

BIS consultation on The Role and Powers of the Consumer Advocate

Response from Citizens Advice and Citizens Advice Scotland

March 2010

Summary

Citizens Advice and Citizens Advice Scotland agree that there is a need for a facility for collective actions for consumers, and believe that a Consumer Advocate could fulfil this role.

We have a number of concerns about the Consumer Advocate post and powers outlined in this consultation:

- sufficient resources need to be made available for the Consumer Advocate to deliver redress for all consumers;
- a fighting fund is established and of sufficient size and suitably underwritten to make the Consumer Advocate's backstop powers a viable threat;
- consideration should be given to providing the Consumer Advocate with the powers needed to take enforcement action as well as action to gain redress, rather than having to rely on the follow-on concept proposed;
- the Consumer Advocate be empowered to initiate actions using a range of options from representative actions to opt-in or opt-out class actions and other group litigation procedures, for example group litigation orders;
- Scotland will need a Consumer Advocate agent or representative to ensure that Scottish consumers are not disadvantaged because of the difference in the Scottish legal system from that in England and Wales;
- the Consumer Advocate should have the capacity to both take collective actions and facilitate restorative justice, thus filling an acknowledged gap in consumer protection;
- the Consumer Advocate should partner with other organisations who may be better placed to initiate redress for consumers, such as: consumer bodies; specifically focussed charities; and enforcers/regulators; and
- the education role envisaged for the Consumer Advocate should involve engaging fully with gaining engagement from firms, consumers and government (including devolved administrations), using evidence of consumer detriment to challenge the status quo.

Introduction

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone, about their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. The service aims:

- to provide the advice people need for the problems they face; and
- to improve the policies and practices that affect people's lives.

The Citizens Advice service is the largest independent network of free advice centres in Europe, providing advice from over 3,200 outlets, including GPs' surgeries, hospitals, community centers, county courts and magistrates' courts, throughout Wales, England and Northern Ireland. Citizens Advice Bureaux in England and Wales assisted 1.93 million clients with over six million problems in 2008/09, 38 per cent of which related to consumer, debt, financial services, travel and utilities issues.

Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 83 Citizens Advice Bureau (CAB) offices, the largest advice network in Scotland. These bureaux deliver frontline advice services through more than 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities. Bureaux in Scotland dealt with a total of 976,989 issues in 2008/09, 28 per cent of which related to consumer, debt and finance issues.

We are pleased to have the opportunity to respond to this consultation about the proposals for a Consumer Advocate and agree that there is a need for a mechanism to enable collective action to be taken on behalf of groups of consumers who suffer detriment as a result of the same problem.

Response to specific questions

Chapter 1: Introduction

Question 1: Given the Government's proposals for a collective action power in respect of financial services claims, is there any need to give the Consumer Advocate a particular power in relation to unfairness in consumer credit agreements? If so, what should the power cover?

We support clause 26 of the Financial Services Bill, which updates and improve the existing provisions for consumer redress schemes set out in section 404 of the Financial Services and Markets Act 2000 (FSMA), and the powers to organise collective redress. We believe that where the problem lies with firms not authorised by FSMA, there needs to be a corresponding power for OFT, to organise similar redress schemes for consumers transacting with firms holding a consumer credit licence. If OFT had this power, they would be best placed to challenge unfair credit relationships through the consumer credit licensing regime,.

An OFT power to tackle unfair credit relationships would not, however, include all the problems consumers experience with credit that is sold along with products. Many products are purchased as a bundle of linked transactions that can include goods, services, utilities, insurance and credit. The purchase is made as a single deal but there is no common set of rules that apply to the whole purchase. For example, cancellation rights and the requirements for information in the paperwork will vary. As a result consumers can find that, when something goes wrong, some elements of the package are easily put right whilst others are not.

A partially sighted, deaf CAB client from Teesside agreed during a doorstep sale to buy a £1,500 mobility scooter, paying for it at the rate of £12 a week, which he explained to the salesman was all he could afford. He relied on what the salesman told him and was shocked to discover that the credit agreement showed that he had borrowed a total of £2,442.72, to be repaid over 48 months.

A Merseyside CAB client needed to claim on the payment protection insurance taken out with a loan when they bought furniture, when they became ill. The credit repayments were to start a year after the purchase and the insurers refused the claim on the grounds that the illness pre-existed the date of the insurance, which they claimed started a month after repayments became due. The three products were bought together and the client's paperwork showed PPI cover started on the date the credit agreement was made.

We believe that the Consumer Advocate should have the power to address the problems with consumer credit agreements where they are a part of a wider purchase. For example, if the Consumer Advocate was seeking to address high pressure doorstep sales for assistive products bought on very expensive credit the targeted consumers could not afford, both the goods and the credit should be within remit. Where the unfair credit is a stand-alone purchase, the Consumer Advocate would be expected to investigate alternatives with the OFT. Ideally the Consumer Advocate would establish a joined up approach with the OFT so that the Advocate's interventions are considered in the assessment of consumer credit licensees' suitability to hold a credit licence. The fact that credit formed a part of the transaction should not debar the Consumer Advocate from action.

Question 2: Do you have any comments on the consultation stage impact assessments included at Annex D and Annex E? If so, where possible please provide supporting evidence

On Annex D, we agree that a Consumer Advocate should have the policy objective to enhance the credibility of the threat of redress and, in the longer term, to reduce the breaches of consumer protection law and build consumer confidence. The case for a champion to take collective action is generally well made and takes account of the wealth of research and previous consultation on this matter. The evidence of the value of the threat of a group action is encouraging. We have listed below additional issues we felt worth raising in relation to impact.

The impact assessment for the preferred option on opt-in/opt-out collective actions needs to acknowledge that funding for publicity will be a crucial factor to achieving success. The consultation acknowledges that Which? found it sufficiently difficult to engage potential members of the group action they took on the football jersey competition case to put them off taking further cases. At Paragraph 28 of Annex D this is said to be due to the opt-in approach. Whilst the pre-damages opt-in option will give more time for publicity, gathering potential participants will inevitably need to be financed. Somebody's time will be needed and advertising in the media, to gain a wide audience, is expensive. Paragraph 34 of Annex D does not make clear what allowance is made for this, only that it is 'included'.

On costs and benefits, any distribution cost will also need to be monitored.

At paragraph 37 of Annex D the ratio of cost to benefit states that damages from the expected one case a year that results in a court case would need to be some £1.5m. There are two additional possible consequences. First that, as the role of the Consumer Advocate is helping consumers who might otherwise not obtain the redress they are entitled to, there will be a wide scope for disappointment where a case is not taken forward. Paragraph 8 indicates that 96 per cent of claims are for less than £1,000 and 83 per cent had a value under £100. These consumers will have high hopes of the Consumer Advocate but may be disappointed. Secondly, where a case is successful,

damages of over £1.5m, plus costs, may well make going out of business a more sensible option. Hopefully the negotiation of redress, rather than court action, will outweigh these risks.

On Annex E, we agree with the preferred option to facilitate the return of monies to UK consumers where this has not been possible in the past. However, where consumers have once lost money, there have often been follow on scam/frauds falsely claiming to help get that money back, for a fee, that are themselves scam/frauds. Examples CAB have seen relate to cases such as timeshare re-sales.

CAB clients from Devon decided to sell the timeshare they had had for 15 years because they had stopped using it. They were approached by two companies. The first required an up front fee and guaranteed a sale but failed to do so. A second firm then contacted the clients and valued the timeshare at a price that included the fees paid to the first company. The clients thought they could recoup the first fees so paid another fee to the second company. They have heard nothing and the phone numbers are unobtainable.

An East of Scotland CAB reported a client was looking to sell her timeshare. The client contacted a time share company initially but then received an unsolicited phone call from another company offering to sell her timeshare for £3,000 if she paid them £1,200. She gave her credit card details. Three months later the timeshare had still not sold and the company gave the client two options, either to join their club and pay a large sum of money, or pay another £1,500 to them to sell the timeshare for £3,000. The client did not wish to take up either option but the company still charged her £1,500. The client has been unable to contact the company since then.

Warning consumers not to pay any advance fee to an outsource funds distribution provider would be important in the publicity of the availability of the funds being distributed, to protect the Consumer Advocate's reputation. Further, the Consumer Advocate should be aware of the potential for detriment through illegal claims management firm. This might be achieved by ensuring the claiming process is publicised as being easily managed by potential claimants themselves or with the help of free advice services.

On both Annexes D and E, there seem likely to be costs to advice agencies in helping those who want to engage with a collective redress action and those who are claiming funds secured by overseas enforcement agencies. Whilst this work would be part of advisers' day to day activities, their contribution to the effectiveness of the Consumer Advocate's role should be acknowledged..

Question 3: Do you have any comments on the impact of the proposals contained within this consultation on minority groups?

The power to initiate collective proceedings will be of particular importance to minority groups because these groups may be more isolated from established sources of help, have particular access needs, or be less confident to take action through the courts due, for example, to language issues. For this reason we support flexibility on opt-in or opt-out arrangements for collective redress actions.

The proposals for engagement rely on work with community groups and a high media profile for initial contact. They fail, however, to give any information as to how support will be delivered throughout any collective redress process in order for these consumers to use the rights the Advocate is telling them about. Initially minority groups may not be exposed to the media coverage or may not understand it linguistically. Accessible formats and translations may be needed too. These provisions are not cheap to deliver and the Advocate may need to support community groups financially to achieve the hoped for engagement with minority groups.

Chapter 2: The role of the Consumer Advocate

The role of the Consumer Advocate appears to us to focus on the education role, rather than the advocacy role. We believe the emphasis should be reversed, so that the primary role is that of acting to gain redress with education as a secondary function. The lack of advocacy is a real gap in consumer protection and whilst education will always be important, there are many bodies engaged with delivering this objective already, so that it need not occupy a major part of the Consumer Advocate's time. We recommend that the Advocate work with these consumer bodies to ensure that there is no duplication in work and that best practices are shared

Question 4: Apart from encouraging voluntary compensation offers from business and monitoring the proposed pilots are there any other ways the Consumer Advocate can initially, i.e. prior to new legislation, champion groups of consumers who have suffered a loss at the hands of a business? If so, what?

Citizens Advice and Citizens Advice Scotland strongly support the restorative justice provisions in the RES Act and looks forwards to both the pilots and the Consumer Advocate's work to obtain compensation offers, taking into account the different Scottish legal process. In addition, we make the following suggestions for ways the Consumer Advocate might champion groups of consumers, prior to new legislation, but which are not mentioned in the consultation:

- **Work with regulators** to encourage greater use of the EU wide consumer protection powers they have in addition to their core regulatory provisions. For example OFGEM could make more use of doorstep selling and distance selling regulations in tandem with the requirements of their standard licence condition on marketing, to address cases such as those detailed below:

A West of Scotland CAB reported a 90 year old client had incurred fuel debt after changing fuel suppliers. The client was approached by a sales person who said that he could reduce her monthly current fuel bill by £30. The client was previously paying £58 per month for gas and electricity. The sales person had said that he will take care of everything for the client and that she would only have to take care of her bill at the end of the month. The money started being deducted from the client's account at the beginning of the month. A few months later the client received a bill of more than £300 for gas, and more than £60 for electricity - nearly double the amount she paid to her previous supplier. The client is extremely distressed at being left with this additional debt that she would not have had if she had not been persuaded to change supplier by the doorstep sales person on the grounds that her bill would be reduced.

A retired CAB client from East Sussex was phoned by fuel salesman and told he was on too high a tariff and should change to a lower one on the spot. When the client identified their fuel provider the sales person claimed to be from the same company. The bureau contacted the supplier who confirmed the salesman was with a different company.

- **Liaise between regulators/enforcers** where detriment relates in part to the regulated community and in part to those only covered by consumer protection law. For example, Citizens Advice found that the problems bureaux reported on mobile phone cash backs took over two years to resolve.

A CAB client from Essex signed up to a mobile phone contract for £50 a month with a £20 a month cash back from the seller. The cash backs have not materialised and the suppliers have now ceased trading, leaving the client with an expensive agreement. The air time provider is holding him to a contract he only agreed to buy on the grounds of the retailer's promised cash back.

OFCOM had regulatory powers with the air time providers but the real issue was with the retailers who used their commission to pay the bills for customers, in order to gain a larger market share. Many found that they could not afford to make these very competitive offers and so went bust, leaving consumers with expensive contracts and without the cash backs to offset them. The enforcement was led by OFCOM as the regulator but they could only tackle airtime providers and seek their help to call retailers they dealt with.. Some Trading Standards services took action against local firms but the problem was wide enough that it should have attracted OFT investigation. The Consumer Advocate may be able to smooth the issues of who is best placed to act by co-ordinating joint actions.

- **LBRO**, the Local Better Regulation Office, seeks to create a more uniform regulatory environment across local authorities and shares our enthusiasm for restorative justice. The guidance LBRO issues may provide a useful home for the encouragement the Consumer Advocate seeks to engender in local enforcers and for planning guidelines should the Consumer Advocate need enforcement to have been taken to open the door to a collective action.
- **LBRO, LACORS, TSI and SCOTSS** will all be vital links for the Consumer Advocate to alert the enforcement community to issues causing consumer detriment.
- **National Fraud Authority** is currently piloting the new single reporting centre for fraud/scams, working with OFT and a wide range of bodies concerned with frauds and with support for the victims of fraud. The intelligence gathered by the NFA reporting centre and the feedback from support groups will be valuable to the Consumer Advocate's role in alerting consumers to scams/ frauds at an early stage.
- **Consumer groups** such as Citizens Advice would value an open door policy to allow the prompt raising of trends they observe that would benefit from the Consumer Advocate's intervention.
- **Trade associations** may be keen to alert the Consumer Advocate to problems in their market, particularly where their members are financially disadvantaged because they do not follow the consumer protection rules. The Unfair Commercial Practices Directive (CPRs in the UK) encourages the use of wider means of enforcement and the OFT have been working on what trade association sponsors can offer.
- **Collective action** has not been formalized in Scotland and a Scottish agent of the Consumer Advocate would be in a good position to ensure that the recommendations made on multi-party actions by Lord Gill in his Scottish Civil Courts Review are kept under consideration by the Scottish Government.

Question 5: What can the Consumer Advocate do to make a difference to consumer education which has not already been tried?

In our experience consumers often accept what they are told by business, even when it offends basic rights such as those provided by sale of goods law, for example:

A North of Scotland CAB reported a client bought a geothermal heating system to run the heat and hot water systems in the house. The client had had problems with the pump part of the heating system ever since he bought it. The seller kept telling him he had to deal with the manufacturers directly. The client was now well and truly fed up with the issue as it was now more expensive for him to pay for his heating and hot water. He had a young family and he was concerned about keeping them warm through the winter months.

A Kent CAB client sought advice about a second hand car he had bought the week before. It had broken down three times but the trader would only repair it at the client's expense. The car was not fit for purpose and might also be dangerous. Despite Sale of Goods rights the dealers seemed to avoid their legal responsibilities on the grounds that no warranty was supplied.

Business to consumer transactions are widely affected by the CPRs. To comply with the requirements for not trading unfairly, businesses need to think about what will the customer understand and what is fair, rather than what is legal/illegal. For consumers to benefit fully from their rights, we believe that the Consumer Advocate will need to work with trade associations and business organisations.

Question 6: What do you think are the key elements of consumer education that the Advocate should work towards improving?

Consumers have a huge quantity of information that is required by legislation in transactions, such as consumer credit agreements, doorstep and distance sales paperwork. Whilst consumers often fail to read the small print, it is at least there for reference when something goes wrong. The Consumer Advocate could help improve access to information by seeking to place it where it is needed, for example at point of sale or at returns counters, where there is no legal requirement for information provision. This includes basic rights applicable to purchasing of goods and services at retail outlets, as has been done in Northern Ireland and which Consumer Focus Scotland plan to do.

Question 7: How do you think the Consumer Advocate can best add value to consumer education given the roles of other organisations?

The Consumer Advocate will be looking at what is working well in the field of consumer education. Many projects are run on a shoe string, locally, and with no financial certainty. Channelling funding streams to these projects would be very worthwhile and could help spread the word as to the presence of a new Consumer Advocate.

It will be essential for the Consumer Advocate to develop close working relationship with other organisations, to work in partnership to ensure that poor practices in the finance or utilities sectors do not easily spread to other sectors that do not have their own dedicated consumer education body.

The Consumer Advocate may also benefit from consulting with the Consumer Council of Northern Ireland on best practice examples on consumer education. The Council produced and distributed 500,000 copies of a Shopper's Rights Card. Consumer Focus Wales plan to produce a bilingual version in Wales. The National Consumer Agency in the Republic of Ireland also produced a shoppers rights card, which they distributed to all households.

Question 8: Do the roles of any other organisations need to be amended to ensure the Consumer Advocate is successful? If so, in what way?

We are unsure as to how the OFT's role under the Enterprise Act 2002 fits with the proposals for a Consumer Advocate consumer education role and would appreciate clarification. The role detailed in the consultation seems to us to replicate the OFT's consumer education role.. Perhaps the Consumer Advocate does not need to do this as well.

Question 9: Should the Consumer Advocate be able to warn consumers about a specific company before the conclusion of any formal enforcement activity? If so, under what circumstances?

We are keen to ensure that consumers are made aware of unfair commercial practices at the earliest opportunity, before too many suffer detriment. Where there is a clear breach of consumer legislation or danger of widespread detriment, consumers and other businesses need to be informed about what is and is not acceptable as soon as the issue comes to light.

This information prior to enforcement action is, we believe, in tune with Hampton/Macropy principles for proportionate enforcement.. It acts as a warning and is an approach the OFT has used., For example, in May 2009 the OFT warned debt management businesses over cold calling practices. This both alerted consumers through press coverage and was fair to all, because the breach of consumer protection law is the focus, rather than a specifically named business.

In addition, there will be cases where an enforcement action has already been taken, perhaps in another EU Member State or against a firm who has decided that the penalty was insufficient to dissuade them from continuing to break the law. In this type of circumstance we believe the business has forfeited the right to be protected from bad publicity and the Consumer Advocate should be expected to warn consumers.

Question 10: How do you think the Consumer Advocate could best go about delivering messages to the least confident consumers about how to best protect their interests?

Successful engagement with less confident and/or potentially vulnerable consumers has often been achieved through trusted delivery avenues and we suggest this approach would work well for the Consumer Advocate. Examples of this include:

- **Training delivered to groups who can then cascade** what they have learned, on the subject of financial skills training. Citizens Advice works with other providers so that local projects can use centrally designed materials and engage with people who are already in contact with the final target group. These projects are not expensive and reach many. Independent evaluations of the OFT-funded "Save Christmas" campaigns show that they have a substantial cascade impact, and changed the saving behaviour of over 40% of those reached. The Consumer Advocate could fund such schemes and have particular strands of message added to existing work.
- **Short plays** about a doorstep selling scenario, performed to local lunch clubs and groups, using actors that reflect the target group, such as older people living alone. A performance was initially used at the 2002 TSI consumer week launch. Again the Consumer Advocate could fund these projects.
- **The OFT has provided materials** for householders about doorstep selling; for carers and those in contact with people who might be vulnerable to mass mailing scams; and for holidaymakers about timeshare-like products. Each have been distributed through local organisations who have an interest in preventing detriment, such as TS and advice

agencies..The Consumer Advocate could engage with trusted partners and provide the funding associated with creating the materials and their distribution.

- **EnergyWatch campaigned** for improved take up of the priority service registers that all fuel suppliers are required to run in order to deliver services such as free meter reading and emergency supplies in the event of a power cut to vulnerable customers. All suppliers have to make this provision under the general licence conditions regulated by OFGEM, but EnergyWatch found that many of those for whom these services were designed had not registered. They launched a campaign to access these customers through those they already engaged with, such as Age Concern and DWP who could seek permission to pass on details that EnergyWatch then used to register people, saving them the trouble.

None of these methods of message delivery is expensive and would complement the media role outlined in the consultation. Further, the media role might be enhanced through regular slots in TV and radio programmes.

Question 11: What do you think are the costs and benefits of creating an independent Office of the Consumer Advocate sitting within Consumer Focus, as opposed to a team within Consumer Focus supporting a joint Advocate/Chair?

The role of the Consumer Advocate needs to be independent of any one consumer body, in order to have an open door policy for ideas and information about trends from the widest possible group of consumer bodies. In this way, we feel the Consumer Advocate could work better with a wide variety of partners. This would be essential where the issue **or project was not one within the remit of Consumer Focus and/or about which other consumer bodies have greater experience or expertise.**

Question 12: Assuming that the powers proposed in this consultation are granted should they be granted to the Consumer Advocate as an individual person or to a corporate body? Why?

Either could work. There are pros and cons either way. For example, an individual would be a single person to be recognised by the public. On the other hand, a corporate body could as easily be recognised by its name. We suggest it could work well as an individual post with a corporate structure working under it, much as many ombudsman services do. For the purposes of issuing proceedings, having a corporate body might prove essential,

Citizens Advice Scotland supports the establishment of a representative in Scotland who would form part of such a corporate structure. This agent would represent the Consumer Advocate in Scotland and would advise the Advocate on Scottish issues, concerns, pursuing any Scottish specific advocacy work as deemed necessary by the Consumer Advocate.

Question 13: Do you agree that if the Consumer Advocate is granted the power to facilitate the return of funds secured by overseas enforcement agencies then he/she should be able to do this for all UK consumers, liaising as appropriate with the relevant Northern Irish authorities? If not, why not?

We see no reason why consumers across the UK should not benefit from any provision for return of funds secured by overseas enforcement agencies.

Question 14: Do you agree that apart from returning funds from overseas, the Consumer Advocate should not act in Northern Ireland? If not, why not?

Since consumer affairs are a devolved matter, in order to respond fully to this question Citizens Advice Northern Ireland would welcome the opportunity for a discussion with BIS as to how the Consumer Advocate might work best with the current Northern Ireland consumer protection regime.

Question 15: If the Consumer Advocate is granted the power to take collective actions on behalf of consumers then do you agree that he/she should be able to do so in a similar way in Scotland as well as in England and Wales? If not, why not?

Yes. The Consumer Advocate will need to ensure that Scottish consumers are not disadvantaged in comparison to their English and Welsh counterparts, due to the differences in law. The Consumer Advocate would have to work closely with the Scottish Government to ensure that relevant legislation, particularly that which pertains to the establishment of formal collective action procedures in Scotland, is introduced in a timely manner.

Question 16: Do you have any other comments on the geographical scope of the Consumer Advocate?

Depending upon the scope of any future powers, it may be important to set out exactly how the proposed Consumer Advocate's work relates to existing roles of the OFT and geographical scope of their work. For example, how will the Consumer Advocate's collective redress role work with the OFT role under the Consumer Co-operation Regulations, in terms of acting as the portal for work by EU bodies, for their consumers in cases against businesses based in the UK? Will the Consumer Advocate take a similar role in persuading business to act fairly where a UK business causes detriment to consumers in another EU state?

Chapter 3: The power to take collective actions

Question 17: Do you agree that we should use the same definition of consumer as in the Enterprise Act? If not, why not?

We have no objection to the use of a definition that covers both consumers and those setting up in business (so as to cover issues such as home-working schemes). We agree it is sensible to base the definition on that of the Enterprise Act 2002 and should cover individuals who receive or seek to receive goods and services. Our concern is that this may not include products that are neither goods nor services, for example intellectual property rights such as downloads. For the proposals to be future proof, we suggest that the legislation should include the same definition of 'product', as is contained in the Unfair Commercial Practices Directive (UCPD) and therefore the Consumer Protection from Unfair Trading Regulations (CPRs), to ensure that the full range of purchases is covered.

Question 18: Do you think any rights of appeal should have been exhausted before the Consumer Advocate can bring a collective action? Please give your reasons.

It will be important that the Consumer Advocate is seen to be fair. Businesses who are seeking to dispute a claimed breach of consumer protection legislation and to clear their name, need the chance to do so. However, this should not create the opportunity for bad business practices such as continuing to challenge legal decisions just to prolong the final outcome. We are concerned about the amount of time that might pass between recognition of a problem causing consumer detriment and actual redress for those consumers. Further, consumers should not be subject to continued detriment for years whilst a case ploughs through appeal after appeal. We suggest therefore that the courts, and other appeal procedures, might be empowered to halt a business practice whilst disputes

are heard, in return for an agreement that the Consumer Advocate be debarred from taking a collective action during that period.

Question 19: Can you identify any unforeseen difficulties with proposing that the collective action power be “follow-on”? If so, please give details.

Citizens Advice has called for a better link between enforcement and redress in consultations about EU and UK legislation since the Injunctions Directive was being discussed in 2000. We were therefore pleased initially to see the links suggested between enforcement, proving there is a case, and follow on redress through the advocate. We suggest, however, that a better option might be for the Consumer Advocate to be given enforcement powers, so that enforcement and redress could form part of the same case.

Any requirements for the proposed redress actions to follow on from enforcement cases must not limit the work of the Consumer Advocate where cases do not need to go to court. Consumer awareness, discussion with business, exploration of other options through regulators and enforcers, voluntary undertakings and ADR solutions should all be open to the Consumer Advocate before enforcement action has been taken. Without this provision, it is difficult to see how the envisaged role for the post might work.

If the Advocate has no enforcement powers, the Advocate should be able to approach enforcers to take action in cases of consumer detriment. We strongly support the central fighting fund, to which enforcers might apply, where an issue affects consumers across local authority boundaries. On a practical point, however, there may be a need for the authorisations for local authority enforcers to act under specified consumer protection legislation to be amended, to allow their investigations to run smoothly across local authority geographical boundaries and devolved authorities. This would reflect the EU regulations allowing cross border enforcement between Member States.

It is important, however, not to confuse the role of regulations with the role of private law redress. The potential public interest role of 'test cases' might be excluded in a follow on arrangement. The proposal as it stands makes regulators the gatekeeper for collective civil law redress, when collective private law remedies should be within the Consumer Advocate's range. Without this wider range, we are concerned that issues of misrepresentation, the remedy in England and Wales for many unfair commercial practices in the CPRs, could be outside scope. We also believe that the Consumer Advocate's power to initiate collective actions should be available for tackling detriment in less regulated sectors, where there is limited scope for enforcement action. At the moment clamping and towing of vehicles parked on private land, such as supermarket car parks, would be out of scope in England and Wales unless the local Trading Standards can match the problems they are seeing with their list of enforceable legislation. Citizens Advice is aware that this has been a problem in enforcement against businesses engaged in clamping and towing.

Finally, we would observe that a follow on approach may be inconsistent with general regulatory policy. As the Macrory report suggests, the role of regulators' sanctions are primarily about compliance rather than redress. Regulatory mechanisms for collective consumer redress are not sufficiently encompassing and tend to be only used on a very targeted and strategic basis. Compensation is very much the 'fag end' of the regulatory system and regulatory action is more usually about a public interest issue rather than the rights of individual consumers. As the Hampton report makes clear, regulatory policy is that of a 'light touch' application of enforcement to improving compliance, not redress.

Question 20: Do you agree that given the “follow-on” nature of the proposed power it makes sense to define scope primarily through a list of legislation? If not, why not?

We favour a broad definition on what is included as within the remit for the Consumer Advocate, for the same reasons reiterated in paragraph 54. Without this, a consumer will not understand why clear breaches of those laws not in the list continue to line the pockets of rogue traders. The Consumer Advocate might not be able to tackle the problems consumers face, when they fall outside the legislation listed.

We are concerned that this proposal to use a specified list of legislation might limit the Consumer Advocate's work with regulators who work primarily under legislation not covered by the Enterprise Act. Further, limiting the scope too far may have the unforeseen consequence of steering poor business practice to areas just outside the list.

Question 21: Do you have any comments on the draft list of legislation which could define the scope of the collective action power as given in Box 1 on page 21? If so, what?

As a minimum, the list should include all EU consumer protection legislation and, in addition, since we have no UK redress rights in our CPRs, the Misrepresentation Act should be included for England and Wales. The Government's initial decision that redress through the CPRs was not needed relied on redress being available already, through legislation such as the Misrepresentation Act.

The draft list does not, so far, include any legislative requirements that are specific to regulators such as OFGEM and OFCOM. Bureaux report problems that offend both consumer protection legislation and the rules that govern sectors such as utility providers. In some cases, the sector specific rules require more. Businesses in these markets are required to meet both general consumer protection rules and sector specific rules and can be challenged using either. If the list fails to include consumer protection legislation outside the list, the Advocate will, we believe, be less inclined to tell consumers about the full range of rules they should expect business to conform with. This could also limit the tools available to resolve consumer detriment.

Question 22: Do you agree that the scope of the collective action power should not be widened to breaches of the legislation in Box 1 that are proven without any public enforcement action? If not, why not?

No. We believe that the purpose of the Consumer Advocate's role should be to facilitate consumer redress where many consumers are entitled to it but are not getting it. Where an individual's case has been heard, and a business has failed to provide redress voluntarily, the Consumer Advocate should then be able to use that case to reference discussions with that firm and enforcers/regulators, to put a stop to that market behaviour. Collective action is the backstop to the Consumer Advocate's persuasive powers and it seems to us that limiting the scope for collective actions to enforcement follow-on would remove the value of this backstop threat. To require a further case, using up court time and public resources, seems wasteful and to go against the Macrory principles.

Question 23: Do you agree that the scope of the collective action power should also include Enforcement Orders made under the Enterprise Act in relation to breaches of legislation listed in Box 1 but not undertakings? If not, why not?

We agree that Enforcement Orders should be within scope for collective action but disagree that undertakings should be outside scope. Only if the undertaking includes provision of redress to consumers who have already suffered detriment from the practices detailed in the undertaking could it be justified for that undertaking to be outside scope.

The issue here is that of providing better means of access to redress for consumer. Those businesses that fail to comply with the rules should not benefit from that non-compliance at the expense of their customers. We appreciate that a voluntary undertaking from a business not to breach legislation may be preferable to enforcers having to go to court for an Enforcement Order, but providing redress remains an important part of what a business should be expected to deliver. As in our response to question 21 and 22 above, we believe that limiting the scope for when collective action is possible will simply limit the persuasive powers of the Consumer Advocate to gain redress without court action.

The danger of failing to include undertakings is that there will then be every incentive for traders not to check they are trading within the law until this becomes the subject of an undertaking. This would put further resource burdens on local authority enforcement who would need to take further cases. Failing to include undertakings also fails to recognise good businesses that trade legally by letting those who breach the law keep the money that should be being returned to consumers.

Question 24: Do you agree that the scope of the collective action power should also include circumstances in which civil sanctions have been applied under the Regulatory Enforcement and Sanctions Act in relation to suspected breaches of the legislation in Box 1 but only to the extent that these have not already secured compensation for consumers? If not, why not?

Yes. If the concept of follow-on action is adopted, we believe that the scope for collective actions must include all enforcement, including civil sanctions under the Regulatory, Enforcement and Sanctions Act (RES). We also agree that it would not be fair for a consumer to gain compensation twice. It will, however, be important that the use of RES civil sanctions does not stop consumers pursuing their own claim instead.

Question 25: Do you agree that, in addition to breaches of the legislation itself listed in Box 1, breaches of contractual terms that are implied by that legislation should be included within scope, provided they have been the subject of prior public enforcement; but that breaches of other contractual terms should not be included within scope? If not, why not?

Citizens Advice and Citizens Advice Scotland are concerned that these very strict limitations on scope will stop the Consumer Advocate tackling practices causing consumer detriment. The example in paragraph 63, on a failure to provide the specifically agreed level of after sales service, is just the sort of case the Advocate needs to tackle because after sales services are an important and costly element of the purchase. This is the very type of case that consumers are likely not to take to court themselves, for example:

A West of Scotland CAB reported that a client who bought a washing machine from a national trader had to ask for repairs to be made to the machine three times already and was not happy with the results. She had been told by a repair man that it was a manufacturing fault and that the machine would probably break down again. The client had tried to negotiate with the seller to try and get a new machine or her money refunded but the seller refused to do either.

A CAB client in the West Midlands specifically asked the car dealer for a warranty to cover anything that might happen to the car he was buying and was assured that the warranty they provided with the vehicle fulfilled this requirement. After six months the ignition failed. The warranty company alleged that this was not covered and the car dealer said it was not his problem, using the warranty as his excuse not to provide an after sales service.

If this sort of matter is outside scope, then businesses that do keep to the agreed contract are disadvantaged. The sales of warranty agreements clearly shows that many consumers want to have certainty about having the products they buy and need to use on a daily basis repaired efficiently when they go wrong.

We would have expected that the terms implied by legislation would, in any case, have been within scope since they are provided under the legislation listed. If this level of picking apart which bits of the legislation are in and out of scope is adopted, then much of the Consumer Advocate's time, and much public cost, will be spent with lawyers, purely to test whether this is a matter for the Advocate to look at at all. The Consumer Advocate will not be able to respond to issues of consumer detriment in a timely manner. As a result, consumers may find the Consumer Advocate is not the champion they needed.

Question 26: Do you agree that there should be no overlap in scope between the Government's proposals for collective actions in respect of financial services claims and the power proposed for the Consumer Advocate? If not, why not?

Yes, we agree that stopping an overlap in scope brings clarity. Our concern is that nothing falls between the two areas' scope, such as goods and services that are subject to a consumer credit agreement.

Question 27: Should there be any other exclusions from the scope of the proposed collective action power for the Consumer Advocate? If so, please give reasons.

No, please see our response to question 25 above.. We see the advantage in the two provisions for collective redress working very closely together, so that all markets consumers engage with are covered. Where the two roles merge, there should, we suggest, be provision for joint collective action so that only one case has to be heard by the courts.

Question 28: Do you agree to the proposed approach to define scope both by specific consumer protection legislation and by certain enforcement actions? If not, why not?

Question 29: Do you have any other comments on the issue of scope?

We feel strongly that there is a danger that the Consumer Advocate may be set up to fail if the situations when they can act are defined too tightly. We believe that this could result in cases where many consumers are suffering detriment but the Consumer Advocate cannot help. It will also disappoint businesses who are complying with consumer protection legislation

Type of collective action

Question 30: What do you think are the pros and cons of the "pre-damages opt-in" model when compared to other options for collective actions taken by the Consumer Advocate?

We suggest an alternative model would be for the Consumer Advocate to be able to initiate representative actions rather than group actions only. The advantages of the possibility for a representative action are that it avoids some of the complex mechanics of opt-in and opt-out tests and procedures by allowing the Consumer Advocate to be the named party at the centre of the claim, rather than a group of named consumers. Thus evidence from consumer organisations, enforcers and regulators supplies the reasoning behind an action and the Consumer Advocate acts for all consumers affected.

This is of vital importance if the Advocate's objective is to access redress for the most vulnerable consumers. These consumers will be least likely to engage with any opt-in or opt-out process because the information requiring this engagement is more likely not to reach this group. And this group will be least able to engage, due to the very issues that cause their vulnerability, for example poor English language skills, limited access to the internet, more likelihood of being house bound, and less access to advice and help. However, this suggestion would depend on the full implementation of collective redress options being available to the civil courts, as recommended by the Civil Justice Council¹.

For the proposed role of the Consumer Advocate to work using the model proposed in the consultation would require, as a minimum, that:

- it is clear to consumers whether their own claim is likely to far exceed the level of liability that has been adjudged, so that they can opt-out;
- the Consumer Advocate is confident enough of the damages likely to be awarded to avoid agreeing to settle the case at a lower sum before the damages hearing, in order to avoid costs;
- the cost for consumers of forming part of the initial group before any action is brought is not such that it proves impossible to organise that group; and
- that the business who is the subject of the claim does not hide assets and cease to trade as soon as liability is established, thus avoiding paying out on damages.

Question 31: Do you agree that consumers should be able, subject to the consent of the court, to opt-out of a case after they have opted-in up and until the determination of liability? If not, why not?

We consider that there should be a wider range of opt-in and opt-out options available at the start of a case because different mechanisms might be suitable for different cases.

Another concern is that claims management companies might seek to cream off cases, as the process on opt-in/opt-out is getting quite complex. The provisions for a Consumer Advocate may threaten the business of these firms and make them look for opportunities to retain income in the consumer claims field. We are concerned that consumers may then lose out on the full level of redress they are entitled to.

Lord Gill in his *Scottish Civil Courts Review* discusses the problems encountered by *Which?* in its case against JJB Sports plc and the use of the opt-in model. He acknowledges that the issue is complex and recommends that it may be an attractive option to leave it up to the court to decide on whether an opt-in or an opt-out model is appropriate

Pre-conditions

Question 32: Apart from considering the likely costs and benefits are there any other general principles the Consumer Advocate should follow when selecting cases to take forward under the collective action power? If so, what?

The costs in paragraph 78 are about the costs of taking the case and the benefits are about the payment following a collective action being taken through the courts. This fails to take account of:

- the costs to consumers of the miscreant behaviour; and

¹ Improving Access to Justice through Collective Actions Published by CJC Dec 2008.

- the likelihood of other businesses starting to use the same bad practices if no challenge is made to the income gained from that breach of the rules.

Principles for selection need to take account of:

- the consequences of failing to act; and
- the concerns of stakeholders such as regulators, enforcers and consumer groups.

Question 33: Do you agree that before the Consumer Advocate can use this power to take a collective action he/she must be satisfied that a significant number of consumers have agreed to join the case? If not, why not?

No, we think the question is whether a significant number of consumers have suffered detriment. Clearly a collective action needs to focus on issues that are affecting many consumers. But the focus should be on consumers who are least likely to take action to gain redress themselves, not numbers who will be prepared to join a case. If there is a financial or a significant time or resource input required from vulnerable consumers, then it may be necessary to seek the help of certain stakeholders to assess the size of the problem. For example, Consumer Focus has powers to require certain information from some utility suppliers and powers for the Consumer Advocate could include the ability to require access to business data.

Question 34: Do you agree that before the Consumer Advocate can use this power to take a collective action he/she must be satisfied that taking forward the case is in the public interest? If not, why not?

Yes, the Consumer Advocate should look at whether an action would be good for consumers as a whole and therefore for the public good. However, the notion of public interest might be in danger of being very narrowly construed, thus potentially excluding a range of very real consumer detriment. What matters far more is the assessment of what constitutes public interest. The Consumer Advocate should be able to consider cases that are affecting the potentially disadvantaged and vulnerable consumers who are not likely to go to court themselves. This might be a very specific group.

Question 35: Do you agree that the Consumer Advocate should be given guidance on what factors to consider when deciding if taking a case is in the public interest? If so, do you have any comments on the proposed list of factors in Box 2 on page 28?

We agree with most of the proposed list but see real problems with the last point on administrative costs for distributing the compensation. We see no reason why the court's order on compensation should not include the costs of compensation distribution, with the Consumer Advocate overseeing this to ensure it is done properly.

Question 36: Do you think that restricting the Consumer Advocate to only use the collective action power to when he/she believes it is a last resort will encourage enforcers/regulators to use what powers they have to obtain compensation for consumers? If not, what would?

Perhaps, but the Consumer Advocate will need powers to require enforcers and regulators to tell them why they have failed to act. The Consumer Advocate should therefore be able to apply for a judicial review if regulator has manifestly failed to take action or perform their statutory duties.

Question 37: Do you agree that before the Consumer Advocate can use this power to take a collective action he/she should be satisfied that other routes for the consumers to obtain compensation have been tried or are inappropriate? If not, why not?

Yes, but consideration also needs to be given to what the Consumer Advocate will do where there is an outcry for action and the relevant enforcer/regulator decides not to. The requirement for other routes to be used needs to take account of cases where other resolution options are disproportionate, perhaps because of the way that market is policed.

Question 38: Do you agree that before the Consumer Advocate can use this power to take a collective action he/she should have consulted appropriately with relevant enforcers/regulators? If not, why not?

Yes, but there should also be a requirement for those consulted to provide a formal response, so that the Consumer Advocate can fully justify a decision to act or not to act. We would like these responses to be public wherever possible, so as to help inform consumers and business about the role of enforcers/ regulators.

Question 39: Do you think any other measures are needed to prevent a business facing more than one action at the same time to obtain compensation in respect of the same action? If so, what?

We think this issue is already well catered for and that the scenario posed in this question is very unlikely because:

- Enforcement authorities have always been in communication about potential enforcement actions where a business has its main address elsewhere. This was part of the 'home authority' principle.
- Intranets exist for Trading Standards to share information about enforcement cases.
- Several pieces of legislation, such as the Consumer Credit Act and CPRs, currently require that Trading Standards services inform the OFT when they are expecting to take an enforcement action. In these cases the OFT logs these cases and, where several authorities plan the same type of case against the same business, we understand that the OFT can intervene to ensure only one case goes ahead. The OFT also has a role under EU legislation for cross border enforcement, to liaise with the local authority best placed to participate in an investigation where enforcers from another Member State are taking action.
- Further, under the RES Act, where there is a principal authority responsible for that business, that authority's permission is needed for another authority to take a case. There is an appeal process through LBRO and this type of issue is central to the role envisaged for LBRO.

Other issues

Question 40: Do you agree that for a collective action to be taken forward individual claims must be based on the same or similar issues of law or fact? If not, why not?

In England and Wales, under representative action procedure establishing similarity and commonality between claimants is not an issue, non individualised evidence of detriment could be sufficient.

In Scotland, Lord Gill has recommended in his review that before a certification order is issued, the court should be satisfied that individual claims are based on common or similar issues of fact or law. Hence, when the review is incorporated into law, any collective action taken in Scotland would have to satisfy this condition.

Question 41: Do you agree that there should be a suspension of relevant limitation periods of the type proposed? If not, why not?

Yes, we agree that it would not be fair for consumers to find they had run out of time to take action whilst awaiting progress of a case being taken on by the Consumer Advocate. This should apply in all circumstances where a consumer's access to redress is time limited, including where cancellation rights apply and where guarantees, warranties or other insurances apply. It may also be necessary to extend this to where the Consumer Advocate remains in discussion with enforcers and regulators about whether there are alternative routes available to deal with the case.

Question 42: Do you agree that consumers joining the action should not face any liability for costs ordered by the court to be paid by the Consumer Advocate? If not, why not?

Yes. This will be vital if the objective for the proposed Consumer Advocate to take action on behalf of those least likely to take action themselves is to be met. It would be appropriate for there to be costs protection rules, as there is with publicly funded (legal aid) cases.

Question 43: Should it be possible for the Consumer Advocate to recover his/her costs from any compensation that is paid before it is distributed to consumers? If not, why not?

We are unsure as to why the Consumer Advocate should not expect a defendant (defender in Scotland) to pay full costs where the collective action succeeds, as detailed at paragraph 91. The danger here is that there could be little left for the consumers themselves and that, as a result, consumers might be less likely to join a collective action. The consultation states that the majority of claims that consumers are failing to take forward themselves are not high value claims.

CAB evidence about claims management firms has been that consumers were often not aware of the costs that can be deducted from a successful case and how much this can reduce the level of damages they receive.

The likelihood and extent of a reduced level of compensation would have to be very clearly stated, so that consumers have the opportunity to opt-out and take a case themselves. We are worried that this would provide an opportunity to gain business for claims management companies, some of whom might claim to be able to get a better deal than that available through the Consumer Advocate. This may in turn make it difficult for the Advocate to retain a good core of relevant participants. It might exacerbate the problem of a majority of consumers opting out at as late a stage as possible, leaving the Advocate in a weak position for continuing the case but having already spent a large sum in preparing for it.

The *Which? v JJB Sports* case settled in early 2008. After costs, claimants received £20 if they had opted-in or £10 or £5 if they did not. Due to these small amounts, and the difficulties in agreeing recoverable costs, both "Which?" and other law firms stated that bringing future claims of this nature was simply not viable.

The Jackson review considers whether the current cost shifting rules work well for collective actions or could work at all for opt out actions². As this report was published after the Consumer Advocate consultation, we suggest that Government should now take into account its conclusions in relation to

² Review of civil Litigation Costs: Final Report, Lord Jackson HMSO 2010

the Consumer Advocate proposals. We believe that the current complex costs rules need to be updated and simplified to take better account of the variety of ways in which cases are now funded.

Question 44: Do you think that the Consumer Advocate should be under any specific minimum requirements to advertise or give notice of potential or ongoing collective action cases? If so, what?

We are not sure that it will be necessary to require a level of advertising as the Consumer Advocate will need to gain some awareness of the numbers of consumers affected by the potential action, before deciding whether it is proportionate to pursue the case. Evidence might come from complaints made to service providers such as Consumer Direct, Trading Standards, and advice agencies. And, as indicated in the consultation, there seems likely to be a good level of media interest. It may therefore be sufficient to include the task of alerting consumers in the Consumer Advocate's job description.

Question 45: Do you agree that, in the context of the power to bring collective actions, the Consumer Advocate should have immunity from claims except for cases where the Consumer Advocate has acted in bad faith or for cases based on a breach of human rights? If not, why not?

Yes.

Question 46: Is it appropriate to allow only the Consumer Advocate to appeal court decisions made in relation to a collective action case? If not, why not?

This seems fair since one objective of the post of Consumer Advocate is to take a single case on behalf of the whole group.

Question 47: Do you agree that any settlement of a collective action case taken by the Consumer Advocate should not have to be approved by the court? If not, why not?

We agree that court approval should not be necessary. The Consumer Advocate should, by this stage, have a good idea of the potential for success, in order to make suitable demands on settlement.

Question 48: Do you agree that the Consumer Advocate should not need to consult consumers that he/she is representing before he/she takes key decisions on managing the case? If not, why not?

Yes, for those reasons detailed at paragraph 99. However, there should be some notice given that allows the collective group to follow the progress of the case. This would also help where consumers might wish to consider whether to opt-out at a relevant stage.

Question 49: What do you think are the pros and cons of granting the court the ability to aggregate damages in a collective action case brought by the Consumer Advocate?

Trusting the court to aggregate damages for a large group of consumers with a relatively similar claim, seems sensible and likely to be cost effective in terms of court time and thus how long it takes for people to gain their redress. If consumers can opt-out at the pre-damages stage, they may be in a position at that stage to assess whether the collective action will serve their best interests.

Question 50: Do you agree that the proposed power to take collective actions should be granted given the associated conditions proposed? If not, why not?

Yes.

Question 51: Can you foresee any unintended consequences from granting this power to take collective actions? Please provide details.

No, not at this stage.

Question 52: Do you have any further comments on the granting of a collective action power to the Consumer Advocate?

We do have a concern about the issue of collecting unpaid judgments acting against consumers' confidence in the Consumer Advocate and wonder whether there should be provision for the courts to require some form of payment into court or other guarantee. Consumers often find that ensuring payment is made takes longer than the case itself, as in these examples:

A Hertfordshire CAB reported their client successfully got judgment against an estate agent for £4,000 for breach of contract but had received no payment from the defendants. The bureau commented that only about 30 per cent of beneficiaries of county court judgments receives the monies awarded to them and the client was frustrated with the time and money spent to no avail.

An unemployed CAB client from North West London, with limited mobility successfully obtained a judgment against a builder for £9,600 when her property had been left in disrepair following his work there. When she tried to enforce the judgment, she found that none of the county court's provisions worked. He lived with others so that the bailiffs could not be sure what property belonged to him. As he was self employed, an attachment of earnings order would not work. As he owned no property a charging order could not be made and the builder had failed to provide any bank or similar details for a third party debt order to be made.

We are also concerned that there is a serious risk that a business might decide to cease to trade and use the cost of defending the court case as the excuse for doing so. Such a threat could push the Consumer Advocate into making a settlement they might not otherwise have agreed to. It would be interesting to seek the views of business representatives on this issue.

Chapter 4: The power to facilitate the return of funds secured by overseas enforcement agencies

Question 53: Do you agree that the Consumer Advocate should be granted the powers necessary to facilitate the return of funds to UK consumers secured by overseas enforcement agencies? If not, why not?

Yes. However, it will be important to determine how this power can be used without too huge a cost, particularly if that cost were to come from the funds allocated for collective redress cases. It can only benefit UK consumers to have this facility for the potential refund of monies paid to overseas frauds.

Alternatively, we suggest the power be granted to the new National Fraud Authority's reporting centre, Action Fraud. This might help encourage consumers to report frauds where money has been lost to Action Fraud, thus ensuring its success in filtering information through to the enforcement community.

Question 54: Do you agree that if funds cannot be returned to consumers in a cost-effective manner then they should be used to finance relevant consumer awareness/education activities? If not, what should happen?

We do see the validity of this but believe the Consumer Advocates should make reasonable efforts made to return these funds to affected consumers. For example, advice agencies and Action Fraud should be alerted to the presence of the funds and the fraud/scam that they relate to. Where they see cases where people can evidence their loss, that person could be made aware of the funds and how to apply for their money back. As a last resort, we suggest that unclaimed sums should be used in such a way as to progress efforts to obtain relevant results for the many. This might include the monies going into a fund to help pay for future cases. However, these issues need further consideration in light of the cy-pres doctrine of using legally earmarked funds to achieve as near as possible their intended legal purposes.

Question 55: Is there a case to widen any power given to the Consumer Advocate to facilitate the return of funds secured by overseas enforcement agencies to funds that originate within the UK? If so, why?

Extending the powers to funds originating in the UK seems sensible. It would be strange for a UK agency to be able to distribute funds from overseas but not from the UK.

We are concerned, however, as to the practicalities of the suggestion that businesses might buy into a mechanism for returning money. We agree that designing and equipping a mechanism might be expensive, so that maximising its use would help offset the costs. Where reparation to customers forms part of another mechanism for gaining redress, a central facility could be used. We believe it is important that the project should always be required to return monies to consumers, rather than accumulating funds to pay for the Advocate's work

Question 56: Is there a case to widen any power given to the Consumer Advocate to facilitate the return of funds in mail intercepted by overseas enforcement agencies to also apply to funds in mail intercepted by UK enforcement agencies? If so, why?

Yes, again it would be strange to do this for overseas cases and not UK cases. It would potentially help Trading Standards officers who locate such payments when investigating cases such as those where accommodation addresses are used to divert attention from the perpetrator. Mail delivery services might be liaised with to tip off Trading Standards when huge quantities of mail are being delivered to such addresses, thus helping stop the fraud promptly. A central facility would save local authorities money they would otherwise need to spend to return money to consumers who are likely to live across a wider area than their own patch.

It may also be worth investigating the option for banks to accept the cheques of their customers and to credit their accounts.

Citizens Advice looks forward to engaging with these proposals as they are developed. Please contact Susan Marks on 020 7833 7132 susan.marks@citizensadvice.org.uk should you have any queries regarding this response.