

Consultation Response: Consumer Duty for Public Bodies November 2021

Scotland's Citizens Advice Network is an essential community service that empowers people 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.

Introduction

Citizens Advice Scotland (CAS) welcomes the Consumer Duty consultation paper. We believe that, in principle, Scottish public bodies should have an embedded duty to consider the impact that decisions related to policy, and adopted practice could, and does, have on those engaging in its services, particularly vulnerable consumers. Scotland's Citizens Advice network regularly deals with clients who are impacted by a lack of regard to consumer outcomes or who fall victim to poor service design.

We believe that a consumer duty will strengthen consumer protection from unintended consequences resulting from public authority decision-making. It is essential that a consumer duty results in meaningful improvements in the consumer journey and achieves positive outcomes for public authority service users.

Q1 Public bodies bound by the Duty

- (a) Do you agree that the Consumer Duty should be applied to the organisations proposed in the public authorities section of this consultation?
1. Consumer Scotland's definition of a consumer is '*an individual, or a business no larger than a small business, that purchases, uses or receives goods or services in Scotland, where those goods or services are supplied in the course of a business*'. We believe that the same principle should extend to all public authorities listed within the consultation document on the basis of direct or indirect engagement with those in receipt of public services, or where a transactional element of public service has the potential to positively or negatively impact consumers. We are of the view that all public body services to consumers should be as good as they can be.
 2. We believe that such a duty will help public authorities proactively understand and identify where and how service users engage with services, the potential for harmful impact, and what positive steps are necessary to mitigate negative outcomes and improve user experience. We believe that Scottish public authorities should, where possible, design services around those that use them to ensure that they are fit for purpose, to further inform decision making and importantly, to meet consumers'

needs and improve consumer trust and confidence. This principle is particularly important when meeting the needs of vulnerable consumers and should support a process of 'designing out' harmful and unintended consequences to consumers through improved insight and understanding. The FCA¹ is currently consulting on a Consumer Duty 'that would set clearer and higher expectations for firms' standards of care towards consumers'. Additionally, Fair By Design² is seeking to have firms build in inclusivity in the whole of their consumer journey from service design to end products and the management of issues. However, as the duty only applies when a public authority is making decisions of a strategic nature about how to exercise its functions, further clarity on the type of decision likely to be within scope would be welcomed.

3. CAS works closely with several sectors to encourage proactive consideration of consumer outcomes, early within a process, on the basis that built in is better than bolted on. One such sector is the water industry. Scottish Water has committed to 'Empower customers and communities' within its 25-year Strategic Plan. Collaborative working between Scottish Water and key stakeholders has begun to shape how such an ambition can be achieved. This includes identifying opportunities to engage earlier with both service users and those impacted by service delivery, to evidence where they have influenced decision making, and that customers have access to information that supports informed choices.
4. Over the last three years, Scotland's water sector has embedded ethical business regulation and ethical business practice within the price setting process. This approach encourages candour and transparency in all interactions between the regulators, the regulated and other stakeholders. Additionally, it supports culture and processes which embed the consumer interest at the heart of decision making, thereby improving outcomes for those that use its services. Ethical business practice is defined as existing in an organisation in which the leaders consciously and consistently strive to create an effective ethical culture where employees do the right thing based upon ethical values and supported by cultural norms and formal institutions. An effective ethical culture is the basis for superior, sustainable performance in all aspects of the organisation, which is key to building and maintaining trust amongst stakeholders and service users. We believe that such an approach could provide a high level framework, or set of ethical principles, to support embedding consumer duty within public authorities.
5. We welcome a duty upon public authorities to evidence and explain how and where they have taken consumer outcomes into consideration during decision making as we believe that this will support more conscious awareness of the need to link outcomes for service users with decision making processes. However, we note that the Duty only requires public authorities to have 'regard to the impact on consumers'

¹ <https://www.fca.org.uk/publications/consultation-papers/cp21-13-new-consumer-duty>

² <https://fairbydesign.com/inclusive-design/>

and not 'due regard to the impact on consumers'. Due regard would place a greater responsibility on bodies to mitigate identified harm when considering consumers' needs, particularly when dealing with other considerations which may be subject to 'due regard', such as the Fairer Scotland Duty. This implies that there is a risk of consumer needs being excluded in the face of more powerful obligations, and therefore the potential to view consumer harm as an unfortunate but necessary outcome. However, we acknowledge that the extent of the duty cannot change now that it has been enacted.

6. As a general principle, we support every effort to identify synergy and outcomes that add value between potentially competing factors. However, where such an outcome is deemed necessary, we would ask that the potential for harm is communicated to consumers openly and transparently.
7. Different consumer groups often display different characteristics that can and invariably do, impact their experience of service provision. These could relate to health, income, geography, etc. CAS is aware of instances where a lack of consumer insight has led to detriment. This may be due to applying a 'blanket policy' approach or simply the absence of a robust consumer-focused framework, and hence visibility into consumer outcomes, being applied to policy development and decision making. A proactive and insightful approach to delivering public services is preferential to one that is reactive and defensive. Furthermore, we would welcome assurance that in exercising the Consumer Duty, it is protected from becoming a 'tick box' exercise. This can become tokenistic and devalues outcomes for consumers. The Duty should evidence delivering positive outcomes for those that use and need public services.
8. For example, most Scottish councils opted to make the application process for Low Income Pandemic Payments available only online. CAS evidence suggests that this approach has excluded a significant number of people who do not have access to online services, thereby demonstrating that sufficient regard of how policy decisions impact upon consumers was not undertaken. We know that many consumers struggle to afford digital services. In recent polling conducted by YouGov for CAS³, 15 per cent of respondents told us that the current costs of their internet or mobile phone contracts were unaffordable in relation to their personal income. Our polling found that 32 per cent of people ran out of money before pay day in the last year. Of those people, 26 per cent had to go without internet access as a result. Based on Scotland's population estimates this works out to 369,200 people. A further 28 per cent went without mobile phone access, working out to 397,600. Additionally, CAS evidence highlights examples of the harm caused to consumers by Council Tax collection methods, which could have been avoided were the circumstances of the consumer designed into policy to begin with.

³ Total sample size was 1032 adults. Fieldwork was undertaken between 20th - 25th May 2021. The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

9. We believe that more can and should be done to encourage a stronger and more overt commitment to increasing consumer-centric culture and behaviours within public bodies, at a strategic and therefore an operational level. This approach will require a fundamental shift in focus from merely delivering services. It will also require consideration of evidencing consumer needs using data and insight to guide decision making, and furthermore, adequately and appropriately communicating this to service users. This will strengthen transparency and accountability, and therefore consumer trust and confidence in public body services.
10. We welcome the approved 'guidance', relating to the duty under Section 21, to public authorities and an obligation by them to have 'regard to any guidance'. We believe that any guidance issued should have its foundations in strong consumer-focused principles, to ensure it embeds and delivers positive impact for service users. Furthermore we believe that guidance should be developed collaboratively to ensure it is as effective as possible in delivering improved outcomes for consumers. This is especially important as we assess the impact that Covid, Brexit, inflation and energy bills have had on households' finances and consequent increased necessity for public service support. It is essential that services from public authorities, work to support consumers that may be struggling to manage several financial pressures across different service agents. Sometimes even within the same public service body. This includes debt recovery and how it can cause unintended hardship on consumers. The consumer duty itself within a single public service body, must be encouraged to take a multi-disciplinary approach. For example, Dumfries and Galloway Council has amalgamated its services within the Revenues Team with those that used to sit within the Education Department for Free School Meals and Clothing Grants. This now means that if a consumer applies for Council Tax Reduction and it is awarded, they will automatically be assessed for Free school meals and School Clothing Grants. Furthermore, applying the consumer duty to debt recovery processes, such as Council tax enforcement, should more readily benefit consumers by placing them at the center of how policies are designed. This could result in Council Tax collection becoming less 'batch' driven or in some cases punitive, and more about supporting people to meet their obligations. Some Councils already demonstrate this approach, such as Fife Council and their Fair Debt Collection Policy. Such examples could be replicated across all local authorities.
11. We believe that there is potential for the development of a more collaborative approach to consumer issues, based on early intervention and prevention, and considering all aspects of policy from a consumer perspective. Such an approach could also help to facilitate more timely intervention in markets where failings are resulting in consumer harm. A more co-ordinated and multi-lateral sharing of intelligence between stakeholders would help to ensure that emerging issues are identified and acted upon at the earliest possible opportunity.
12. Further clarity would be welcomed on whether guidance will be statutory.

13. We would welcome additional clarity around engagement with, and interaction between Consumer Scotland and public bodies not covered by a Consumer Duty e.g. CMA, Ofgem, Ofcom, to protect consumers, particularly around sharing and promoting good practice.
14. We are aware that many organisations and sectors are moving away from prescriptive measures to a principles-based approach, which sets out a higher level commitment or ambition, rather than attempting to list exhaustive rules. For example, to support consumer-centricity amongst our key stakeholders, CAS applies a set of seven consumer-focused principles (access, choice, safety, information, fairness, representation, redress – diagram below). Consumer principles are used to assess the consumer interest and form the framework within which policy and decision making is developed and communicated. They allow us to champion consistent and transparent policy positions across a diverse range of subject areas, and help staff and Trustees to operate confidently and effectively when new or unfamiliar issues arise. They also provide a straightforward way of explaining to stakeholders how we identify and analyse consumer issues. What are understood today as consumer principles can be traced back to a 1962 speech given by John F. Kennedy to the US Congress in which he outlined four rights, or 'Kennedy Principles': the right to choose; to be informed; to safety; and to be heard. Over time these were further added to following sustained campaigning by Consumers International, and others, and incorporated additional consumer rights related to: redress, safety & quality, access to goods & services and the promotion of sustainable consumption. The United Nations' Guidelines for Consumer Protection gave legitimacy to the whole notion of "consumer rights", and provided the support and guidance necessary for developing consumer protection legislation in nations around the world. It is from these separate, but interrelated, developments that the consumer principles adopted by CAS have their roots.

Consumer Principles



15. We believe that the application of high level consumer-focused principles will embed and incentivise more consumer-centric behaviour within organisations. Furthermore and through developing greater awareness of what consumers need, they could be instrumental in developing measures that lead to improved consumer outcomes, which can then be measured. We are currently working with Scottish regulators and service providers to implement and embed consumer-focused principles within a broad range of sectors. Such principles could then be supported by more granular tests such as a consumer impact assessment process.

(b) If not, which public authorities should be excluded, and why?

N/A

(c) Are there any public authorities you feel should be bound by the duty which have not been listed, please give reasons why?

N/A

Question 2 – Functions in Scope

(a) Should public bodies be subject to the duty when carrying out all of their functions or only specified functions?

16. CAS supports the principle of consumer interests being embedded rather than bolted on across all functions, for example, not just service related but revenue related also (as highlighted by point 11 above). We believe that public bodies should undertake a consumer duty when carrying out all functions to support visibility of any 'hidden' issues which could either cause detriment or further benefit consumers. Such a duty could be initially undertaken using a consumer impact assessment.

17. CAS believes that public bodies could do more to identify an appropriate balance between regulation, partnership working with other public bodies and with consumers, and enforcement when exercising powers and authority. This will require a willingness to review how the public is engaged and identifying barriers to engagement with particular aspects of public policy. For example, are engagement methodologies appropriate and informed for groups of consumers or specific communities of place or interest? What prevents consumers from more actively engaging – is there sufficient inclusion? Do consumers have various channels to choose from in terms of how they wish to be engaged or communicated with?

18. As Scotland move to decarbonise and meet our net zero targets, new technologies will be installed in people's homes. Whilst we recognize the need to rapidly deploy low carbon technologies, it is essential that consumers and particularly low income and/or vulnerable consumers do not become 'guinea pigs' in this process.

19. CAS has experience of responding to experimental solutions, such as the installation of home energy efficiency technologies that do not work to the benefit of recipients. In fact, we have seen cases whereby installations can and do cause detriment to consumers. In some cases those impacted are no longer able to switch to a cheaper provider, which undermines fairness and can result in increased costs. There is a risk that poorly designed initiatives go unchallenged and largely unnoticed. One such example is of a 'Thermaflow' electrical heating system that was rolled out by Falkirk Council and Scottish Power in 2012 within the Slamannan and Braes areas, which are both low income areas. Shortly after installation, tenants raised concerns that fuel bills had risen as high as £100 per week and were simply unaffordable – this constituted a 230% increase in weekly charges. Instances of inappropriate technologies being installed into properties are not unique and often fall out with what may be considered a reasonable charge compared to other energy users with access to the marketplace. Those on the new scheme can be expected to cover the cost of installation, which can be expensive. More is required to protect consumers from such decisions made without prior and adequate research and consultation.

20. Another such example is the Wynford Estate in Glasgow. 1,784 homes were connected to a new heat network in 2013. The network, which is owned and

operated by SSE, was meant to offer a more affordable and environmentally friendly source of heat to residents, who were previously using electric storage heating. High levels and balances of fuel debt in 2019 and 2021 indicate that the current tariff structure, based on the cost to serve, is unaffordable for most people living on the Wyndford Estate. Wyndford is in the first decile of the Scottish Index of Multiple Deprivation and is one of the top 10% most deprived areas of Scotland. Modelling by the Scottish Government in 2018 estimated that the median gross (before taxes or housing costs) weekly household income ranged between £161 - £522, and that approximately 78% of Wyndford households earn less than £500 a week (the national median household income in 2018/2019 was £517). Not only did Wyndford fail to deliver the forecasted cost savings, it removed consumer choice in one of the most deprived areas in Scotland. This has left widespread consumer disengagement, high levels of fuel debt, and loss of trust of the energy sector within the community.

21. CAS is aware that Scottish public authorities are required⁴ to prepare annual reports on compliance with climate change duties, and to send these reports to Ministers within 8 months from the end of each financial year. An Amendment Order requires the inclusion of information, where applicable, on a target date for achieving zero direct emissions of greenhouse gasses, or other such targets that demonstrate contribution to Scotland achieving emissions reduction targets. However, we would welcome further consideration by Consumer Scotland on ways to encourage public authorities to identify, collaborate and report on areas of commonality, which support national targets such as net zero emissions, particularly where they require consumer involvement and depend on behavioural change. Approaching consumers with a simplified and unified approach, that is easy to engage with, is more likely to succeed than asking consumers to engage with multiple agencies and agendas, which may not convey a consistent message or single point of engagement.
22. Promoting the sustainable consumption of natural resources e.g. water, and other environmentally sustainable practices e.g. disposal of domestic and non-domestic waste, should be undertaken in a way that reflects the vital role consumers play as part of the solution. Direct partnership working between public bodies and service users, to promote and sustain a green economic recovery in Scotland, will have a better chance of changing consumers from being passive observers to active participants. However this can only be achieved through effective awareness, education and engagement. Working together with service users to shape policy and interventions will promote legitimacy with consumers, and counteract any attempt to 'do' policy to people which could include greenwashing.

(b) If all functions, why?

As stated above.

⁴ [The Climate Change \(Duties of Public Bodies: Reporting Requirements\) \(Scotland\) Amendment Order 2020](#)

(c) If just specified functions, how should these be determined?

N/A

Question 3 – Reporting and Governance

(a) Do you have any comments on the reporting requirements of the duty, which will help to ensure public authorities meet the conditions?

23. CAS is of the view that what gets measured and reported is more likely to get improved, and even more so when compliance information is made publically available. This principle is applied to many utility companies and we would welcome further consideration of performance tools that improve consumer outcomes through measuring the consumer experience.

24. Furthermore, consideration would be welcomed of how the new consumer duty would relate to other duties upon public bodies to carry out impact assessments, and also to how reports can be presented in a way that is accessible, clear and simple, and not overwhelming for consumers.

25. Further consideration would be welcomed regarding the chosen reporting period by public bodies, and if this would make it more difficult to compare and contrast. If the objective of a consumer duty is to embed a stronger 'consumer first' culture, then the ability to compare results across similar public bodies could incentivise organisations to strive to be the best as well as provide early indicators of those that require further scrutiny.

26. We would welcome further information on outcomes for a public body that does not report against or fails to meet the consumer duty – what are the consequences? Often a balance between incentives and consequences can promote engagement in a duty.

27. In addition to the delivery of essential services to service users, CAS believes that a 'consumer duty' within public bodies should also support improved redress for consumers. We are aware that routes to dispute resolution can be highly complex and difficult for consumers to navigate. There is no single journey to achieve redress across public authorities and for many consumers who lack the resilience to pursue an issue, they will probably simply drop out and therefore not achieve a satisfactory outcome. 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) options for consumer issues which may allow for swifter resolution of complaints at any early stage. In this regard, 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, with a single branded entry point for people wishing to access ADR on consumer

matters. There is a critical need to simplify the landscape, create easier entry points for consumers and allow them to understand how to enforce their rights.

(b) What further key considerations or consultation do you think is required to ensure that the governance and reporting structures suit public bodies?

28. CAS would welcome further information on how reporting structures in particular will align with other Scottish Government frameworks e.g. the National Performance Framework.