

CITIZENS ADVICE SCOTLAND ECONOMY, ENERGY AND FAIR WORK COMMITTEE CONSUMER SCOTLAND BILL

Citizens Advice Scotland's evidence submission recognises that the 'outcome' of the Consumer Scotland Bill is, in its effect, much broader than the main 'output', the creation of Consumer Scotland. The aims for the legislative process should therefore be much broader, to ensure the devolved powers are used for the maximum benefit of consumers in Scotland.

We welcome any investment or intervention from the Scottish Government that benefits consumers. The creation of Consumer Scotland has the potential to be the final piece of a jigsaw that creates, in Scotland, an integrated system of consumer protection that is unique and will add real value to the work already being done to support citizens and consumers. However, in order to achieve this the new body will need to build upon and enhance the high quality services that already exist to create a system made up of multiple organisations that work together to protect consumers.

This whole system approach combines the best aspects of a "bottom up" community based approach with those of a more "top down" Governmental approach that can afford consumers the best protection possible. This new system should marry together differing approaches to identifying issues. CAS's work and that of other agencies is based on the lived experience of our clients and the issues they encounter. And from the top down, Consumer Scotland should adopt a more systems based approach looking at national research and analysis and the ways in which markets might be organised and regulated to minimise consumer detriment.

This holistic approach, which recognises the strengths and expertise in all segments of the consumer landscape, and with its variety of inputs and approaches, may well be unique and will certainly be powerful. CAS has outlined this vision for the consumer landscape throughout the process to date.

However this approach does present problems for CAS and potentially for the Committee in its examination of and response to the Bill. It is the completion and creation of this whole system that CAS supports and Consumer Scotland plays a part in that. However this needs to be done with recognition that this is only one part, and there are many other organisations that play a part in the landscape and need to be given due consideration. The Citizens Advice network has been providing independent consumer advice, advocacy and protection for 80 years. Our place in this system cannot be under-estimated and should be recognised as it will be fundamental to the success of Consumer Scotland.

The Bill as presented is too greatly focused on the single output of creating Consumer Scotland and too little is said about how this action creates a better outcome for citizens in terms of an enhanced system to better protect their interests.

Creating Consumer Scotland cannot and must not be an end in itself. The value of the new agency can only be assessed by fully understanding:

- What Consumer Scotland will do.
- How that relates to the work of others already active in this area.
- How the creation of the new agency will create a more integrated and effective system of consumer protection.

At the time of writing too little detail is known about many of these issues and how this new agency will relate to its wider existing environment. CAS would encourage the Committee to very thoroughly examine this broader context. It might be tempting to simply create Consumer Scotland in broad and unspecified terms with the hope that in the early stages of its development and evolution its relationship with others comes about naturally in discussions, and negotiation. CAS believes this lack of clarity would be a mistake that will lead to confusion and a diminished offer for consumers as the new agency works to make an impact in an already crowded landscape, and without the benefit of parliamentary scrutiny.

CAS and our public and private sector partners in service provision recognise that no new agency ever arrives “fully formed. Some level of immediate development and evolution always takes place as soon as any agency “goes live”. However it is not unreasonable to expect sufficient detail to exist to allow us to have confidence that Consumer Scotland fits in the whole system of consumer advice and advocacy and that it truly will add value.

To support the Committee in examining this issue we have outlined some key questions we believe should be asked:

1. Do the proposals for Consumer Scotland explicitly recognise that the new agency is only one part of a system of consumer advocacy and protection? Does it overtly recognise its responsibility to work with others to promote integration and effective co-operative working?
2. Are we sufficiently clear about the exact role, powers, responsibilities and boundaries of the new agency? Sufficient detail will be required to ensure that CAS and other agencies can adapt to and work alongside Consumer Scotland, and ensure that it can reach its full potential.
3. As the outcome of this legislation is a better working and more effective system of consumer advocacy and protection should there not be greater emphasis in the Bill about the ongoing role that the Citizens Advice network and other bodies will still play in making this a reality? Emphasising only what’s new only serves to minimise the value of what already exists, and can create confusion.
4. How will the improved system - completed by the creation of Consumer Scotland - be better able to meet its equalities obligations and afford more and better protection to the most vulnerable people in our communities?

Additionally, we would request that the committee makes provision for recognising the unique and valuable role of the Citizens Advice network in the delivery of Consumer Advocacy in Scotland, by writing this into the Bill.

EVIDENCE

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

As we have stated in our introduction we believe the Bill lacks detail on the value the new body will add and how it will complement and enhance existing services. We believe that this is essential if the Bill is to achieve an improved landscape for consumer. For the last 80 years, the Scottish Citizens Advice network has advocated on behalf of citizens. The strength of our advocacy work is that it builds on our advice offering, bringing the voices and lived experience of people into the policy making environment. The information we gain from advice provision gives us a good picture of the issues impacting on people in communities. The depth of this information combined with the lived experiences of people drives our unique brand of advocacy. We use this information to work with stakeholders locally and nationally to highlight issues and bring about positive social change.

We believe that there is a real opportunity for the creation of the new body to deliver something truly unique in Scotland, but it is not in replicating what CAS and the CAB network does. We set out the gap that we think the body can fill in our response to the 2018 Consultation: Consumer Scotland should be a body operating at a macro level, focusing on tackling those systemic market issues which cause detriment in communities. We believe that this is the area in which the new body can provide the additionality which other respondents to the Consultation also identified as vital. We would like this role to be clearly articulated in the Bill in order to prevent duplication and replication of existing services.

Our network's bottom up approach from us will abut the top down approach which we have outlined for Consumer Scotland. Doing this well can ensure that the separate roles of the two organisations complement each other – leading to consumer detriment being addressed at all levels across the country. We believe by working together and performing our respective roles we can maximize consumer benefit.

We would like to see the macro level, market focused approach more clearly articulated in the Bill, along with recognition of our network and other existing organisations. This will ensure that the Bill demonstrates that the new body can bring the additionality that we would like to see it deliver.

We are also seeking a formal recognition of CAS's role in providing advocacy.

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

We have set out above how we believe that Consumer Scotland can add value to consumer advocacy as a strategic body focussing on markets, which will complement and enhance the current advocacy arrangements. We believe this principle relates to the wider consumer landscape where Consumer Scotland could play a similar role. There is much that works well already and the advent of Consumer Scotland cannot be to the detriment of these highly valued existing services.

We see no value in a central body such as Consumer Scotland playing a direct, hands-on role in the provision of advice services and indeed, believe there are risks associated with this, in terms of removing independence, threatening local service provision and breaking

the link between consumer and wider citizen issues. We would welcome greater clarity on the role Consumer Scotland will play in advice provision.

As an independent, holistic advice provider, with a footprint in every community in Scotland, we know that people trust us to provide them with the information and advice which they need to resolve their issue and that we help empower people to find a way forward. Our advice work is the foundation of the service that the Citizens Advice network provides. Our footprint of local bureau and our specialist telephony services mean that people in Scotland can access advice at a time and place that suits their needs. Our brand is among the most trusted in the country and people come to us for help in solving their problems.

We know that people are often stressed and vulnerable when seeking advice and don't differentiate as to whether their issue is a citizen or a consumer one, and indeed that people often face multiple issues which transcend citizen and consumer boundaries. This makes it vital that people have one place to come to solve their problem because we know that the more people are transferred between services the more likely they are to drop out and not get the help they need. This should be a key consideration for the Committee when considering the scope of Consumer Scotland.

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

We believe that the Bill provides for a very wide scope for the new body, but without providing a clear definition of what the body will do in practice. While we understand the desire to include the full range of functions that have the potential to support consumers, we believe that the current scope of the Bill is too wide and creates the potential to stretch the new organisation as well as risk replicating existing services, and having the unintended consequence of diminishing the value the new body can bring.

In order to ensure the body delivers additionality we would like to see a smaller, more focused role for the new body which would operate at a strategic macro level dealing with systemic issues. Functions could include:

- Data collection and sharing to improve the prioritisation of issues impacting on consumers nationally.
- National research to understand Scotland's consumer markets in the context of international markets, and identify and develop best practice.
- Investigations tackling those issues and markets which create the most harm in communities in Scotland and ensuring that the Scottish consumer has a powerful voice in combatting these issues.
- Overseeing a Consumer Duty in the public sector that ensure that consumers of public services in Scotland have access to the highest standard of service and understand and can challenge service provision when things go wrong.

These powers all currently exist within the Bill as it stands. We believe this list provides a more achievable, focused purpose for the new body. The new body should not seek to deliver services which are already in existence but should instead look to work with existing providers to ensure that the landscape is clear and accessible for consumers, and maximise benefit for consumers.

We note the provision in the Bill for some of the functions of Consumer Scotland to be added to or varied after the passage of the Bill is complete and the intention for this to be carried out by negative procedure, which potentially limits the level of scrutiny. While we understand the desire to future proof the functions of a new body, there is also risks associated with conferring new functions into a body once the Act has passed.

We believe it is in the best interests of consumers to clarify the functions proposed for the new body in the Bill at this stage and include a requirement for any future amendments to this to be subject to the appropriate Parliamentary scrutiny process so that due regard can be made to consumer interest and achieving value for public money.

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

As a network that deals with people every day, Citizens Advice understands vulnerability and that this is a situation that can affect anyone brought about by a change of circumstances and can be short term in nature. It isn't limited to a set of pre-defined characteristics.

Our network already have an established and widely recognised role in providing advice and advocacy services to and on behalf of vulnerable people so it will be important that Consumer Scotland does not attempt to duplicate our services. There will be greater benefit in Consumer Scotland adopting a partnership model and targeting its finite resources towards other activities, while working closely with CAS to ensure that the needs of vulnerable consumers are being adequately considered. We would therefore look for assurances that there is no change to CAS's ability to make a super-complaint.

Where Consumer Scotland would have a valuable role is in intervening at a markets level where these do not adequately support vulnerable consumers. This combination of the Citizens Advice people-focused approach which would collect and share evidence of harm, combined with the new body's macro level intervention can deliver real, sustainable improvements which benefit those who need it most.

In practice the definition of vulnerability as written in the Bill is potentially problematic in that it includes a list that is not exhaustive. While we recognise this serves an illustrative purpose, we would look for this to either be completed or removed as there may be unintended consequences or confusion arising from this definition when the Bill is enacted.

Additionally, CAS currently has a remit in terms of its advocacy in the regulated industries to look after the consumer interests of small businesses. This type of consumer is explicitly excluded from the functions of the new body; however, we believe that there is a role for the new body in protecting this group. We know that healthy microbusinesses are key to supporting inclusive growth; therefore we would like to see the Bill amended to include these consumers in the scope of Consumer Scotland's responsibilities or an alternative provision made, otherwise there will be a gap and a detrimental position for Scottish small businesses.

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

We recognize that a number of issues remain reserved which could act to limit the scope of the powers of the new body, however, CAS believes that there is opportunity for the new body to work in partnership with existing bodies such as the Consumer Protection Partnership (CPP) to allow Consumer Scotland to achieve change in reserved areas.

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

We recognise that Consumer Scotland will have a lead role in acting as a voice to Government and industry in the new landscape and we want to support it to do this. We believe that the new body can provide a powerful new voice in dealing with some of the systemic issues which create detriment to consumers and we can help the body to deliver this by sharing insights on the issues we see in communities, while ensuring that we retain our independence and provided that this can be done in a way that protects the anonymity of our clients.

As a central body, access to this local information will be crucial to the new organisation: a great deal of stock is placed upon the new body using this evidence led approach to assessing detriment and prioritising action.

We understand from the Policy Memorandum that Consumer Scotland is going to drive change by taking a data-led approach to ensure that it identifies harm correctly, and can accurately prioritise those areas that require substantive investigation. CAS welcomes this approach and the focus of the new body in breaking down barriers to sharing insights across the consumer landscape.

Consumer Scotland could provide additional benefit to the consumer landscape by making its data sets publicly available. Having a live and up-to-date data set on consumer detriment could add value as a consumer education and communication tool as it would alert consumers and other consumer groups to emerging issues.

We recommend that analysis is undertaken to determine the nature and quality of the data sets and insight available to the new body to ensure that there is adequate information available to support this basis for the new body, particularly at its inception.

Any costs associated with obtaining and creating data sets or insight should not be underestimated and we would expect to see these costs factored into the set up costs for the new body. We are seeking assurances that small organisations would not be expected to bear the cost burden of sharing insights with the new body.

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

CAS welcomes the new duty for public bodies to consider the impact of their policies on consumers, and has always recommended this as a way in which the Bill can add value in a wider sense. However, there is a risk that this could be seen as a burden or a tick box exercise by stakeholders and that would eliminate the impact of the duty.

We would seek only to strengthen this commitment by inclusion of the words 'due regard' to this section. This would put the Consumer Duty on a similar legal footing to the Public sector equality and Fairer Scotland duties which are applicable to public bodies and would ensure similar weight is given to the new duty. We believe that there are also lessons that can be learned from the creation of Social Security Scotland in terms of how the values of dignity, fairness and respect, have been driven through the practical implementation of the body.

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

We welcome any investment or intervention from the Scottish Government that benefits consumers. The creation of Consumer Scotland signals a commitment to add to the current landscape of consumer protection, and can add value particularly in an oversight role, as long as it recognises the long established partners in the consumer landscape that are working well.

As outlined in our introduction, we believe that there is a real opportunity to deliver something unique for Scottish consumers.

There are a number of areas where we feel that Consumer Scotland could add value to the existing consumer landscape which are not included in the Bill. We have set these out below:

Consumer Education

We would like to see mention in the Bill of the provision of consumer education and the role that the new body will play in delivering this. We believe that this is essential to preventing harm and improving outcomes for Scottish consumers. We recognise from our own work in this area that there is a significant resource commitment in delivering this and we can support the new body to deliver this where appropriate. However our view is that it is an essential preventative tool.

Microbusinesses

As part of its current role, CAS currently has a remit to work on the regulated industries to look after the consumer interests of microbusinesses and small businesses. This type of consumer is explicitly excluded from the functions of the new body; however, we believe that there is a role for the new body in undertaking advocacy on behalf of this group. We know that healthy microbusinesses are a vital component of inclusive growth; therefore we would like to see the Bill amended to include these consumers in the scope of Consumer Scotland's responsibilities.

In addition to the inclusion of these functions in the Bill, CAS would like to see greater clarity on key areas and sections of the Bill. Some of these are noted within the main body of our response and are therefore not repeated in this section, however they are summarised below for completeness.

Vulnerable consumers

As highlighted above CAS questions the definition of vulnerable consumers in section 6 (3) (1) of the draft Bill, and whether the scope of this is wide enough to include all those who may be deemed to be vulnerable at any given time and for a wide variety of reasons.

Scrutiny

As outlined in the text above CAS would like to see the functions of the new body articulated more clearly in the Bill and a requirement for appropriate parliamentary scrutiny to be part of any process for changing these functions.

Collaboration

Section 6 (3) (b) of the draft Bill states that Consumer Scotland must have regard to the desirability of working in collaboration with others as appropriate. The policy memorandum for the Bill is stronger and more positive at paragraph 24 in terms of building partnerships. Despite this CAS would like to see this section of the Bill strengthened to ensure effective collaboration and due regard by Consumer Scotland for the activities of other organisations to ensure an effective and responsive consumer landscape in Scotland.

In relation to section 13(4) of the draft Bill CAS considers it a useful step that the forward work programme for Consumer Scotland should be laid before the Scottish Parliament. However, CAS considers that a period of scrutiny by the Scottish Parliament may also be appropriate. Likewise we would suggest section 13(3) be altered so that 'due regard' must be given to the view of persons, bodies and organisations having an interest in consumer matters. This would ensure that views would require to be taken from stakeholders before the work plan is created and laid in Parliament. This would ensure that all those with an interest in consumer matters in Scotland are able to contribute and would help ensure further join up within the landscape which will ultimately be of benefit to consumers. CAS would also be interested to understand in relation to creation of the welfare report outlined in S16 to what extent would there be engagement and collaboration with other organisations when creating this document.

Organisational structure/transparency

Within the draft legislation there is much emphasis placed on the body being independent of Scottish Government. However the Bill suggests that the Chair and members of Consumer Scotland will be appointed by Scottish Ministers via the public appointments process and by virtue of Consumer Scotland being covered by the Ethical Standards in Public Life Act. While this is useful and reassuring, CAS would still emphasize the need to ensure that there is no real or perceived conflict of interest in this process, and that care must be taken to ensure that selection and recruitment processes are robust and transparent. Clear policies for managing conflict of interest exist and are adhered to. CAS

would also highlight that the same or similar level of diligence is required to be given to any interim arrangements and appointments made which may precede the establishment of the new body.

Schedule 1 (2) states that members of Consumer Scotland should be in post for a period not exceeding 5 years. CAS considers the potential 5 year term is lengthy in comparison to other public bodies that tend to appoint members on a basis of less than 5 years. As such CAS considers that members of Consumer Scotland should be appointed for a time period of less than 5 years.

In terms of Schedule 1 (8) which outlines the potential for committees and sub-committees within Consumer Scotland CAS considers it a useful step that non-members of Consumer Scotland can be involved in its sub-committees. This would provide for a stronger and more varied voice within Consumer Scotland. CAS would be keen to understand how appointments to sub-committees will be taken forward, to ensure a wide range of individuals can potentially be involved and note interest, as opposed to sub-committees potentially being populated with known individuals from within the landscape with an interest in consumer issues.

As outlined in schedule 2 of the draft Bill CAS welcomes the fact that Consumer Scotland will be subject to FOI to ensure transparency of the information utilised and decisions taken. CAS would be keen to understand if it is planned that there will be proactive FOI data released from Consumer Scotland as currently occurs in other areas of Scottish Government.