a. Adjust b. Change Reforming the Framework for Better Regulation 44 c. Replace d. Remove e. Other (please explain)

CTSI would urge that Government's approach goes beyond those aspects that are easily monetised and include those that cannot be given a financial value would give a better indication of the genuine impact of regulation. Implementations costs are often more easily assessed than the benefits and as such the positives of regulation tend to be underestimated.

Question 30: Should the One-in, X-out approach be reintroduced in the UK?

Question 31: What do you think are the advantages of this approach?

Question 32: What do you think are the disadvantages of this approach?

In response to Questions 30-32, CTSI consider that Regulations should be implemented on the basis of benefit and not via a mathematical formula. Government can ensure ongoing consideration of the appropriateness and necessity for regulation without a simplistic formula being used. Requirements placed on businesses should be proportionate and the penalties a fair representation of the detriment likely to be suffered by the injured party.

As outlined above any change to the UK consumer protection framework should be in consultation with regulators so that the impacts of proposed changes can be addressed in practical terms. A balanced approach if favourable in terms of simplifying regulation, with the needs of consumers and enforcers also considered.