



House of Commons
Committee of Public Accounts

Protecting Consumers – the system for enforcing consumer law

**Fifty-fourth Report of Session 2010–
12**

*Report, together with formal minutes, oral and
written evidence*

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Committee of Public Accounts

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The following Members were also Members of the committee during the parliament:

Dr Stella Creasy (*Labour/Cooperative, Walthamstow*)
Justine Greening (*Conservative, Putney*)
Eric Joyce (*Labour, Falkirk*)
Rt Hon Mrs Anne McGuire (*Labour, Stirling*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pac. A list of Reports of the Committee in the present Parliament is at the back of this volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee is Philip Aylett (Clerk), Lori Verwaerde (Senior Committee Assistant), Ian Blair and Michelle Garratty (Committee Assistants) and Alex Paterson (Media Officer).

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Summary

Individual consumers lose around £6.6 billion every year because of the malpractices of traders, for example by purchasing defective goods, being misled by advertising or being offered inadequate redress by traders. At least £4.8 billion is lost through malpractices which occur at a regional or national level, such as mass market scams, counterfeiting, and unscrupulous traders who operate over large geographical areas.

The Department for Business, Innovation and Skills (the Department) has overall responsibility for policy on consumer protection. However, the majority of enforcement work, from weights and measures testing to the prosecution of rogue traders, is carried out by local authority Trading Standards Services, each with jurisdiction in only its own local area. The Office of Fair Trading enforces some laws at a national level, such as breaches of competition law, the Unfair Terms in Consumer Contracts Regulations and the regulation of consumer credit.

The enforcement of consumer law cost taxpayers £247 million in 2009-10. Local authorities spent £213 million of this on the provision of Trading Standards Services, and the remaining £34 million was spent by Central Government, to support regional and national enforcement work, including that of the Office of Fair Trading.

Despite the high cost to consumers of regional and national problems, it is not clear which of the various enforcement bodies is ultimately responsible for tackling them. Furthermore, the level of funding available to different Trading Standards Services varies widely. Some areas have as few as two Trading Standards Officers while others employ over a hundred. This results in very different levels of coverage in different areas, and there are enforcement deserts where local authorities do not spend enough money to provide an acceptable level of protection to consumers.

Taking on enforcement work which has regional or national importance can expose enforcement bodies to considerable financial risk, for example if a case goes wrong and the costs incurred by the defendant are recovered from the prosecuting body. Furthermore, the potential profitability of committing an offence can outweigh the maximum available penalty, meaning that existing penalties and powers are often insufficient to provide an adequate disincentive to would-be offenders.

The Department has limited understanding of the true cost of protecting consumers or of the success of existing interventions. The impact of doorstep crime, where traders with no registered premises go from door to door selling substandard or even non-existent services, has not been quantified despite it being a hugely important and serious issue for consumers which has a disproportionate impact on people who are most vulnerable. Furthermore, there is no clear and complete information on how much enforcement activity actually costs. Without collecting better quality information, it is impossible for policy makers to make sure money is focussed on tackling effectively the problems that cause the most harm to consumers.

The approach to enforcing consumer protection has not kept pace with the changing nature of the problems it is intended to tackle. When the enforcement system was first

established, trading was more localised and consumers tended to lose money through singular instances of malpractice, for example, by being overcharged or sold a short measure. Now, the increase in the number of companies who operate nationally and the trend towards online shopping have caused problems which are more likely to affect consumers on a regional or national level. The system for protecting consumers has not kept up with these changes and is not properly equipped to tackle new problems as they emerge.

The Department has recently consulted on reforming consumer law enforcement. It should address our recommendations in its reforms. The changes the Department makes must deliver a system fit for the modern era. Responsibility for tackling regional and national instances of malpractice or rogue trading must be clearly designated. In particular, we are concerned about instances where companies across the same sector are engaged in the same behaviour, which can therefore cause extensive consumer detriment. Enforcement bodies must have access to sufficient resources and powers to tackle these cases.

On the basis of a report from the Comptroller and Auditor General¹ we took evidence from the Department, the Office of Fair Trading and the Trading Standards Institute, as well as representatives of Citizens Advice and Consumer Focus, on the current arrangements for the enforcement of consumer law, and the proposed changes to the regime.

Conclusions and recommendations

- 1. Accountability arrangements for protecting consumers are incoherent and fragmented.** The Department for Business, Innovation and Skills is accountable for overall consumer policy, but has very little control over the resources used to implement its policy as locally-funded Trading Standards Services carry out most of the enforcement work. Central Government spent £34 million, and local authorities £213 million, on consumer law enforcement in 2009–10. However, consumers suffer at least £4.8 billion of detriment from trader malpractice that extends beyond the boundaries of a single local authority - for example, companies selling goods online, or doorstep traders who travel large distances to trick people out of money in their own home - and there are no clear arrangements setting out responsibilities and accountabilities for tackling the problem. In designing a new system the Department must clearly spell out the obligations and responsibilities of all the organisations involved, ensuring that there is clear accountability and funding for regional and national issues.
- 2. The enforcement system for dealing with trader malpractices that occur at a regional and national level is inadequate, and instances of abuse fall through cracks between enforcement bodies.** Some local authorities are willing to fund cases of trader malpractice that extend beyond their own boundaries. However, within the enforcement system as a whole there is very limited specific support or funding for regional problems. The Department provided only £8 million to fund regional work in 2009-10, and that funding has now come to an end. Most local Trading Standards Services are too poorly resourced to take on regional work. Furthermore, the arrangements to determine which enforcement body takes on cases of regional or national importance are not working, especially those where cases are referred by Trading Standards Services to the Office of Fair Trading. The Department must ensure that there are robust systems and funding available to escalate cases to the appropriate enforcement body, and that the progress of cases is assured and can be tracked through the system.
- 3. The level of service available to consumers varies across the country and is inadequate in some areas.** Local authorities have discretion over the level of funding they provide for Trading Standards Services. As a result, there are significant disparities in the funding with some areas not having enough resources to provide an adequate level of protection. For example, some areas have as few as two Trading Standards Officers while others employ eighty. The enforcement weaknesses in one geographical area risk allowing rogue traders to base themselves there while causing problems more widely, thereby undermining the effectiveness of the system as a whole. The Department must put in place systems to ensure transparent monitoring so that citizens can judge whether a sufficient level of protection is being consistently provided to consumers.. Transparent data will help to ensure that gaps in the enforcement system are exposed and tackled.
- 4. The powers and penalties available to enforcement bodies are too weak to address serious forms of harm to consumers.** The kinds of problems experienced by

consumers are changing rapidly, with, for example, a lot of goods and services now being purchased online. Enforcement bodies need to be equipped both to detect and remedy existing problems, and to prevent new problems from emerging. Under current arrangements, Consumer Focus and the Office of Fair Trading are responsible for conducting research into emerging market issues, and pursuing complex investigations into new scams. There is a particular risk where practice is common across sectors and exercised by a number of firms. Such cases cause widespread consumer detriment. This is already offering challenges to the system. The Department's proposals to abolish Consumer Focus and scale down the Office of Fair Trading risk further reducing the available capacity to undertake this type of forward looking and important, high level work. In reducing non-departmental bodies working on consumer law enforcement, the Department must ensure that the remaining enforcement bodies have the power, expertise and money to address major and emerging forms of harm.

5. **The level of financial risk taken on by enforcement bodies may discourage them from pursuing complex and difficult investigations.** The Department has established a 'fighting fund' to support local authorities who pursue cases of regional or national importance, but at only £250,000, the money available is insignificant in comparison to the potential cost of these investigations. Complex cases that cause consumers serious problems can typically cost in excess of £200,000, and the Office of Fair Trading estimates that it carries about £10 million of potential liability for legal costs at any one time. The Department must set out how it will ensure that enforcement bodies are able to pursue cases through the courts where necessary, and are not deterred from taking on large or complex investigations by the costs and risks involved.

1 The structure of the system for enforcing consumer law

1. The unfair treatment of consumers by traders costs them and the economy over £6.6 billion every year. Trader malpractice can be accidental or deliberate, and can be caused by activities ranging from pressure selling, to scams where criminals operate behind the appearance of a legitimate business.² In excess of £4.8 billion is lost every year through malpractices which occur at a regional or national level, such as mass market scams, counterfeiting, and from the activities of unscrupulous traders who operate over large geographical areas.

2. The enforcement of consumer law cost £247 million in 2009-10. £213 million of this was spent by local authorities on local Trading Standards Services. Central government provides the remaining £34 million to support regional and national enforcement work.³ This includes work undertaken by the Department for Business, Innovation and Skills (the Department), which holds overall policy responsibility, and the Office of Fair Trading which is accountable to Parliament and spends around £8.5 million on direct enforcement work.⁴

3. The majority of expenditure on enforcement activity, including expenditure on regional and national issues, is provided by local government. Where funding and decision making is devolved to local bodies, the Accounting Officer retains overall responsibility to account to Parliament for the proper use of those funds, and they must satisfy themselves there is a sensible framework to promote value for money.⁵ However, the Department was unable to offer a clear explanation of what it was accountable for, particularly in relation to spending at a local level.⁶

4. Cases of individual traders treating consumers unfairly, for example selling short measures, are the responsibility of Trading Standards Services or regional enforcement teams such as Scambusters. However, many cases of serious trader malpractice, for example mass market scams, occur across the jurisdictions of several local authorities. These cases can be too large for local Trading Standards Services to pursue, but not sufficiently important to be taken on by the Office of Fair Trading, which focuses on protecting consumers from problems caused by new and emerging markets, or from the lack of effective competition.⁷ So there is a gaping gap which leaves many consumers, especially the most vulnerable, unprotected.

2 C&AG's report, *Protecting Consumers – the system for enforcing consumer law*, Session 2010-12, HC 1087, paragraph 1

3 C&AG's report, *Protecting Consumers – the system for enforcing consumer law*, Session 2010-12, HC 1087, paragraphs 1.3 – 1.7.

4 Additional evidence submitted by the Office Fair Trading

5 Q 150, Committee of Public Accounts, Twenty-eight Report of Session 2010-11, *Accountability for Public Money*, paragraph 12.

6 Qq 153 -156

7 Qq 7, 9, 144

5. The arrangements for addressing consumer problems that occur regionally and nationally are inadequate.⁸ Regional and national cases may be tackled by Trading Standards Services, Department-funded regional enforcement projects, or the Office of Fair Trading; but no organisation has overall responsibility for ensuring they are adequately resolved. Some Trading Standards Services are willing to take on significant cases even if they are not in their remit, but this is dependent on them having access to adequate resources and appropriate expertise, and the support of their local council.⁹ In the past additional support was provided by Local Government Regulation (an organisation in the Local Government Group), but this has now been abolished.¹⁰

6. Only two of the fifteen cases formally referred from Trading Standards Services to the Office of Fair Trading between July 2009 and January 2011 resulted in direct enforcement action being taken by the Office of Fair Trading. The other cases were referred to other bodies, back to Trading Standards Services, or overseas. The protocols designed to ensure cases are dealt with at the right level are not working and the current system instituted in 2008 risks both wasting resources and providing an inadequate response.¹¹

7. Identifying the nature and prevalence of consumer problems is vital in ensuring that resources are directed to the areas where consumers are experiencing most detriment. However, there are two separate national intelligence databases in use within the enforcement system to gather evidence on where problems for consumers are, or are at risk of, occurring. One of these was procured by the Office of Fair Trading in response to requests from the Department and Trading Standards Services, but not all enforcement bodies have access to it. Using local government money, one Trading Standards region has developed an alternative and currently incompatible database which is available to all Trading Standards Services.¹² The lack of a consistent case management system means cases are not followed through properly.¹³

8. In the current economic climate, the protection of consumers is an increasingly important issue. The types of activity which cause harm to consumers, for example, new forms of scams such as credit card fraud, chip and pin fraud, and e-mail scams, are constantly evolving and changing. Enforcement bodies therefore need to be able to take preventative enforcement action to address new problems, as well as having the capability and capacity to address existing local and more widespread problems.¹⁴

9. Currently, the Department funds regional projects, such as the Scambusters and Illegal Money Lending teams, to provide further capacity to address regional and national cases.¹⁵ The funding of these projects has been on a short-term and piecemeal basis and is therefore vulnerable in the current fiscal environment. The Department told us that its

8 Qq 35, 64 - 66

9 C&AG's report, paragraph 3.4

10 Q 64

11 Q 111, 121-129, 131-132

12 Qq 149-155, C&AG's report paragraph 2.10

13 C&AG's report paragraph 3.18

14 Q9-10, 40, 138

15 C&AG's report, paragraphs 3.9, 3.12

funding will continue until 2012-13, but the Illegal Money Lending teams have recently been rationalised and instead of being regionally located, there will now be only one team each for England, Wales and Scotland.¹⁶ The Department believes that this will maximise the effectiveness of resources, but we are concerned that the teams are being taken further away from the communities they are supporting.

10. In its consultation document, *Empowering and Protecting Consumers*, the Department outlines proposals to abolish the consumer advocacy body Consumer Focus and to reduce the consumer responsibilities of the Office of Fair Trading. Responsibility for addressing regional and national issues would rest with Citizen's Advice, Trading Standards Services and the new Competition and Markets Authority.¹⁷ Funding for these bodies to carry out their responsibilities is unclear.

16 Qq 117

17 Qq 9-10, 141-142, Department for Business, Innovation and Skills, *Empowering and protecting consumers*, June 2011.

2 How the system is functioning

11. Local authorities have discretion over the level of funding they provide for Trading Standards Services, although there is no statutory requirement beyond local authorities providing a single weights and measures officer. There has been a decline in the profile of Trading Standards Services within local authorities, and some currently sit as low as the fifth tier in the local authority management structure.¹⁸ Annual funding for the 197 Trading Standards Services in Great Britain is expected to reduce from £213 million to around £140 million by 2014.¹⁹

12. There is a wide variation in the level of resource available to Trading Standards Services with, for example, Welsh authorities spending twice as much per member of the population as London authorities. Furthermore, some authorities have as few as two officers, while others have over eighty. Enforcement deserts exist where some local authorities do not provide enough money to maintain adequate trading standards coverage.²⁰ Figure 1 illustrates the variation in expenditure on Trading Standards Services across Great Britain in 2008-09.²¹

18 Qq 112-113, C&AG's report, Figure 16.

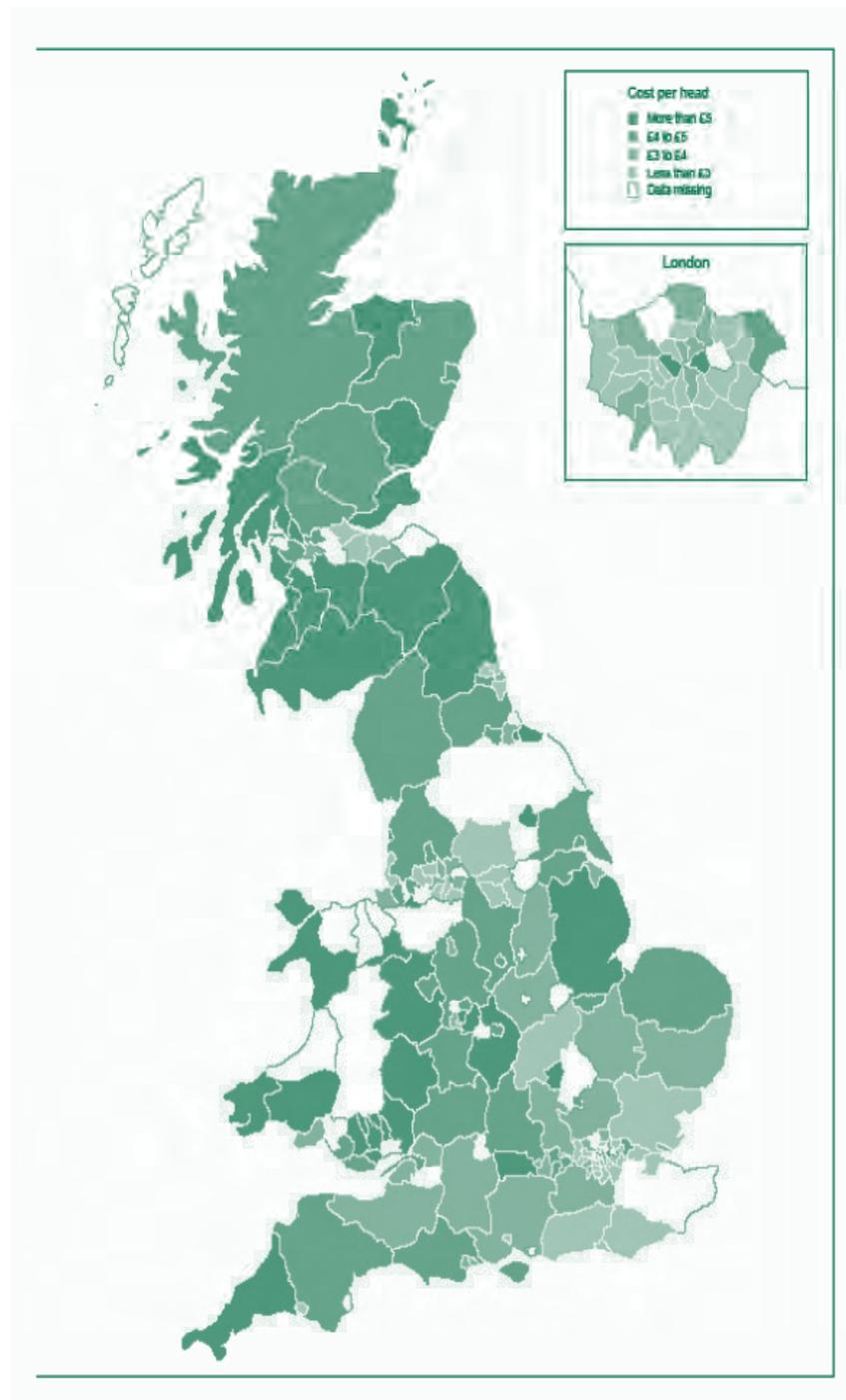
19 Q 64, C&AG's report, paragraph 9

20 Qq 1, 25, 32, C&AG's report, paragraph 9

21 Qq 1, 64, 133-135

Figure 1

The variation in expenditure by Trading Standards Services across Great Britain (expressed as cost per head of population)



Source: C&AG's report, Figure 13

13. The Department could not clarify the total cost to consumers or the economy arising from trader malpractices, and they did not know how much of this can be attributed to localised, regional or national activity.²² In particular, the impact on consumers of doorstep crime, that is, where a trader pressurises or tricks a consumer out of money while visiting the consumer's own home, has not been quantified. Furthermore, the Department could not tell us to what extent the level of detriment that consumers experience from trader malpractices could be reduced by reforming the system for enforcing consumer law.²³

14. Data on the efficiency of Trading Standards Services is incomplete and policy makers do not have a good understanding of which services are more, or less, effective. In addition, the Department does not know the potential savings that could be made if the system were to function optimally.²⁴ Analysis by the National Audit Office suggests that some larger services are able to benefit from economies of scale by for example, sharing back office services. This analysis could provide a starting point for understanding what an optimum model of consumer law enforcement could deliver.²⁵

15. Enforcement work undertaken by the Office of Fair Trading clearly involves risk and it estimates that £10 million of public money is put at risk through its potential liability for legal costs.²⁶ Some of the organisations against whom cases are brought have significant resources available to defend themselves and are not deterred by the threat of litigation. An enforcement body pursuing legal action against a trader must bear these risks itself, creating a significant disincentive for organisations to take on difficult cases.²⁷

16. Some Trading Standards Services can take on cases of national importance, but this is at the discretion of their local authority and requires them to have the capacity to meet the costs of an investigation which can be substantial and are unpredictable.²⁸ Complex cases that cause consumers serious problems can typically cost in excess of £200,000.²⁹ The Department provides a 'fighting fund' of only £250,000 to support local authorities that pursue litigation in cases of regional or national importance.³⁰

22 Q 108

23 Qq 95-103, 111

24 Qq 103-105

25 Q 104, C&AG's report, paragraph 4.8

26 C&AG's report, paragraph 3.6

27 Qq 136-140

28 Q125, C&AG's report, paragraphs 3.5 – 3.6

29 C&AG's report, paragraph 3.5

30 Q148

Formal Minutes

Monday 31 October 2011

Rt Hon Margaret Hodge, in the Chair

Mr Richard Bacon	Fiona Mactaggart
Jackie Doyle-Price	Austin Mitchell
Matthew Hancock	Nick Smith
Chris Heaton-Harris	Ian Swales
Meg Hillier	James Wharton
Jo Johnson	

Draft Report (*Protecting Consumers – the Systems for enforcing consumer law*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

Conclusions and recommendations 1 to 5 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fifty-fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Wednesday 2 November at 3.00pm]

Witnesses

Monday 5 September 2011

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Gillian Guy, Chief Executive Officer, Citizens Advice, and **Mike O'Connor**, Chief Executive, Consumer Focus

Ev 1

Martin Donnelly CMG, Permanent Secretary, Department for Business, Innovation and Skills, **Philip Collins**, Chairman, Office of Fair Trading, and **Ron Gainsford OBE**, Chief Executive, Trading Standards Institute

Ev 7

List of printed written evidence

1	Department for Business, Innovation and Skills	Ev 21
2	Consumer Focus	Ev 22
3	Office of Fair Trading	Ev 23: Ev 31

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Support to incapacity benefits claimants through Pathways to Work	HC 404
Second Report	Delivering Multi-Role Tanker Aircraft Capability	HC 425
Third Report	Tackling inequalities in life expectancy in areas with the worst health and deprivation	HC 470
Fourth Report	Progress with VFM savings and lessons for cost reduction programmes	HC 440
Fifth Report	Increasing Passenger Rail Capacity	HC 471
Sixth Report	Cafcass's response to increased demand for its services	HC 439
Seventh Report	Funding the development of renewable energy technologies	HC 538
Eighth Report	Customer First Programme: Delivery of Student Finance	HC 424
Ninth Report	Financing PFI projects in the credit crisis and the Treasury's response	HC 553
Tenth Report	Managing the defence budget and estate	HC 503
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Fourteenth Report	PFI in Housing and Hospitals	HC 631
Fifteenth Report	Educating the next generation of scientists	HC 632
Sixteenth Report	Ministry of Justice Financial Management	HC 574
Seventeenth Report	The Academies Programme	HC 552
Eighteenth Report	HM Revenue and Customs' 2009-10 Accounts	HC 502
Nineteenth Report	M25 Private Finance Contract	HC 651
Twentieth Report	Ofcom: the effectiveness of converged regulation	HC 688
Twenty-First Report	The youth justice system in England and Wales: reducing offending by young people	HC 721
Twenty-second Report	Excess Votes 2009-10	HC 801
Twenty-third Report	The Major Projects Report 2010	HC 687

Twenty-fourth Report	Delivering the Cancer Reform Strategy	HC 667
Twenty-fifth Report	Reducing errors in the benefit system	HC 668
Twenty-sixth Report	Management of NHS hospital productivity	HC 741
Twenty-seventh Report	HM Revenue and Customs: Managing civil tax investigations	HC 765
Twenty-eighth Report	Accountability for Public Money	HC 740
Twenty-ninth Report	The BBC's management of its Digital Media Initiative	HC 808
Thirtieth Report	Management of the Typhoon project	HC 860
Thirty-first Report	HM Treasury: The Asset Protection Scheme	HC 785
Thirty-second Report	Maintaining financial stability of UK banks: update on the support schemes	HC 973
Thirty-third Report	National Health Service Landscape Review	HC 764
Thirty-fourth Report	Immigration: the Points Based System – Work Routes	HC 913
Thirty-fifth Report	The procurement of consumables by National Health Service acute and Foundation Trusts	HC 875
Thirty-seventh Report	Departmental Business Planning	HC 650
Thirty-eighth Report	The impact of the 2007-08 changes to public service pensions	HC 833
Thirty-ninth Report	Department for Transport: The InterCity East Coast Passenger Rail Franchise	HC 1035
Fortieth Report	Information and Communications Technology in government	HC 1050
Forty-first Report	Office of Rail Regulation: Regulating Network Rail's efficiency	HC 1036
Forty-second Report	Getting value for money from the education of 16- to 18-year olds	HC 1116
Forty –third Report	The use of information to manage the defence logistics supply chain	HC 1202
Forty-fourth Report	Lessons from PFI and other projects	HC 1201
Forty-fifth Report	The National Programme for IT in the NHS: an update on the delivery of detailed care records	HC 1070
Forty-sixth report	Transforming NHS ambulance services	HC 1353
Forty-seventh Report	Reducing costs in the Department for Work and pensions	HC 1351
Forty-eighth Report	Spending reduction in the Foreign and Commonwealth Office	HC 1284
Forty-ninth Report	The Efficiency and Reform Group's role in improving public sector value for money	HC 1352
Fiftieth Report	The failure of the FiReControl project	HC 1397

Fifty-first Report	Independent Parliamentary Standards Authority	HC 1426
Fifty-second Report	DfID Financial Management	HC 1398
Fifty-third Report	Managing high value capital equipment	HC 1469
Fifty-fourth Report	Protecting Consumers – The system for enforcing consumer law	HC 1468

Oral evidence

Taken before the Committee of Public Accounts on Monday 5 September 2011

Members present:

Rt Hon Margaret Hodge (Chair)

Mr Richard Bacon	Austin Mitchell
Stephen Barclay	Nick Smith
Stella Creasy	Ian Swales
Jackie Doyle-Price	James Wharton
Mrs Anne McGuire	

Amyas Morse, Comptroller and Auditor General, and **Alex Scharaschkin**, Director, National Audit Office, gave evidence. **Gabrielle Cohen**, Assistant Auditor General, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

Protecting Consumers—The System for Enforcing Consumer Law

Examination of Witnesses

Witnesses: **Gillian Guy**, CEO, Citizens Advice, **Mike O'Connor CBE**, Chief Executive, Consumer Focus, gave evidence.

Q1 Chair: May I start with two apologies? One is that I have half lost my voice, which is probably a joy to most people in the room, and the other is to apologise sincerely for keeping you waiting. We are not usually like this, but it is our first sitting since the recess, we had to agree a number of draft reports in private session and there were one or two contentious issues—sincere apologies. I did try to give you a little forewarning that we might be running late, but we are later than I thought we were going to be, so real apologies.

I think our questions to you are really around two issues. If we look at the current structure of consumer protection, and we are looking particularly at issues that cross local authority boundaries, it seems to me that having one Department setting the regulations but then having no control over funding the local authorities that are primarily there implementing the regulations is too fragmented and does not allow effective delivery of consumer protection against detriment. Do you agree, or do you think that the present arrangements work well?

Mike O'Connor: First, I pay tribute to the work of trading standards officers up and down the country who are doing a very good job. Therefore, in commenting on the system, it is on the system rather than on the individual organisations.

I do agree that the system is very fragmented. It had its roots in times gone by when cities got charters and had local markets that had to be monitored. What the NAO report calls out for is greater co-ordination. The trick is how you marry greater national co-ordination with local accountability. This is not a new problem. The Hampton report in 2005 recommended the setting up of a central consumer and trading standards body. The proposals that the Governments have brought forward on the trading standard policy board or the

joint enforcement body, which are two alternates, could work, but they are really about solving the national and regional problems. They will not address the problem that the NAO has identified. I look to the Government to be somewhat more imaginative and creative about a system that will tackle the fragmentation and the danger of enforcement deserts that criminals can take advantage of. Moreover, given that there is less money right across the public sector, the appetite to tackle the big problems locally will not be there.

All our research shows that trading standards do not have a high enough priority with locally elected politicians. Some kind of system is needed. We have produced proposals for mutualising trading standards nationally which can be commissioned locally, and that is the direction the Government should be going in. In Northern Ireland, we already have a national trading standards. The Welsh Assembly Government are heading in that direction. I know that those are smaller areas, but they show how elected officials are beginning to see the point of having co-ordinated and national level activity on trading standards.

Q2 Mrs McGuire: Could we have an explanation of what you mean by mutualising trading standards?

Mike O'Connor: We produced a report floating the idea that public services do not have to be provided just by the private sector or just by the public sector. The middle road of mutualisation could be a way forward where we could have a mutualised trading standards service for England. That would give it credibility, leadership and co-ordination but it could be commissioned locally so that services could be bought locally. The local accountability would be done by the purchasing locally. I look to the Government to think more widely about how we make

sure that we have a good national, strong enforcement system.

Q3 Chair: To follow Anne's point, how would mutualisation ensure the funding of activity that is cross-local authority boundary?

Mike O'Connor: The Government are already putting £34 million into tackling the £5 billion-worth of problems that are thought to be national or regional. The local authority bring £200 million into the £2 billion-worth of local problems. I envisage that the mutualised body should bid for, and hopefully win, funding at that level to tackle regional and local problems.

Q4 Chair: From whom?

Mike O'Connor: From Government for the national and regional problems. For local problems, they should try and sell their services to local authorities.

Q5 Mr Bacon: That model already works for building control. In my own area, we have the building control function for several local authorities performed in one place through a series of contracts. Are you saying that if a mutual was set up, it could do the trading standards function for bits of Suffolk, bits of Norfolk and bits of Cambridgeshire under contract with various local authorities that currently have the legal responsibility for doing it?

Mike O'Connor: That is one model, but I would like to see the Government explore different models. It is not until we look at this in a radical way that we will tackle this local inconsistency—lack of central intelligence, different standards and uncertainty about what is working across the country.

Q6 Chair: I want to give Gillian the chance to come in, but what I do not understand in your model is where the incentives would be for anybody to commission cross-boundary issues. I can understand the incentives for a local authority to commission work in the old style trading standards sort of way, but what about the cross-boundary scams? Where will be the incentive for anybody to commission and pay for that?

Mike O'Connor: That will have to be funded. The Government idea of an indemnity provided through a mutual, or another body, is the way forward there.

Q7 Chair: Gillian, what would you like to say on that?

Gillian Guy: I just want to pick up the word "fragmentation". As an organisation, Citizens Advice would agree that there is a fragmented system out there but, just being clear, the system remains fragmented while we only talk about enforcement; if we want to deal with the whole system, we have to talk about consumer empowerment and consumer advocacy, and driving behavioural change in businesses and securing their compliance. It has to be the whole system that we talk about.

From our point of view, we are looking to make use of the opportunity of the NAO recommendations, together with the proposals in the consultation document on the consumer landscape, to try to come

up with some solutions—not to paper over the cracks of that fragmentation, but to bring the whole system together, particularly in terms of the kind of data that Citizens Advice can bring to bear on collection and analysis, and giving ammunition to the enforcement arm of the system.

One thing that we say about the NAO report is that its recommendations have some resonance. We can see that there is confusion over who can take what kind of cases—some fall through the cracks and there is some duplication throughout the system, but I am not sure that the entire answer is to centralise it and control it. I speak from the experience of my organisation, which in those terms is fragmented; we are 400 separate organisations who come together, and we manage to deliver a pretty consistent service. We have ways and means of doing so.

Talking of incentives, part of it has to be about building a business case to show the return on investment to local authorities and to show them the realities of life, which are that resources are currently significantly constrained. There is an opportunity for some kind of innovative solution. I would also ask that the bodies that are currently involved—far be it from Citizens Advice to ask trading standards to organise themselves differently—be set about with some principles that are required for this system and then design the model. All too often, we go for the model first and then worry about how we are going to accord with the principles. I have not yet seen a clear articulation of those principles.

Q8 Nick Smith: In Blaenau Gwent in south Wales, we have good trading standards. They have run some excellent public health campaigns recently, particularly on alcohol misuse, when they worked with the police and the local health board. That has worked well. I am interested in the idea of mutuals, but I would be worried that strong local working relationships could be lost and also about consumer input and information. If you are working towards a mutual model, how would you address those two concerns?

Mike O'Connor: The mutual model does not include or exclude partnerships with local authorities, or involving local people. I agree that trading standards could do much more to communicate with people and to empower them and help organise them.

Our research in Scotland shows that most consumers are aware that trading standards exist but that they do not know what they do and do not talk to them. They talk to Consumer Direct, which sometimes refers them to trading standards, but they do not go direct to trading standards. The trick is to ensure local accountability and local responsiveness with a level of co-ordination. When it comes to enforcement of the law I am all in favour of localism, but there has to be some national accountability and some national control—and, of course, accountability to Parliament. We need to keep local accountability but somehow bring about national integrity, and I am worried about the Government's proposals for disbanding the OFT and spreading its work among local authorities. For example, the OFT does excellent work on internet crime, but under the Government's proposals that

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would be given to a host local authority. There is a danger of fragmenting that strong national enforcement body. The Government's approach of fragmentation is replicated in other parts of the consumer landscape with the proposals for the future of Consumer Focus, where we may lose capacity. I am not critical of the trading standards policy board, but we need some broader thinking about how we are going to address the findings of the NOA.

Q9 Austin Mitchell: Our trading standards generally work well with local fraud, such as loan sharks going round door to door. That will continue to be dealt with adequately, but most fraud now must surely be on a wider basis. You point to the possibility of enforcement blackspots like Delawares dotted around the country where enforcement is not adequate, but most fraud now is on a regional or a national basis. If people are fiddling my credit card account or bank account or whatever, it is done on a computer by some remote guy well away from me, who is buying yachts in my name or buying more yachts than I already have in my name. I can't see that the new system will deal adequately with fraud on that basis. Some £34 million for dealing with regional and national fraud is peanuts compared with the scale of the problem. How is it going to be dealt with? Consumer Focus was claiming a big hit with people's gas bills, was it?

Mike O'Connor: We got npower—

Q10 Austin Mitchell: How is that going to be done under the new system?

Mike O'Connor: You're right that the national and regional problems are about £5 billion. The local problem is about £2 billion. A completely disproportionate amount of money is spent locally. When it is spent locally, the differences across the country are huge. We spend twice as much per head in Wales as we do in London. There may be some good reasons for that, but I don't think it's a rational, reasoned argument about where money makes most difference. That's why you need a strong body like the OFT centrally, and a strong body like Consumer Focus, which has that expertise, to look forward and prevent problems from occurring. Both in terms of consumer law enforcement and consumer advocacy, the Government's proposals carry an awful lot of risk of fragmenting and dissolving central capacity to deal with the big problems and with tomorrow's problems, which is what Consumer Focus concentrates on.

Chair: I get the feeling that you don't agree with that, Gillian.

Gillian Guy: I am stopping short of trying to design a trading standards system from the position of Citizens Advice—I don't think it's my place to do that, frankly.

Q11 Chair: I said laughingly to Richard, "Well, you're getting more resources out of this." I have a lot of sympathy with what Mike O'Connor has said: if you are trying to deal with national-regional problems you need a national-regional, strong body that is accountable somewhere to get results. You're actually going to expand under the proposals. Is it because of your expansion that you feel more comfortable, or is there a logical reason that you can

explain to us for thinking your system will be better than the one Mike is proposing?

Gillian Guy: I do not feel more comfortable because we're going to expand. That's quite an uncomfortable position to be in right now actually. What we want to bring is something about the whole system, which I talked about before. So what we intend Citizens Advice to bring to this is the experience of—

Q12 Chair: I understand that. You gave us that answer. How will you deal with the issues that Mike mentions? I think that the system is fragmented, and that having Consumer Focus and the OFT is a lot. How are you—Citizens Advice—going to be able to deal with those cross-boundary issues in the new context? How can you give the Committee comfort that there is real value for money in that organisational structure in tackling this massive consumer detriment?

Gillian Guy: There are two issues here. One is that, as I've already said, we have to determine the principles. One of the principles has to be that it shouldn't be a fragmented system and it should have appropriate levels.

Q13 Chair: But how will you do that?

Gillian Guy: With respect, it isn't my job to design that. But what I will do is make an input to the consultation because currently we have some proposals that are capable of being worked on. They are not final and all these things that we are identifying need to be looked at within those proposals.

Q14 Chair: With the greatest respect, you are going to be given the resources to run a lot of it. So you are going to have to design it. I am a bit worried that you say you are not designing it.

Gillian Guy: Not designing trading standards is what I'm talking about. We are designing, because we're taking over Consumer Direct, and we are making sure that we give at least as good a service as Consumer Direct currently gives in protecting the data and service that are there. We will also enhance that by what we bring as Citizens Advice. So we will give a web capability as well for people to get that advice and get their service direct. They will also be able to have the depth of telephone and face-to-face advice that, as I'm sure you know, we offer through over 3,000 outlets across England and Wales.

Chair: They mostly refer them to me actually—my local ones. But never mind.

Gillian Guy: It goes both ways, to be honest.

Chair: No, it doesn't.

Gillian Guy: In lots of constituencies, it does.

Chair: Not in my constituency—they all come to me.

Gillian Guy: Okay. We had better have a look at that.

Q15 Mrs McGuire: I am interested in how you see the role that Citizens Advice will play in the new consumer protection landscape. What extra dimension will you bring to Consumer Direct? What extra dimension will you bring to the abolished Consumer Focus?

Gillian Guy: In terms of Consumer Direct, we will be, as I said, providing at least the same service

through the telephone service that is available at the moment. We'll add to that a web capability for people to get advice. We'll be linking that to our face-to-face—

Q16 Mrs McGuire: With volunteers on the same model that you have now—the citizens advice bureaux?

Gillian Guy: Our model at the moment is a mixture of volunteers and paid staff, but it predominantly involves volunteers.

Q17 Mrs McGuire: You have very few paid staff in each office, outlet or bureau. Is that right?

Gillian Guy: There are 20,000 volunteers in Citizens Advice.

Q18 Mrs McGuire: So you have 20,000 volunteers. How many paid staff do you have?

Gillian Guy: Six thousand.

Q19 Mrs McGuire: Some bureaux have a slightly higher ratio of volunteers to paid staff. What else will Citizens Advice bring to the game?

Gillian Guy: I've got as far as the telephone service. I've mentioned the web capability. There will be a direct link to our face-to-face appointments system, which will be available through all the various charities and outlets—the 3,000 outlets that I spoke about. That will enable people to get in-depth advice, beyond what they currently get through Consumer Direct. There will also be a very close link with trading standards, both locally and nationally. Whatever structure we end up with, this will be the case. The bank of data that we will then have will be strengthened by the data that we have as Citizens Advice, seeing 2 million people a year with 7 million problems. We will be able to bolster the information with that. The data bank will be much stronger from Consumer Direct and Citizens Advice. That will be available to the OFT and trading standards. We will also be able to see on a regional or a local basis whether problems are national or not and get action at an appropriate level.

Q20 Mrs McGuire: In terms of engagement with the public, have you put a figure on that extra face-to-face work? What investment will be needed in Citizens Advice to deliver that service?

Gillian Guy: We have been doing some modelling, but I don't have figures that I would want to quote to the Committee at this stage.

Q21 Mrs McGuire: If you don't have the figures, perhaps you could share an element of the model. You have 6,000 full-time staff and 20,000 volunteers. How will you bulk that up, or will you not have to do that?

Gillian Guy: I think it unlikely that we would have to bulk it up just on Consumer Direct, because we will take the majority of calls dealt with at telephone stage and web stage. Currently, we get referrals from Consumer Direct that are being dealt with by those 26,000 people, so we're not expecting enormous growth there, but we want to market this so that we

get more people to come in, and we'll build our capacity as we start marketing.

Q22 Mrs McGuire: That will be your real challenge. Consumer Direct is a telephone-based system. I'm not sure where it's based these days. Is it still in the Outer Hebrides?

Gillian Guy: It's in various places.

Q23 Mrs McGuire: The citizens advice bureaux have a reputation for offering face-to-face work. Surely your capacity in terms of the face-to-face culture that you offer will need to be increased. That is as opposed to Consumer Direct, which was founded as a telephone-based system.

Gillian Guy: And it will stay a telephone-based system, but we will be able to add to it a web-based system and that face-to-face facility. We currently get a large number of referrals from Consumer Direct that are absorbed within our current resources. What will happen is that there'll be a direct appointment system so that people won't have to be referred on; they'll be directed.

Q24 Mrs McGuire: How do you see enforcement being implemented? Will that involve Citizens Advice? Will you have to go to the local cop shop? Have you thought of that? Has Consumer Focus thought of it? From my point of view, enforcement is the crucial issue—how do people get their rights enforced?

Gillian Guy: We deal with people on a daily basis, as you clearly know, in terms of advocacy on their behalf. We advocate and will do so in an in-depth way on consumer issues if there is to be a transfer of functions from Consumer Focus following the consultation. That advocacy takes two forms. We will pursue people's cases individually as far as we are able; and, nationally in particular, but also locally, we will pursue policy changes if we think that there is a policy problem. Enforcement would then be referred to trading standards, which is where that happens.

Q25 Mrs McGuire: There is a difference between negotiating with the DWP or the local housing department, and trying to pursue enforcement with a cowboy builder, for example.

Gillian Guy: We do deal with half a million of those a year.

Mrs McGuire: Yes, but you don't have enforcement powers—

Gillian Guy: We refer under trading standards.

Mike O'Connor: Enforcement will remain the task of trading standards. That is why in this review the Government must address the fall-off in performance—not performance but the fact that we are getting a fragmented service; we are getting these enforcement deserts. Citizens Advice will not be able to replace trading standards. We have got to strengthen the trading standard; we've got to co-ordinate and direct it, and we've got to get value for money out of it and make sure the resources are going to where they can make the most difference.

To answer your question about advocacy, I do have some concerns about it because Consumer Focus at

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the moment focuses on prevention. We work on issues like smart meters—every house in the country is going to get a new smart meter over the next few years. We focus on things like copyright law. We are working on issues that are not coming in through consumer complaints today, but that will be really important tomorrow. In the markets, £200 billion is going to be invested in energy, communications and transport over the next few years, and we need a body with a strong consumer voice. The Government are consulting on that, and our argument to them is that they should bring the consumer bodies—Consumer Council for Water, Passenger Focus, Consumer Focus—together into one strong body because we can save money. It will also be more effective because there are things that affect consumers such as billing, access and disadvantage right across the piece. We should have one strong body.

I have some concerns that if you put us into an organisation such as Citizens Advice, for which I have great respect but whose main job is advising people about today's problems, you're going to lose that focus. We think the Government's analysis has been too much about who does the job and less about what job needs to be done for the future, given how markets are changing. We have published proposals for a regulated industries unit, and we believe that whoever takes on that role in the future should have a self-contained unit that is as accountable as possible to Parliament. Moving this work to a charity would mean that there isn't direct accountability to Parliament, which I would regret. I have been an accounting officer for 15 years and I have had to account for £4,000 million over my lifetime. This is a painful experience, but one that I think is right.

Q26 Chair: You talked about Citizens Advice taking on all these new roles. In February, you warned that you are likely to face a cut in your financial resources of 45%. Perhaps you could explain to the Committee how, in the context of those cuts, you see yourself able to accept a wider role.

Gillian Guy: There are two points there if I may. We have said that if we are taking on a wider role, we recognise two things about that. One is that it is building on a current role, and secondly that it will require us to get new expertise. That is why we are in discussion with Consumer Focus about how we might transfer that. That is about us taking on a wider role with resources. If we cannot take it on with resources, we cannot do it as an organisation. That is one piece. The second piece concerns our existing structure and what we currently do today without these extra roles. I have said, continue to say, and will probably be saying in other places tomorrow, that we are under considerable stress about the local funding that goes to our individual bureaux. We are not dissimilar from trading standards in that, and somehow there has to be a recognition of the value that comes from enforcement of those issues in trading standards in the community, and the value of giving advice at an early stage that is preventive and stops people from getting into dire situations. That value has to be demonstrated so that there is an investment from local authorities. The consistency otherwise is not maintainable.

Q27 Chair: That is a good argument for resources. In the context in which you are facing cuts—I don't know whether the 45% figure that you quoted in February transpired in the outcome for your 2011–12 settlements as an organisation, but let's assume that it did in part—are you suggesting that if you get new money from BIS you will ring-fence that in some way to carry out these new duties?

Gillian Guy: Can I be clear about what happened with regard to resources? It is not just about local government funding. I will be clear with the Committee—the cuts in local government funding generally averaged about 10%. That masks a considerable range. Some of our bureaux were between 60% and 100%, and there were others who did not get a cut, because the local authorities were quite convinced of the value—and the return on investment—of having this early advice. There are some other parts of this, rather greater in some senses, but 25% of our bureau funding comes from the legal aid fund. Legislation is currently going through Parliament that will stop that funding. The bureau will lose £20 million worth of funding as a result of that. More to the point, 450 specialist advisers will not be funded to give advice to people, who will not go away; they will need that advice. The other issue is about the financial inclusion fund. That did not come to fruition, because we were given a year's reprieve on that, thank goodness. We are very grateful to the Treasury, but we do have to find a solution to that from somewhere, because, now of all times, people need help with their financial capability to manage their money.

Q28 Chair: So, will you ring-fence any new money? Will you be able to do that within the structure of your organisation?

Gillian Guy: We will have to account to BIS for how we are spending consumer money on consumer issues.

Q29 Chair: So you will ring-fence it?

Gillian Guy: I would not call it ring-fencing, because we do not run our budgets like that. I could not take a volunteer, for example, and say, "I am going to split you in half; this half is consumer and this half is not." But we will have to account to BIS for how we spend our money on the consumer budget that will come to us for these functions.

Q30 Chair: But if you are facing cuts on other budgets, and people walk through your door, and you do not want to refer them all to the MP, how are you going to—

Q31 Stella Creasy: If your bureau shuts, because it has not got the core funding that keeps it going, how are you going to provide the consumer advocacy service in that local area?

Gillian Guy: Couple of answers there, I'm afraid. One is that the consumer advocacy service is not just about the bureau. Let us be clear—Consumer Direct is not in the bureau; the web is not in the bureau; and the national advocacy is not in the bureau. But the local and the face to face within the bureau are very important.

Q32 Stella Creasy: I can absolutely see that. If people have complex consumer problems, being able to go and talk to someone about what their rights are and what redress they have would be fantastic. You raised the spectre there of possible rights deserts. We have enforcement deserts; we might have rights deserts where there will be some areas of the country in which, if you have a problem with a dodgy builder, the response will be, “Good luck; get on your internet; get on your phone.” In other places, you might have somebody who can guide you through. That raises the possibility of inequalities in outcomes, doesn’t it?

Gillian Guy: It does, and that is why we are continuing to fight for those resources that are currently there, to keep that local presence and keep that local advice going. We have a responsibility to find better ways of doing it, to find more effective ways of doing it and make sure that people can get advice elsewhere.

Q33 Stella Creasy: Sure, but this is a Chinese walls fight, if I can use that phrase, because the people funding you to do some of the other work are also the same people who are going to be funding you to do this work. This is all in BIS.

Gillian Guy: I am talking about local funding.

Q34 Stella Creasy: But there are things such as the financial inclusion fund. That was a national government decision. The outcome of that will affect your ability to deliver on these other facets, won’t it?

Gillian Guy: That is the very argument that we have, which is that you cannot take our capacity out if you expect us to provide services.

Q35 James Wharton: I want to carry on a little bit from where Anne’s questioning was going, tying it in to local trading standards services and how they are going to work, and how they work at the moment. There are two questions that I would be interested to get your opinions on. One is how well disparate and separately funded trading standards organisations of different qualities and of different outcomes can work together on projects or issues that are larger than their individual area, and how we should be looking to tackle some of the challenges that those throw up, including the potential liabilities and the potential impact, which can be so much more significant than the impact on a single area.

Also, how do you see the national consumer policy being implemented through lots of different trading standards organisations? How effective is that? Are there other things that the Government should be doing to make it more effective and ensure that they actually deliver on the policy that is essentially decided?

Gillian Guy: In terms of local trading standards organisations, they are variable, and I think that came out through the NAO report. It is probably something that trading standards would readily say is the case. Our plea is to make sure that the resource is there locally for that community to make sure that the enforcement is sufficient.

When it comes to working across boundaries, I know some practical difficulties are thrown in people’s ways, like—and this is not my area—who can work in whose patch. But there are ways round that, and groups of trading standards organisations have come together and worked on projects. They have worked on some nationally funded projects, such as Scambusters, very successfully—and there is a track record for being able to do that.

I believe we will need something to bring together national policy. We have the bones of some proposals at the moment about how we would have some national presence, and national weight given to that. We have ours already at Citizens Advice and we would welcome working with a national organisation to make sure that that is given some vent locally. But we also want to influence local policy through our bureaux and through those trading standards organisations.

Q36 Mrs McGuire: The Citizens Advice model gives the impression of being a homogenous organisation, but in fact—unless the situation is different in England and Wales from that in Scotland—bureaux are free-standing, independent organisations with a local board of trustees. Following on from James’s question, how do you get to a point where you have cross-boundary co-operation between citizens advice bureaux, given the independent nature of your structure?

Gillian Guy: Certainly we have an independent structure. That does not mean that we are homogenous—and we don’t want to be, because that is the good thing about being local.

Q37 Mrs McGuire: But when people talk about Citizens Advice, they get the impression that it is an organisation that has a chief executive, and everything at local level fits in to that organisation—that company—like Tesco or something. But you are not; you are an amalgam, if I can use that word, of freestanding organisations—of independent trustees.

Gillian Guy: We are more like SPAR than Tesco.

Q38 Mrs McGuire: All right, SPAR. That’s a franchise—

Gillian Guy: It is also quite difficult to tell the difference between them in that sense, because what we have is a common offer. If you want to be a citizens advice bureau, you have to be a member of Citizens Advice, and conditions are attached to that, otherwise you would not get the same offer when you walked into a bureau. So it has to be about the volunteers being trained, and that is centrally controlled, because—

Q39 Mrs McGuire: I know all of that. How are you going to facilitate the cross-border co-operation that is a problem under the current system in some areas?

Gillian Guy: In the way that we do now, but probably more so—particularly on consumer issues. We will be able to consider how we design that and bring bureaux

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together to help us deliver on consumer issues. We think that will help us with the rest of our service delivery, too, because we will bring in new models. When I said that we have a responsibility to think about how we do things to come in most cost-effectively, we will be working across boundaries and encouraging that with bureaux, because not every bureau can maintain that same level of specialist advice, for example, so they will have to share some of that. At the moment, they share nationally a large number of things, such as IT, training and the AdviserNet, which gives them the advice documentation. So we are used to doing that and we will do more of it.

Chair: Mike, a final word to you, because I am conscious that we have heard a lot from Gillian.

Q40 Stella Creasy: I would be interested in your response, Gillian, to Mike's point about the horizon-scanning approach. You talked about helping people to access their individual rights; there is clearly an issue about collective rights within consumer enforcement, both in whether your data show you that there is a particular problem with scam builders in some areas, and also in new forms of technology and scam—15 or 20 years ago, no one would have predicted chip and pin fraud and so on, but that stuff is always happening. That is a slightly separate role from being a responsive organisation, and I am a bit concerned that we have not teased out where that will come from if reforms go ahead and if Consumer Focus is merged into the CAB.

Gillian Guy: We have a role between the two of those, which is around policy development. It may not be as futuristic as what Mike described—as horizon scanning—but it is certainly about thinking where we might need to change social policy because of the

evidence base that we have about what is going on in communities and for people. Horizon scanning in particular industries is a specialist skill, and we will import that. We need to grow that in Citizens Advice—with less money.

Mike O'Connor: I believe we need Citizens Advice to give people advice. We also need a body which works on prevention. In terms of value for money, you get more value for money by turning off the tap than by mopping up. With the Government's proposals, I worry that you are going to lose strong national enforcement bodies like the OFT, and you are going to lose an expert body working on tomorrow's issues, such as Consumer Focus does. We are asking an awful lot of Citizens Advice. I am sure they can rise to the challenge, but I think there is a danger that we are fragmenting OFT, we are fragmenting Consumer Focus, and you are going to lose a national accountability and a national focus. Localism is okay, but it does not mean doing everything locally. There is a case for central co-ordination and accountability.

Gillian Guy: May I pick up on a point? There is a characterisation of Citizens Advice here that probably goes back about 60 years, but we have moved on in the intervening period. We do a lot of preventive work and our mission statement is not about, "Let's just pick up the pieces," but about, "Let's get to a stage where this doesn't happen again." We work in schools, we work with people about taking control of their lives and, actually, we do not subscribe to just giving people advice, but actually helping them not get into the situation again, and we work on policy to make sure these things do not happen again, so I just wanted to correct that.

Chair: Thank you to both of you and, again, my apologies for being so late this afternoon. Thank you for your very clear advice.

Examination of Witnesses

Witnesses: **Philip Collins**, Chairman, Office of Fair Trading, **Martin Donnelly CMG**, Permanent Secretary, Department for Business, Innovation and Skills, and **Ron Gainsford OBE**, Chief Executive, Trading Standards Institute, gave evidence.

Q41 Chair: Welcome. Again, I reiterate apologies for keeping you waiting. We have some good experts around the table this afternoon, so I hope that we can have an interesting exchange of views. I will start by asking you, Martin Donnelly, if I may: who is accountable to the public for protecting the consumer against scams that are not limited to a specific local authority area?

Martin Donnelly: We in the Business Department are responsible for the overall policy framework, and we have funding to ensure that we can work effectively with the OFT, with local trading standard colleagues, to deal with the cross-border issues.

Q42 Chair: So are you accountable?

Martin Donnelly: We are accountable for setting the policy for those issues that go beyond straight local authority issues—yes, we are responsible for national policy in this area.

Q43 Chair: So we can hold you to account as the new arrangements roll out. With the abolition of the OFT and Consumer Focus, we will hold you to account if arrangements are not fully in place to protect consumers against scams to the value of some £5 billion.

Martin Donnelly: Well, this Department is in charge of policy and we are consulting on the best way of achieving those objectives.

Q44 Chair: You are not in charge of funding, are you?

Martin Donnelly: We have some national funding, which we use.

Q45 Chair: How much?

Martin Donnelly: We have £30 million going to Citizens Advice, £4 million to Consumer Focus, £10 million on our specific enforcement against some of the scams that you have been talking about, through

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initiatives like Scambusters, through our attempts to deal with illegal money lending, and we also fund the debt advice helpline, and the separate funding from OFT on Consumer Direct, which we have talked about. So we do have some funding—£10 million specifically on enforcement issues. Obviously, a lot of funding is at local level.

Q46 Chair: Who does the £10 million go to?

Martin Donnelly: We use the £10 million in the form of various specific projects. So Scambusters is one arrangement where we work—

Q47 Chair: But that money comes to an end, does it not? I cannot remember when—it is in 2012, or something like that.

Martin Donnelly: It is continuing.

Q48 Chair: It is continuing beyond 2012?

Martin Donnelly: It may not necessarily have the same name, but as we go forward into the new arrangements we have this level of funding to continue.

Chair: That is welcome news.

Martin Donnelly: It is obviously subject to ministerial decision, but I would expect that to happen. It is an important area. We are using that funding to work regionally with the different local authorities and obviously to co-ordinate. And we have put forward consultation proposals to try to make the incentive structures and some of the issues that you have been discussing work more effectively going forward, building on the expertise of the local trading standards bodies and of course the OFT.

Q49 Chair: I cannot remember what you totted up, but you gave us figures that suggested how much in total would be available to support consumers against detriment?

Martin Donnelly: We have £10 million directly for enforcement of detriment issues. Then there is £30 million of funding for Citizens Advice.

Q50 Chair: But that is beyond consumer detriment. That is just general funding for—

Martin Donnelly: That will include the issues that we have been talking about, regarding the awareness of issues. Similarly, there is our support for Consumer Focus and debt helplines.

Q51 Stella Creasy: £4 million to Consumer Focus?

Martin Donnelly: £4 million to Consumer Focus, yes.

Q52 Mrs McGuire: And you have £10 million, so that is £44 million under the current arrangements and £30 million of that goes to citizens advice bureaux?

Martin Donnelly: That is right, including £8 million for transitional costs including changing of arrangements on Consumer Direct.

Q53 Mrs McGuire: How much of that is about consumer protection, consumer advocacy and dealing with detriment? If £30 million of it goes to Citizens Advice, is that for Citizens Advice to carry out

general duties or is that specifically for consumer issues, which harks back to the question that the Chair asked of the chief executive of Citizens Advice?

Martin Donnelly: It is support for wider consumer issues. I could give you a more detailed note on how that money is spent. I would separate that from the specific funding to deal with consumer detriment; if you like, that is dealing with the scams that have happened as opposed to trying to empower consumers to understand what their rights are and how to use them.

Q54 Mrs McGuire: Can you be clear, though? You should be able to be clear today, to clarify whether the £30 million that goes to citizens advice bureaux under what you have suggested is an umbrella of “consumer protection” is related to the funding of the general running costs of Citizens Advice, which it receives as a national organisation with a funding relationship with BIS.

Martin Donnelly: It is to do with the specific services that Citizens Advice provides as a national organisation, not the bureaux.

Q55 Mrs McGuire: No, because the bureaux are locally funded.

Martin Donnelly: Yes.

Q56 Mrs McGuire: But Citizens Advice is the national organisation.

Martin Donnelly: Yes.

Q57 Mrs McGuire: Not specifically for consumer issues.

Q58 Chair: Not for detriment—not for dealing with what we are talking about, which is scams.

Martin Donnelly: No. It is not for dealing with scams.

Q59 Mrs McGuire: In actual fact, we have £14 million going into consumer detriment then, loosely speaking?

Stella Creasy: No, because £4 million of that is for Consumer Focus.

Mrs McGuire: All right. So, it is £10 million.

Martin Donnelly: Essentially, it is £10 million specifically on the enforcement side, although I would underline the point made by Mike that dealing with some of these issues upstream is, of course, very important. Having empowered consumers, so that they are aware of their rights, can prevent some of the detriment.

Q60 Chair: I know that Mr Barclay wants to come in, but before he does so I just want to get some information from Mr Collins. You are funded directly from the Treasury?

Philip Collins: Yes, we are.

Q61 Chair: And you currently spend what amount on actually chasing these scams?

Philip Collins: Our best estimate of our total spending on all consumer enforcement work for the last year, up to the end of March 2011, was £9.5 million.

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Q62 Chair: £9.5 million, plus the £10 million. And when you go, who picks up that tab?

Philip Collins: Well, it is not clear, first of all, that we will go, so to speak. What is clear from the consultation document is that the Competition and Markets Authority will retain some consumer functions. What is unclear is what those functions will be and what will happen to the central resource that currently exists within the OFT to provide support to trading standards and to handle national cases.

May I just broaden the debate a bit, beyond this question of scams, because it is very important to be forward-looking here? We are facing a situation where, in 2011, we need to have a consumer regime that is fit for purpose for dealing with the sources of consumer detriment that will arise and hit consumers in the next five to 10 years. Those sources of detriment are constantly changing. They are constantly evolving. New problems are coming up. Consumers are being ripped off in different ways—different variations on the old rogues and the scammers; but there are new business models and there are new business practices. Now, if we can challenge those effectively and early, you can actually nip problems in the bud, and through a combination of tough enforcement action—perhaps limited enforcement action—but also very effective business guidance, and very effective consumer education, you can actually change things, meaning that the problem does not become as bad as it appeared to be at first sight.

The other thing is there are new markets emerging, where consumers are suddenly finding opportunities to spend their money, and therefore there are people there trying to make them spend more of their money than they wish to spend. We need to be able to address those. A very good example was the payment protection insurance that emerged in the late '70s, where consumers have been hugely disadvantaged. Other examples are things like mobile devices. So we need to be looking ahead—going back to the earlier discussion about horizon scanning. Any consumer enforcement regime needs to be very forward-looking and needs to be able to stamp on the practices that are, clearly, highly damaging; but it needs to be very forward-looking in making the best use of limited resources to prevent these problems from arising.

Q63 Chair: And where will that sit in the new arrangements?

Philip Collins: That is unclear at the moment, but it is clear some responsibility will remain within the Competition and Markets Authority—but a substantial proportion will potentially move to some joint body. We have fairly strong views that the best model is the joint enforcement model, under which, essentially, the national body and trading standards come together and make very careful decisions about which cases to pursue and which cases not to pursue, how they are pursued, by which body, and how the joint resources of trading standards and the national body can be used most effectively. We think that is the best use of public money.

Q64 Chair: I am just going to bring the trading standards people in to respond to that as well, because clearly at the moment you are the best funded bit of this landscape, with £200 million or so—but it is mostly local authority funded, and it is mostly funded for issues of consumer detriment that occur within a local authority boundary. Perhaps you would like to tell us a little bit about whether you see your members funding these more national issues—doing the forward-looking that has been described by Mr Collins—and what funding you put into the pot at present to deal with either existing scams or potential scams.

Ron Gainsford: It does not feel like we are the best funded, but I will take your word for it in terms of the aggregate sum that you mention. I think the difficulty we face at the moment, of course, is you cannot have a situation where that aggregate funding is going to reduce from the £213 million-ish that we currently have for England, Scotland and Wales to circa £140 million by 2014. In fact, that is coming sooner rather than later because of the frontloading of those formula grant cuts etc. So in that sense something has to change. We simply cannot carry on as we have done. Additionally to that, of course, the Committee may be aware that we have also lost, by decision of the Local Government Group, the central co-ordinating machinery that local government once provided; so the organisation that was called the Local Authorities Coordinators of Regulatory Services—Local Government Regulation—which has been with us since 1978 and which was set up by Government and local government at the behest of business, to address allegations of inconsistency, has evaporated rapidly by way of decisions at Smith Square by the Local Government Group. That affects trading standards in all parts of the UK. That machinery has gone, almost overnight, and although there are some small successor regimes being considered, we face a serious challenge, both in the context of the loss of aggregate resource, and therefore individual resource, in local authorities, and by way of the supporting machinery that has been around for some considerable time.

In that sense, so far as the Government's proposals are concerned, we are obviously of a view that we have to do things differently, and the issue is what we can actually do differently in that regard. From our point of view the issue has always been this: in a sense the great strength of trading standards is its roots in localism, in the context of the advantage this country has over many other countries in Europe, and otherwise, with which I am fairly familiar.

In that sense we have a fairly unique creature in the United Kingdom in the trading standards service that we have. In the sense of its roots, it is a very effective one, given the intelligence available at local level. In that sense, there is great value in seeing a continuance of some local standing within trading standards. The great challenge in addressing markets—market and consumer demands—and the fleet of foot, those determined to defraud and engage in malpractice, has always been how to convert that local capability into a regional, national and now international capability. In that sense the track record is reasonably good.

My institute has been around for 130 years, and the past 30 years of that have been invested significantly in engaging with other overseas organisations in different European unions, in building up a great deal of professionalism in the UK, and so on. In that context, the amount that is achieved for the investment made is significant.

I think the Committee has seen the level of out-turn achieved from the relatively small sums given by BIS to the Illegal Money Lending units and to Scambuster teams. They are fairly small—£5.2 million, £2.7 million, £150,000 for safety at ports. The deliverables from that are quite significant and proven so by the data that have emerged from the Illegal Money Lending and Scambuster teams. The worry always is continuity, stability, predictability of funding and how local authorities are encouraged to invest in that.

For me, the big question is that coherence will have to be built on having a much more engaged concordat and understanding between local and central Government. Local government at the moment has held the stewardship of trading standards for many years. Yet we operate outwith any definitive framework of performance or expectations, and that especially so over the past 18 months, when those performance indicators that were in place have evaporated and where, largely, the performance monitoring regime has evaporated.

Q65 Chair: So you would support the development of a much stronger national organisation?

Ron Gainsford: What the country needs, and what we certainly need, is to ensure that there is an infrastructure in place that enables that local presence to convert effectively into a regional, national and international presence.

Q66 Chair: Which means a stronger national infrastructure?

Ron Gainsford: Which I think does mean certainly a greater migration of responsibility to the national as well as to the local.

Q67 Stephen Barclay: Mr Collins, you mentioned the figure of £9.5 million before. Was that the spending of the OFT on consumer enforcement?

Philip Collins: That was the spending on consumer enforcement, yes, and it is based on actual figures for 2011.

Q68 Stephen Barclay: Okay. Because the report on page 6, note 2, puts the figure in excess of £13 million per annum. Are we talking about different things there? Or are you saying that the figure has changed?

Philip Collins: The figure has changed, because the £9.5 million is the actual outcome for the year. The £13 million was the figure being discussed, based on budget for the year in 2011.

Q69 Stephen Barclay: The NAO may want to come in, but the report also says that the OFT has not provided details of expenditure. Why did you not provide details?

Philip Collins: Because at that stage we were in discussion with BIS about the implications if there were fundamental restructuring, with complete chopping-off of the consumer function. Those discussions were not complete. The NAO did not press us to produce figures and was happy to use the figure produced by BIS as an estimate.

Q70 Stephen Barclay: I would have thought that if you were looking at restructure, it is even more likely you would be on top on what you are spending—how many staff and how it breaks down—rather than less so. Perhaps in a note to the Committee you could give us a detailed breakdown. Just to give us an estimate, could you tell us how many staff you have in that area, how many of those are lawyers and what is the ratio in terms of what you are spending on staff, IT, policy work and so on?

Philip Collins: Yes, we can do that, certainly.

Q71 Stephen Barclay: Can you just give me an estimate now? I presume you have an idea how much you are spending. Whether it is £9.5 million or £13 million, you must have an idea how it is being spent.

Philip Collins: Of the rough split of the £9.5 million, roughly 70% is what I call front-line enforcement.

Q72 Chair: 70?

Philip Collins: Yes, 70% is front-line enforcement staff. That is lawyers and economists who are working in the front line.

Q73 Stephen Barclay: So that is on lawyers.

Philip Collins: Yes, and economists and others, and 30% is in the support function.

Q74 Stephen Barclay: How much would you be spending on IT? Presumably that is in that 30%, so how much within that 30%?

Philip Collins: It is not broken out within the overall organisation because obviously it is a fully integrated function. We don't actually structure the organisation so that consumers are a part of it; the consumer is part of an overall competition and consumer function looking at how markets work, and therefore how you break out the actual costs of consumer and competition will depend on what happens in the particular cases in a year. But I can provide a detailed note to the Committee.

Q75 Stephen Barclay: That would be helpful. In terms of putting a head count to that, that 70% equates to what sort of head count—how many staff?

Philip Collins: It depends. The direct head count is between 70 and 80, but that excludes the support staff.

Q76 Stephen Barclay: But the 70% of the £9.5 million is paying for those 70 to 80 staff.

Philip Collins: Yes, and it is also obviously paying for some central overheads—senior management and so on.

Q77 Stephen Barclay: So it is not all on front-line services, that 70%. We have had debates on this

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Committee before about what is classed as front line, and in fact the Cabinet Office does not have a definition. Each area is free to interpret front line, which is why—

Philip Collins: The way we define front line here is that it is those who are directly working on the cases involved, together with the immediate support services, such as a general counsel's office, statisticians, economists and so on, who are directly working on those projects.

Q78 Stephen Barclay: In terms of actual enforcement cases, how many were there last year?

Philip Collins: My recollection is that we had 85 active enforcement consumer cases last year.

Q79 Stephen Barclay: So that is basically one per person for the year.

Philip Collins: Yes, that is a slightly difficult comparison because obviously you are looking at cases that are being generated and those that are being closed at any particular point in time, and some of them are very big cases and some of them are very small cases.

Q80 Stephen Barclay: Sure, but they will be working on some for more than one year.

Philip Collins: Yes.

Q81 Stephen Barclay: That is one way of estimating impact; could I take you to figure 18 please, on page 38? I welcome your explanation, because I was a little surprised by the figures here.

On my reading, the estimated impact for the Office of Fair Trading was £42 million, which if it was on £13 million is a three and a bit to one ratio; obviously it is more if it is £9.5 million. But it is still massively below the trading standards services, where you have an estimated benefit of £347 million, which note 3 says is a benefit ratio of six or seven to one. So it looks, give or take, as if the trading standards is having twice the benefit as the OFT, and perhaps Mr Donnelly will want to come in on whether that is a reason for the Government taking the policy decision they are taking. To us, as a value-for-money Committee, there seems to be a massive discrepancy between those figures, and I just wondered if you could help us on that.

Philip Collins: The answer might well be that they are essentially different kinds of cases. We have just revised the figure for positive impact for 2011, and it comes in slightly below the £42 million figure, but it is important to understand that the way we look at our enforcement work is to try to look at everything we do and the impact on consumers across both our competition and our consumer functions. So we are looking separately, in aggregate, across the piece, and splitting out any one element in any one year might not give the right impression. Taken overall, we are required by our settlement with the Treasury to achieve a five to one benefit ratio.

Q82 Chair: Mr Donnelly, do you want to comment, as Mr Barclay suggested?

Martin Donnelly: I was re-reading the comment from the NAO in paragraphs 5.12 and 5.13. This is a very challenging area, and it can be difficult to judge both complexity of cases and overall impact. One of the challenges, as you will be aware from reading the report, is that we struggle to estimate accurately detriment, and therefore the impact of various cases.

Q83 Chair: So, did you look at this when you decided to merge the OFT into the new competition authority?

Martin Donnelly: That is something that, as you know, we have consulted on, and Ministers will be making a final judgment on it later this year.

Q84 Chair: But you have proposed it. Was this an issue that you looked at in proposing it for public consultation? You always come to us just before the decision has been made.

Martin Donnelly: This information would have been broadly known

Q85 Chair: Was it something you had regard to? Why did you put forward the proposal? You have proposed something that is now subject to public consultation. Was this an issue, or why did you propose it? Some of us are a bit bewildered by that.

Martin Donnelly: Well, there are two separate consultations, and I just want to be clear which one we are talking about here—the move on the competition framework with the OFT and the Competition Commission, or the proposals for how we co-ordinate more effectively on consumer detriment going forward.

Q86 Stephen Barclay: One accepts that these things are judgment calls, of course, but even you quoted paragraph 5.12, which says that the impacts reported by Scambusters teams ranged “from £0 to £15.7 million”. It goes beyond a judgment if something is at zero. Why have we got a team where the impact is rated at zero?

Martin Donnelly: The Scambusters have uncovered £64 million of fraud. Estimates suggest that they have saved consumers £25 million, and they have prosecuted 65 rogue traders successfully, so there are a series of measures which show that there has been a positive outcome.

Q87 Stephen Barclay: Sure, but I am asking about this point: why have we got a range here that starts at zero?

Martin Donnelly: I may have to come back to you in a note. I believe the answer is that this is aggregating the different regional Scambusters teams' outcomes.

Q88 Chair: Can Alex help us? What is the £0?

Alex Scharaschkin: It may also just reflect non-reporting by some teams as well. So, these are the impacts reported by Scambusters teams. I think there is some inconsistency in the application of the calculation tool by teams.

Chair: May I just say to witnesses that we need our notes within a week, to keep up?

Q89 Stephen Barclay: In a way, that brings me on to your opening points, Mr Donnelly, about policy and how it relates to governance. Clearly, if areas are not reporting at all, as accounting officer, it is difficult to see how you get a grip on whether that is delivering value for money—if there are gaps in the data.

I want to clarify a point, particularly in terms of the relationship with OFT. Are you responsible for governance around money that is allocated by the Treasury, or is that separate to the area that falls within your central Government policy remit?

Martin Donnelly: The short answer to the second part of your question is that no, we are not. The OFT is responsible to the Treasury, but naturally we work closely together.

On the specific Scambusters point, I add that we have a now well honed system of accountability with those teams. We meet every three months, look at progress by the teams against objectives on detriment, and we ensure that there is regular reporting back. So, I would separate those two things.

Q90 Stephen Barclay: When you said in your evidence earlier that BIS is responsible for central Government policy for consumer protection, are we saying that that applies except for consumer protection covered by the OFT?

Martin Donnelly: We are not responsible for the funding of the OFT, but the OFT play a major role in delivering the policy.

Q91 Stephen Barclay: Of course they play a major role—again, that is civil service language—and no one would dispute that. What I am trying to understand is where your remit stops. If I understand correctly, you are saying, “We are responsible for central policy as a whole”, but then, the OFT are also saying, “But we report directly to Parliament and we have people working on policy”—presumably—within the OFT. Is that correct, Mr Collins?

Philip Collins: Yes. Staff work in policy.

Q92 Stephen Barclay: So, do they report to BIS, Treasury, or Parliament directly?

Philip Collins: To the extent that they work on policy in the consumer sphere—and indeed, in the competition sphere—they are generally working with BIS. However, in terms of accountability—

Q93 Stephen Barclay: Of course, everyone in central Government is working with one another nominally—one would hope. It may be that I am just coming in to this fairly new, although the Committee often sees fairly complex governance structures, but when something goes wrong, there isn't a linear structure as to where responsibility sits. That is what I am trying to understand. As accounting officer, you are setting the policy, Mr Donnelly, but most of the central Government money is coming from a different Department.

Martin Donnelly: My Ministers are setting the policy.

Q94 Stephen Barclay: Of course, but your Department is setting the policy and most of the

money is coming from the Treasury. Yet we have an arm's length body in the form of the OFT, which says in its note that it is directly accountable to Parliament—not directly accountable through the Treasury, but directly accountable to Parliament. Within that structure, we then have local authorities, some of which are not providing data to central Government, and have their own governance structures. So what I am trying to understand is that when you say to us as a Committee, “We are looking across the broad remit in setting policy”, to what extent are there still issues within the governance that fall outside your remit, and are you satisfied that you have full control?

Martin Donnelly: There are important issues around governance which we are concerned about, and need to take forward to be able to deliver our policy responsibilities effectively, separating policy from funding, as you have done. That is why, in the consultation document, we have focused explicitly on how we improve national leadership and co-ordination capability around the various detriment issues that we have been discussing. That will have implications depending on the final decisions by Ministers in the light of the consultation that finishes in three weeks.

Q95 Chair: I am going to bring in Anne, but I want to be clear, so answer yes or no. Will you get your fingers on Mr Collins's money, and will you have some influence on the money of Mr Gainsford's members. Yes or no?

Martin Donnelly: I'm going to give you an answer that you may not like, but it is the most accurate one. The decisions that Ministers take for the structures that we set up will have implications for how resources are moved around.

Q96 Mr Bacon: What will those implications be?

Martin Donnelly: It will depend on the model that is followed through. There are possible models of co-ordination in which some funding could move from the OFT to a new supervisory body, which we envisage would be led by trading standards, but working with the OFT and ourselves. There is a variety of models, and the consultation document sets out some, but no decisions have been taken on that.

Q97 Chair: Let me ask one final question before I go to Anne and then the Comptroller and Auditor General. Do you think your fingers ought to be on that money and the other money?

Martin Donnelly: There is a political decision for Ministers about—

Q98 Chair: Oh dear. Would your advice to Ministers be that you ought to control the money, just on this issue of consumer detriment across borough boundaries, that currently goes to the OFT, and some of the resources that are currently spent by local authorities? What would be your advice to Ministers?

Martin Donnelly: I would separate those two questions, because I consider that the question of local spending and accountability is for Ministers—

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Q99 Chair: Just say yes or no, because we are running late.

Martin Donnelly: That is not for me. The question of how we spend collectively our central resource is absolutely one on which you should be challenging me, but both of us should persuade you that we are spending it most effectively.

Q100 Chair: That was not a clear answer.

Amyas Morse: I just want to contribute to your thought process by saying that we have been talking largely about the amount of resource put into it, but when looking at value for money one should look at the benefit as well as the cost of the benefit. By how much do you think it would be feasible to reduce the consumer detriment of £4.8 billion? I don't believe you should answer me right now, but have you considered what, if you had the most effective system for protecting consumers, by how much that might go down?

Martin Donnelly: I don't know, partly because—as has been pointed out—we are in a changing game with the internet, and the move to more digital purchasing raises a whole set of new issues for all of us, and partly because, as we move towards what I hope will be an even more effective model with Citizens Advice, we should be able to do more upstream, which will prevent some of the detriment issues from arising.

Q101 Chair: I am going to bring in Anne, but I am shocked that you cannot answer that question, because when designing and proposing a new system for consultation you should have had an answer to that question in your mind.

Martin Donnelly: There is an issue about what the figures are, which are difficult to work out, and I think the NAO would agree.

Amyas Morse: I didn't mean that to be a trap, but I wanted to recommend that it is worth considering it and saying how much benefit might be accomplished as you design the system, because it might be a guide to how much resource should be applied to it.

Q102 Mr Bacon: What is your ballpark estimate of the range of possible benefit? The CAG asked you by how much you could reduce the detriment, and what could be the extra benefit if you had a very effective system, and you said that you do not know. My question is, what is your estimate of the possible range of benefit and range of reduction in detriment that could occur? You must have some notion. I am not asking you to sign your name in blood to one number, but where are the goalposts roughly? Where are the parameters?

Martin Donnelly: Well, why that is a difficult question to answer is that we have, we believe, a relatively effective system at the moment. That is what cross-European comparisons show. That is what some work that we commissioned several years ago from the University of East Anglia shows. It is unclear how much difference it is possible to make. It is also important—this is one of our priorities for the period ahead—to get more accurate information on the level

of detriment, so that we can work out where it is coming from and where our interventions will have most effect.

Q103 Mr Bacon: Do you not have any internal estimates for roughly what this decrease of detriment might be? Is it £95 million, £200 million, half a billion, £1 billion, £3 billion? What are we looking at, even if it is only a rough guess?

Martin Donnelly: No, I cannot give you an estimate because of how that figure is made up and because we are not sufficiently sure about the elements that go into it to be able to do that.

Chair: So the answer might be, “Don't spend a penny.” If you do not know what you are getting for it, why spend it?

Q104 Stephen Barclay: Does figure 14 not give some sort of start to what Richard is referring to? Paragraph 4.7 makes a point about one of the outliers that is extremely efficient. Part of the reason why it is very efficient is because, as it states, the “Trading Standards Service caters to five separate local authorities, sharing staff and back office processes across the whole”. There are economies of scale as such. In paragraph 4.8, it is the smaller ones in particular that appear to suffer from diseconomies of scale.

There is already some data pointing to what an optimum model might deliver. I fully accept that one cannot predict the future. It may be that the saving is staying still, but would have gone up had you not acted. The margin could be measured in different ways. On the existing data that you have, you have the fact that in Wales there is twice the cost compared with London. There are these regional variations between different areas. There are data already there available to you.

Martin Donnelly: There are data. Ron may wish to comment on what trading standards covers, which goes much more widely than just consumer detriment. We are all in favour of areas where, as in West Yorkshire, authorities are working together to reduce their input costs. What is less clear is the impact. It is about measuring that impact. You would, of course, have more resource to use, but the question is which areas you would use it in and what that impact would be.

Q105 Stephen Barclay: So there is no estimate of the range, coming back to Richard's question. Taking the circumstances of today, if you moved to an optimum measure, could you put a figure as to how much benefit that might accrue?

Martin Donnelly: It is difficult to produce a figure that is useful at this stage.

Q106 Mr Bacon: That is not an answer to his question. Mr Barclay was asking whether you have a number. You said to me earlier that you could not give a rough estimate, which is again not an answer to question, “Have you got a number?” Have you got a number?

Martin Donnelly: We do not have a number beyond the numbers that are in the NAO Report.

Q107 Mr Bacon: How do you give advice to Ministers on the basis of this flimsy evidence base? I am not asking you to tell me now what your advice to Ministers is, because they will make their decision in due course, but you have given them your advice already as to what they should do, haven't you? Is that correct?

Martin Donnelly: No. At the moment we are consulting on the basis of the document that came out in June. At the end of September we will review that.

Q108 Mr Bacon: But the consultation document was based on a proposed route—a proposed path—wasn't it?

Martin Donnelly: It raised a series of ways forward. There was one that Ministers said at that stage they were particularly interested in, which was a trading standards policy board. There are other ways of achieving the co-ordination that they said they wanted. They also highlighted the fact that we need to work through new national systems to get a more accurate grip on precisely how much detriment there is and how far our actions are having an impact on it.

Q109 Stella Creasy: So does that mean that you are critical of Mr Collins's figures? The figures about £5 billion of cross-border detriment have come from the OFT.

Philip Collins: That figure was based on some work done some years ago. Going back to the comments I made at the very beginning, we need to be very careful about just talking about consumer detriment. We are talking about many different kinds of detriment caused in many different ways. One of the things that we do in deciding whether to take cases or not is to estimate the size of the market and the impact we think an intervention will have on the market, as well as substantiating a theory of harm. Then, after the event, for a selected number of cases, we do evaluations, and we work out whether our assumptions were correct and what we think the avoidable consumer detriment was.

For example, in terms of the intervention that we made in relation to airline pricing, which was essentially to make sure that all non-optional costs were included in the headline price and which was achieved ultimately through negotiation and not by enforcement action, we estimate that it created an avoidance of consumer detriment of about £130 million a year.

To go back to the question of how you look at the impact, if you measure it one year with another, you will see variations, so we tend to look at it on a three-yearly basis. We average it over three years and we look at the costs and benefits.

Q110 Stella Creasy: Would that explain why you have only picked up three of the 15 cases that trading standards have referred to you? *[Interruption.]* Two. Sorry.

Philip Collins: That is an entirely different point.

Q111 Stella Creasy: But it's not really, is it? One of the concerns we obviously have is an effective form of enforcement to deal with the detriment that you have identified. In particular, one of the important points that you picked out is doorstep crime. I think most of us have seen people in our surgeries every week who have been scammed by cowboy builders and whatever. If that is cross-border, as in it is people crossing borough boundaries, then it falls without the remit of trading standards. Indeed, one of the things that this report identifies strongly is that there is not that co-ordination, and that falls to the Office of Fair Trading. So you've identified a problem and put a number on it, but nobody seems to be acting on it.

Philip Collins: The question of the two out of 15 is an entirely different question. What that is addressing is which cases were referred by trading standards to the national authority with the view to action being taken and pursuant to a protocol, which had been agreed between trading standards and OFT through LACORS in 2008. We accept that the system is not working as well as it could, but in fact, virtually all those cases were referred on to the appropriate enforcement authority for action. We took two or three ourselves into our work, either our market studies work or our enforcement work. We referred some back to the home authority for trading standards. We referred some to the Financial Services Authority and we referred some to overseas enforcers. We actually referred some back to trading standards. For instance, there was a question about the rights to cancel tickets for a performance if an understudy was appearing in the theatre rather than the named performer. That seemed to be a classically local issue that should be resolved locally, and not taken up at national level by trading standards. I can provide, if the Committee wishes, a detailed explanation of those 15 cases, but it may not be appropriate to spend time on that.

Chair: That would be really helpful. I have Anne waiting so patiently that I am going to shut you up for a minute. I will let you come back in.

Q112 Mrs McGuire: That is not my normal nature, but there you are.

I sometimes feel that, in dealing with this issue, we are swimming through treacle. If I think that we are swimming through treacle, then God help the consumer out there. We have a spectrum of consumer detriment that has to be dealt with. On the one hand, a lot of the local work is dealt with by trading standards officers, and at the other end of the spectrum, some of the big strategic engagements have to be dealt with through the OFT. On trading standards, I think many of us know really good trading standards officers, but it appears that there has been a decline in their profile at local level. There has been some difficulty about funding with smaller local authorities. Often, trading standards officers will feel that they are inside local government in terms of their physical desk, but frankly they are not part of local government. Certainly, from my feedback from trading standards officers, that poses a problem. Value for money is more than about putting in £10 million and getting £10 million of value out the other end; it is also about

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what we are doing for consumers or the general public in this respect. I wonder whether Mr Gainsford would like to comment on my analysis of where trading standards sits at the moment.

Ron Gainsford: I think that is a very fair analysis of where trading standards fits at the moment. If you look at the situation, we have a group of people who are highly professional, highly competent and highly enthusiastic, are very driven by what they are there for, who see themselves as a force for good and who have an incredibly broad portfolio—that includes Scotland, but particularly in England and Wales. They are accountable in many ways to 10 or a dozen different parts of Government, and they look at a whole range of issues, all of which impinge on the well-being of communities or individuals, and of course the well-being of businesses and employers.

It is interesting that when the NAO Report looked at where you would go as a consumer to complain, it found that 35% would go to trading standards—that was the highest figure—and 3% said that they would go to local government. In a way that illustrates your point. In the sense of those out there, trading standards is a strong enough brand in itself to stand alone. It is not necessarily seen by many as part of local government. Indeed, I have had many conversations where people have been surprised that it is part of local government and that is something to do with where it is. It is probably the most outward facing part of a local authority in terms of its communications and contacts. In that sense there is an issue. When you look at the local authorities themselves, quite often, disproportionately, because a service like trading standards does a good job, elected members are not particularly interested in it. That has its own counter-productive effect within the local authority.

Q113 Mrs McGuire: That is because it is not part of the local government infrastructure. It is not necessarily part of a committee that gives a report to the local authority.

Ron Gainsford: What happened with small services, like trading standards and often discretionary services, was that when the committee structure broke down in local government and went to a cabinet structure, to be quite frank those small services had an increasingly difficult job by way of reach into both the elected member hierarchy and the senior officer hierarchy. The Report in many ways exposes that in that some of my colleagues are at fifth tier in terms of the management structure.

Q114 Mrs McGuire: If they are not part of the mainstream infrastructure of the local authority, it makes their life quite difficult.

I want to ask Mr Donnelly about the relationship cross-border and cross-border in my terms is Hadrian's wall because the Report covers the activities across all of the UK, although it may just be in GB—I could be corrected on that. In paragraph 8 on page 8 of the Report the National Audit Office says: "Central government therefore has few levers to directly influence the delivery of policy objectives." I suggest to you that this is particularly an issue in Scotland

where consumer policy is reserved to the UK, but delivery is through local authorities and that is devolved to the Scottish Government. There is a view that the UK Government seem either reluctant or unable to deal with the issues of failing Scottish authorities but the Scottish Government have no responsibility to deal with those issues.

As you quoted the University of Sheffield's report, perhaps I could add as a comment that in 2002, Audit Scotland's report, "Made to Measure" found that at least a quarter of trading standards services did not meet the minimum standards of service—not trading standards officers, I want to be very clear about that. That view was reinforced in 2009 by Consumer Focus Scotland. What sort of relationship do you have in trying to manage the outcomes of what is effectively a UK policy, but within a government structure that is devolved?

Martin Donnelly: You are right. It is a challenge that we are aware of.

Q115 Mrs McGuire: I don't want you to be aware of it. Devolution has been around now for 12 years. It would be really helpful if you were more than aware of it.

Martin Donnelly: If I could make two quick points. One is that on our national spending, we work with Scotland. So, for example, on dealing with illegal money lending, we have a team that covers England and a team that covers Scotland: Scambusters, similarly; Fighting Fund and so on. So our national policies work with Scotland. Secondly, we will make sure, as we go through the consultation, that the proposals that come out also work with Scotland.

Q116 Chair: Are you tackling the issues she raises?

Mrs McGuire: That is not actually my point. I appreciate that Scambusters and money lending staff and, indeed, Consumer Direct, have bases in Scotland. My question relates specifically to the quality of trading standards services that do not meet the minimum standards of service. I will give you an example. Section 71 of the Weights and Measures Act 1985 gives the Secretary of State power to carry out an investigation into the arrangements made by local authorities to give effect to the purpose and functions of the Act. I am not aware that any inspection has been carried out since the local government reorganisation in 1995 to assess whether individual services are being delivered, and that is in the face of a doubling of the number of authorities that deliver those services. That is an enormous gap in trying to manage the quality of output from trading standards. It is not about individual criticism—trading standards officers are working under pressure—but about whether we are getting quality of delivery. Value for money is about quality as well as the input of the £10 million or £14 million or whatever it is.

Martin Donnelly: I would like to get back to you, if I may, on the weights and measures point.

Mrs McGuire: I thought you might. I did not think you would have that information at your fingertips.

Martin Donnelly: It is important.

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Chair: James, do you want to come in on that point or can I bring in Austin?

Q117 James Wharton: I will be very brief. Illegal money lending teams and projects and the changes we have had have been mentioned a couple of times. It is mentioned briefly in the Report. I thought it was worth flagging up. We have lost our regional money lending teams—I can only talk for the north-east. We lost the north-east illegal money lending team, and I think it has gone to Birmingham for a more centralised process. My concern is, now that you've rationalised the illegal money lending team programme, how will you ensure that it delivers success? It is an increasingly important area, particularly in times of economic challenges when people are short of money, do not have anywhere else to turn and often turn to these illegal moneylenders. We know that has an impact on many of our constituencies. The teams appear to be being taken further away from the communities they are supporting—in my case, going from the north-east to Birmingham. How will you ensure that you will continue to deliver a good service, and in fact deliver a better one, at a time when it is really needed, while cutting it back.

Martin Donnelly: Firstly, by ensuring that we continue the funding. Secondly, by ensuring that the fair challenge that you make is being met. My understanding, and our teams' understanding, is that by working centrally out of Birmingham we have been able to draw on more expertise that we can then use effectively across the country. If there is evidence that that is not happening or perceived not to be happening, it would be very helpful to have it and we will look into it. It is only organised that way to get maximum effectiveness from the resources we are putting in.

Q118 James Wharton: Just very quickly, my last question: when you say retain the level of funding, is that the same as before the rationalisation or at a new level that is actually a bit lower?

Martin Donnelly: We are spending £5 million this year on illegal money lending, and I envisage that level of funding—

Q119 James Wharton: What was spent last year and the year before? Is that a post-rationalisation or a steady level of funding or is it a reduction that will keep steady now it has been reduced?

Martin Donnelly: I will check, but my understanding is that it has been steady. We have aimed to protect that area of spending because of its priority for the reasons you have given.

Q120 James Wharton: Would you be able to confirm that for us?

Martin Donnelly: Yes.

Chair: Within a week. I have a whole lot of people waiting to speak—Austin, Jackie, Stella, Stephen.

Q121 Austin Mitchell: Are you happy with the fact that only two of the 15 cases you put up to the OFT were actually dealt with by the OFT?

Ron Gainsford: I don't know if "happy" is the right word. It exposes the fact that the protocol that existed between the Office and trading standards authorities was not working as well as it should have. I think that it is something to do with the fact that a process that was started in 2008 has not been sufficiently well oiled.

Q122 Austin Mitchell: What do you put it down to? Do you put it down to buck-passing by the OFT or the fact that you were sending cases to the wrong destination?

Ron Gainsford: I think it is unfair to say that the OFT is buck-passing. You have to take each case on its merits. I like to look at the core of what is happening. The important part is that we cannot afford to waste any of the resource we have, so when we come to cases that have national significance, we have to be very clear about who will assume responsibility for them. To me, the exposure in the NAO Report is that we were not entirely clear who would assume responsibility. That to me is a waste of everybody's resource.

Q123 Austin Mitchell: Should there be a procedure therefore to see that cases are referred to the body that can deal with them? The NAO Report ventures the opinion that where cases are not taken up, there is a risk that some "will fall between different enforcement bodies, with no-one taking responsibility." We will have a mess.

Ron Gainsford: Absolutely. We cannot afford that. The process did not work as well as it should and we will need to ensure that, whatever happens with the BIS proposals, we have a process that works. Which significant cases individual local authorities will take has always been an issue. It is important that the Committee understands that there are local authorities that will take large significant cases. That is because they have the professional expertise available and the resilience to do it, but, more importantly, they are likely to have the support of their senior executives and the elected members within that authority to put the public funds within that authority at potential risk. We have seen what happens if cases are lost when they take that decision.

Q124 Stella Creasy: Name names.

Ron Gainsford: Name names?

Stella Creasy: Name local authorities that are prepared to do that.

Ron Gainsford: If you look at some of the cases taken by Surrey county council recently and by North Yorkshire county council, you will see that significant cases were taken there.

Q125 Stella Creasy: Do you subsequently see a reduction in the sorts of scams that we are talking about in those areas as a result of that? Do people get the message: "Don't be a cowboy builder in Surrey"?

Ron Gainsford: I think that absolutely can happen, but these tend to be cases that go beyond their boundaries. In effect, they are doing it on behalf of the nation itself, and that is a big ask for any

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individual authority to take. Certainly, as the public funding and accountability of the electorate gets more prevalent and exposed—

Q126 Stella Creasy: Who do you think should bear that risk then?

Ron Gainsford: Who should bear the risk of the large cases? It is certainly a risk that must be borne centrally and locally. To me, the answer is not in—

Q127 Stella Creasy: Mr Gainsford, Mr Collins is the central and you are representing the local, so who should be responsible for those kinds of cases?

Ron Gainsford: We both should. Absolutely.

Q128 Stella Creasy: So why is it that only 15 cases are referred, and, of those 15, only two then get taken forward or they get passed back? Where is the middle ground in all of this?

Philip Collins: I would like to come in here. I think part of the problem with the system was that it allowed any one of 197 trading standards services to input their case into the system. There was no moderation process under which trading standards, either regionally or nationally, said, “We think there’s a problem here. We should refer it to the OFT.”

I will give you a detailed answer on the 15 cases, but, just to give you a flavour, one was referred to the Financial Services Authority and two were referred back to the trading standards home authority responsible for the trader in question. In two cases, bodies were already taking action—one was the local trading standards and one was the police. One case was referred back to the originating trading standards service that was best placed to deal with that individual failure, which was in its patch. There was a variety of other ones. Certain ones were referred overseas—

Q129 Austin Mitchell: Could you give us a note on what happened and why?

Philip Collins: I will do that.

Chair: With details

Philip Collins: The other point that I want to make is that there is a formal referral process, but there is also a tremendous amount of joint working that goes on between trading standards and between OFT—

Q130 Stella Creasy: So can you say a little bit about what you are doing to support local authorities in areas where there are concerns, so that it is not that you have to live in Surrey to be comfortable that you are not getting cowboy builders?

Philip Collins: Just to give you a flavour, we estimate that, over the last year, we have engaged with 95% of the 197 trading standards services. Over 90% contacted our preliminary inquiries team, raising questions with them. We have provided training to some 36% of trading standards services on individual legal issues. We engaged with more than half the trading standards services in our campaigns work in Scambusters and the distance selling regulations hub and the Sale of Goods Act hub. We engaged with a quarter of trading standards services on our market

studies work, and 23 trading standards services worked with us on individual enforcement cases, so there is a lot of joint working.

Q131 Stella Creasy: Sorry, but with respect, Mr Collins, that is not quite the same, is it? Mr Gainsford is talking about local authorities taking on the risk of taking forward a prosecution that has a national benefit. What are you doing to support them taking on those cases that have a national benefit and involve risk?

Philip Collins: Take second-hand cars. It is a huge issue and concern for trading standards and causes lots and lots of complaints to Consumer Direct. We launched a study, and we came to conclusions. We are supporting trading standards, and we have made it clear that—if necessary—we will stand behind national enforcement action if they are not willing to do so.

Q132 Stella Creasy: So it is on particular issues; it is not particularly local authorities picking up the big central cases.

Philip Collins: No, no. This is on particular issues that are of concern to consumers where there is a high level of consumer detriment and where it is an intractable problem for many trading standards authorities. We have carried out a market study.

Q133 Austin Mitchell: Let me turn it back, because you have named and praised Surrey for its willingness to spend the money. Are you prepared to name and shame local authorities that do not adequately fund their trading standards? I am surprised that the only legislative requirement is that they have a weights and measures officer, so what they could do is up to them. Looking at the map on page 30, Yorkshire seems pretty mean, which is fairly characteristic. Are you prepared to name the areas that are not providing enough money to keep adequate trading-standards coverage?

Ron Gainsford: I don’t have to, because the information is available.

Q134 Austin Mitchell: Could you give us a list?

Ron Gainsford: It was referred to in the Audit Scotland report and in the Consumer Focus Scotland report. It was very clear what those two organisations felt was not being invested in trading standards in sufficient numbers. Similarly, the data are readily available elsewhere, so, for me, I am not sure what that would achieve, other than the fact that—

Q135 Austin Mitchell: Shouldn’t minimum standards be set so that they are?

Ron Gainsford: That is the point I was making: other than to expose the fact that we have no blueprint at all in terms of how the trading standards service is delivered in this country. In that context, again we are caught betwixt the autonomy of local authorities—increasingly, by way of localism agendas and matters of that sort, and their desire for greater freedoms and flexibilities in terms of where scarce funding is directed—and the needs of the nation itself,

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communities and regions, as to how they deal with the prevalence of fraud and other detriment in those regions.

Chair: I am going to bring Jackie in, but I think your evidence is very interesting, and I am going to put on the record that you are saying that there ought to be both a national infrastructure and, as I understand it, minimum standards. I find that really interesting as we consider our recommendations at a later stage.

Q136 Jackie Doyle-Price: This follows on quite nicely, because what I am concerned about is that we are having to put public money at risk to tackle consumer detriment. In many cases, we are taking on businesses that will throw a lot of money at these things. Mr Collins, you have already alluded to a number of those in your evidence, such as commercial airlines and low-cost fares, payment protection insurance and of course bank charges. What we are talking about here is sharp practice on the back of high street, mainstream companies working in the grey area of regulation.

If we look at page 23 of the NAO report, the OFT says that at any one time £10 million of public money is at risk by pursuing these prosecutions. Having been very critical of the OFT for being very slow at taking action on bank charges, I am beginning to see why. You were in a situation where it was not black and white, and the banks had a lot of money that they were prepared to throw at this. Clearly, the consumer detriment was very clear and very widespread. Can I ask you, Mr Collins, to what degree the risk that you are putting public money up against big companies inhibits you from taking action?

Philip Collins: I do not think it inhibits us; it makes us very careful in assessing what we do and how we do it, and I think that is important. What has struck me since coming to the OFT, having been in private practice, is the fact that there are companies now pursuing particular practices that 10 or 15 years ago perhaps would not have employed the most expensive lawyers and taken every point under the sun. Now, however, that is happening with an increasing number of cases where you might have otherwise expected the party to throw in the towel after the first round. They do not do that, and therefore we have to make very careful assessments.

We have a particular case at the moment that I have in mind where, much to my surprise, the parties have involved the most expensive City lawyers, and we know perfectly well that we are at substantial risks on costs if we lose. In the banks case, we dealt with that by having an agreement with the banks that ultimately we would run it as a test case, and that there would be no payment of costs to them, so we only had to pay our own costs; they came out of public funds.

I would not say it is a constraint, but it provides a reality check as to what you do and what you don't do, and the cases that you want to fight. I think particularly if you have got a range of cases, if you want to try and establish a precedent or send a very strong deterrent message, if you pick the right case and fight it in the right way, it has a tremendous effect in the rest of the industry—the rest of the sector

concerned. So it is a question of trying to pick the winners and running them and resourcing them in the right way.

Q137 Chair: But in finding the winners—that rather shocked me, actually—you don't think, "God, they've employed some expensive lawyers who might just be rather more whizz kid-y than us."

Philip Collins: No, it depends on the quality of your own internal team; it is not only a question of lawyers.

Q138 Jackie Doyle-Price: But even then you are taking on an industry-wide cartel, which is a pretty unequal fight, even though you are representing the great body of consumers, backed by the Government. When you are taking on the banks, it is still a pretty unequal fight. In that sense, should we not be looking at your tools and enforcement penalties, as well as looking at who does what in this brave new world?

Philip Collins: Possibly. When we won the banks test case—I went to the hearing—I think we had 68 lawyers arranged against us from eight or nine different firms.

Jackie Doyle-Price: Paid a lot more than your people.

Philip Collins: Paid a lot more than our people. I was extremely impressed with the work that our team did until, ultimately, we lost in the Supreme Court, which was not our team's fault at all.

In answer to your question, I think it is very important when one is spending public money that the executive and the board are fully focused on the risks of litigation. I can assure you that in every significant case that we bring, we focus on the cost and the risk to the public purse.

Q139 Jackie Doyle-Price: The reality is that £10 million is small beer for a bank mounting an action against you. If you are saying you have only £10 million of financial risk at any one point, how would you quantify that? That sounds like quite an impressive figure to me, from a risk management point of view, in public money.

Philip Collins: The answer is: by very careful evaluation of the case at every stage before we bring the case, and particularly by exploring opportunities to resolve the case without litigation. If a company, however well advised, is convinced that a national regulator is going to fight all the way and has a good case, ultimately they will often back down and settle. Often that makes a better solution for the consumer and for the market, and actually promotes innovation and competition.

Amyas Morse: But you have just said they are not doing that so much any more.

Philip Collins: Some companies are willing to settle; some companies are not willing to settle.

Q140 Jackie Doyle-Price: I think this is really a question for the Department for Business, Innovation and Skills. What we have here is a consultation on who does what in terms of consumer detriment, but really we are asking the wrong question. We need to have a vision of what the issues are and what our offering is in terms of how we are going to protect the

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consumer, and then work back to how we get there. It is one thing to look at the rogue traders that trading standards can tackle and take that one bit further, but if you are talking about big business operators and cartels, I do not think we have come anywhere near tackling it.

Philip Collins: That is why I started with the comments I made about looking to the future. I agree entirely with the comments made earlier. The question is what we are here to try to do. Then secondary, do you say, “Let’s try to design the mechanism to deliver”?

Q141 Chair: Do you want to comment on that, Mr Donnelly, as the accounting officer?

Martin Donnelly: Yes. I would like to agree with it. I think it is important to separate the small but important cases—the roofers, or what Surrey did on energy pricing, which had a wider impact—from the cases where we are talking about the structure of markets, where the issues involved are market-distorting and where the OFT has a particular expertise. We have got to make sure that we link that in. The challenge for us going forward—it is a difficult one—is finding the best structure to link trading standards policy expertise on the ground with the higher-level but inevitably limited, financially and by human resources—

Q142 Chair: Are you confident that within the new structure, you have that capability in the various propositions, and the resources to risk and potentially lose?

Martin Donnelly: I am confident that out of our consultation, we will be able to come to a better structure, which will produce better results. On the issue of how much resource we will need going forward, I am less confident, because it will depend partly on how markets evolve, particularly as we enter the digital age, with the challenges that throws up.

Q143 Chair: Are you confident?

Ron Gainsford: I am confident that in the new regime, the empowerment that BIS proposed to give to our group of individuals is one that could be used very productively, provided local government supports it wholeheartedly, in whatever part of GB we are talking about. I am confident that we can design a CMA. We have been very insistent on it, in the sense of structural market issues not being a matter for trading standards but needing to be dealt with by the OFT or CMA. In that sense, I think there is more consideration to give, and that can be done.

I am less confident about the vagaries of local government funding and what can be done about that. That is back to my point that I think there needs to be a little more courage in terms of the sense of direction that is enjoyed by both central and local Government on this issue. If that can be achieved, I feel that the core component part of trading standards can be quite productive.

Q144 Stephen Barclay: Before I ask about the database, to pick up on Jackie’s question, are you

proposing to move funding from the OFT to, in essence, the consortium of trading standards? That was my understanding, and it strikes me that they will be potentially less equipped to take on the big cartels than a central body.

Martin Donnelly: That is one option. It has to work on the basis that the expertise that we have is still being played in. Whichever way you do the hard wiring, we must make sure that we have got effective co-ordination and that we are taking evidence-based decisions on which are the most important cases arising from individual trading authorities, if you like, but where we should be taking the most difficult, most expensive or most risky cases. And that is what we are aiming to come up with out of the consultation.

Q145 Stella Creasy: You are conflating two different things, aren’t you? Mr Collins was talking about that—[*Interruption.*] Well, you are conflating emerging markets and practices—the cartels with dodgy builders and with weights and measures—and asking an organisation to do both. The case you seem to be making here and, indeed, the case that this report seems to make quite effectively is to separate those two functions out entirely, and to say, “Actually, we need a body that works on behalf of the consumer and a separate body that looks at the market and at how that might operate,” because the danger in all of this is that the vast majority of cases that the public get caught up in will fall between the cracks. They won’t live in Surrey and the cases won’t be big enough for Mr Collins to be interested in, before he can even apply his resources to dealing with some of the emerging markets and some of the concerns that many of us have about some new practices within the public sector or financial services, for example—no body will be responsible, rather than everybody being responsible.

Martin Donnelly: We are working towards a structure where we should have on the one side consumer advice and advocacy, which we have talked about, and on the other side the OFT or a Competition and Markets Authority—if we get there—which is dealing with structural market problems, and then some co-ordinating mechanism which will pick up the really important enforcement cases. For example, they might be digital ones—

Q146 Stella Creasy: Sorry, it is about enforcement, isn’t it? It is about who is actually going to take action. We can all identify problems at a local and national level, but who is actually going to carry the can for taking action?

Martin Donnelly: The consultation sets out that the third body, whether the trading standards policy board or the joint enforcement board, will be deciding on action. We are already providing some funding to help in that. We would aim to ensure that there would be funding, using the funds we currently have available, for that board to decide which actions it wanted—

Q147 Stephen Barclay: So you would indemnify litigation costs in essence?

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Martin Donnelly: We have at the moment a fighting fund, which in a small way has supported 20 cases for trading authorities—

Q148 Chair: How much is your fighting fund?

Martin Donnelly: That was £250,000, but it has been able to make a difference.

Chair: I think we are all absolutely gobsmacked. You are going to deal with a dodgy builder and the banks out of a fund of £250,000.

Q149 Stella Creasy: With the second-hand cars, how much have you set aside to indemnify the second-hand cars legal action?

Philip Collins: We haven't at this point done that. We have simply made it clear in principle that we will support, but we have not done any evaluations as to what it would cost. At the moment, the local authority concerned is actually working with the particular national trader to try and improve its compliance with the law, in which case enforcement action might not be necessary. But if we are required to take enforcement action, we will have to form a view then as to what the cost is going to be and what the risks are.

Q150 Stephen Barclay: In terms of talking about the banks, I think we need to be careful, because the Financial Services Authority is being split in two, with a dedicated consumer protection focus, which one would hope to be the body that is then leading in terms of taking on the banks. But the point that I think Jackie was driving at stands, which is that there is a difference between the enforcement action taken against high numbers/low risk and the major players. It will be interesting, once the consultation is complete, how that is addressed.

The point that I wanted to deal with relates to the governance issues. I just want to clarify who is the accounting officer to Parliament for the national intelligence management database that the OFT put in place, and who is the accounting officer to Parliament for the East of England Trading Standards Association, which has used public money to pay for a duplicate database?

Martin Donnelly: On the East of England, as I understand it, that is a local authority-funded initiative. Consequently, it does not have central Government funding, so we do not have an accounting officer—

Chair: I have to tell you that it is accountable through DCLG, is it not?

Martin Donnelly: I was taking a narrow, BIS view.

Chair: No. It's outrageous. You started this evidence session—

Q151 Stephen Barclay: Its funding does come from the Department for Communities and Local Government, and on one of the issues that we have had an exchanges with Sir Nicholas Macpherson on, he was very clear in his evidence, because a previous Permanent Secretary had taken a different line. Sir Nicholas Macpherson was clear that where devolved decisions are taken, and the money is coming from

an accounting officer, the accounting officer does not devolve his accountability for that spending. So Sir Nicholas Macpherson has given a very clear steer, and we still await his note with interest—it has been promised for over six months now.

Chair: We are getting it next week.

Q152 Stephen Barclay: Hopefully it will come soon. It relates to this issue. In other words, the accounting officer is responsible. To come back to the original question, we have two areas spending money and duplicating each other. The report does not say how much each system has cost, so it would be useful if you could tell us. From a governor's point of view, however, it is unclear who has been accountable and who is in the wrong. That is really what I am trying to clarify.

Martin Donnelly: My understanding is that the East of England system has a wider scope than the other national system, which OFT has been working to put in place, and Philip may want to say a word on that in a moment. I would just add that, going forward, it is clear that we need a fully coherent system if our policy is going to work.

Q153 Stephen Barclay: No one would dispute that. What I am after is two names—the two accounting officers for the two systems and the cost of each.

Martin Donnelly: On the first, as far as I am aware, no funding from BIS has gone into the East of England system. All I can say is that it is not my Department.

Q154 Stephen Barclay: You set the policy. You do not know who the accounting officer was?

Chair: You actually said at the beginning of the session that you are accountable to Parliament.

Martin Donnelly: We set the policy. How local authorities choose to spend some of their funding is not something we are directly responsible for.

Q155 Chair: You actually said you were accountable to us.

Martin Donnelly: For the policy.

Q156 Stephen Barclay: I think we have Sir Nick Macpherson in next week, and also Bob Kerslake. If it is not you, logic would suggest they are the two people we should hold accountable. Would that be correct?

Martin Donnelly: I am not in a position to give you a clear answer to that.

Q157 Stephen Barclay: But you are the person in central Government setting policy in this area, and you cannot even tell a Committee of Parliament who it should hold accountable for money that is duplicated—not whether the decision was right or whether there was a good reason for setting up the databases at the same time. That seems surprising.

Martin Donnelly: Philip can comment on the OFT funding for the system, and may want to do so in a moment. All I am aware of on the other system is that several local authorities decided to set up a wider

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database, which went beyond simple consumer detriment and included other areas—environmental health, for example—which they found useful. Therefore, they decided not to work through the system which had been set up centrally.

Stephen Barclay: Okay. We have not had an answer.

Philip Collins: Perhaps I can just comment. This is something we set up. We were asked to do this by trading standards services and by BIS.

Q158 Chair: Who is accountable for the money that you have spent?

Philip Collins: We are.

Q159 Chair: Who is your accounting officer? Are you the accounting officer?

Philip Collins: No, I am not the accounting officer. My chief executive is.

Q160 Chair: The chief executive. Are you accountable directly to Parliament or through the Treasury?

Philip Collins: Through the Treasury.

Q161 Chair: So Nick Macpherson is the accounting officer?

Philip Collins: Yes. Essentially, what this model was designed to do was to support the regional intelligence

network that was being set up at the request of trading standards and BIS. We essentially act as the facilitator for procuring this system.

Chair: Hang on a minute.

Q162 Stephen Barclay: On the statement submitted to the PAC by the Office of Fair Trading—one assumes, therefore, that it is your note—paragraph 6 says the OFT is “directly accountable to Parliament for its performance.”

Amyas Morse: It is John Fingleton

Philip Collins: John Fingleton is the accounting officer.

Q163 Stephen Barclay: So he is the accounting officer, not Sir Nick Macpherson.

Philip Collins: Yes.

Q164 Chair: So Mr Donnelly is accountable—he told us so. Mr Collins told us that his boss is accountable for OFT expenditure. Mr Donnelly does not quite know, but I think we do, whether DCLG is accountable for DCLG expenditure. This is a mess. Maybe we should conclude on that and see where our report takes us.

Thank you. I apologise for the lateness, which is our fault.

Written evidence from the Permanent Secretary, Department for Business Innovation and Skills

I am writing in response to an email, from the Public Accounts Committee, of 6 September which enclosed the draft transcript of the PAC hearing on Consumer Protection. I attach a corrected transcript.

During the evidence session I also promised four notes of clarification, which are attached to this letter.

BIS FUNDING TO CITIZENS ADVICE IN 2011–12

£21.8 million is allocated by SIS as core Grant-in-aid funding under S.274 of the Enterprise Act; split £18.9 million to Citizens Advice and £2.9 million to Citizens Advice Scotland.

This funding enables the umbrella bodies to provide essential central services to the network of individual Citizens Advice Bureaux across England, Wales and Scotland such as the provision of central information and IT; training of bureaux staff and volunteers; maintenance of bureaux standards and provision of advice. It also funds Adviceguide, a central website to provide the public with on-line advice.

A further £8 million (£7.018 million for Citizens Advice; £0.982 million for Citizens Advice Scotland) has been allocated to cover the transitional costs associated with the transfer of Consumer Direct to CitA/CAS.

Altogether, funding for 2011–12 for both organisations totals £29.8 million.

IMPACT RANGE OF SCAMBUSTERS TEAMS

The £0 entries relates to “direct savings”. This line means actual savings to individual consumers, for example an intervention that gets money back or stops someone parting with money in the first place.

Local authority trading standards services receive complaints in real time and they will often respond to them immediately. This opportunity for immediate intervention, ie to make “direct savings”, does not always arise in the way Scambusters is operated. Scambusters are tasked with taking on complex issues often some time after particular incidents. In most cases, consumers will have already had the assistance of their local Trading Standards service and therefore the impact will have been counted in their own local figures.

The measurement of Scambusters’ impact is calculated through estimates of the effect of stopping the practice continuing into the future, and consumer detriment which is thereby prevented. Such estimates about the avoidance of future detriment are based on assumptions about likely future savings and are not claimed in every case.

WEIGHTS AND MEASURES ACT 1985 INSPECTIONS

Weights and measures legislation is not devolved therefore it covers Scotland, England, and Wales. Under section 71 of the Weights and Measures Act 1985, the Secretary of State has inspected the technical capability of local authorities in relation to their duties under section 4 of the Act. This involves an on-site audit of a local authority’s metrology (measurement) capability to ensure that it is fit for purpose ie that the test weights and measures they hold and use are both accurate and legal. Audits have been carried out on an annual basis. For example, in 2008, Fife, Dundee, Orkney, Shetland, Western Isles, Glasgow and Dumfries & Galloway councils were audited. Corrective actions identified at the audit are subsequently followed up by the National Measurement Office to ensure completion.

The audits do not cover resourcing levels or enforcement priorities which are set at a local level. However weights and measures enforcement feeds into one of the five “Priority Regulatory Outcomes” (formerly the *National Enforcement Priorities*) set by the LBRO for local authorities *Le. Support enterprise and economic growth by ensuring a fair, responsible and competitive trading environment.*

The National Measurement Office publishes an annual report summarising the activity of local weights and measures authorities based upon the data submitted by local weights and measures authorities as required under section 70 of the 1985 Act. The National Measurement Office uses this data to input to and update the national risk assessment for the various instruments used for trade—ranging from petrol pumps to water meters to vehicle weighbridges. The report is available for authorities to complement their local risk intelligence models

Table 1

TOTAL BIS SPENDING ON ILLEGAL MONEY LENDING

	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13	£m
	<i>Outturn</i>	<i>Outturn</i>	<i>Outturn</i>	<i>Outturn</i>	<i>Estimated</i>	<i>Plans</i>	<i>1</i>
					<i>Outturn</i>		
Illegal Money lending	3.09	5.15	5.17	5.19	5.20	5.20	

Notes:

1. Figures relate to BIS funding only and exclude funding from other parts of government, e.g. HMT, CLG (unless otherwise stated)

September 2011

Written evidence from the Chief Executive, Consumer Focus

I am writing to clarify the oral evidence I gave to the Committee of Public Accounts on 5 September 2011 on the Comptroller and Auditor General’s Report *Protecting the UK consumer.*

The Committee’s main focus was on the system for enforcing consumer law and particularly the role of Trading Standards services and the Office of Fair Trading but Members also raised questions about related issues: the work of the Citizens Advice service in giving advice to individuals and the work of Consumer Focus in representing consumers’ interests.

All three areas; enforcement, advice and representation, are addressed in proposals made in the Department for Business, Innovation and Skills (BIS) consultation *Empowering and Protecting Consumers* which closes on 27 September.

I would like to take the opportunity to clarify my evidence on the system for representing consumer interests. BIS are consulting on abolishing Consumer Focus and transferring most of our functions to Citizens Advice, in respect of England and Wales, Citizens Advice Scotland and the General Consumer Council for Northern Ireland.

It is for Parliament to decide which body carries out which public functions and it is not for us to express an opinion on who does what work in the public interest. The work we do can be carried out, as now, in the public sector or, as the Government proposes, in the voluntary sector. We do think it appropriate however to express our views on what needs to be done to promote consumers’ interests based on 36 years work in this field by Consumer Focus and its predecessors.

We therefore want to shift the debate from **who** does the work to **what** work needs to be done. In this we agree with Jackie Doyle-Price MP when she said at the Hearing “What we have here is a consultation on who does what in terms of consumer detriment, but really we are asking the wrong question. We need to have a vision of what the issues are and what our offering is in terms of how we are going to protect the consumer, and then work back to how we get there.” The decision on which organisation is best placed to deliver a particular function should be taken after one has defined what needs to be done, not before. Form should follow function, not vice versa.

We want to draw particular attention to the huge challenges facing consumers in sectors subject to economic regulation—energy, post and communications, transport and water. We have published proposals for a Regulated Industries Unit bringing consumer representation together in these sectors, ie Consumer Focus, Consumer Council for Water and Passenger Focus. Whichever organisation takes on our role, this Unit should be part of any future landscape. Bringing together consumer representation in these vital sectors would save significant amounts of money through sharing costs, and we all face the challenges of having to do more with less funding. Critically it would also improve our effectiveness in serving consumers because there are common issues across all these sectors. Consumers do not live their lives in silos and neither should bodies that seek to represent their interests. We fear that the opportunity to bring these sectors together may be missed by this Government, as it was by the last Government.

Moreover we believe that in any new arrangements, the legal powers, given by Parliament to Consumer Focus, to force companies and regulators to divulge information must be maintained alongside the consumer representation functions. We also believe it is crucial that the duty we have to account to Parliament and the industries which fund the work is maintained. Direct accountability to Parliament for money and the use of legal powers are likely to be lost if our statutory functions are passed to a charity as the Government proposes.

Although we say it is for Government to decide which body takes on public functions, we do have fears about the implications for consumer representation of transferring our functions to bodies whose primary function is to provide advice and assistance to individuals, ie the Citizens Advice service. Our work at Consumer Focus is largely about prevention. We seek to prevent problems occurring by working with industry, regulators and Government to ensure that policies and products are designed in a way that consumers get a fair deal, for example our work on Smart Meters which will be installed in every home in a few years. Very few people are reporting problems with Smart Meters today but they will do so tomorrow if we cannot ensure that consumer interests are built into policies which are being designed today. Hence my reference at the Hearing to turning the tap off rather than mopping up the flood. We also argue that one gets the greatest value for money by preventing problems happening in the first place ie through effective “upstream” work.

There is a further point about potential fragmentation of consumer *voice* and loss of synergy in the proposed new arrangements. With our UK wide remit and pan economy powers, we are currently able to spot common issues, read across sectors, apply learning from one part of the economy to another. We also represent the views of consumers in Brussels where many relevant policies are decided and where BEUC—the European Consumers Organisation—say Consumer Focus has “a *very* strong reputation with EU and international decision makers” and that we are “key in providing expertise and advocating the consumer perspective on issues that constitute a high priority on the EU agenda”. We fear that the future system will be more fragmented, with separate bodies and voices likely in Scotland, England and Wales and Northern Ireland. We worry about the potential advocacy gap in complex markets and services where issues are not complaints driven and where there is no industry funding. We fear that lessons from one regulated industry will not be applied to others unless the Government shows vigour and determination to set up a Regulated Industries Unit.

As Gillian Guy said at the Hearing on 5 September, Citizens Advice follow up on the problems brought to them to try and ensure they never happen again. This is prevention work but different to the more primary prevention work we do. I have no wish to denigrate Citizens Advice, for whom I have the greatest respect, but I fear that because their centre of gravity is advice, our forward looking work will suffer if it becomes absorbed into such a large body. If Government asks the Citizens Advice service to take on our function, it is important that a Regulated Industries Unit, should be somewhat separated from the main body of their work in order to maintain focus and accountability.

9 September 2011

Written evidence from the Office of Fair Trading

At the Committee’s hearing of 5 September on *Protecting the UK Consumer* I was asked to provide further information to the Committee which you will find in the enclosed memorandum. In view of the interest among members of the Committee in the different sources and types of consumer detriment and the measurement of costs to consumers, and in the light of the material and comments in the NAG Report on these issues to which members of the Committee referred, I have also included some additional information and explanation on this subject in the enclosed memorandum which I hope that the Committee may find helpful.

I have had the opportunity of sharing this memorandum in draft with the NAG which is content with our references to the NAG and its work.

I trust that the Committee find this additional information helpful. We remain at the Committee’s disposal to provide anything further which would assist the Committee in the preparation of its report.

1. ESTIMATES OF THE BENEFIT OF CONSUMER ENFORCEMENT WORK

The TSS Fair Trading Impact Calculator and the OFT's Positive Impact estimate

The data on the benefits of the OFT and TSS presented in the NAO report and discussed at the Committee hearing are calculated in different ways, for different purposes, and are not suitable for comparison

The NAO refers to the Fair Trading Impact Calculator (FTIC) as the method used by both the OFT and TSS to estimate the direct financial benefit for consumers arising from their interventions. Although the OFT has previously used a similar methodology to calculate benefits, this is no longer the case, and the OFT's current methodology is markedly different to that of the FTIC.

The FTIC is based on complaints data and estimates the direct financial impact on consumers of all TSS work, extrapolating a number for the whole country from a small sample. On this basis, the estimated benefit from TSS consumer enforcement work (as published in 2009, on the basis of TSS work conducted in 2007) was £228 million.¹

The OFT, following an independent review of its impact estimation methodologies by Professor Stephen Davies,² abandoned the generic use of complaints data to estimate the impact of its consumer enforcement work in favour a more detailed (and data-demanding) approach. Under the new approach, the consumer enforcement benefit figures only include estimates for those completed cases for which an evaluation can be undertaken according to the new methodology.

For instance, in the financial year 2010–11, only two OFT enforcement cases were evaluated.³ Other cases⁴ were excluded from the evaluation for a variety of reasons, including where cases still had potential for legal challenge, for instance where the result might be overturned on appeal, or where quantification would be speculative or inappropriately resource intensive because of poor quality available data. Amongst the interventions not evaluated were significant, high profile cases such as Postal Gold, Incentive Leisure Group, and Package Travel Group.

Estimates of direct financial benefits to consumers do not reflect the true benefits arising from consumer enforcement work

The implicit cost / benefit ratios discussed at the Committee session (Q81) provide do not provide an appropriate indication of the true benefits arising from the consumer enforcement work undertaken by the OFT or TSS. The benefits reported for both organisations only include direct benefits to consumers and do not capture the wide-ranging indirect impacts.

The wider benefits of the OFT's consumer enforcement work include:⁵

- Deterrence and impact on consumer confidence. The OFT, in its role as the national enforcer of competition and consumer law, focuses on higher impact cases. Previous OFT evaluation work has found powerful evidence of indirect deterrence effects arising from work of this kind in Ryanair, MB Designs and Foxtons.⁶
- Preventing the need for TSS to take numerous further local cases. For instance, cases against Incentive Leisure Group and Package Travel Group have been successful in preventing the need for TSS to take their own cases against these companies, since the OFT has stopped the practices of these traders nationwide by a High Court Order.
- Setting legal precedent and clarifying the law, for instance in cases such as Foxtons, Purely Creative Ltd., or Ashbourne Management Services, which can facilitate the work of TSS when taking forward individual cases on related issues.

¹ The NAO report also refers to a figure of £119 million of benefits attributable to advising and assisting consumers seeking redress. This is a different type of activity to that associated with consumer enforcement and more akin to that carried out by Consumer Direct for which the reported consumer benefit to cost ratio for 2010–11 was over 10 to 1 (See OFT annual report 2010–11, page 34)

² Professor Stephen Davies' review highlighted the inherent problems with using complaints data. See "A review of the OFT's impact estimation methods", 2010 (OFT1164). Stephen Davies is Professor of Economics and also one of the four founders of the ESRC Centre for Competition Policy at the University of East Anglia. He has acted as an advisor to and undertaken research for a number of governmental bodies in the UK and overseas.

³ The two cases were Foxtons and We Buy Any Car limited.

⁴ See www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-archive/

⁵ In addition, OFT consumer enforcement can facilitate other OFT work (for instance, on market studies), hence contributing to the benefits for consumers arising from this work. Our case against Foxtons established transparency as a remedy that the High Court was happy to enforce, and so led our thinking on the contracts market study—where we proposed transparency more or less as a remedy across all sectors. We also saw how the remedy might work in practice because of the improvements Foxtons made to their contracts as a result of the enforcement case.

⁶ OFT (1139) and OFT (1346), Ibid

The OFT continues to work towards gaining a better understanding of the impact on consumers

Since the NAO report was written, the OFT has published its most recent Positive Impact estimate report which covers the impact of different areas of OFT activity. This shows average yearly direct benefits to consumers arising from OFT consumer enforcement of £36 million.⁷ However, as noted above, this figure does not provide an estimate of the total benefit to consumers from the OFT's consumer enforcement work, as the OFT takes a conservative approach to calculating this number, with only the direct financial benefits of a small proportion of the OFT consumer enforcement cases included.

Based on the cost/benefit ratios of specific cases,⁸ and other evidence from our in-depth ex-post evaluations,⁹ the OFT is confident that the real impact of its consumer enforcement work in 2010–11 is much greater than £36 million. Should an estimate of the cost/benefit ratio of the OFT's overall consumer enforcement work be attempted, we are confident that this figure would be greater than 6:1. This also reflects the lower estimate of the cost of the OFT's consumer enforcement work in comparison to the cost figure provided in the NAO report. For 2010–11, the OFT calculates the cost of its consumer enforcement work was £8.5 million [see section 3 of this memorandum, "The OFT spending on consumer enforcement"].

Our ongoing evaluation work continues to focus on gaining a better understanding of our impact on consumers, including through the embedding of the new approach to impact estimation in our consumer enforcement work.

20 September 2011

2. TSS CASE REFERRALS TO THE OFT AND OFT/TSS INTERACTIONS

The Committee expressed interest in the referral system between TSS and the OFT, and asked why so few cases had been acted upon by OFT and about who dealt with what kinds of case (Q127–132).

The case referral protocol is a relatively new formal process, and is only one of the many ways in which the OFT and TSS interact in identifying and discussing issues that may require action by the OFT, by TSS, by the OFT and TSS jointly or by other enforcers. We explain below the case referral protocol and the position on the 15 instances in which it has been used and then deal with the broader interactions between the OFT and TSS, with some examples.

The case referral protocol

Following the 2006 Hampton Report, the Trading Standards Policy Forum (TSPF), Local Authority Coordinators of Regulatory Services (LACORS) and OFT agreed the case referral protocol in June 2008. The protocol provides guidance on which cases are suitable for TSS to refer to the OFT, via a Case Referral Form, (ie nationally significant and market wide consumer issues). The OFT decided earlier this year to review the protocol but has had to wait until Local Government Regulation (successor to LACORS) have completed their reorganisation.

In summary, 11 of the 15 issues referred were acted on by OFT or referred on for action by the appropriate enforcer in accordance with the principles set out in the Protocol. Of the other four two were not taken forward directly but were used as intelligence for internet enforcement by the OFT, one became part of a wider OFT market study, and the last referral was in fact a request for legal advice from the OFT rather than for enforcement action.

When the OFT is not best placed to act on an issue submitted, we ensure that it is sent to the right home as in nine of the 15 cases listed below which include referrals to the Financial Services Authority, the Metropolitan Police, and OFT's counterparts in Spain and Canada.

Three of the cases involved practices affecting businesses (B2B cases) rather than consumers which, although formally outside the protocol, were nevertheless taken forward.

The 15 referrals

The following table sets out details of the 15 issues referred by TSS to the OFT under the case referral protocol between July 2009 and January 2011.

⁷ OFT (1354), Positive Impact 2010–11

⁸ OFT (1139), "Evaluation of six consumer enforcement cases",

⁹ OFT (1346), "An evaluation of OFT's consumer enforcement case against Foxtons"

<i>Date & Subject</i>	<i>Source/Complaint and Outcome</i>	<i>*</i>
May–Nov 09 Sale of mobile broadband / phone packages	Source/Complaint: Bexley. One consumer complaint about a “free” laptop with contract not being free as it resulted in the consumer paying higher monthly fee than for a contract without the laptop. The trader’s Home Authority was investigating but thought the practice more widespread and Ofcom not able to assist so TSS referred to the OFT. Outcome: not a priority for the OFT on the evidence provided, but the referral was used as an input to the OFT’s study into Advertising of Prices, being an example of complex pricing which also arises in many other consumer contracts. The study was published in December 2010 and its results are being taken forward in a number of ways, including some enforcement action.	N
Aug–Sep 09 Advertising / publishing	Source/Complaint: Barnet. Over 100 complaints related to a business directory scam. Possible Police interest due to issues of fraud. Outcome: referred by OFT to trader’s Home Authority TSS (Manchester).	N
Oct–Nov 09 Theatres / entertainment industry	Source/Complaint: Cambridgeshire. One complaint relating to cancellation rights for theatre tickets if an understudy takes over from the advertised star. Outcome: local issue, already covered in the OFT’s published guidance on UTCCRs. Not a breach of legislation and issue is covered in model contract terms for Society of Ticket Agents (STAR) that have been assessed by the OFT for fairness. Referred back to TSS.	L
Nov 09 Timeshare / Holiday Clubs	Source/Complaint: Maidenhead. TSS seeking legal advice relating to TSS jurisdiction over traders based in Gibraltar. Outcome: This should not have been submitted to the case referral system as TSS was seeking legal advice rather than OFT action.	N/L
Nov–Dec 09 Car insurance	Source/Complaint: Leicestershire. 250 complaints about the miss-selling of car insurance by car dealerships, paying the difference between pay out for a write off and the amount the consumer paid for the car. Outcome: Referred on to the FSA as they are primarily responsible for insurance and best placed to act.	N
Dec 09–Jun 10 Timeshare retail	Source/Complaint: Barking. 50 complaints about a timeshare reselling scam, where trader located overseas. Outcome: Referred to West Sussex TSS as they were already investigating with the police. However, the OFT also issued an alert to the Spanish authorities.	N
Dec 09–Jan 10 Pay per view	Source/Complaint Glasgow. One complaint about £17.50 payment and cancellation rights for pay per view sports events from Jersey. Outcome: Individual case referred to Jersey TSS as Home Authority.	N
Jan 10 Sales of electronic equipment	Source/Complaint: Newport. One complaint, not from a UK consumer about the failure to deliver from a fake UK website, possibly in East Timor. Outcome: It was not clear what action was possible and there was no evidence of UK consumer detriment. Information was added to OFT Internet Enforcement intelligence.	N/L
Mar–Apr 10 Possible scam website	Source/Complaint: West Dunbarton. One complaint that an Australian website selling boats may be a scam (the complainant had not purchased from the site). Outcome: TSS advised on how to report the overseas trader to the international e-consumer web portal for complaints about transactions with overseas firms, and the case detail was added to OFT’s Internet Enforcement intelligence.	N/L
May–Sep 10 Estate agency	Source/Complaint: Stockport. Around 30 complaints about a B2B estate agent who was paid to sell business premises but after taking no action to sell, the cancellation by business still results in a fee. Additional query as to membership of estate agents redress scheme if premises are part residential/part business. Outcome: Not a priority for the OFT, but the trader subsequently agreed with the local TSS to join a redress scheme.	L/N
Jun 10 Computer technical support	Source/Complaint: Lincolnshire. One complaint (although there are many on this type of scam) about an Indian based cold calling computer repair scam. Outcome: The case was referred to the Metropolitan Police who were already investigating.	N/I
Jun 10 Misleading pricing about home heating oil	Source/Complaint: Gloucestershire, with LACORS support. Three complaints about heating oil quotes not including VAT. Outcome: the OFT took informal action, including discussions with the trade association, as industry wide implications and the issue has been taken up within OFT’s market study into off-grid energy. The OFT has also recently taken enforcement action in this market to prevent consumers being misled when searching online for heating oil supplies.	N

<i>Date & Subject</i>	<i>Source/Complaint and Outcome</i>	<i>*</i>
Jun–Sep 10 Burglar alarms	Source/Complaint: 100s of complaints about misleading practices in burglar alarm sales. Outcome: OFT acted to revoke the company’s consumer credit licence, and another TSS/Scambusters took some action. Company wound up and OFT watching for related complaints	N
Nov 10	Source/Complaint: Kent—one complaint, but many others on similar lottery scams affecting businesses. Outcome:—OFT enquiries uncovered that the scam originated in Canada and flagged issue to Canadian authorities.	I
Jan–Feb 11	Source/Complaint: Kent. More than 400 complaints about a business directory advertising scam trader located in Spain. Outcome: Not able to refer under EU consumer protection co-operation regulations, as issue affects business rather than consumers. But the OFT raised with the Spanish authorities who had investigated.	E

*L—local, N—national, I—international, E—European

Interactions between the OFT and TSS in regional and national issues and cases

The case referral system discussed above is just a small part of the regular and effective collaboration between the OFT and TSS. Our trading standards partnership team, staffed by some ex-Trading Standards Officers, attend Regional Heads of Service meetings, act as the liaison point for the Trading Standards Institute (TSI) and the Regulatory Support Unit within the Local Government Group, have a permanent seat at the Trading Standards Policy Forum and work with the Local Better Regulation Office where matters involve TSS engagement and the development of the regulatory landscape.

The formal case referral system backs up a process of ongoing dialogue over potential cases and other issues. The OFT provides considerable general and specific support to TSS in taking on local and wider enforcement cases through case support and advice by our Preliminary Investigations Unit, through to specific training, delivered regionally and at TSI branch training events to enable TSS to make full use of new consumer specific legislation such as the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

The extent and range of our interaction between June 2010 and May 2011 includes:

- OFT engaged with 95% of all TSS—190 out of 197 authorities.
- 91% of all TSS had contact with OFT’s Preliminary Investigations team, responsible for responding to TSS requests for advice and prioritising incoming complaints.
- OFT provided training to officers from 66 TSS (36% of all TSS).
- 96 TSS (49% of all TSS) engaged with OFT on campaigns work (eg Scambusters, Distance Selling Regulations / Sale Of Goods Act hubs).
- 49 TSS engaged with OFT Market Study teams and 23 assisted on individual OFT enforcement cases.

Aside from this general support, we also work with TSS to address specific issues where a joint OFT/TSS approach can deliver better outcomes for consumers across the board.

Second-hand cars: We launched a market study into second-hand cars as one of the largest areas of consumer complaints and local TSS enforcement activity. The study gave TSS and the OFT a much clearer picture of the reasons behind the problems consumers face in the market, and of how OFT and TSS can work together to tackle these problems more effectively. The OFT has made clear to a number of TSS that it is prepared to act as a legal backstop (ie consider formal enforcement action) should informal efforts to secure improvements in compliance not succeed. We have also offered support to TSS in their engagement with major second-hand car dealers to advise on compliance, improve customer service, and reduce complaints, and through the publication of guidance on compliance with consumer law by used car dealers.

Holiday Clubs (Incentive Leisure Group): We obtained enforcement orders against two companies (Personal Travel Group Limited, Geo Demographic Market Research Limited) and seven individuals (also directors of Incentive Leisure) stopping the use of misleading sales and marketing practices. Cases were referred to OFT by Scambusters team. Four TSS (Edinburgh, Milton Keynes, North Somerset and Durham) conducted onsite inspections to gather evidence.

Webuyanycar.com: We took enforcement action against used car buying company webuyanycar.com over concerns that its online valuations were misleading. Rochdale TSS gave us assistance in the course of the investigation. Other TSS also took witness statements as part of the investigation.

Security systems: An individual TSS did not have the resource necessary to fight a case against a company which had the potential to set an important legal precedent on the interpretation of a key phrase in the relevant legislation. OFT worked with the TSS in question, providing legal advice and guidance, and undertakings were secured from the company.

The OFT has no directional powers over the TSS beyond a limited statutory coordination role to prevent inappropriate court action by other enforcers under specific legislation. Instead, we rely on mutual agreement.

3. OFT SPENDING ON CONSUMER ENFORCEMENT

The Committee asked for a breakdown of the OFT's spending on consumer enforcement work, with details as to how this is divided between frontline delivery and back office support.

In 2010–11 the OFT spent £8.5 million on consumer enforcement, including our internet enforcement work.¹⁰ The figure of £13 million in the NAO report was an estimate provided by BIS, based on budgeted information previously provided by the OFT but using significantly different methodology and assumptions to those used by the OFT (eg for allocating overheads).¹¹ The figure of £8.5 million is based on OFT's actual spending.

Of the £8.5 million cost of consumer enforcement, 66% is made up of direct front line delivery and support and 34% is back office support. This is roughly in line with the 70:30 split set out in our SR10 budgets.

Direct costs (staff and non-staff)	46%
Frontline support (inc Policy, General Counsels Office, Enquiries & Reporting Centre etc)	20%
Back office support (HR, facilities, IT and finance)	34%

In 2010–11, 51.9 Full Time Equivalent (FTE) staff worked on consumer enforcement.¹² This includes staff in our Goods & Consumer Group and Cartels & Criminal Enforcement Group (43.2 FTEs) as well as the time of those lawyers in General Counsel's Office who have provided direct support to enforcement work (3.1 FTEs) and staff across the Office (5.6 FTEs) who have worked on Preliminary Investigations. There are qualified lawyers working in all groups across the OFT, and the figures include lawyers and non-specialist staff alike who work on a number of projects at any one time. The OFT does not make use of a time recording system so it is difficult to clearly state how many lawyers work on consumer enforcement across the Office over a period of time.

In answer to the specific question raised during the Committee session (Q74), across the OFT as a whole, IT and Telecoms represent approximately 4% of total expenditure.

4. THE NATIONAL INTELLIGENCE MANAGEMENT DATABASE

The Committee expressed an interest in the arrangements for the National Intelligence Management Database (NIMD), as set up by the OFT (Q152 onwards).

Costs

The total cost of the NIMD project, including staff and ongoing maintenance costs over five years, is estimated to be £983,000. Of this £353,000 came from funds recovered by the OFT under the Proceeds of Crime Act 2002, arising from a competition case, giving a net cost to the OFT of £630,000 over five years.

The OFT pays £70,000 a year running costs for the National Intelligence Database.

Accountability

As we stated in our background memorandum to the Committee and at the hearing, the OFT is an independent, non-Ministerial government department, with a mission to make markets work well for consumers. It is directly accountable to Parliament for its performance, and the Chief Executive John Fingleton is the Accounting Officer. The OFT's accounts are audited by the National Audit Office and its performance reporting requirements and overall budget are agreed with HM Treasury through the normal spending review process for Government departments.

¹⁰ The figure of £9.5 million referred to during the PAC session on 5 September included £1 million for consumer education. For the purposes of this note, all figures refer solely to the OFT's consumer enforcement work.

¹¹ The BIS Impact Assessment for the consultation on changes to the consumer regime states that the incremental costs of **all** of OFT's consumer activities for 2011–12, excluding Consumer Direct, "might be in the order of £12 million–£13 million" (para 216).

¹² The figure of 70 staff referred to by Philip Collins during the PAC session included staff working within the Goods and Consumer Group on issues such as consumer policy, the Trading Standards Partnership Team and the Consumer Code Approval Scheme. The figures here refer to the FTE equivalents working specifically on consumer enforcement across OFT.

Background on the NIMD

In 2008, the OFT was formally tasked¹³ by the Trading Standards Policy Forum, which represents all 11 TSS regions, to lead this project on behalf of Trading Standards. As the national enforcer, the OFT is keen to help Trading Standards where it can despite the lack of a statutory remit or express powers to do so, and it was felt that this project was in line with the OFT's overall responsibilities to support the system as a whole, and that the OFT was well placed to contribute a range of skills to manage the project.

The OFT had also identified a requirement for an intelligence database for its own use in its cartels and consumer criminal enforcement work and it made sense to ensure that a common system was procured and used nationally and regionally.

The NIMD was implemented primarily to join up TSS regional intelligence hubs that form the TSS Regional Intelligence Network (RIN) and to provide Regional Intelligence Officers with the necessary tools to process raw intelligence into meaningful intelligence products. We opened up the NIMD to local TSS to make the process of communicating intelligence to and from regional hubs more efficient, but individual local TSS' use of the system is not essential to the functioning of the network.

The Regional Intelligence Network Steering Group (senior TSS intelligence managers of the system) determined the functionality of the system, which was signed off by the Trading Standards Policy Forum. In the summer of 2009, whilst the OFT was engaged in the tender process for the NIMD, EETSA Ltd made the decision to build its own bespoke regional database. At that time, EETSA's position was that its database would not be opened up to other regions or authorities. The OFT understands that the EETSA database is designed to join up a number of local authority regulatory functions in addition to fair trading work, such as environmental crime and anti-social behaviour.

The OFT has engaged with EETSA Ltd throughout the development, implementation and ongoing operation of the NIMD (eg an EETSA representative attends the quarterly NIMD user group meetings) and EETSA has access to the intelligence in the NIMD. We also have shared the functionality and design of the NIMD, so that the two systems are compatible and can be integrated in the future if funding is available.

In summary, the NIMD was built with TSS, at their request and to their specification, and the OFT is proud of the leadership role it played in its implementation. Given the situation, the OFT believes that its expenditure provided a good solution, and that the usage of the NIMD by RIOs (which was its original purpose) in 10 of 11 regions is a positive result in a landscape where there is no power for BIS or the OFT to direct.

5. THE CHANGING NATURE OF CONSUMER DETRIMENT

We strongly agree with the NAO in their view that enforcement work needs to be focused on areas of high risk to consumers, based on the best possible understanding of the prevalence and nature of consumer detriment. However, accurate and comprehensive measurement of the total amount of detriment affecting consumers would be extremely complex and potentially very costly. Some of the difficulties with measurement include:

- the sheer range of different types of harm that would fall under the definition of “consumer detriment” (see below);
- measuring non-financial harm such as inconvenience or stress is particularly difficult;
- whilst complaints and intelligence data gives a picture of the harm consumers are aware of, much detriment is unrevealed until practices are investigated and found to be illegal; and
- even then consensus on the line between legitimate business practice and unfair treatment of consumers is not always easily achieved—there can be a wide range of perspectives on the same issue.

It is therefore important to recognise that there will be limits to any understanding of consumer detriment based purely on what can be quantified. The consumer regime needs to tackle each form of detriment—failing to tackle rogues who scam old people with overpriced roofing work would undermine confidence and legitimacy of the regime. Similarly, failing to tackle market-wide issues would undermine consumer confidence in the benefits of free markets and damage economic growth.

It is also important to ensure that the regime is equipped to tackle new and emerging types of detriment, and to keep pace with the ways in which consumers' dealings with markets are changing. Many of the challenges faced by the consumer regime are the result of the historic evolution of enforcement structures established to meet the needs of a time when business and consumer purchasing were mostly local, and before large national and multinational businesses operating through multiple and sophisticated channels to market became well established in the UK retail environment.

Different types of detriment

The NAO's figure of £4.8 billion given for cross-border detriment appears to be based on figures for mass-market scams and intellectual property crime.¹⁴ We would argue that there are many other significant types

¹³ Priority number 6 in the LACORS Trading Standards UK Control Strategy and Delivery Plan October 2008 to March 2010.

¹⁴ At Figure 3 in the NAO Report “Protecting Consumers—the system for enforcing consumer law”

of detriment that need to be tackled at a regional and national level, such as bad behaviour by good businesses that can affect large numbers of people and the proper functioning of markets.

For example, consumers can suffer detriment:

- from **mis-selling**, which can lead to consumers making unnecessary purchases, overpaying or getting a poor deal in other ways. For instance, recent estimates have put the scale of mis-selling of payment protection insurance alone at between £3 billion and £9 billion over recent years. Another instance is the enforcement action taken by the OFT earlier this year against a number of companies that offered to buy gold from consumers by post, as consumers were being locked into accepting the offer that had been made for their gold. In particular, the OFT was concerned with the business practice of sending consumers a payment, which if not rejected and returned within restrictive time periods, meant that their “silence” was taken as consent to the payment and their gold was melted down;
- as a result of **complex pricing structures** and **opaque emerging business models** which make it hard for consumers to get the best deal. In 2009 an independent evaluation of just one OFT intervention (to secure a voluntary commitment from the airline industry to greater transparency in pricing) estimated annual benefits to consumers of £131 million.¹⁵ Our recent Advertising of Prices market study¹⁶ examined how complexity in the way prices are advertised makes it harder for consumers to compare prices, for example, through the drip-pricing strategies adopted by some internet-only airlines. This work supported our recent action to tackle unfair credit and debit card surcharges for consumers buying flights online (the OFT estimated that consumers spent around £300 million pounds on surcharges in 2010 with the 10 major airlines operating in the UK);¹⁷
- after they have made a purchase where goods they have purchased are **faulty or not as described**;
- if **unfair terms** are included in contracts or if complicated terms and conditions which are not obvious to consumers at the time they enter into a contract are included. For example, successful OFT litigation in the High Court prohibited the use of terms and conditions used by a residential lettings agency governing sales and third party renewal commissions, and the Court Order also provided that where renewal commission is charged, this must be clearly brought to the consumer’s attention at the outset.¹⁸ We also secured a Court Order in August¹⁹ ruling that terms in some standard contracts used by a national gym management company and affecting thousands of consumers, covering minimum contract lengths and a number of other key terms, were unfair and therefore unenforceable;
- from **misleading promotions**, which encourage people to believe they have won a valuable prize when, people are actually being sold a low value product. The OFT issued High Court proceedings against the companies and individuals behind five UK prize draw promotions in an attempt to prevent mailings and the distribution of scratch-cards which were misleading;²⁰ and
- from other unfair commercial practices such as **misleading actions, misleading omissions and aggressive commercial practices**, which are prohibited under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs—see below for further details). The OFT has taken enforcement action under the CPRs against Markco Media, the company behind group buying website Groupola, for using “bait pricing” to promote a sale of iPhone 4s. The OFT has also brought criminal charges against six women from the Bristol area under the CPRs, in connection with its investigation into a suspected unlawful pyramid scheme.

The CPRs, which both OFT and TSS enforce, extended the scope for enforcement action through the introduction of some new concepts into UK law. As well as providing protection from misleading conduct (by action and omission) it added provisions on aggressive conduct by traders, a general duty not to trade unfairly, and 31 specific banned trading practices including pyramid selling and refusing to leave the home when asked. It also contains specific provisions relating to vulnerable consumers. The regulations are generally only applicable where the practice distorts consumers’ decisions (average consumer’s transactional decision). These new provisions provide more flexibility for enforcers, allowing us to tackle practices not covered by previous laws, but sometimes also require careful consideration of the impact of the practice on consumers before intervention. This principles-based approach requires analysis and both legal and economic expertise.

Local and national approach

TSS have led the way in addressing local and overt detriment such as doorstep crime and scams, through localised surveillance and intelligence gathering techniques, effective partnerships with local agencies and in depth knowledge of local markets and businesses. TSS also run detailed criminal investigations into firms that cause detriment regionally or nationally, for example the successful action by Surrey Trading Standards against a major energy supplier for misleading sales practices earlier this year. TSS are experienced in taking

¹⁵ www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/of1139.pdf

¹⁶ www.of.gov.uk/OFTwork/markets-work/completed/advertising-prices/

¹⁷ www.of.gov.uk/OFTwork/markets-work/super-complaints/which-payment-surcharges

¹⁸ www.of.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/foxtons/

¹⁹ www.of.gov.uk/news-and-updates/press/2011/92-11

²⁰ www.of.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-current/prize-draw-promoters/#named6

prosecutions, often acting directly as prosecutors in local criminal courts. Coupled with their wider fair trading functions, such as business advice on compliance, they are often able to secure quick behavioural change from individual traders and relief for consumers.

The OFT and the concurrent sectoral regulators²¹ have developed approaches to tackling systemic market issues, generally at the non-criminal end of the spectrum. They do this through economic analysis of the drivers of business behaviour, the ability to work with trade bodies and firms across a sector to develop market-wide solutions, and the capacity to pursue multiparty enforcement and litigation, generally in the higher courts. In addition, the OFT is responsible for complementary functions (for example, research and analysis, consumer advice and education, international liaison, and business guidance) that support its own enforcement activities as well as those of TSS and concurrent sectoral regulators, and has spearheaded the development of specialised online enforcement capabilities.

The OFT is prepared to, and does take on, cases involving well-resourced parties using top city law firms. The fact that a party has such representation means that we have to resource those cases fully, and they may take longer and thus this has an impact on the number of cases we can take at anyone time, and at the margins where the law is unclear we may not choose to take that particular case, but we have never not taken a case that we think is strong because of the resources on the other side.

13 September 2011

Supplementary written evidence from Office of Fair Trading

REVIEW OF THE CONSUMER LANDSCAPE—THE OFT'S VIEW

The BIS review could lead to the biggest changes seen in the consumer landscape for a generation. There are many issues to be decided which will have a critical impact on the future of consumer protection in the UK.

The OFT agrees with BIS's overarching aims of:

- Reducing complexity of the consumer landscape.
- Strengthening the effectiveness of consumer enforcement.
- More cost-effective delivery, closer to the consumer front line.

We will be publishing a full response in due course but would highlight the following as being crucial to ensuring any changes produce an effective consumer regime.

ENFORCEMENT OF CONSUMER LAW

The system for consumer enforcement must be able to address the full range of detriment consumers can suffer when buying goods and services: tackling rogues, supporting businesses that wish to comply, and dealing with market-wide problems.

The UK consumer regime currently allows for different types of interventions to suit different types of problems, from criminal and civil enforcement to other compliance tools such as business advice, consumer education, and self-regulation. It is vital that this flexibility is preserved along with the current range of expertise.

The OFT believes there needs to be stronger shared leadership in prioritising cases—the Joint Enforcement Board (JEB) is the best option in the consultation as it will increase joint leadership while minimising disruption and loss of existing expertise.

With finite resources there will always be cases that cannot be taken, but the system must make sure that cases that should be taken don't fall through a gap due to resources being in the wrong place or because of unclear responsibilities.

The JEB would bring together representatives of the Trading Standards Service and the OFT/CMA, and potentially other interested bodies, to set national enforcement priorities. It would choose the most important cross-border enforcement cases and agree who is best placed to take them. In this respect it is similar to the option of the Trading Standards Policy Board but has the advantage of explicitly including joint delivery by the OFT/CMA and the TSS. The other key benefits of the JEB in comparison to the other options in the BIS consultation are that it:

- Joins up consumer enforcement strategy from national, through regional, to the local level, in a structured way.
- Builds on the expertise and capacity in the system rather than breaking it up and trying to re-build it elsewhere.
- Provides genuine shared decision-making and joint accountability.

²¹ The concurrent regulators are the Civil Aviation Authority, NIAUR—the Northern Ireland Utility Regulator, Ofcom, Ofgem, Ofwat and the Office of the Rail Regulator.

- Ensures that enforcement capability across the system is strengthened to address detriment occurring in the high street, on the internet, through scams and rogue traders, and from market wide practices.
- Can happen quickly at very low-cost.

JOINING UP CONSUMER AND COMPETITION WORK

Consumer and competition work are closely linked and are led most effectively and efficiently nationally in a single agency—as is increasingly the case in other leading economies. The OFT/CMA should retain an important consumer enforcement role.

Many of the key consumer problems at national level are complex and market-wide, involving the business models of national and multi-national businesses. These issues require the same detailed analysis of effects in the market and appetite for litigation risk as competition enforcement, together with an analysis of how competition will be impacted by the resulting change in business behaviour. Making the correct judgements on these issues is critical for economic growth. Sometimes competition powers may need to be used alongside, or as an alternative to, consumer powers.

EXAMINING MARKETS

As a consumer advocate Citizens Advice and Citizens Advice Scotland should have research and analytical capabilities, but the ability to examine markets from both a consumer and competition perspective is a unique feature of the current regime which cannot be split into pure “consumer” studies and “others”.

A core strength of the market study system is the ability to look beyond individual breaches of consumer or competition law and examine whole markets to assess the best way of remedying problems. The OFT does this by bringing together both competition and consumer analysis to publish authoritative reports balancing the market and consumer perspectives. It is often extremely difficult to know at the outset of a market study whether a given issue is a consumer, a competition or a “mixed” problem. Once the underlying causes become clear, a requirement to transfer studies between agencies would add complexity, risking duplication and delay.

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