

Citizens Advice Scotland – Response to Consultation on Reforming Competition and Consumer Policy

Scotland's Citizens Advice Network empowers people in every corner of Scotland through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Background

Citizens Advice Scotland (CAS) is pleased to have the opportunity to respond to the Department of Business, Energy and Industrial Strategy's (BEIS) consultation on Reforming Competition and Consumer Policy. CAS plays a significant role in the provision of consumer advice and advocacy in Scotland, and we recognise the significance of the proposed reforms for consumers. We welcome the UK Government's focus on Consumer and Competition policy and the role it can play in promoting long-term economic development and consumer protection during the post pandemic recovery.

It is essential that any reforms result in meaningful improvements in the consumer journey and achieve positive outcomes for consumers. CAS believes that the proposed reforms present a significant opportunity to streamline the consumer journey and strengthen consumer protection arrangements, whether that be improving consumer access to redress or recasting the arrangements for consumer representation as part of wider partnership level engagement.

CAS believes that the current strategic partnership level arrangements for consumer policy such as the Consumer Protection Partnership (CPP) can be built upon and further utilised and enhanced to achieve meaningful outcomes for consumers. While the CPP's current functionality allows for effective responses to consumer detriment and rising trends, CAS considers there is an opportunity to increase that effectiveness by modifying and building on its ways of working.

Since the onset of the pandemic, we have observed a rapidly changing consumer environment; consumers' behaviours have changed significantly, as have the practices of businesses. In the period between April 2020 and August 2021, the Citizens Advice network in Scotland provided 442,930 pieces of consumer-related advice, accounting for 34% of all advice provided in this period. We are pleased to see the UK Government acknowledge that a strong consumer protection policy and effective enforcement of consumer rights is vital in terms of underpinning consumer confidence. A consumer centred policy will enable consumers to engage within markets while knowing they are supported by strong legal rights that will be respected and which are able to be swiftly and effectively enforced.

This approach strongly mirrors the consumer principles that CAS use systematically in all of our work. We believe that through the consistent application of these principles we will see more consumer centric behaviour and the development of improved consumer outcomes.

Consumer Principles



Our response to this consultation is framed around these principles, with further comments regarding each section and answers to specific questions to follow below.

Executive Summary

CAS welcomes the opportunity to respond to this consultation. We also welcome many of the proposed reforms, however it is essential that reform results in meaningful improvements in the consumer journey and achieves positive outcomes for consumers. We believe the consumer needs to be placed at the heart of consumer policy and would recommend that the consumer principles and the principle of “fairness by design” be used as an overarching guide to assess and inform consumer policy. In relation to the detail of the proposed reforms CAS’s views are as follows:

- We support the granting of additional powers to the CMA but have mixed views on whether the CMA’s priorities should be informed by governmental direction.
- We wish to see a greater ability for regulators to respond to the differential impacts of competition across the devolved nations.

- We are of the view that these reforms provide an opportunity to further strengthen and enhance the function of the Consumer Protection Partnership to improve collaboration and responsiveness on consumer protection issues.
- We believe that further action is required to equip consumers with the skills and knowledge to participate in online markets safely; in this regard we support proposals to reform the use of subscription services.
- We wish to see reforms which make it easier for consumers to understand their rights and to take swifter, more effective action to enforce these rights.
- We believe there is a need for better education on consumer rights as well as a need for clearer information to be provided about Alternative Dispute Resolution (ADR) so that consumers understand what it is.
- We are of the view that the ADR landscape is overly cluttered and would support streamlining to provide for one consumer ADR provider in each sector. As a minimum, there should be a single branded entry point for people wishing to access ADR on consumer matters.
- We recommend that ADR providers should report to regulators on trends. This would close the feedback loop and help drive up standards across regulated industries by enabling regulators to take action to prevent consumer detriment.
- We would wish to see Competent Authorities play a role in setting and monitoring common standards across the sector, including in relation to how providers support vulnerable consumers.

Competition Policy

When appropriately implemented, competition policy can have significant benefits for consumers. It is an essential tool in driving both innovation and business development and can lead to higher standards overall by driving out practices which do not meet consumer needs. Competition can allow consumers to exercise freedom of choice, allowing them to select the goods and services which best meet their individual needs. A diverse market, not inappropriately dominated by monopolies or large companies, allows for innovation and new product development. We believe that competition should work at all price points in the market, including lower price brackets. For example, we would welcome the development of competitive and affordable social tariffs across markets for all essential services (such as postal services, broadband and mobile phones, and energy) to allow consumers with fewer financial resources to still have a choice of provider.

CAS recognises that the role of the CMA is essential in regulating competition, investigating anti-competitive practices, and taking appropriate action when necessary. CAS is supportive of the proposals to grant the CMA additional powers as well as the proposed changes in the CMA structures. This could result in swifter investigations that prevent detriment from occurring or going unchecked.

However, we feel that the CMA currently benefits from its own agility within market landscapes; in that they can react independently to growing issues within markets without the need for a Governmental steer. In relation to Question 3 of the consultation, CAS believes it will be necessary to strike a careful balance. While a strategic steer from the Government to the CMA may be beneficial, there is a risk it may also impact their ability to be responsive and to undertake work under their own initiative.

When looking at the consumer landscape within Scotland alone, CAS would support the development of more national and regional perspectives within the CMA's overall strategy. While it is essential that competition works for consumers throughout the United Kingdom of Great Britain and Northern Ireland, it is also essential that competition works within each country respectively. Consumers within the devolved nations can experience differential impacts of competition and for some consumers in Scotland, competition is not currently delivering the desired benefits. For example, some consumers in Scotland have little to no choice of broadband and mobile providers in rural communities given the lack of adequate connectivity and signal strength. In relation to post, some Scottish businesses and consumers in the parcels market have little choice of parcel operators and continue to face issues around delivery charges and exclusions. It is essential that when the CMA investigates market competition, it incorporates consideration of disparities at the regional level as well as the national level.

While market intervention is by nature a reactive process, the complex landscape that consumers have to navigate when things go wrong presents a barrier to timely investigation and (where necessary) intervention to address and prevent consumer detriment. Each of the organisations present in this landscape plays an important role at a local and / or national level. While it is essential that there should be no wrong doors for consumers, a more co-ordinated and multi-lateral sharing of intelligence between stakeholders would help to ensure that emerging issues are identified and addressed at the earliest possible opportunity.

Consumer Representation

CAS is currently a member of the Consumer Protection Partnership (CPP) and contributes to a number of its groups. CAS appreciates the opportunities the CPP provides for consumer advocacy bodies and regulators to work alongside BEIS to consider issues of consumer detriment across multiple sectors and identify any action that may be needed. However, CAS is of the view that these reforms may also provide an opportunity to further strengthen and enhance the function of the CPP.

CAS considers that a 3-pronged approach could be applied to the CPP's work across all sectors which would provide enhanced benefits for consumers:

- Firstly, greater testing of policy from a consumer perspective through a more collaborative approach at the CPP would allow for ongoing and constructive dialogue as policy is developed. This would be akin to an early intervention and prevention approach to prevent or reduce consumer harm or detriment happening in the first place, by considering all aspects of both the policy cycle and product lifecycle from a consumer perspective. It could also help to facilitate more timely intervention in markets where failings are resulting in consumer harm.
- Secondly, ensuring greater responsiveness and nimbleness of the landscape when consumers have experienced harm or detriment. While it is essential that there should be no wrong doors for consumers, a more co-ordinated and multi-lateral sharing of intelligence between stakeholders via the CPP would help to ensure that emerging issues are identified and acted upon at the earliest possible opportunity.
- Thirdly, simplifying routes to redress for consumers. The landscape can be complex for consumers to navigate in order to secure appropriate redress and this can act as a disincentive to pursue legitimate complaints. Again, making this a focus of the CPP across all sectors would benefit consumers in terms of identifying areas of good practice and where improvements could be made.

Overall CAS considers that this proactive approach which would see CPP members working in a more collaborative and co-ordinated way which would help prevent consumer harm.

Past experience demonstrates the potential value of adopting such an approach. For example, CAS has written extensively about the negative consumer outcomes experienced by a significant proportion of consumers who participated in the UK Government's green deal scheme. While the conduct of individual actors played a significant role in the level of detriment that was evidenced, fundamental shortcomings in the consumer protections provided by the legislative framework proved a predictable yet avoidable barrier to the ability of billpayers to obtain effective and timely redress. A more collaborative approach to policy development could have helped to prevent this, allowing policymakers to address the erosion of consumer protection before such harm occurred.

Consumer Rights

Preventing online exploitation of consumers

Strong consumer rights which can be effectively enforced are essential in underpinning consumer confidence when engaging with markets. We believe that consumer law should reward good practice and deter practices which cause consumer detriment, ensuring that the fair treatment of consumers results in commercial success for traders who comply with the law and put the interests of consumers first. CAS welcomes the recognition that consumer confidence is critical in the revival of markets after the COVID-19 pandemic, and we further welcome the recognition that markets have changed drastically in the past 18 months. Throughout the United Kingdom, there has been an increase in reliance on online retail markets by consumers. This has fundamentally altered how consumers access markets, with consumers now moving towards online transactions and marketplaces. CAS believes that the accessibility of markets to all consumers is essential for both consumer confidence and economic growth. With the growth of online markets, consumers are being presented with new ways to access and interact with markets.

However, the rapid growth of online markets presents challenges and barriers to consumers and in order to prevent consumer detriment in future, they may require further regulation as these markets continue to grow and evolve. Given the extent to which online markets have changed in the last 18 months, it is essential that consumer detriment in those markets is consistently monitored and addressed. Parallel to the rapid growth of online markets is the rapid development of technology, with consumers having access to innovative devices and digital services. These devices and services influence how consumers engage and interact with markets, with smart technology becoming more prevalent within consumers' households. It is therefore likely that over time, consumers may engage with markets in new ways, such as voice command transactions and biometric security. CAS believes that there should be consistent monitoring of new technologies and digital services that consumers use to access markets, to ensure that protections are in place prior to the development of any potential detriment.

CAS recognises that websites are increasingly collecting consumer behaviour data and are using this to influence consumer spending decisions. We feel that consumers may not always be aware of this activity and may face detrimental consequences through the use of exploitative website design and point of sales practices. CAS believes that in order to reduce consumer detriment as a result of these practices, consumer awareness of this issue has to be significantly improved. By equipping consumers with the skills and knowledge to participate in online markets safely, consumers should have increased trust and a sense of agency. We believe that this is an essential component in the post pandemic economic recovery. CAS would welcome further reform to restrict the use of behavioural techniques within online markets, as this could increase consumer trust and engagement and prevent exploitation of vulnerable consumers who may be more susceptible to these practices.

We also welcome the steps being taken to address issues in relation to the use of fake reviews, although we do not wish to offer detailed comment on this.

CAS believes that the principles encapsulated by "Fairness by Design" may result in lower levels of consumer detriment, with regards to online marketplaces. Such an approach would ensure that the consumer, and especially vulnerable consumers, are placed at the heart of any process design, meaning that equality of access and consideration of the impacts of

policies are key design issues. Such an approach would assist in removing the “poverty premium” where those in poverty pay more for certain services, exacerbating existing financial vulnerabilities.

By ensuring that online retail websites are designed in a manner that is accessible to consumers, both in terms of useability and information, consumers may benefit from more informed decision making before making an online transaction. However, CAS would recommend that consumers have access to educational resources to ensure that they are fully empowered to participate in online markets. Considering issues beyond exploitative behavioural capture, consumers may be subject to online scams or other behaviour that influences consumer choice and purchasing decisions. It is therefore essential that consumer education and advice is adequately resourced and promoted going forward.

One area in which consumers may benefit from both education, as well as further regulation, is the parcels market. CAS has observed that with the rise of online retail over a number of years, consumers in Scotland have been subject to parcel surcharging when ordering goods from both online retail and online marketplaces. In some cases, consumers in Scotland were not aware of the surcharging costs being applied by either retailers or parcel delivery services. In Scotland, this issue is predominately faced by consumers within rural areas, but CAS are aware that consumers throughout the United Kingdom of Great Britain and Northern Ireland are subject to this practice. In April 2021, YouGov carried out consumer research on behalf of CAS that captured how consumers in Scotland felt towards surcharging. Of the 1029 consumers surveyed, 59% believed parcel deliveries should cost the same across the whole of Scotland. The research further highlighted that of the consumers who were subjected to surcharging when buying online, 36% (n=192) stated that they were put off from buying online altogether as a result¹. This is but one example in which the rapid growth of online markets in unregulated sectors has resulted in detrimental impacts on consumer’s confidence in and ability to access online markets.

Tackling Subscription traps

CAS supports the proposals to strengthen and clarify the law on pre-contract information. We agree that consumers need to understand what they are signing up for and should be given more clearly presented choices on the auto-renewal of subscriptions. We support the proposals to ensure consumers receive reminders when contracts auto-renew onto a new term, as this additional information will allow consumers to make a timely choice regarding their renewal. We believe that this will benefit vulnerable consumers including those consumers who are struggling to pay their bills. CAS feels that the information included in the reminder is sufficient information for consumers, however consumers will only get maximum benefit if the reminders are provided in plain English and provide easy to follow instructions which allow consumers to cancel subscriptions if they wish. Where information is provided digitally, any notification must also be appropriate to the device being used to access information. We welcome the acknowledgement that a reminder must be sent using the consumers preferred method of communication, which would again benefit vulnerable consumers as well as consumers who are digitally excluded.

¹ <https://www.cas.org.uk/publications/postal-services-scotland>

CAS believes that the same principles should apply to reminders when free trials and introductory offers come to an end. CAS also recognises these offers act as an efficient means of attracting new consumers and allowing consumers to test/preview a product or service before committing to a full price purchase. In relation to the potential mechanisms for reminders as set out in Question 36, CAS sees the benefit of using both proposed options, these being *(i) an obligation to provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (ii) an obligation to obtain the consumer's explicit consent to continuing the subscription.*

If option (i) provides consumers with the same level of information as is proposed for the auto-renewal of subscription contracts, CAS feels that this is sufficient information for consumers to make an informed choice. However, we also feel that option (ii) provides the consumer with significant opportunities to withdraw from the subscription after the free trial or low-cost offer expires. Given that research from Citizens Advice found that over 80% of consumers in subscription traps were not made aware that they were renewing a contract at the outset², CAS believes that there may be merit in exploring both options (i) and (ii) as a joint mechanism. We believe that consumers should receive adequate reminders and should also be required to give explicit consent to continue the subscription, to allow consumers to make fully informed choices. For example, if the consumer receives the reminder under option (i) but faces a situation in which they cannot cancel or withdraw from the full priced subscription then it is likely they will face unwanted costs. This may be the case for vulnerable consumers, who would significantly benefit from option (ii) in the event that they did not receive, understand, or act upon the reminder from option (i). We would therefore welcome an exploration of the feasibility of traders being required to offer both mechanisms.

CAS agrees that the process to enter a subscription contract can be quicker and more straightforward than the process to cancel the contract. With regards to Question 40 and the easy exiting proposal, CAS would support mechanisms to allow people to take quick and easy steps to cancel unwanted subscriptions. This should help those struggling with their bills or trying to manage their money better and prevent debt, allowing consumers to take back financial control promptly without any difficulties. However, there also needs to be a quick solution for those who do not have digital access and traders should consider how this process can be accessible for all, including those for who digital is not their preferred method of communication.

A Case Study of Unintended Consequences of Existing Consumer Law – the Example of the Green Deal

In relation to whether there are any perverse incentives or unintended consequences arising from existing consumer law (Question 49 of the consultation), we would highlight the Green Deal as one such example from which learnings for the development of future policy can be taken. We believe the Green Deal illustrates how consumer protections can fail despite the positive intentions of policy makers. This is more likely to happen when initiatives include multiple parties, the purchasing arrangements are complex, or the product has an extended or complex lifecycle. This example demonstrates why we are recommending that protections are reviewed from a consumer perspective before being implemented.

² Citizens Advice, Locked In: Consumer issues with subscription traps, 2016.

Green deal plans are complex consumer credit agreements, the terms of which bind the electricity billpayer at a relevant property, and future electricity billpayers at that property, for periods of up to 25 years from the date on which the measures installed under the contract were provided.

The length of these contracts and the potential transfer of risk to subsequent billpayers necessitated strong consumer protections to enable both current and future billpayers access to adequate and timely redress. However, policymakers failed to recognise that the delivery model chosen for green deal, combined with the length of most green deal plans, significantly increased the likelihood of a green deal provider selling its financial interest in the green deal plans it had entered into with consumers. Regulations were therefore drafted in such a way as to unintentionally erode consumer protection by incentivising such arrangements, as where the payee on the date on which a complaint is made differs from the payee on the date the contract was entered into, the date from which any redress can be provided is altered from the date of the breach to the date on which the complaint was made.

The design of the green deal allowed green deal providers to also trade as both green deal assessor organisations and green deal installers. While this was intended to smooth the customer journey by providing consumers with a single point of contact, such companies were left exposed to liability for potential wrongdoing at multiple points in the green deal process. By systematically trading their consumer debt interests immediately after the relevant contracts had been completed, these companies could therefore limit their exposure to risk. However, this provided a perverse incentive for disreputable green deal providers who were also trading as green deal installers and green deal assessor organisations to undertake a high volume of poor-quality work over a short period of time, sell their debt interests to a third party before complaints could be made, and then exit the market before the repercussions of their trading strategy had become fully apparent.

In addition, the legislative framework which underpins the green deal was written in such a way as to provide a hard time-bar to the making of an eligible complaint. This time-bar differs depending on the nature of the complaint, but in all cases, it provides less protection than that provided by the FCA Handbook of Rules and Guidance. This leaves many consumers unable to make an eligible complaint when they first become aware of issues with a green deal plan, particularly in cases where the consumer has inherited the plan from a previous billpayer, as the majority of complaints must be made within six years of the date of the contract. By comparison, the FCA Handbook provides that a complaint can be made within six years of the date of the contract, or within three years of the date on which the grounds for complaint were first identified (or ought to have been identified) by the complainant, whichever is the longer.

The green deal framework also eroded several significant provisions of consumer law. For example, where a consumer credit agreement that is not a green deal plan is improperly executed (through the omission of a signature confirming liability, for instance), such a contract is only enforceable on the order of a court. In cases of forgery, consumer credit agreements that are not green deal plans are also automatically void. However, the green deal framework prevents these protections from being considered by decision makers when reviewing relevant complaints. In the most extreme cases, this means that a decision maker is unable to void a consumer's liability under a green deal plan on which the consumer's signature has been forged and where the payee on the date of the complaint is different from the payee on the date of the breach, as the decision maker is only empowered to cancel the plan from the date of the complaint. Monies recovered by payees before the date of the complaint are therefore left unrecoverable when they would have been due to be returned to the consumer with interest under standard consumer law.

Consumer Law Enforcement and Redress

CAS broadly agrees with the stated aims of the proposals, which are:

- Improving consumer awareness and signposting
- Increasing the quality and oversight of ADR
- Improving the take-up of ADR by businesses in non-regulated markets.

Before making comments on the specific questions posed by the paper, CAS would make the following more general points regarding consumer awareness and signposting and the use of ADR.

CAS agrees that increasing the quality and take-up of ADR may be of benefit to consumers. We have seen an increase in the number of clients requesting advice from CAB (Citizens Advice Bureaux) on ADR over the course of pandemic. However, for consumers to obtain maximum benefit from ADR they need to understand their consumer rights and how to enforce them. There is a need for greater advice and education about consumer rights more widely, not just in relation to vulnerable consumers.

Further, there is a need for far greater consumer awareness and understanding of ADR. There are many different forms of ADR, including conciliation, arbitration, ombudsmen schemes and mediation. The various disciplines have differing levels of formality, and the extent to which consumers remain in control over final outcomes or retain any ability to appeal decisions differs. Often different terminologies can be used by providers in describing their processes. This contributes to a widespread lack of understanding as to how or why ADR might assist consumers in the circumstances of their individual case. CAS is of course happy to continue to play a role in advising consumers about ADR and how using ADR will affect their individual circumstances but there is also a need for wider awareness raising activities by providers and governments. As noted below, a cluttered landscape does not assist in adequately signposting consumers or allowing them to make informed decisions about to resolve disputes.

Unless consumers understand their legal rights there is a risk that they will settle claims in a way that delivers less value than they may have received if they had taken formal legal action. This raises the risk of creating two-tier justice. In our view, the success or otherwise of any increase in ADR usage will be dependent on whether it is sufficiently underpinned by a robust and sufficiently funded advocacy sector which ensures consumers can access free and impartial advice on their rights before entering any dispute resolution process.

In many markets, routes to redress are complicated by the interaction of consumer law, common law, and consumer credit regulations. Bodies responsible for upholding consumers' rights (including ADR) are not always empowered to call upon the full suite of legislative provisions available. This can result in a complex landscape for consumers to navigate in order to secure appropriate redress and can act as a disincentive to pursue legitimate complaints. The lack of consistency across sectors also hampers the ability of consumers to apply any knowledge they have gained about how to seek redress across sectors, meaning that the consumer journey to obtaining redress may have to start afresh in each sector.

In summary, CAS would welcome any reforms which make it easier for consumers to understand their rights and take swifter, more effective action to enforce these.

Stronger enforcement powers for enforcers

CAS agrees that the introduction of an administrative model should improve the speed of response with which regulators can tackle issues and should lead to better outcomes for consumers. We do not offer any comment on the detailed mechanics of this. We would also support the introduction of monetary penalties for non-compliance with information gathering requests by regulators as this is likely to result in swifter investigations.

Enabling traders and consumers to resolve disputes independently

CAS supports placing a greater emphasis on an early intervention and prevention approach. We wish to see adequate support in place within the legal system for consumers and clients to undertake dispute processes effectively and this includes being able to access ADR where this is appropriate to the circumstances of their case.

As noted above, for ADR to be truly effective in allowing consumers to access redress, it must be underpinned by appropriately funded and resourced consumer advocacy and advice services that can be accessed on a free-of-charge basis. It must also be recognised that some vulnerable consumers may need assistance from advice and advocacy services to access ADR. In some cases, the interests of vulnerable consumers may be better served by having advocacy bodies interact directly with providers on their behalf. For instance, ADR schemes requirements may not be appropriate when dealing with vulnerable consumers who need more engagement, are unable to follow timelines and submit information in the expected and structured manner. The Extra Help Unit (EHU) run by CAS is one such example of this and provides the tailored and flexible support required for consumers and has a history of achieving strong outcomes and financial redress by advocating strongly for the consumer and working closely with energy suppliers.

There is a risk that using ADR to settle cases might allow patterns of offending or unacceptable actions to continue, without regulators becoming aware of industry trends or incidents of poor practice. This risk is greater if there are multiple ADR providers in each sector. It would be helpful for ADR providers to report to regulators on trends, for example identifying a large number of claims against particular companies or a pattern of unacceptable actions occurring across a particular sector. This would close the feedback loop and help drive up standards across regulated industries by enabling regulators to take action to prevent consumer detriment.

For ADR to be effective in resolving disputes consumers must be able to enforce mediated settlements quickly and effectively. More consideration should be given to what happens where disputes cannot be resolved or where settlements break down. It is important that both consumers and traders understand what will happen in the event of unsuccessful mediation or breaches of agreements.

Finally, CAS notes that this is a complex area in constitutional terms. Consumer Protection law is reserved. However, consumer advocacy and advice are devolved, and Scotland retains its own distinct legal system. It will be important that solutions work across the UK and the mechanisms for accessing legal remedies and redress must take account of the differing legal systems across the UK.

CAS has a number of comments to make in relation to the specific questions and these are addressed below.

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

During and subsequent to the pandemic, much ADR provision has been online or via video platforms. For many vulnerable people, especially older or disabled consumers, digital will not be their first choice and a digital by default approach will not meet their needs. Vulnerable consumers will need to be able to access both advice and signposting and ADR services using a variety of channels, including face to face, online and telephone.

Some vulnerable consumers may need assistance from advice and advocacy bodies to access ADR services. CAS would want to see minimum standards set out for ADR providers regarding accessibility. Ideally CAS would wish to see a common framework in place across all providers for working with vulnerable consumers. Such a framework should allow for support and advocacy bodies to play a role in assisting clients. This highlights the continuing need for appropriately funded and resourced consumer advocacy and advice services.

CAS also believes that ADR should be free at the point of access to consumers, or this will result in those who cannot afford it failing to take it up and losing the ability to enforce their rights. Even a nominal charge has the potential to deter people who are financially vulnerable from making complaints and risks leaving those who are financially vulnerable open to exploitation by traders.

Q.66 How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

CAS acknowledges that the question of timeliness needs to be balanced against the need to adequately investigate and determine complex complaints. While CAS supports the greater awareness and take-up of ADR, it is important that the use of ADR actually results in concrete improvements to consumer outcomes. Our experience in the energy market has shown that some complaints are extremely complex and simply cannot be effectively expedited. We are also concerned that by shortening timeframes, consumers may simply be diverted to ADR schemes rather than accessing advice services. This may have the unintended effect of reducing consumer access to holistic support which can assist consumers with other issues such as money or debt advice.

Once any ADR process has been commenced, we would note that from a consumer perspective, it is important that there are clear timeframes set out for dealing with each stage of any process. Regular reporting by providers against KPIs for timeliness should also be required, in the interests of accountability.

Increasing the quality and oversight of ADR

CAS would support the development of a common legal framework for consumer ADR around expertise, independence and impartiality, transparency, fairness, and annual reporting.

The proposed four key principles to improve the quality of ADR – neutrality, efficiency, accessibility, and transparency are all important aspects of any ADR service. However, CAS believes that there must also be sufficient emphasis placed on the consumer principles set out above and on improving and simplifying the consumer journey.

Q.67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

Currently, the identity of the Competent Authority differs between sectors. We believe that the UK Government should consider whether a single authoritative body should be tasked with setting common performance standards, benchmarks, and reporting requirement for all ADR schemes. This would make it easier to compare performance and raise standards. Having a single authoritative body with oversight of the ADR sector for consumer issues would also ensure that quality is maintained.

We believe that consumers should be able to expect similar levels of procedural fairness and support in making a complaint regardless of the ADR scheme they are complaining to. The diversity of process and practice between ADR schemes is confusing for many consumers.

CAS would like to see the competent authority playing a role in setting minimum standards, for example of accreditation, training, accessibility, and complaints. The authority could, for example, provide a model code of practice for handling of cases as well as setting out standard timeframes for handling and reporting requirements for providers. It could also issue guidance on how providers can support vulnerable consumers.

A Competent Authority could also put in place a framework allowing ADR providers to report to regulators on trends, for example identifying where there are many claims against particular companies or a pattern of unacceptable actions occurring across a particular sector. This would close the feedback loop and help drive up standards across regulated industries by enabling regulators to take action. The suggestions above will of course require additional resource and will not be possible to implement unless Competent Authorities have sufficient powers and resources.

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

CAS is concerned that the current proposals do nothing to reduce the clutter in the landscape or make it easier for consumers to navigate. We note that research by Queen Margaret University (QMU) in 2017 found at least 90 ADR providers³. There are overlaps and gaps in provisions, meaning that consumers can be left confused or without access to adequate remedies. By way of example, CAS is aware of a large increase in the use of online shopping and parcel deliveries during the pandemic. Where there were issues with missing or damaged parcels consumers were often left unclear about who was responsible and whether they should contact the delivery firm or the retailer.

CAS would support making the use of ADR mandatory in regulated sectors. While this is generally the case there are some exceptions, and these should be brought into line. For example, we are aware of numerous issues relating to flights and package holidays during the pandemic and we believe these should be within the scope of this proposal. If they are not, there is a risk that consumers in these sectors could wait longer for redress, magnifying the risk of potential harm to consumers, especially those who are financially vulnerable.

In some regulated sectors, multiple ADR schemes currently compete. This creates a risk that consumers do not know where to complain, resulting in consumer needs not being

³ [confusion-gaps-and-overlaps.pdf \(qmu.ac.uk\)](https://www.qmu.ac.uk/research/3-confusion-gaps-and-overlaps.pdf)

met. CAS believes that in regulated sectors, ADR should be limited to 1 provider in each sector.

In non-regulated areas where ADR becomes mandatory, we believe that the UK Government should consider whether having a single ADR provider per sector is the right solution for consumers. As a minimum, there should be a single branded entry point for people wishing to access ADR on consumer matters. CAS would also highlight the risk of having incomplete coverage of consumer ADR schemes, as this raises the possibility of there being a two-tier system, depending on what is being purchased. This is likely to lead to further confusion for consumers.

Improving the take-up of ADR by businesses in non-regulated markets

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

CAS agrees that ADR should be mandatory in the motor vehicle and home improvements sectors.

CAS would support a payment per case basis for businesses, as we believe this reflects the polluter pays principle and will reflect the number of complaints made against a trader. This is consistent with what happens in other sectors. For example, the Scottish Legal Complaints Commission imposes complaints levies on upheld complaints on a per case basis. Levels imposed will depend on factors such as whether the firm followed best practice in handling complaints and whether they had accepted any service failures and offered a reasonable settlement.

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

CAS believes that ADR should be free at the point of access to consumers, or this will result in those who cannot afford it failing to take it up and losing the ability to enforce their rights. Even a nominal charge has the potential to deter people who are financially vulnerable from making complaints and risks leaving those who are financially vulnerable open to exploitation by traders.

CAS would not support the imposition of a lower threshold for claims. CAS would recommend that the UK Government considers giving ADR schemes discretion to reject a complaint which is clearly frivolous or without merit or allowing providers to triage complaints and adopt more slim-line processes for minor complaints.

Collective Redress

Q72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes? Q73. What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?

In principle, CAS would support this. This would allow consumers to benefit from the collective support of other consumers, and private and consumer organisations. Court action

is difficult to navigate for consumers which deters many from going down that route so collective actions could provide redress for those who would not have received it otherwise. CAS notes that there are recently implemented provisions regarding the use of group actions in Scotland. It is important that any proposals in this area are consistent with these new provisions and take account of different Court jurisdictions and practices and differing legal aid provisions across the four nations. In this regard, careful attention will need to be paid to the outcome of the current Call of Evidence on Dispute Resolution in England and Wales.⁴

Trading Standards

Q.74 How can national enforcement agencies NTS and TSS best work alongside local enforcement to tackle the largest national cases of criminal breaches of consumer law?

It is crucial for enforcement more generally that there is appropriate levels of funding for both national and local enforcement activities in order to protect consumers and prevent more instances of harm or detriment occurring.

⁴ [Dispute Resolution in England and Wales - Call for Evidence \(justice.gov.uk\)](https://www.justice.gov.uk/call-for-evidence/dispute-resolution)