
Which?, 2 Marylebone Road, London, NW1 4DF
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Consultation response: The Scottish Government's consultation to establish a consumer body for Scotland

About Which?

Which? is the largest independent consumer organisation in the UK with more than 1.3 million members and supporters. We operate as an a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to tackle consumer detriment by making individuals as powerful as the organisations they have to deal with in their daily lives. Which? empowers consumers to make informed decisions and campaigns to make people's lives fairer, simpler and safer.

Summary

Which? welcomes the opportunity to respond to the Scottish Government's proposal to establish a consumer body for Scotland. This follows on from our previous contribution to the Working Group on Consumer and Competition Policy in Scotland.

We broadly welcome the proposal to establish a new body with a clear focus on investigating issues and proposing solutions solely from a consumer perspective, along with a wider duty on public authorities to consider the impacts on consumers of their policies or decisions.

The governance of Consumers Scotland and the relationship that the new body has with other parts of the consumer landscape needs to be clearly defined as they will determine its success, ensuring that it is a strong advocate for consumers and not merely another body in a landscape that is already complex.

Introduction

We welcome the Scottish Government's commitment to advance consumer interests within Scottish policy-making. This follows the devolution of powers in relation to consumer advocacy and advice in the Scotland Act 2016, as well as provision to allocate levy funds from the energy and postal sectors to fund consumer advocacy and advice and the power, in certain circumstances, to refer a market for investigation by the Competition and Markets Authority (CMA).



Consultation questions

1. Do you have any comments on the consumer landscape in Scotland?

The current consumer landscape is complex, with a range of different bodies responsible for policy-making, regulation, enforcement, advocacy and advice within Scotland as well as the UK. It is timely to review the extent to which this landscape can meet the challenges facing consumer protection and ensure it can respond to specific issues facing Scottish consumers. This includes innovations within markets, technological developments and potentially, changing trading patterns and relationships as the UK leaves the EU.

The Scottish Government's proposals focus on strengthening the consumer advocacy arrangements within Scotland, which we welcome. Our investigations and research have highlighted a range of issues where a more proactive approach is needed to tackle consumer detriment – from unfair trading practices, including pricing practices through to the risk to health from unsafe consumer products.

We also have specific concerns that the current system of consumer enforcement is in urgent need of reform - and so actions that can help to ensure that it is working more effectively in consumers interests are needed. This includes the extent to which consumers are able to enforce their own rights, through effective alternative dispute resolution (ADR) and how the current system of consumer enforcement is operating. At the moment, the public enforcement system is heavily reliant on the work of local authority Trading Standards departments. Audit Scotland has previously raised concerns about the weaknesses of this approach.

Which? would like to see greater centralised responsibility and prioritisation and therefore welcomed BEIS's proposal in the *Modernising Consumer Markets* Green Paper, that there should be a UK-wide consumer body established. This could, for example, be achieved by strengthening the consumer enforcement role of the Competition and Markets Authority (CMA), along with a central body that has responsibility for consumer product safety. The ability for any new body to understand and responds to the issues facing Scottish consumers will be essential - and the proposed new body, Consumers Scotland, could make a valuable contribution to this.

2. Do you agree with the proposed functions of Consumer Scotland?

It is proposed that Consumer Scotland would be an investigatory body, focused on tackling issues where there is a high level of consumer detriment which will require concerted and often collaborative action to address.

We can see value in establishing such a body as it would be filling an important gap within the landscape. Its role would be distinct from advocacy bodies that already exist, including Citizens



Advice Scotland as it would be responsible for conducting a small number of in-depth inquiries and proposing solutions.

We agree that the body must be independent, established by statute and arms' length from the Scottish Government so that it can set its own priorities and conduct investigations where they are needed. Its governance will be crucial for ensuring that it can do this effectively – including a board and leadership comprised of strong expertise relevant to consumer issues and which will be trusted to act in the consumer interest.

There must not be any conflicts of interest. The body must also operate transparently. Lessons can be learned from the creation of Food Standards Scotland, which holds its board meetings in public for example.

We also agree that the expertise within the new body will be crucial, if it is to be able to fulfil its responsibilities effectively. It must also engage consumers in its work and understand their perspectives through consumer research, as well as their behaviour.

The new body must be adequately resourced and we believe that greater clarity from the Scottish Government in advance of its establishment on the budget that will be made available would build confidence that Consumer Scotland will be effective.

Clarity of roles, responsibilities and relationships with other bodies in the landscape will be needed. It needs to be ensured that the new body helps ensure the landscape is more responsive to consumer needs, rather merely making the landscape more complex and causing confusion between the roles of the various bodies within it.

There should be a review of the impact that the body is having after its establishment to ensure that it is making a positive difference.

3. Which powers and duties would you like Consumer Scotland to have, in order to carry out its proposed role?

Consumer Scotland needs to be underpinned by statutory powers to gather evidence and so that its recommendations have to be taken seriously by other parts of government. It should therefore have investigatory powers. It should also have powers to publish the advice that it gives to Ministers.

4. What are the criteria that would constitute a specifically Scottish consumer issue?

We agree that legal services, parcel deliveries and the effectiveness of the wider consumer protection landscape are all issues that would fall within Consumer Scotland's remit as they raise specific issues for Scottish consumers.



The issues that Consumers Scotland focuses on should be either:

- Consumer issues that are specific to Scotland because they are devolved or because of the nature of the market, the businesses/ providers or other circumstances specific to Scotland (eg. geography).
- UK-wide issues that have a specific Scottish dimension or may need a different solution in Scotland – for example because the issue may be more pronounced, affects consumers in a different way or it could require different solutions.

It should avoid duplicating the work of UK organisations.

Banking would be an example of an issue falling under the second bullet point as although it is UK-wide, Scottish consumers may be faced with specific issues or disproportionately by UK-wide issues, such as bank branch closures and access to ATMs.

Other services where there are similar, uniquely Scottish aspects that differ from the wider UK, include telecoms services such as broadband and delivery charges for example.

There may also be some competition issues eg. mergers of major supermarkets, such as the current proposed merger between Asda and Sainsbury's where there may be a specific Scottish dimension that Consumer Scotland could ensure was being considered by the CMA. It must however avoid duplicating the work of the CMA and its Scottish office.

5. Which criteria might Consumer Scotland consider when assessing the level of harm needed to be reached before an investigation is pursued?

Consumer Scotland will not be a competition authority and so care is needed in treating it in too similar way in terms of how it would instigate an investigation into an issue. It would be for Consumer Scotland to highlight evidence of consumer harm that could in turn trigger a potential investigation by the CMA or other regulators. Consumers Scotland must be focused on advocacy, rather than conducting work that is the responsibility of CMA or other regulators.

It is important that Consumer Scotland focuses its investigations on areas where there is evidence of consumer harm within a market or part of a market and that it is able to look at issues where a lot of consumers are likely to have been affected or at risk of harm – as well as those that affect a smaller number or specific group of consumers but there is particularly significant harm.

We welcome the proposal that a consumer scoreboard could act as a forerunner to the process of gathering and assessing consumer harm across Scotland and help to identify the priority issues for the new body.



6. Are there additional functions you think Consumer Scotland should have to allow it to deliver impacts for consumers in the current landscape?

The body should have an over-arching scrutiny role that goes beyond specific projects, ensuring that across the Scottish Government, issues that will have most impact on consumers are understood and are addressed. This should include oversight of how public bodies are applying the proposed duty to consider how their policies or decisions impact on consumers.

Consumers Scotland should also be a source of consumer expertise that other parts of the Scottish Government can draw on.

7. Are there any additional functions Consumer Scotland should have that will enable it to adapt and respond to future consumer challenges?

Consumer Scotland must have an horizon scanning role, ensuring that it could identify emerging issues with implications for consumers and their protection. It would need to work with other bodies and regulators, within Scotland and the UK to do this. This will require specialist expertise and effective networking. It should be a central hub for this intelligence.

8. What are your views on the current consumer advice system? How could it be strengthened?

9. What are your views on how the Scottish Government could improve how it commissions and funds advice to individuals?

The consumer advice system is an important source of intelligence that needs to feed in to the work that is done across the consumer landscape, helping to ensure that issues facing consumers are identified early and acted upon. It will therefore have an important relationship with Consumer Scotland.

More should be done to improve the sharing, compatibility and use of data that comes from complaints and combining this with other sources of intelligence in order to ensure that the system is able to respond to new or emerging threats for consumers.

We welcome the pilot project to look at uniting online complaints company Resolver with the telephone services of Citizens Advice Direct with the intention of creating a “more seamless complaint journey”.

10. How can advocacy develop greater capacity to bring change for consumers?

There is potential to explore the consumer challenge type model that the Water Industry Commission for Scotland (WICS) has successfully developed so that consumer perspectives are taken into account by Scottish Water. There is potential to expand this model across a wider range of public, as well as private, providers so that they develop mechanisms to engage with their customers directly and take into account their interests. This is distinct from marketing activities.

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More generally, Consumers Scotland will have an important role promoting consumer engagement across the Scottish Government and public bodies, promoting the involvement of consumers and their representatives in the most effective way to shape policy and decision-making and drawing on consumer research and other sources of consumer intelligence.

11. What are your views on whether there should be a duty on public authorities to consider the impacts on consumers of policies or decisions?

We support the introduction of this duty on public authorities which should ensure that consumer interests are more explicitly considered and advanced. A requirement to report on how this duty is acted upon should also be considered.

12. Beyond the actions set out how should the Scottish Government use its resources and powers to improve outcomes for consumers?

We have highlighted our concerns about consumer enforcement. Although enforcement is not devolved, the Scottish Government does have responsibility for the local authorities that carry out much of this work. This should therefore be a particular area for action. The resources and expertise within the system need to be used more effectively to ensure that risks are identified and enforcement is addressing areas of most consumer harm.

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