



CAS Submission to the Devolution (Further Powers) Committee: Implementing the Smith Agreement - The UK Government's Draft Legislative Clauses Civil protections and advice

Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer service, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Adviceguide provides information on rights and helps people solve their problems.

We are champions for both citizens and consumers and in 2013/14 the Citizens Advice Service in Scotland helped over 330,000 clients in Scotland and dealt with over one million issues overall. In addition, the Scottish zone of our self-help website Adviceguide received approximately 4.2 million unique page views. In 2013/14, our citizens advice bureaux recorded a financial gain for clients of over £125 million.

Our Citizens Advice Bureaux (CAB) network, which includes telephone helpline Citizens Advice Direct, deliver frontline advice services through more than 200 service points across the country, from city centres to rural communities. This network of bureaux is staffed by a team of paid staff and nearly 2500 volunteers.

The Citizens Advice consumer service provides a helpline service for those needing advice and information on consumer rights and helps to solve problems with consumer goods and services. Citizens Advice Scotland delivers part of this Great Britain wide service from a call centre in Stornoway, helping people in Scotland and across other parts of Great Britain.

The Extra Help Unit, through a team of telephone caseworkers based in Glasgow, helps people throughout Great Britain who have complex energy or postal complaints or are at risk of having their gas or electricity cut off.

If we paid our volunteers it would cost the service £10 million. Research by the Fraser of Allander Institute into the economic benefits of advice shows that the Scottish CAB Service contributes an annual total benefit to the common good in Scotland of nearly £170 million.

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Introduction

In this submission CAS focuses on the proposals surrounding the devolution of civil protections and advice contained within Chapter Six of the UK Government's Command Paper '*Scotland in the United Kingdom: An enduring settlement*'.

In 2013/14, the Citizens Advice Service in Scotland helped over 330,000 clients in Scotland and dealt with over one million issues overall. CAB are the leading providers of advice in Scotland and we provide our service in 30 out of 32 local authority areas reaching 94% of the population. We are a trusted and established service throughout the communities of Scotland.

Consumer advice, advocacy and education are areas we are passionate about. Between them, Scotland's network of 61 local CAB and our Citizens Advice consumer service dealt with well over 289,000 consumer issues in 2013/14 for people living in Scotland. Our top five consumer issues across the service were unsecured credit; credit card debt; bank accounts; energy; and private rented housing. Consumer issues such as these are categorised into different advice areas – eg debt, housing - but when we look at all these consumer issues together its accounts for 30% of our workload.

Citizens Advice Scotland (CAS) welcomed the Smith Commission and much of the Command Paper, and look forward to working with all those involved in the transfer and transition of powers to the Scottish Parliament. We have called for this to be carried out in the best interests of the people of Scotland. Our submission to the Smith Commission focused on three principles – fairness, responsiveness and equality.

Section 6.3 Tribunals

In our submission to the Smith Commission CAS called for the Employment Tribunal and the Social Entitlement Tribunal to be devolved. We stated that we didn't believe 'it is an issue that the law is reserved but the enforcement devolved' as we have precedence in this area. For example consumer credit is a reserved issue yet enforcement of consumer rights are through the Scottish courts. We also believe that the smooth transition of Tribunals to Scottish jurisdiction will be possible because of the recent changes made to the Scottish Tribunals System.

Therefore CAS very much welcomes the devolution of many currently-reserved tribunals to Scotland and the opportunities this represents. However we are concerned at the framing of the clauses in this area.

Scotland has a strong and independent legal system which is free to interpret reserved legislation and policy and in many instances this can lead to a distinctly Scottish approach. In all Scottish courts and Scottish tribunals there is freedom in the making of rules and the policy surrounding operations subject to the necessary legislative considerations. It is clear that the spirit of the Smith Commission's recommendations would allow for the devolution of tribunals into this culture and the natural extension of the current approach to administrative justice in Scotland.

Paragraphs 63 of the Smith Commission report stated, 'All powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.'

However, CAS has serious concerns about the reality of devolved tribunals under the terms of draft Clause 25(6) which states 'may include provision that imposes conditions or restrictions' on the transfer of functions and that these may 'be made with a view to purposes including securing consistency in any respect in practice or procedure or otherwise between the Scottish tribunal and other tribunals'.

The reality of Clause 25 (6) in application could mean that while Scotland might administer devolved tribunals, there could be conditions or restrictions imposed that mean the Scottish Parliament is not able to enact the policies it wants. Tribunals will not be devolved in the sense we understand our current administrative justice or legal system to be.

This could impact directly on, for example, the possibility of Scotland removing fees from the Employment Tribunal – a significant area of concern for CAS as we have seen clients no longer access this route to justice due to barriers of cost. This and other policies would allow tribunals to be more responsive and make a positive difference to the people of Scotland – but that is only possible without restrictions.

CAS recommends that section 25 (6) therefore be removed so there is no provision for conditions or restrictions being placed on the devolution of the Tribunals that are being transferred to the Scottish Parliament.

Section 6.4 Competition

Citizens Advice Scotland very much welcome the proposals in the Command Paper at section 6.4 and draft clause 41 that will ensure the Scottish Government has the ability to make references to the Competition and Markets Authority (CMA) under the rules of the Enterprise Act 2002 for an investigation into a market that is not working for the benefit of Scotland's consumers or distorting fair practice and competition.

Citizens Advice Scotland however notes that the current wording in the draft clauses requires Scottish Ministers to make the application jointly with the Secretary of State.

We do not believe that this is in the spirit of the Smith Commission's recommendations which simply stated that Scottish Ministers would have equal ability to make references to the CMA as UK ministers currently do. CAS believes that the need for Secretary of State approval could act as a veto on the ability for Scottish Ministers to make a reference to the CMA.

CAS recommends therefore the legislation is changed to reflect the Smith Commission's original proposal which would allow Scottish Ministers to have equal ability to make references to the CMA. This is especially important given the recommendations that consumer advice and advocacy; the ability to pursue complaints for vulnerable consumers; and the powers to assist those facing disconnection are to be devolved to the Scottish Parliament.

Section 6.5 Consumer Advocacy and Advice

As outlined in the Command Paper, CAS has undertaken a variety of new consumer responsibilities over the past few years including now having a role in consumer advocacy and education which were previously the role of the Office of Fair Trading. In addition we also now have responsibility for speaking out for consumers across energy, postal services and water through our Consumer Futures work. Other changes within the consumer landscape also led to Citizens Advice Scotland taking over two other important consumer services and these are now incorporated into the overall Scottish Citizens Advice service.

The Extra Help Unit is a team of telephone caseworkers based in Glasgow which helps people throughout Great Britain who have complex energy or postal complaints or are at risk of having their gas or electricity cut off who are referred through our consumer helpline, Ofgem, the Energy Ombudsman, or their local elected representative.

The Citizens Advice consumer service (CACS) provides a helpline service for those needing advice and information on consumer rights and helps to solve problems with consumer goods and services. Citizens Advice Scotland through Citizens Advice Direct delivers part of this Great Britain wide service from a call centre in Stornoway, helping people in Scotland and across other parts of Great Britain. In 2013/14 CACS dealt with 176,799 issues for callers across GB, with approximately a third of these issues from Scotland based callers.

We believe that the changes that have taken place mean the voice of consumers in Scotland has been strengthened and consumer campaigning increased - all to the benefit of the citizens of Scotland. In our submission to the Smith Commission, we stated:

‘It is clear that both gaps and duplication of work are possible within the current system that sees consumer protection legislation be reserved to Westminster yet be enforced in Scotland through Trading Standards, and consumer advice and advocacy again lying with the UK Government but yet delivered by agencies in Scotland such as ourselves and others working in the field of consumer advice education and advocacy, and financial capability,

‘We believe that consumer protection should be devolved to allow for a more fair, equal and responsive way of tackling enforcement of these issues and to prevent duplication of work and effort and instead allow agencies to note and fill any gaps in provision. In light of much of what we have said on co-operation between Governments, we also agree with the Scottish Government’s idea of working with the UK Government on a Scottish Consumer Ombudsman. This is exactly the sort of example of where a joint committee would benefit all the people of the United Kingdom.

‘We would agree with those that have examined this issue and concluded that it would be in the best interests of the people of Scotland for consumer education and advice – and the funding thereof – to be devolved to the Scottish Government. We believe that this clearly allows for more responsiveness for the citizens and consumers of our country and will also increase fairness and equality in this area. If this recommendation is taken forward, we look forward to working with all the relevant partners to ensure a smooth transition takes place and relevant and responsive structures put in place.’

Therefore CAS very much welcomes and is pleased that consumer advocacy and advice, along with the ability to pursue complaints for vulnerable consumers, and powers to assist those facing disconnection are to be devolved to the Scottish Parliament. These are all areas that will allow the work of the Scottish Citizens Advice service – and other agencies - to be more reactive and responsive to the needs of our clients and the greater population.

However it is also clear to CAS that in order to achieve a consumer protection regime for Scotland that is adequately focused on and responsive to the needs of Scottish consumers and businesses, the full devolution of enforcement and redress is also necessary.

Whilst we are pleased that two of the pillars of consumer protection – advocacy and advice are to be devolved we believe the other two pillars of enforcement and redress are missing and without the latter, the former would be poorly served and we would call on both Governments to work together to take this need into account.

The devolution of enforcement and redress would allow for a strategic approach, ensuring that policies and practices which resulted in detriment to consumers did not fall between the gaps of multiple agencies.

We believe that enforcement agencies need to be able to understand the unique challenges consumers face because of the geographical and demographic nature of Scotland. For example, Scottish enforcement would ensure that rural consumers are not left without adequate protection just because of their remote location.

Any devolution of enforcement to Scotland must be properly resourced to ensure a sustainable service. Trading standards service are under-resourced and often leave consumers facing a postcode lottery as to whether the service in their area can assist with their issue.

CAS is also in agreement with the Scottish Government's proposal for a single Scottish ombudsman service. This would underpin and act as an authority for all ADR schemes in Scotland, including public sector and industry-led redress codes and schemes. This ombudsman would be tasked with ensuring ADR schemes were available in all consumer markets. The ombudsman would also act as a catch all for markets which did not provide an approved ADR scheme thus ensuring no consumer was left without a route to redress.

A Scottish Ombudsman would fit within the Scottish legal framework and work closely with the legal services industry to ensure that an ever increasing number of easy to deal with cases were taken out of the court system and into alternative and more appropriate means of dispute resolution. This would free up Scottish courts time to deal with the most complex cases with particular points of law in challenge. The Scottish Ombudsman would by its nature have a much clearer understanding of the unique and independent legal system in Scotland and legislation that is different to other parts of the UK

Therefore we have two recommendations. First CAS recommends that both the UK and Scottish Governments open up a dialogue on this issue and it within the final legislation. We would welcome the Committee also taking the time to look into this area.

Second, we recommend that both Governments work closely with Citizens Advice Scotland in the transfer of these powers, and ensure that funding, processes and structures are established that will ensure that Scotland's citizens and consumers can be represented well by organisations such as ours that provide advice and advocacy and speak on their behalf.

Section 6.6 Payday Loan Sops and 6.7 Fixed-Odds Betting Terminals

The Smith Commissioners are to be commended for looking at the issue of the proliferation of payday loan shops and Fixed-Odds Betting Terminals in our communities. CAS is one of a number of organisations who have highlighted the negative impact of payday loans on Scotland's citizens. We believe our campaigning work did much to raise awareness of the issues that our clients and the wider public were having with payday loans including: continuing 'roll-over' of loans; ability to take multiple payday loans; breaches of the rules regarding Continuous Payment Authorities which led to raids on customer's bank accounts; and of course the cost of borrowing a payday loan, and interest rates applied.

CAS published ten recommendations of actions that could be taken to protect the public from payday lenders¹ as well as campaigning and working through our network of CAB to empower and educate people on their rights and responsibilities when it came to payday lenders. We are pleased to say that most of these actions have now been taken and we have seen major changes in the way that payday loans can now be accessed. This is part due to legislative changes and in part due to the introduction of the new Financial Conduct Authority (FCA) who from their establishment in April 2014 took the issue of irresponsible payday lending very seriously and took steps to protect consumers – including introducing an interest rate cap on loans which came into force in January 2015.

Section 6.6 Payday Loans Shops

In the introductory section of Chapter 6, paragraph 6.1.3 states, 'The specific recommendations set out in the Agreement span a range of measures, including the power ... to prevent the proliferation of high-staking gambling terminals and payday loan shops'.

¹ Citizens Advice Scotland. Payday Loans: a mayday call. November 2013. Available at: <http://www.cas.org.uk/publications/mayday-payday#overlay-context=publications>

Yet as we can see from the sections that actually outline these powers, there are no further or additional powers over payday loan shops but instead paragraph 6.6.2 states, 'Officials in the UK Government and Scottish Government will continue to discuss this part of the Smith Commission Agreement to consider whether any other action is required to deliver it.'

We have always found the Scottish Government have taken a close interest in the issue of payday loans and what actions they could take within the powers available to them to protect consumers. During 2013/14, the Scottish Government held round table events and hosted a summit to discuss the issue. In April 2014 they published their 'Payday Lending Action Plan'² outlining twelve points on tackling payday lending including the use of planning laws.

We are aware that planning laws can only tackle Payday Loan shops and do not tackle online presence of many payday companies. In response to a recent consultation, CAS supported the intention to allow planning authorities the ability to control the provision of both payday lending shops and betting offices if they feel the need due to overprovision in the local area. The impacts of inappropriate high-cost lending are numerous and CAS has extensively set out our evidence on the impacts of such borrowing in recent years. Using planning laws should not be seen as providing a blanket ban on such facilities but the government's proposal did allow for individual decisions to be made on a local basis thus allowing for controls to be implemented if there is local reasoning for doing so. CAS believes that the level of control that was consulted on is appropriate and allows the planning authority to take into account if further provision would be damaging to an area and its citizens. CAS is therefore disappointed that the Scottish Government decided after consultation that they will not progress the ability for planning authorities to control over-provision.

At present there are no other actions the Scottish Government can take within the current or proposed devolved statement. Therefore within the Command Paper we can only comment on what paragraph 6.6.2 may mean.

In our submission to the Smith Commission, where we used the three principles of fairness, equality, and responsiveness to the issues our service deals with, in our section on Debt and Financial Products & Services we stated that we believed as banking, finance, and credit remain areas that cannot be transferred under our present devolved system the possibility of devolving powers to tackle areas such as payday lending, basic banking, and increasing access to affordable credit isn't available to the Scottish Parliament. However we also stated:

'The solutions to so many of these issues are political and policy driven rather than a matter of where those decisions are made so again we would urge Governments to work together to tackle them and use each other and the variety of organisations and agencies involved in this area for the ideas on how to do so. This is a key area which could be examined by a joint committee or working group approach as we discussed earlier and include voices from across the UK to seek solutions.'

We would reiterate this stance if both Governments are to address fully and positively, the issues people currently face with debt and access to credit and banking. CAS would recommend, as we did in our Smith Commission submission, that this is done through closer co-operation and communication, not just between Governments, but between other institutions and organisations directly with the Scottish Government, Scottish Parliament and other stakeholders in Scotland such as Citizens Advice Scotland.

Part of our submission stated - (the full chapter Communication and Cooperation on this area is available in our submission):

² Scottish Government. Payday Lending Action Plan. April 2014. Available at: <http://www.gov.scot/Topics/Built-Environment/regeneration/town-centres/PayDayLendingActionPlan>

'We also believe that many current UK policy making institutions should and could be much more responsive to listening to and responding to the concerns, the views, and ideas of those in Scotland when it comes to policy areas that impact on them.

'We believe that many institutions that deal with reserved issues should be more responsive and have a mandated role to listen to Scottish stakeholders and respond to the needs of the people of Scotland that they serve. This includes listening to agencies and organisations that represent the citizens of Scotland.

'We need to move away from a London centric approach for meetings and conferences. The Financial Conduct Authority held meetings in Edinburgh with stakeholders both pre their launch in April 2014 and after; the Competitions and Market Authority held their first ever Board meeting in Scotland in September. This should happen far more often and not be an unusual occurrence but common place. Maybe it is because both these institutions are new and do not have established traditional set ways of conducting themselves, maybe it is because they are genuinely making an effort to open up their processes of working. Either way they are to be commended for doing so and we recommend others follow in their footsteps.'

It is the lack of such communication and engagement in many other institutions including Whitehall departments and House of Commons committees, that is holding back progress on these areas and this could be easily addressed if there was a culture change in such organisations and institutions.

Section 6.7 Fixed-Odds Betting Terminals

CAS welcome the devolution of power over Fixed Odds Betting Terminals (FOBT) to the Scottish Government which will allow the Scottish Government to look at how many FOBT are appropriate in each betting shop. CAS have assisted numerous clients who have been affected by debt, relationship breakdown and employment loss due to problem gambling and would be happy to provide examples of where problem gambling has impacted the lives of some of our clients if the Committee wishes.

The Scottish Government Health Survey 2012 found a person living in the most deprived areas in Scotland are seven times more likely to be a problem gambler than the rest of the population. It also found that 'machine playing', gambling including users of FOBTs, were more likely to either be a problem gambler or at a higher risk of developing a problem with their gambling. So it is clear that this power if used can make a difference to people's lives and we would be happy to work with the Scottish Government in the future on this issue.

We would however go further than the Command Paper does, and recommend that the legislation also devolves further powers to the Scottish Parliament which would allow Scottish Ministers to stipulate rules on lone working in betting shops.

In recent years a number of betting shop firms have moved to single staffing of their shops and there is serious concern regarding the safety of such workers. CAB have assisted with some requests from workers in Scottish betting shops regarding them feeling unsafe in their workplace and across the UK there have been a number of recent violent attacks and robberies on betting shops. We feel that if the powers were given now through the new legislation, this is an area that could be investigated further by the Scottish Parliament with a view to possibly taking positive action to ensure the safety of staff in betting shops and provide a safer working environment – including possibly the need for two staff.