

Analysis of responses to the Consultation on A Consumer Body for Scotland

Why Research, November 2018

Acknowledgments

Thanks to the individuals and organisations who responded to the consultation and to all at the Scottish Government who provided input and offered advice as required.

Contents

Contents	2
Executive Summary	1
Respondent Profile	1
Main Findings: The current consumer landscape in Scotland	1
Main Findings: Consumer Scotland	2
Main Findings: Scottish Government action	4
Consumer advice	4
Consumer advocacy	4
Consumer duty	5
Introduction	6
Background	6
Respondent Profile	6
Methodology	7
The current consumer landscape in Scotland	9
Consumer Scotland	12
Scottish Government action	21
Consumer advice	21
Consumer advocacy	23
Consumer duty	25
APPENDIX: Respondent Organisations	29

Executive Summary

The Scotland Act (2016) transferred new powers relating to three key areas including competence for consumer advocacy and advice. There is evidence that in specific markets, Scottish consumers behave differently and have different needs from consumers in the rest of the UK, although there is no mechanism that delivers improved, targeted outcomes specifically for Scottish consumers. The 2016 SNP manifesto committed to a new statutory body to support consumers; this is envisaged as an investigatory body, focusing on tackling issues where there is a high level of consumer detriment, and which need concerted and collaborative action to address.

On 4 July 2018 the Scottish Government launched a consultation on '*A Consumer Body for Scotland*' seeking views on the proposed powers and functions of this new statutory body, Consumer Scotland.

Respondent Profile

A total of 58 responses were received; 43 from organisations and 15 from individuals.

Respondent Groups	
	Number
Advice body/consumer org/complaint resolution	18
Local Authority / trading standards	5
Industry / trade body	7
Utility / energy	8
Public body	3
Other	2
Total organisations	43
Individuals	15
Total respondents	58

Main Findings: The current consumer landscape in Scotland

Around half of those responding echoed comments made in the consultation paper, noting that the consumer landscape in Scotland is fragmented, complex, disjointed and / or confusing to navigate. There were also some comments that there are inconsistent levels of service due to the range of different bodies responsible for policy making, regulation, enforcement, advocacy and advice.

Respondents also referred to the loss of local authority trading standards advice services which has left a gap in advice available to consumers.

There was support for the establishment of a national body such as Consumer Scotland; this was seen as helping to provide a more consistent and unified approach to support for consumers. Respondents identified a range of roles or areas of focus for Consumer Scotland, including the need to address gaps in the current landscape and identify emerging markets where advice and advocacy is needed, and to build on and enhance the structures and relationships that already exist. There were also some references to the need for partnership working between Consumer Scotland and other organisations in the advocacy and advice sector, as well as the need to avoid duplication of effort.

Only a small number of respondents were unsupportive of the establishment of Consumer Scotland, and key concerns were that this could lead to duplication of effort or that it would add to confusion for consumers, given that some policy responsibility remains with the Westminster Government.

Main Findings: Consumer Scotland

The proposed functions of Consumer Scotland

A majority of those responding to this question agreed with the proposed functions of Consumer Scotland, and only a very small number disagreed, although a large number of respondents opted not to provide a response. A key theme was one of broad support for the proposal and a number of respondents reiterated their support for elements of the consultation paper, for example, the importance of independence or the need for Consumer Scotland to be staffed by experts. However, some respondents noted the need for adequate funding.

A key theme was the need for clarity over the relationship between Consumer Scotland and other public bodies with responsibility for consumer protection, and how the new body would fit with existing organisations in the consumer protection landscape. Allied to this, there were requests for clarity on the scope of the powers for the new body and how these would be communicated to consumers.

There were some concerns over the potential for the new body to duplicate work already conducted by other consumer protection organisations such as Citizens Advice Scotland or its bureaux, and some respondents highlighted the need for effective coordination across the sector. A small number of respondents noted the importance of UK-wide consumer protection organisations with which Consumer Scotland should operate.

There were some requests for information on the sector in which Consumer Scotland would operate.

Powers and duties for Consumer Scotland

There was some support for the powers and duties outlined in the consultation paper, although there were some comments on the need for the duties to be clearly

defined to avoid duplication of roles and responsibilities. A wide range of specific powers and duties for Consumer Scotland were outlined.

There were a small number of references to the need to have a strong network with regulators that is underpinned by agreements that take into account the established expertise of other organisations.

Criteria that would constitute a specifically Scottish consumer issue

A number of those responding to this question noted that a specific Scottish consumer issue could include any matters falling under devolution, although there was also a degree of acknowledgment that some consumer services, such as water, would impact on a wider UK population. Some respondents commented that any issue affecting consumers in Scotland should be considered a specifically Scottish consumer issue; others noted instances where Scottish consumers are disproportionately affected in comparison to the rest of the UK. There was also some reference to Scottish geography or the location of consumers affected.

Criteria to be considered when assessing the level of harm needed to be reached before an investigation is pursued

Respondents referred to a wide range of criteria that could be considered, including where there are specific issues with vulnerable customers, the number of individuals affected, the prevalence of issues, the level of harm to individual consumers and potential future impact.

There was some reference to definitions or approaches that have been adopted by other organisations and which could be considered by Consumer Scotland. Some respondents also noted that consideration should be given as to whether other public authorities such as Trading Standards Services were better placed to deal with specific issues, and a small number of respondents suggested Consumer Scotland should focus on unregulated sectors.

Possible additional functions for Consumer Scotland

There were some comments of a need for Consumer Scotland to have a wide remit and a capacity to respond to issues in a speedy manner. Key themes that emerged were that Consumer Scotland should have a function to oversee or coordinate advice services so as to ensure consistency and expertise in the quality of advice and levels of service offered; to store data centrally, and to collaborate with other organisations which have a consumer focus.

Once again, there was reference to the need to ensure that any organisations have clear roles and responsibilities so as to avoid any duplication in services offered.

There were some requests for Consumer Scotland to be able to ensure that consumers have access to advice and redress services; and some reference to the need for promotion or lobbying for a prevention agenda as well as consumer awareness and education.

Additional functions that would enable Consumer Scotland to adapt and respond to future consumer challenges

A key theme to emerge at this question was a suggestion for Consumer Scotland to have a 'horizon-scanning' role in order to check what future developments might occur, both within specific sectors and across the consumer landscape as a whole.

Another key theme was the need for Consumer Scotland to work with other bodies and regulators in Scotland and the UK.

Main Findings: Scottish Government action

Consumer advice

Views on the current consumer advice system

Comments on the current consumer advice system focused on the fragmented, inconsistent and complex nature of the current landscape. A wide range of suggestions were made as to ways in which the consumer advice system could be strengthened; these included the need for consumer bodies to work together to create consistency in advice available and better coordination of services.

A key theme was the suggestion for a single coordinating organisation offering a single point of entry to consumer protection, which would allow for accessibility to all, access to specialist agencies, consistency in available advice, better coordination across the sector and streamlining the landscape. There were also comments of a need for a funding regime that would help sustain advice and advocacy for consumers.

Views on how the Scottish Government could improve how it commissions and funds advice

Views on how the Scottish Government could improve how it commissions and funds advice often echoed points made in response to earlier questions such as the need for long term funding to help build sustainable capacity, the need to share data across organisations or the need for Consumer Scotland to be a one-stop-shop.

A few respondents referred to other work that has been carried out and to which the Scottish Government could refer.

Consumer advocacy

A key theme which emerged in relation to how consumer advocacy can develop greater capacity to bring change for consumers, included the importance of having an independent and / or representative voice to support consumers. There was also some reference to the benefit of development of a customer scoreboard to provide a solid evidence base to identify areas where consumer detriment is occurring. There was also some support for the proposal that CAS would maintain its advocacy powers.

Consumer duty

Views on whether there should be a duty on public authorities to consider the impacts on consumers of policies or decisions

Most of those responding to this question felt there should be a duty on public authorities to consider the impacts on consumers of policies or decisions, albeit that some made qualifying statements in relation to their support, the key comment being the need to have a clear definition of who consumers are.

Only a very small number of respondents noted their opposition to the introduction of this duty.

How Scottish Government should use its resources and powers to improve outcomes for consumers

There were some suggestions for ways of improving consumer representation and engagement. A number of respondents echoed points made in response to earlier questions including the need to prioritise consumers and create a culture that places the interests of consumers at the heart of policy and decision-making, supporting consumer choice and driving consumer engagement, simplifying the consumer landscape, the need for medium and long term funding and reviewing how data is recorded, collated and shared.

Introduction

Background

1. The Scotland Act (2016) transferred new powers relating to three key areas. First, competence for consumer advocacy and advice. Second, giving the right to Scottish Ministers to act with the UK Secretary of State to refer a market for investigation by the Competition and Markets Authority (CMA) where there are reasonable grounds for suspecting that competition within a market is being prevented, restricted or distorted. Third, devolution of the Competition Appeal Tribunals to the Scottish Court and Tribunal Service.
2. There is evidence that in specific markets, Scottish consumers behave differently and have different needs from consumers in the rest of the UK, although there is currently no mechanism that delivers improved, targeted outcomes specifically for Scottish consumers. In June 2015, the Working Group on Consumer and Competition Policy for Scotland was established. The remit of the Working Group – supported by five Expert Panels – was to consider optimal arrangements for the consumer protection and competition landscapes and to advise the Scottish Government (SG) on how best to deliver their vision for consumers. The report of the Working Group, published in November 2015, recommended the establishment of a new statutory body in Scotland to support consumers. In response to this report, the SG set out seven key actions aimed at protecting consumers and competition, including working with partners to strengthen consumer support and ensuring Scotland has competitive and fair markets.
3. This new statutory body to support consumers formed part of the SNP 2016 manifesto commitment and it was envisaged this would be an investigatory body, focusing on tackling issues where there is a high level of consumer detriment, and which will need concerted and collaborative action to address.
4. On 4 July 2018, Jamie Hepburn, Minister for Business, Fair Work and Skills launched '*A consultation on A Consumer Body for Scotland*' seeking views on the proposed powers and functions of this new statutory body – Consumer Scotland. The consultation also invited views on general Scottish Government policy for consumers, including providing more holistic advice services, improving the impact of consumer advocacy and increasing the consideration of consumer interests in public policy-making, potentially through development of a statutory duty for public authorities in Scotland. The consultation closed on 28 September 2018.

Respondent Profile

5. A total of 58 responses were received: 43 from organisations and 15 from individuals.

6. Respondents were assigned to respondent groupings in order to enable analysis of any differences or commonalities across or within the various different types of organisations and individuals that responded.
7. A list of all those organisations that submitted a response to the consultation and agreed to have their name published is included in Appendix 1.
8. The following table shows the numbers of responses in each analysis group. The largest organisation sub-group was advice body/consumer org/complaint resolution, with smaller numbers in other sub-groups.

Respondent Groups	
	Number
Advice body/consumer org/complaint resolution	18
Local Authority / trading standards	5
Industry / trade body	7
Utility / energy	8
Public body	3
Other	2
Total organisations	43
Individuals	15
Total respondents	58

Methodology

9. Responses to the consultation were submitted using the Scottish Government consultation platform Citizen Space or by email or hard copy.
10. It should be borne in mind that the number responding at each question is not always the same as the number presented in the respondent group table. This is because not all respondents addressed all questions; some commented only on those questions or sections of relevance to their organisation, sector or field of interest. The report indicates the number of respondents who commented at each question.
11. The researchers examined all comments made by respondents and noted the range of issues mentioned in responses, including reasons for opinions, specific examples or explanations, alternative suggestions or other comments. Grouping these issues together into similar themes allowed the researchers to identify whether any particular theme was specific to any particular respondent group or groups.

12. When looking at group differences however, it must be also borne in mind that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups did not share this opinion, but rather that they simply did not comment on that particular point.
13. While the consultation gave all who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to a wider population outwith the respondent sample.
14. A small number of verbatim comments, from those who gave permission for their responses to be made public, have been used in the report to illustrate themes or to provide extra detail for some specific points.

The current consumer landscape in Scotland

15. The consultation paper noted that the division of responsibility for protecting consumers is complicated and any action taken by the Scottish Government to improve consumer outcomes must and will respect the areas of consumer protection which remain reserved to the UK Government. However, the devolution of limited powers provides scope to develop a consumer policy that focuses on creating a culture that prioritises consumer fairness, and more effective mechanisms to redress unfairness where it occurs.

16. The first question asked,

Q1: Do you have any comments on the consumer landscape in Scotland?

17. A total of 49 respondents, across all sub-groups, opted to provide comments in response to this question.

18. Around half of these respondents echoed comments made in the consultation paper and noted that the consumer landscape in Scotland is fragmented, complex, disjointed and / or confusing to navigate. Some of these respondents commented that there are inconsistent levels of service as there is a range of different bodies responsible for policy making, regulation, enforcement, advocacy and advice. These comments came primarily from organisations within the Advice body/consumer org/complaint resolution sector, local authorities / trading standards and individuals. Typical of the comments emerging in response to this question was,

“From the consumer perspective the landscape appears fragmented. This has the effect that it can be difficult for consumers to navigate their way through the options available and sometimes not easy to understand what those options are. Access to mediation to enable early dispute resolution is patchy across Scotland and depends on both the route of access and geographical location. In both cases the information to consumers could do more to inform consumers their choices, about mediation and how to access it.”

(Advice body/consumer org/complaint resolution)

19. Several respondents also noted that there has been a loss of local authority trading standards advice services and this has left a gap in what is available to consumers or that consumers are not receiving the quality of advice they need. Indeed, a small number of respondents referred to the 2013 Audit Scotland report¹ which had noted ‘the long-term viability of councils’ trading standards services is under threat and urgent action is needed to strengthen protection for consumers’. A small number of local authorities noted that some Trading Service Standard (TSS) authorities run local trader registration schemes but that these are not always compatible

¹ Protecting Consumers

with others and the number of available schemes can be confusing to consumers.

20. A number of respondents, across most sub-groups, noted the need for a national body such as Consumer Scotland to be established as this would help to provide a more consistent and unified approach to support for consumers. Other comments made by small numbers of respondents also referred to the need for an organisation that can focus on Scotland-specific issues, or the need to recognise differences in the Scottish market. There were also a small number of comments on the need to ensure that Consumer Scotland receives adequate core funding.

21. A number of respondents focused on the roles or areas of focus for Consumer Scotland. These included the need:

- For their remit to include services and goods from the private and public sectors.
- To address gaps in the current landscape and identify emerging markets where advice and advocacy is needed.
- To build on and enhance the structures and relationships which already exist.
- To ensure there is a focus on understanding how consumers may suffer detriment or unfairness to ensure that consumers who are unaware of harm are protected.
- To provide better information for consumers so they can make informed choices.

22. A small number of respondents also referred to the structure of Consumer Scotland and the need for a clear statutory basis for the organisation, with strong strategic oversight and strong leadership, independent and accountable to Scottish Ministers, with its governance and accountability to be aligned with the delivery of outcomes.

23. Several respondents also noted the need for partnership working between Consumer Scotland and other organisations in the advocacy and advice sector, including Citizens Advice Scotland (CAS) and the Citizens Advice Bureaux (CABx), with a small number of these respondents referring to a need for the Scottish Government to align with UK-wide protection partners. A small number of respondents commented on the need to work with existing organisations to avoid duplication of effort. Several respondents – primarily within the local authority / trading standards sector – commented on other providers in the sector, for example, making positive comments about the role of CMA in Scotland or that CAS and CABx provide a good local service and the need to continue with these services.

24. There was comment from a small number of respondents of a need for effective Alternate Dispute Resolution (ADR).

25. A small number of respondents were not supportive of the establishment of Consumer Scotland, with key comments that:

- There is no need for a separate Scottish consumer organisation.
- This will add to confusion for consumers given that some policy responsibility remains with the Westminster Government.
- This will lead to a repetition and duplication of work.
- There is a need for more or better information so that consumers can make informed choices.

Consumer Scotland

26. The consultation paper noted that addressing consumer challenges in Scotland requires a mechanism to:

- Synthesise the abundance of evidence and data of consumer harm produced by the wide range of consumer-focused organisations;
- Identify the most serious or pressing issues leading to consumer detriment;
- Develop and champion evidence-based solutions to tackle those issues.

27. It proposed establishing Consumer Scotland to take on this role. The consultation paper proposed that Consumer Scotland will be an independent body, established by statute and at arms-length from the Scottish Government, be staffed by experts, be user-focused and have the capacity to drive change. Its focus will be selective, Scotland-focused and transparent.

Q2: Do you agree with the proposed functions of Consumer Scotland?

Question 2

	Yes	No	Don't know	No reply
Advice body/consumer org/complaint resolution (18)	4	-	-	14
Local Authority / trading standards (5)	4	-	-	1
Industry / trade body (7)	3	-	-	4
Utility / energy (8)	-	-	-	8
Public body (3)	-	-	-	3
Other (2)	1	-	-	1
Total organisations (43)	12	-	-	31
Individuals (15)	4	3	3	5
Total (58)	16	3	3	36

28. Respondents were invited to explain their answer and 41, cross all sub-groups, took the opportunity to comment.

29. A key theme was one of broad support for the proposal and a number of respondents reiterated elements of the consultation paper, for example, the importance of various elements such as the need for independence, to be staffed by experts and so on. One issue raised by some of these respondents was the need for adequate resourcing. Respondents also highlighted a wide range of areas where it was felt Consumer Scotland

should have responsibility; these included information, education, advice, advocacy, redress, dispute resolution and research.

30. A key theme emerging from respondents was the need for clarity over the relationship between Consumer Scotland and other public bodies with responsibility for consumer protection, with some requests for clarity on the scope of the powers of the new body, how these would be communicated to consumers and how they would fit with existing organisations in the consumer protection landscape.
31. While there was broad support for Consumer Scotland, there were also some comments that it should not duplicate work that is already carried out by other consumer protection organisations, with specific reference to Citizens Advice Scotland and the Citizens Advice Bureaux.
32. A small number of respondents felt that the functions identified do not warrant a new organisation and commented that the establishment of Consumer Scotland could lead to repetition and duplication of activities, particularly if the roles of each are not clearly defined.
33. Several respondents also requested information on the sectors in which Consumer Scotland would operate, for example, whether its remit would extend to the energy sector. While some respondents highlighted existing Scottish-based organisations with which Consumer Scotland would have to operate, a few others noted the importance of UK-wide organisations.
34. Alongside these comments, some respondents noted there is potential for duplication of effort or conflicts of interest, and highlighted the need for effective co-ordination across consumer protection organisations. As noted by one organisation in the utility / energy sector,

“... in determining the functions of Consumer Scotland, the Scottish Government should give careful thought to defining these and ensuring that all participants within the current consumer landscape understand their relevant functions (and any associated interdependencies). Any hierarchy of responsibilities between the consumer bodies should also be made clear. For example, where more than one organisation has an interest in a particular issue, it will be important to understand which organisation’s views or interests take priority.”

35. There were a small number of comments that the vision for the proposed agency is limited and that it should have a broader role, be forward-thinking and fill the current gaps in consumer advocacy arrangements in legal services and public services.
36. A small number of respondents referred to the BEIS green paper about the effectiveness of national coordination and the incentives for action by local authority trading standards services (LATSS); one of these respondents – a public body – recommended that the Scottish Government should

consider wider developments within the consumer protection landscape that are occurring at a UK-wide level.

37. One respondent within a public body suggested that Consumer Scotland should become a member of the Consumer Protection Partnership (CPP).

Q3: Which powers and duties would you like Consumer Scotland to have, in order to carry out its proposed role?

38. A total of 37 respondents provided commentary in response to this question.

39. Some respondents noted their agreement with some or all of the powers and duties outlined in the consultation paper. Once again, the issue of duplication of activities was raised by a small number of respondents who commented that the duties of Consumer Scotland need to be clearly defined to avoid duplication of role(s) and responsibility(ies) in terms of work undertaken by other consumer protection bodies.

40. Many respondents who commented at this question identified a wide range of specific powers and duties that should fall to Consumer Scotland. These included a duty to:

- Assess that advocacy and redress is working effectively; including a better resourced court advocacy service.
- Have an overview of the court system.
- Have an overview of Trading Standards Services (TSS) or a duty to assess the quality and performance of TSS.
- Be an enforcement body or to be able to recommend what enforcement should be undertaken by sector regulators and have the power to refer issues to regulators for further investigation.
- Have the power to lay reports directly before the Scottish Parliament and a capacity to make recommendations on legislative remedies to the relevant Parliamentary committee.
- Review consumer issues such as energy or transport.
- Set up approved trader schemes.
- Identify and investigate markets and areas of devolved responsibility that are deemed to be detrimental to consumers' interests and to develop evidence-based solutions and promote good practice.
- Identify and fund prevention activities to protect consumers from harm.
- Carry out investigations and to be able to require businesses to provide information such as offering access to documents, statistics etc.
- Require consumer advice providers to be part of a quality assurance scheme.

- Support vulnerable consumers.
- Accredit and supervise ADR providers.
- Recommend the creation of regulatory bodies or ombudsmen in sectors where existing regulation is not sufficient.
- Supporting the independence of Consumer Scotland by empowering it with consultation rights vis-à-vis Scottish authorities' decisions and policies which have an impact on consumer interests; as well as coordination with other relevant regulatory or consumer bodies.
- Make a wide range of recommendations and ensure that recommendations are imposed, in an appropriate timeframe.
- Be able to make super-complaints (albeit that one respondent noted that Consumer Scotland would have to be designated by the Secretary of State to be able to make super-complaints), launch market studies and agree voluntary action with industry.

41. There were a small number of references of a need to have a strong network with regulators that is underpinned by agreements that take into account the established expertise of other organisations.

42. A small number of respondents reiterated their opposition to the establishment of Consumer Scotland on the grounds that the organisation is not needed, concerns over duplication of effort or that it would be preferable to review the operations and funding of CAS.

43. A small number of respondents also felt that the powers of Consumer Scotland should be limited; for example, one organisation in the energy / utility sector felt that Consumer Scotland should only have the power to make recommendations to government and the regulator on policy development.

Q4: What are the criteria that would constitute a specifically Scottish consumer issue?

44. A total of 35 respondents, across all sub-groups, provided commentary in response to this question. A number of these respondents, primarily in the advice body/consumer org/complaint resolution sector, noted that specifically Scottish consumer issues could include any matters falling under devolution, albeit that a small number of respondents also commented that some consumer services – such as water – would impact on a wider UK population. A small number of organisations in the local authority / trading standards sector also noted that this should not include issues that are Scotland-only.

45. A similar number of respondents simply noted that any issue affecting consumers in Scotland should be considered a specifically Scottish consumer issue, with a small number of organisations noting that markets are not just governed by administrative boundaries. Another key suggested criterion was instances where Scottish consumers are disproportionately

affected in comparison to the rest of the UK; examples cited by respondents included energy prices, petrol prices, digital inclusion and parcel delivery prices.

46. Several respondents cited Scottish geography and / or the location of consumers affected; again, parcel delivery was cited as an example. One or two respondents referred to the demography, socio-economic circumstances or climate of Scotland as other criteria for consideration.

47. A number of respondents referred to specific services that could be deemed specifically Scottish and these included:

- Public transport and ferry services.
- The health service.
- Education.
- Housing.
- Legal and related services.
- Telephone, broadband and digital services.
- Heating and insulation.
- Energy, gas and electricity, although one organisation in the utility / energy sector queried if energy would be included as this is not a devolved sector.
- Access to money and debt management.
- Parcel delivery.

48. A small number of respondents requested clarification of the term 'consumer' or suggested there is a need to allow for a wide interpretation of 'specifically Scottish'.

49. As at previous questions, a small number of respondents noted their antipathy towards establishing Consumer Scotland, with comments that it is better to consider community safety rather than focus on purely Scottish issues or that there is a need for cross-border working and liaison to avoid duplication and risk of gaps in the market. One respondent in the industry / trade sector commented that it would be better for Consumer Scotland to support, assist and collaborate with the wider UK consumer protection system.

Q5: Which criteria might Consumer Scotland consider when assessing the level of harm needed to be reached before an investigation is pursued?

50. A total of 35 respondents, across all sub-groups, chose to answer this question.

51. A number of respondents, primarily from the Advice body/consumer org/complaint resolution or Local authority / trading standards sectors offered

a number of criteria that could be considered. These included a need to consider:

- Where there are specific issues with vulnerable customers.
- The number of people that are affected.
- The prevalence of issues.
- How widespread an issue is.
- The level of harm to individual consumers.
- The potential future impact or whether there will be long term economic harm.
- Where there is financial loss or harm.
- Where there are associated costs to the public purse.
- Where research or data from other organisations highlight consumer detriment.
- Where there is detriment to socio-economic well-being, education, health and social welfare, housing, security and safety or other aspects of consumers' lives.
- Anything which harms the collective interests of consumers.
- Practices or policies that put consumers at a disadvantage in dealing with service providers.
- The scale and duration of harm.
- Where there is detriment to a business.

52. A relatively small number of respondents referred to definitions or approaches that have been adopted by other organisations and which could be adopted by Consumer Scotland. These included the use of the Consumer Scorecard by the Ministerial Taskforce, the definition developed by the Strategic Intelligence Prevention and Enforcement Partnership (Sipep), the consumer principles promoted by CAS, the CMA Prioritisation Principles or internationally recognised consumer principles.

53. Some respondents noted that consideration should be given as to whether other public authorities such as Trading Standards Services, or organisations such as Citizens Advice Scotland, are better placed to deal with specific issues. A small number of these respondents noted that Consumer Scotland should focus its attention on unregulated sectors where there are no other organisations with jurisdiction.

54. Several respondents commented that the remit of Consumer Scotland needs to be broad, with wide discretion, or that the criteria will vary according to a specific issue or specific circumstances and that specific criteria may not be helpful.

55. A small number of respondents made general comments about the need to address the issue where there is a clear evidence base, or robust

data on which to take action, rather than distinguishing issues that are based on limited or anecdotal evidence.

56. A number of other comments were made, each by a small number of respondents; these included;

- Criteria are not needed if a consumer has the opportunity to seek redress.
- There is a need to define what constitutes harm.
- There should be consensus among stakeholders that a specific issue constitutes harm.

Q6: Are there additional functions you think Consumer Scotland should have to allow it to deliver impacts for consumers in the current landscape?

57. A total of 34 respondents provided commentary in response to this question, some of whom reiterated points made at earlier questions.

58. There were a small number of general comments on the need for Consumer Scotland to have a wide remit and a capacity to respond to issues in a speedy way to protect consumers.

59. A number of key themes emerged in response to this question. A number of respondents considered that Consumer Scotland should have a function to oversee or coordinate advice services so as to ensure consistency and expertise in the quality of advice and levels of service offered as well as offering a capacity to store data centrally. Allied to this, there were some comments that Consumer Scotland could bring together and collaborate with other bodies with a consumer focus; and influence and collaborate with them. Examples given by one respondent were ACS and Ofgem.

60. That said, a small number of these respondents highlighted the need to ensure that while Consumer Scotland could bring together stakeholders working within the current consumer landscape to join up data sources and ensure information sharing, there is a need to ensure that any organisations have clear roles and responsibilities so there is no duplication in terms of the services offered. One organisation in the energy / utility sector requested clarification on the consumer landscape and the role of CAS.

61. Several respondents felt that Consumer Scotland should be able to ensure that consumers have access to advice and redress services, with one local authority commenting that redress is the logical extension to advice provided or any enforcement action taken.

62. A small number of respondents suggested an education or awareness raising role for Consumer Scotland, for example, in promoting or lobbying for a Prevention Agenda to help educate consumers, or for consumer education to be provided within schools. Allied to this, there was a suggestion that the organisation should promote competitive markets.

63. While acknowledging that it is a reserved area, a few respondents called for enforcement powers for Consumer Scotland.

64. Other suggestions made by one or two respondents included:

- Statutory powers so that Consumer Scotland can obtain information from service providers or regulators.
- A research function; for example, to be able to investigate structural barriers to effective consumer empowerment.
- Powers to make representations to bodies outwith Scotland in instances where policies or practices impact on consumers in Scotland.
- Powers of inspection and entry to ensure that companies comply with consumer law.
- To offer an ombudsman service.
- To be the quality assurance body for consumer advice providers.
- To have an overarching scrutiny role.
- To lay down the criteria for the accreditation of ADR providers.
- To champion models of regulation which focus more on consumers.

65. A very small number of respondents commented that the functions outlined in the consultation paper are appropriate for Consumer Scotland to gather evidence, investigate and make recommendations for the benefit of consumers.

66. One organisation in the energy / utility sector commented that there should be a single well-funded organisation with a dual function; firstly, to offer an advice service for consumers; secondly, that has a research and policy development team to contribute to the wider policy debate.

67. Other suggestions made by one or two respondents included a suggestion to roll out the In-Court Projects so that there is one per Sheriffdom, to set up a simplified consumer court or to set up a simplified Scottish ADR system.

Q7: Are there any additional functions Consumer Scotland should have that will enable it to adapt and respond to future consumer challenges?

68. A total of 17 respondents provided commentary in response to this question, with many of these reiterating their response to the previous question or reiterating points made in responses to earlier questions.

69. The key theme that emerged was a suggestion for a duty for Consumer Scotland to have a 'horizon scanning' role in order to check what future developments might occur, both within specific sectors and across the consumer landscape as a whole. This would enable them to look ahead and avoid future problems, as well as monitor and respond to new markets and

ensure that advice and advocacy providers are aware of new areas of detriment to consumers.

70. Another key theme which emerged was the need for Consumer Scotland to work with other bodies and regulators in Scotland and the UK, with a small number of suggestions for a coordinating role in relation to other agencies. As one organisation in the advice body/consumer org/complaint resolution noted,

“It is imperative that consumers recognise that they are supported by a single, consistent system of consumer redress, regardless of whether this space is shared by a number of consumer advocacy groups.”

71. A small number of respondents again referred to redress and enforcement, with one organisation in the advice body/consumer org/complaint resolution commenting that,

“We would also suggest that Consumer Scotland might have a role in relation to both consumer redress and consumer enforcement. While consumer protection laws are reserved to Westminster, the enforcement of these laws is primarily carried out by Scottish local authorities’ trading standards services. Major concerns about the current trading standards arrangements in Scotland have been raised by the Accounts Commission and others. The Working Group recommended that Consumer Scotland should have a role in the co-ordination of trading standards services in Scotland, and in setting national enforcement priorities, among other things.”

72. Other comments, made by single respondents included:

- A need for the Scottish Government to offer a commitment to review the legislation behind making Consumer Scotland a statutory body so that changes to legislation can be made quickly in order for Consumer Scotland to remain fit-for-purpose.
- A need for Consumer Scotland to be sufficiently resourced.
- A need for Consumer Scotland to be flexible and responsive to changing circumstances.

Scottish Government action

73. This section of the consultation paper looked at consumer and wider advice services, consumer advocacy and the role of the consumer interest in Scottish public policy and decision making.

Consumer advice

74. The consultation paper noted that consumer advice provision needs to keep pace with changes to the world in which we live and that consumers know where to turn when they need help.

Q8: What are your views on the current consumer advice system? How could it be strengthened?

75. Comments on the current consumer advice system tended to mirror many of the views expressed at Question 1, with comments on the fragmented, inconsistent and complex nature of the current landscape. There were also a small number of comments that the current landscape has been weakened by the loss of consumer advice and intervention services from Trading Standards Services. There were also a small number of comments that it can be difficult to know where to obtain advice or how to access the required advice.

76. A wide range of suggestions were made as to ways in which the consumer advice system could be strengthened. Again, many of these echoed points made at earlier questions. These included the need for consumer bodies to work together to create consistency in available advice, better coordination of available services, to ensure that there is no duplication of advice and for data and information to be shared in order to help inform consistent preventative strategies. As one organisation in the advice body/consumer org/complaint resolution sector commented,

“It is important, therefore, that a strategic and integrated approach is taken to the provision of advice and education on consumer matters; legal rights and responsibilities; housing; and money and debt. This should include bodies in the private, public and voluntary sectors. Organisations which come into contact with consumers at key ‘life events’ such as setting up home; having a baby; getting married; or losing a job, could also play a vital role both in signposting people to appropriate sources of help and in providing direct help and support.”

77. Another key theme was the suggestion for a single coordinating organisation offering a single point of entry to consumer protection. The key advantages of this were that it would be accessible to all, it would offer a joined up approach, access to specialist agencies, consistency in available advice, better coordination of consumer programmes and advice services, as well as streamlining the landscape.

78. Several respondents noted the need for a funding regime that will help sustain advice and advocacy for consumers. Other suggestions made by respondents included:

- A need for an ombudsman and arbitration service.
- A focus on advice and redress and strengthened links between the two.
- Better signposting for consumers to access services.
- A need for consumer advice and intervention to be a statutory duty for Scottish councils. There was also reference to the need to strengthen local authority Trading Standards Services.
- Better use of digital technology in the provision of consumer advice and the use of online complaints tools.
- A range of communication channels that can be used by consumers, including face-to-face advice (considered to be particularly relevant to vulnerable consumers), digital and telephone.

79. A small number of respondents referred to the Scottish Government's pilot project which aims to unite the online complaints tool, Resolver, with existing telephony services at Citizens Advice Direct. It was felt that lessons could be learnt from this to help deliver a strengthened and more effective advice system. One respondent in the advice body/consumer org/complaint resolution sector suggested that lessons could also be learnt from the recent independent review of legal aid in Scotland and the recommendations made in this review.

Q9: What are your views on how the Scottish Government could improve how it commissions and funds advice to individuals?

80. A total of 31 respondents, many of whom were organisations in the advice body/consumer org/complaint resolution sector or individuals provided commentary to this question. Many of their comments echoed those seen in response to previous questions.

81. One of the themes which emerged related to the need for long term funding which would help to build sustainable capacity as well as helping to attract and retain high quality, experienced staff and offer a better service to the consumers; in turn, this would allow providers to plan their service provision more strategically as well as providing stability and security for advice providers.

82. There was also reference to the need to share data, or to strengthen existing data sharing between organisations and bodies providing advice to consumers. Allied to this, there were also a small number of comments on the need for Consumer Scotland to be a one-stop-shop; this would allow them to ensure a consistent service to all consumers. One organisation also suggested a second tier for intervention capabilities and a third tier for legal support.

83. A small number of respondents felt that the Scottish Government should consider whether existing consumer advice organisations are fit for practice and can demonstrate competencies.

84. Other suggestions for ways in which the Scottish Government could improve how it commissions and funds advice to individuals, each from a small number of respondents included:

- Funding for face-to-face advice and / or offering a range of channels to offer advice; including the integration of existing services with technology-based solutions so that consumers can access advice across different platforms and media.
- Funding for education or advertising campaigns to raise awareness of issues related to consumer advice.
- To review what is currently available and ensure any duplication is removed, identify any gaps and ensure these are filled.
- To ensure an outcomes-focused approach from advice agencies and others in the consumer landscape, including regulators and businesses.
- To set up an evaluation and approval programme for future funding; this would help to drive integration, coordination and sustainability and interoperability around personal data sharing.
- Set up a national quality assurance framework for advice services; this would help to ensure a focus and scrutiny on the quality of advice offered.

85. A few respondents referred to other work that has been carried out and to which the Scottish Government could refer. These included an outline of how funding operates within a specific sector. An organisation in the Local authority / trading standards sector noted that they follow the 8 key principles of commissioning that were developed by the Office of the Third Sector. There was also reference to recent work conducted by Blake Stevenson on publicly-funded advice services in Scotland; reference to the Scottish Government's pilot project which aims to unite the online complaints tool, Resolver, with existing telephony services at Citizens Advice Direct; and the approach implemented in projects such as the Scottish Government's Welfare Reform Mitigation project.

Consumer advocacy

86. The consultation paper noted that effective consumer advocacy can drive solutions to even the most intractable consumer problems but that the current model of advocacy is not always effective. The Scottish Government has begun a review of consumer advocacy to understand which interventions most effectively drive change. A Ministerial Taskforce on Consumers and Markets has also been established which brings expertise together and will act as a coordinating mechanism until Consumer Scotland is established.

Q10: How can consumer advocacy develop greater capacity to bring change for consumers?

87. A total of 33 respondents, many of whom were organisations in the advice body/consumer org/complaint resolution sector or individuals, provided commentary to this question. Once again, many of their comments echoed those seen in responses to previous questions. Key themes emerging included the importance of having an independent and / or representative voice to support consumers, with a small number of comments on the importance of the voice of the consumer being at the heart of any work undertaken by Consumer Scotland.

88. A number of other issues were each commented on by small numbers of respondents. These included the benefit of development of a customer scoreboard as this would provide a solid evidence base to identify areas where consumer detriment is occurring and help to prevent this reoccurring in the future. Some respondents also noted their support for the proposal that CAS would maintain its advocacy powers, and a small number also noted that the CAS model works well, albeit one respondent suggested that they needed to adopt a more proactive role. Other comments, each made by a small number of respondents included:

- Reference to the need for better training for advice staff.
- The need to focus on areas where consumers are unable to take action themselves.
- The need to make it easier for consumers to take their cases to court and the need for court advisors to be available in all courts.
- Support for action that targets traders who are targeting consumers.
- Suggestions for a new consumer body to be based on the model developed by the Water Industry Consumer Forum; and a need to examine the benefits that have been derived for the water sector to see if these can be applied in other sectors.

89. Other key themes which had been mentioned at earlier questions included:

- The need for a single point of contact or one-stop-shop that would have responsibility for centralised data capture, a capacity to exchange information and intelligence between agencies and act as an umbrella organisation for the wider consumer advocacy sector.
- Easy and transparent access to consumer advice, with a small number of references to vulnerable consumers in particular.
- The need for adequate funding to enable sustainable consumer advice services.
- The need for collaboration and partnership working between consumer advice and advocacy groups.

Consumer duty

90. The consultation paper noted that consumer and public authority action are linked and many important priorities depend on consumer cooperation. The Scottish Government is developing a range of mechanisms which could ensure consumers receive full consideration when developing new policies.

Q11: What are your views on whether there should be a duty on public authorities to consider the impacts on consumers of policies or decisions?

91. A total of 33 respondents, across most sub-groups, provided commentary to this question.

92. Most of those responding to this question felt that there should be a duty on public authorities to consider the impacts on consumers of policies or decisions; and the Green Deal was cited as an example that could be used to help guide this duty. The following quotation is typical of the responses to this question,

“For consumer issues to be central when policy decisions are being made, using a duty to consider the impacts on consumers is a mechanism that would improve or remedy issues for consumers.” (advice body/consumer org/complaint resolution sector)

93. Only a very small number of respondents were against the introduction of this duty, with an industry / trade body commenting,

“We believe the interests of consumers need to be better considered by the Scottish Government and other bodies when proposing public policy interventions. Currently consideration of consumer issues is not done consistently across departments. Furthermore, the cumulative impact of policy decisions is rarely considered, nor a metric for considering those impacts on consumers (or indeed the wider economy). These are all areas where a better and more consistent approach would be welcomed. We don’t believe a statutory duty should be the first step in improving this approach. The priority should be focusing on developing a better and more consistent approach. Should non-legislative measures prove ineffective then a public duty may be necessary to ensure the Scottish Government effectively considers the needs of consumers when developing public policy.”

94. Some respondents made qualifying statements in relation to their support, the key one of which was a need to have a clear definition of who consumers are. Other issues raised, each by only one or two respondents included;

- A need to strike a balance between giving due consideration to new policies through a design-led approach and giving policy makers permission to act quickly when necessary to remedy harm.
- A need to consider the extent to which such a duty might be placed on businesses that provide goods and services to consumers.

- A need to consider how public authorities would consider impacts of policies or decisions upon consumers.
- There should also be a requirement to report on how this duty is acted upon.
- A query over who would be responsible for conducting the assessment process.
- A need for more information on the public bodies which would be subject to this duty.
- A need for a programme of support and guidance to public authorities to help with implementation.
- A need to safeguard against the unintended consequences where local authority priorities are concerned.
- A need to consider both direct and indirect impacts.
- The potential for this to clash with Best Value principles.
- There is a need for alignment, coordination and collaboration with UK government and relevant UK bodies.
- The impact should be considered on all parties.
- Scottish Government contracts should have conditions to protect consumers.
- There is a need for an increased profile of consumer matters across the public sector.
- There is a need for consistency in educational or preventative messages across the public sector.

Q12: Beyond the actions set out in section 2, how should Scottish Government use its resources and powers to improve outcomes for consumers?

95. A total of 28 respondents opted to provide commentary in response to this question, with most comments made by very small numbers of respondents; many of which reiterated points made in response to earlier questions.
96. A few respondents made suggestions for ways of improving consumer representation and engagement. These included:
- Setting up consumer engagement groups along the lines of what has been established within the energy network sector; or setting up consumer panels in particular sectors such as the Scottish Legal Complaints Commission Consumer Panel.
 - Setting up experience panels such as those set up ahead of the devolution of the new social security powers.
 - Encouraging public bodies and private organisations to consider appointing consumer representatives to their boards and developing wider consumer engagement strategies.

- Establishing a Consumer Ombudsman for Scotland.
- Setting up consumer courts such as the Tayside In-Court Project and having one court in each sheriffdom; or setting up a specific consumer court to deal with low value consumer issues.

97. Points raised in response to earlier questions included reference to the Scottish Government:

- Prioritising consumers and creating a culture that places the interests of consumers at the heart of policy and decision-making; supporting consumer choice and driving consumer engagement.
- Helping to simplify the consumer landscape to make the process of resolving issues more simple; for example, making it easier for consumers to seek advice, obtain intervention and legal action where needed.
- Securing medium and longer term funding for Consumer Scotland so as to facilitate a strategic and evidence-based approach to consumer policy development.
- Setting up Consumer Scotland with a wide remit.
- Reviewing how data is recorded and collated by advice services and shared with other agencies; and ensuring effective data sharing across agencies. One respondent within the advice body/consumer org/complaint resolution sector suggested that all organisations holding data about individuals that can be used as Verified Attributes should be required to provide this information; another that all consumers should be provided with a safe, secure personal data store.
- Helping to improve the effectiveness of ADRs across Scotland. One local authority / trading standards organisation suggested,

“.... we think the Scottish Government could consider trying to tackle ADR problems through the Scottish justice system. Although many aspects of ADRs are reserved matters, the courts are a matter for Holyrood. It may be possible to have a “consumer court” to deal with relatively low value consumer issues in a manner that is very user-friendly and largely at-a-distance and online. It would of course need to be compulsory for businesses to engage with this if it were part of the formal justice system. It would have to be even simpler and more user-friendly than the Sheriff Court Simple Procedure and there would have to be safeguards allowing referral and appeal to traditional courts. But it may be possible to design something where 99% of the cases are resolved through straightforward, at-a-distance processes. We recognise that this would be a challenging proposal to achieve, but significant improvement on the current ADR system failure would be a very considerable achievement.”

- Providing appropriate resources for enforcement to make the consumer protection landscape effective.
- Preserving and enhancing local advice networks and organisations by helping to develop collaboration and strategic partnerships with Consumer Scotland.

- Using the resources and expertise within the local authority system more effectively for enforcement issues.
- Supporting research.

APPENDIX: Respondent Organisations

Airdrie Citizens Advice Bureau

BT Group plc

Chartered Trading Standards Institute Scottish Branch

Communications Consumer Panel & Advisory Committee for Older and Disabled people

Competition and Markets Authority

Consumer Dispute Resolution Centre

EDF Energy PLC

Energy Action Scotland

Homes for Scotland

Money Advice Scotland

Ofcom's Advisory Committee For Scotland

Ombudsman Services

Resolver Group

Scottish Gas and Centrica plc

Scottish Independent Advocacy Alliance

Scottish Mediation

Scottish Power

Scottish Retail Consortium

Scottish Water

SLCC Consumer Panel

Society of Chief Officers of Trading Standards in Scotland

SSE Energy Services

Transport Focus

20 organisations - name withheld

15 individuals

