

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

CONSUMER SCOTLAND BILL

SUBMISSION FROM WHICH?

1. What are your views on the Bill overall? How far do you think the Bill will achieve what it sets out to do? Are there gaps in the support currently available to consumers? How would Consumer Scotland fill these gaps? What priorities should Consumer Scotland have?

A. Which? was a member of the Scottish Government's Independent Working Group on Consumer and Competition Policy, and we agree with the Scottish Government that at present, the consumer landscape in Scotland is complex, with a range of different bodies responsible for policy-making, regulation, enforcement, advocacy and advice.

Scottish consumers spend more than £8 billion every month and a healthy economy depends on consumers feeling confident in how, when and where they spend their money. Yet too many markets today fail Scottish consumers. With the acceleration of digitisation and data collection, the growth of new ways of purchasing goods and services as well as the inevitable changes associated with exiting the EU, consumers need to be confident that their rights keep pace and evolve in tandem.

We therefore welcome the creation of a dedicated publicly-funded consumer protection body with consumer and competition expertise. As an investigatory body, focused on identifying and tackling consumer detriment, the proposed Consumer Scotland would plug the current gap and make the support available for consumers more transparent and less complex. Its role would be distinct from other publicly-funded bodies that focus on "citizens" issues and its remit will cover consumer-centric issues, offering solutions to the markets where the risk or experience of consumer detriment is high.

All public bodies should consider consumer interests both throughout their policy making processes and when making decisions of strategic importance. The proposed Bill provides Consumer Scotland with the necessary powers to adequately represent consumer interest and achieve its stated aim of improving support for Scottish people.

If used effectively, this should help to ensure that issues that impact on Scottish consumers are also identified and addressed. Which? has been active in Scotland for more than twenty years and during this time, we have evolved our work to reflect the specific challenges to Scottish consumers. There is for example significant consumer detriment in the declining availability of cash, the disparity in digital connectivity between regions and communities in Scotland, and in the regulation of legal services. Consumer Scotland could use its investigatory powers to undertake specific research into these areas to illustrate the challenges that Scottish consumers are facing and to articulate how industry and Government could do more to solve these issues.

2. The Scottish Government recognises that there are already many organisations working with consumers in Scotland. The Bill would therefore require Consumer Scotland to work in collaboration with other bodies where appropriate. How does Consumer Scotland fit in with other bodies operating in this sector? How could Consumer Scotland help streamline services? Will the legislative provisions ensure Consumer Scotland does not duplicate existing work?

Many bodies interact with consumer rights either directly in their operations, or more broadly within their remit. Therefore the responsibilities and scope for action of Consumer Scotland must be clear

so as not to duplicate the efforts of other bodies or lead to unnecessary conflict. For example, Citizens Advice Scotland will cover off 'citizen' issues, such as welfare and public health, whereas Consumer Scotland will operate in respect of consumer issues, using its research and investigatory powers to identify current and future practices that might result in detriment to the consumer. The Competition and Markets Authority (CMA) will retain responsibility for tackling many areas of detriment, using both its competition and consumer powers, but Consumer Scotland will have an important role in identifying areas where there is harm and the CMA needs to act.

A memorandum of understanding should be created between Consumer Scotland, CAS, the CMA, Trading Standards Scotland and other key bodies, so as to maintain a clear distinction in priority areas and remit, as well as where co-operation and sharing of information is essential. These bodies should collaborate and support each other. Consumer Scotland will also need to hold positive relationships with other stakeholders, such as Which?.

3. The Bill would provide Consumer Scotland with powers to provide advice; represent the views of consumers; collect information; organise research; and carry out investigations. Scottish Ministers are able to add to, vary or remove functions as required. Do you think Consumer Scotland has the necessary powers to make a difference to consumers in Scotland?

Within the context of the Scottish consumer landscape, the Consumer Scotland Bill provides the body with adequate powers to investigate and research areas of possible detriment for people in Scotland. The body will then be able to use this research to advocate on behalf of consumers and offer solutions where appropriate.

However, it is vital that the body is fully resourced with a robust budget if it is to exercise its powers and achieve its stated aims. The Scottish Government must provide assurances that Consumer Scotland will have adequate funding to commission qualitative and quantitative research to support its in-house policy work. As Consumer Scotland enters its second and third years of operation, we would expect to see an increase in spending on research to enable the body to deliver against its stated purpose.

4. Consumer Scotland would have a duty to consider the interests of vulnerable consumers, including disabled, older, low income and rural consumers. Do you think the creation of Consumer Scotland will make a difference to your consumer problems, or the problems of the consumers that your organisation deals with?

In order for Consumer Scotland to be able to deliver its advocacy objectives for people in Scotland, the definition of 'vulnerable consumers' should be broadened in the Bill. The CMA has conducted research into this issue, concluding that a vulnerable consumer does not have to be older or from a lower income background, as is sometimes suggested. Vulnerability arises in situations where the retailer/ service provider is in an advantageous position, due to the consumer's lack of understanding of the market, lack of awareness of their rights, or even emotional vulnerability (for example, during a time of bereavement when interacting with the funeral services market).

There are many life events that can make a consumer more vulnerable; whether this is a short term occurrence impacting a single transaction, or a longer term factor like age that presents the potential for ongoing vulnerability. For Consumer Scotland to truly deliver results within its remit, these definitions of vulnerability should be encapsulated in its advocacy work.

5. Most consumer protection powers are reserved to the UK Parliament. Consumer Scotland won't be able to change reserved laws or require UK-wide bodies to do anything. Will this limit how effective it can be? How should Consumer Scotland tackle consumer issues which are affected by reserved powers?

The powers scheduled to be granted to Consumer Scotland, if used effectively, should enable the body to seek change in the areas likely to be identified in its work plan. Given the scope of powers available to the Scottish Government, Consumer Scotland appears to be proportional. The body can research and make proposals based on this research on any areas falling within the 'consumer' remit.

Even if responsibility for some or all powers in a policy area is reserved to the UK Government or UK-wide regulators, this should not impact Consumer Scotland's ability to exercise its powers of research and investigation. It can then use these powers to advocate effectively either to devolved or central government or to regulators to reduce the consumer detriment in that particular area. Whether or not a power is reserved, the logic for influencing on behalf of consumers in that space remains the same, as does the importance of thorough and robust investigatory research.

6. The Scottish Government intends that information about consumer problems will be widely shared between organisations so that action can be prioritised (see the Policy Memorandum, paragraphs 21 and 22). There are legal and organisational barriers to this sort of information sharing. Do you think it can be achieved in practice?

Organisations working with a common consumer purpose should share research and insight wherever possible. Which? undertakes regular surveys and polls and make this data available as often as we can. We also regularly seek data from organisations and bodies who have the information we need to contextualise our work and understand where consumer detriment is greatest.

It will be important that Consumer Scotland can access the breadth of data that exists across government and ideally with businesses and other relevant stakeholders to inform its work. It needs to be able to identify emerging issues that will affect Consumers Scotland and will be in a unique position to bring together and analyse data from a wide range of sources. We would also expect Consumer Scotland to share its research and insight with relevant stakeholders as well as making it publicly available.

As long as data is anonymized and GDPR observed, there would be no reason why data of this nature could not be shared between organisations. Which? commonly shares its data externally, often in pursuit of our advocacy objectives. Similarly we have often received data from other organisations that can aid us in this work.

7. The Bill creates a new duty on public bodies to consider the impact of their policies on consumers. How can Consumer Scotland ensure that this makes a practical difference to consumers? How do you think the duty should operate?

We strongly support the introduction of this duty on public authorities which should ensure that consumer interests are more explicitly considered and advanced. There should be open reporting and monitoring of how this duty is acted upon. This will ensure that the duty is operating effectively in improving consumer outcomes across all public bodies.

8. Are there any other aspects of the Bill you would like to comment on?

We would suggest that there are several additional areas where the Bill could better serve the ultimate goal of improving consumer experience in markets where currently there is the potential for detriment by ensuring that Consumer Scotland is sufficiently independent and robust

- An independent Board

The composition of the Consumer Scotland Board will be important in ensuring impartial but passionate advocacy from those involved. We would suggest a public declaration of interests for members and open board meetings, as is the practice with Food Standards Scotland. These measures will help to improve the transparency of the body and allow it to clearly communicate how its ways of working ultimately serve the consumer interest. It will also help to ensure that consumers in Scotland can have confidence in the new body from the outset.

- Research budget

As mentioned earlier in our submission, we would urge that the budget for research is expanded once Consumer Scotland is fully established and enters its second/ third years of operation, so as to provide a robust source of funding for the varied investigatory work that Consumer Scotland would need to undertake.