

Liberal Democrats Policy Consultation

Consumer Policy

Consultation Paper 95



This consultation paper is presented as the first stage in the development of Party policy for consumers. It does not represent agreed Party policy. It is designed to stimulate debate and discussion within the Party and outside; based on the responses generated and on the deliberations of the working group a full Consumers policy paper will be drawn up and presented to Conference for debate.

The paper has been drawn up by a working group appointed by the Federal Policy Committee and chaired by Jonathan Marks QC. Members of the group are prepared to speak on the paper to outside bodies and to discussion meetings organised within the Party.

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Comments should reach us as soon as possible and in any event no later than 30th March 2009.

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Values and Purpose of Consumer Policy

1.1 Liberal Democrats have always been committed to the pursuit of open, liberal, competitive markets within the UK and beyond. Our task is to develop policy that ensures that those markets give the best service to consumers at all stages and all levels and across both private and public sectors of the economy. We recognise that there are goods and services which are consumed by entitlement and those consumed by choice.

1.2 The Liberal Democrats' commitments to freedom and to fairness go hand in hand with our belief that the state exists to serve the citizen. Our approach to consumer law and policy starts from the position that consumers are not economic agents in a textbook, but individuals, families, workers, pensioners, benefit claimants. So our consumer policy must be about improving the ability of people to access and secure the goods and services they need and want affordably, efficiently and on fair terms.

1.3 In the following pages, we group our consultation questions into the themes listed below. However, we welcome feedback and responses on any area of consumer policy.

- Ensuring that markets operate freely, fairly and competitively – in such a way as to give people a wide range of goods and services to meet their needs and aspirations affordably and on fair terms (A Fair Marketplace)
- Ensuring that all people – and particularly the most vulnerable – can access the goods and services they need and want across all sectors with reasonable ease and in a way that is efficient and personal (Responsiveness)
- Ensuring that people are given the information they need – including the environmental and sustainability implications – to make informed choices between what is on offer (Informed Choices)
- Ensuring that consumers are protected from unfair and unscrupulous practices (Consumer Protection)
- Ensuring that everyone has easy access to effective forms of redress, when the provision of goods and services falls short of their legitimate expectations (Effective Redress)
- Ensuring that particular sectors have specialist treatment when and where appropriate (Sector-specific Policy)
- Ensuring that government maintains appropriate balance between regulation, codes of practice and advice to ensure that the above objectives are met with no more interference in the operation of the market than is necessary to achieve them (Appropriate Government)

Question

1. *Are our Values and Purposes (the objectives as set out above) appropriate?*

A Fair Market Place

2.0.1 Liberal Democrats believe in the development and maintenance of well-functioning and competitive markets throughout the private sector and of efficient and well functioning arrangements for the supply of services across the public sector. Our concern is that in many areas of the economy the mechanisms for securing these ends are not working adequately.

2.1 *Competition Policy*

2.1.1 There are three UK bodies that manage competition policy:

Office of Fair Trading (OFT): primarily responsible for consumer protection and the first phase of merger inquiries.

Competition Commission (CC): an independent body covering the second phase of competition inquiries. The CC has extensive powers to act only when there is an “adverse effect on competition” and cannot consider environmental or social concerns. The CC also has a duty to act in a proportionate manner.

Competition Appeal Tribunal: - the appellate body for CC & OFT judgements.

Their remits:

Cartels: Illegal co-operation (to both civil and criminal liabilities) between firms to exploit consumers. These are the sole responsibility of the OFT, subject to appeal to the CAT.

Abuse of Dominant Position: Erecting illegal barriers to entry (e.g. Microsoft) and using market power to undercut competitors. This is the sole responsibility of the OFT.

Merger control: Preventing conglomerations that may cause a “substantial lessening of competition”. First phase carried out by the OFT (relatively easy to pass), then referred to the CC for a more in-depth investigation (about 50% pass).

Market Studies and Investigations: The OFT has the power to launch informal market studies, often referred to the CC (can also be referred by utility regulators), e.g. the recent investigation into the ownership of London & Scottish airports.

2.1.2 The Labour Government passed both the Competition Act (1998) & Enterprise Act (2000), moving much responsibility to the OFT and CC, and dictated that decisions were to be made on purely competitive considerations, and were subject to appeal from the new CAT.

2.1.3 The DBERR Secretary of State also has the right to intervene in merger references in situations of national security, media plurality and financial stability.

2.1.4 As a result of the way the existing competition regime is structured, it is directed principally at prohibiting anti-competitive activity in the marketplace. We need to consider what steps can be taken positively to encourage further competition where we believe that existing markets work inefficiently or to the detriment of consumers.

2.2 *Balancing the needs of business and consumers*

2.2.1 Empowering people, strengthening their hand in their interactions with large or faceless institutions, makes markets more competitive – not less. Competitiveness is not just about firms competing for your money. It is also about you having enough protections, information and confidence to be able to judge that you are being treated fairly. It is also crucial to Liberal Democrats that consumer protection is targeted to protecting the most vulnerable in society.

2.2.2 Businesses (and even public sector service providers) cannot be railroaded into changing the way they work. But businesses, in the long run, know that what is good for their customers and clients is ultimately good for them.

2.3 *Organisational size and shape*

2.3.1 No thorough review of the consumer experience can ignore the fundamental question of the size of organisations consumers have to deal with. There is no set rule that “small is better”. There is often a trade-off between local, personable, people-friendly businesses (or public services) and an administrative/bureaucratic procedure in place to deal with consumer issues consistently. But nobody wants to see local colour and character disappear from our goods and services. This is about broadening the meaning of localism – not just about decision-making, but about the shape and size of the institutions producing, selling and providing goods and services in any given locality.

Questions

2. *Is the existing competition regime working satisfactorily?*
3. *What steps, if any, should we take to encourage greater competition, where the existing regime does not intervene?*
4. *Should governments worry about the size of organisations? If so, what would we do about it?*

Responsiveness

3.0.1 In this section, we consider “softer” approaches to improving the buying experience: standards, customer services, accessibility and so on. We may not be able to directly affect the quality of the relationship between private sellers and their customers but we hope to investigate what we can do about this in the *public* sector – and see whether any best practice can indeed be taken over to the private sector.

3.1 *Faceless Britain*

3.1.1 The term “Faceless Britain” has been used to refer to the challenges experienced by millions of ordinary people every day in accessing public services. With every year that goes by, more and more services that used to offer face to face contact are being replaced by systems that are centralised, remote and inhuman. We are seeing the development in the economy of, increasingly remote systems that are divorced from the people they are supposed to serve.

3.1.2 Large corporations and government departments increasingly refuse to conduct business face-to-face with their customers. Not only is this creating a frustrating, rigid, unresponsive, poor quality marketplace for goods and services: it probably makes bad business sense. There is a real need to articulate this new experience and to consider what can be done tackle it.

3.2 *Accessibility*

3.2.1 Related to the above, we are also eager to widen access to good quality goods and services (both private and public). Many potential consumers are thwarted from the start, owing to geographical disparities or other physical barriers to trade. We also need to examine how accessible European marketplaces are to British consumers: we have heard the rhetoric, but is the experience of liberalised European goods and services a reality?

3.3 *The seller approach*

3.3.1 The normal selling experience (in a high street, for example) is for a potential customer to approach a seller directly. But we should remember that sellers do not have to wait for customers to arrive at their door. Sellers have developed entire industries based around approaching their own consumer base: indirectly (through generic advertising campaigns) or directly (through increasingly sophisticated means of personalised and evidence-based marketing, and direct sales). This has created concerns about privacy and pressure selling which impact on the relationship between consumer and supplier. We deal with some of these concerns in Section 5 (Consumer Protection).

Questions

5. *What can be done to tackle the "Faceless Britain" problem and to improve the interface between institutions and people?*
6. *How should the rights of the individual to privacy be protected against increasingly sophisticated targeting by sellers?*
7. *What can we do to improve the responsiveness of large organisations to the needs of their customers?*

Informed Choices

4.1 Access to information

4.1.1 People can and should be empowered to make their own decisions and choices, with proper access to relevant information. Businesses and service providers who are not prepared to provide easily understandable and accessible information on their products should be treated with suspicion.

4.1.2 Information requirements are becoming more and more common, be it labelling (e.g. nutritional information), standard information sheets for loans, or information requirements for consumer contracts (such as details on the right of withdrawal).

4.1.3 There is already considerable legislation in this area, primarily regarding product labelling, certification, health and safety. However the effectiveness of information requirements needs careful monitoring. Too much information can sometimes lead to the same result as not enough – so clarity and ease-of-use may be the key here. There have been calls for proper testing of standard information with consumers as part of the legislative process. We also need to accommodate the wide range of languages we have in the EU.

4.1.4 We would like to see a renewed consensus on labelling and certification protocols which deal with the product's health risks, origins, manufacture and true environmental impact.

4.1.5 We also need to ensure that information is provided in such a way as to be accessible and understandable by the most vulnerable groups in society

4.2 Environmental Impacts

4.2.1 Promoting changes in behaviour, including by consumers, is an important way of tackling climate change. According to the CBI, consumers influence one quarter of all carbon emissions through their shopping baskets. If consumers are empowered to demand low carbon goods and products, more competition to provide low carbon solutions will be created. Check-Out Carbon (2008), a report by Forum for the Future, highlighted the importance of opportunities that exist to reduce carbon emissions as a result of consumer purchasing.

4.2.2 More than ever before, consumers want to “go green”. Tesco has found that 80 per cent of its customers consider the environmental impact of what they buy. New research by the Climate Group shows that, despite the recession, UK consumers are becoming more committed to making changes to their lifestyles in order to tackle climate change. To achieve this consumers need better and clearer information. Forum for the Future's research revealed that more than eight consumers in ten want more information about the environmental impacts of the products they buy.

4.2.3 Carbon labelling is a vitally important tool in enabling consumers to buy environmental products and helping to reduce carbon in consumer purchases. The labels used on refrigerators, for example, have been effective at raising awareness among consumers and promoting more efficient product design. Forum for the Future found that consumers want to be able to trust

retailers not to supply products that harm the environment. At the moment, however, not enough information on carbon foot-printing is available.

4.3 Financial consequences

4.3.1 Often, consumers are not fully aware of the financial commitment they make when entering into a contract. These can include not just capital and financing costs, but future maintenance and operating costs of product and services purchased (e.g. replacement razor blades and printer cartridges!). The Financial Services Authority is doing good work here in providing easily understood advice on complex financial products such as mortgages and savings instruments. However, often many other products and services have financial implications too.

4.4 Contractual terms of provision

4.4.1 Related to financial consequences, there is a more general need to ensure all contractual terms and obligations are understood by the consumer (and, indeed, the counterparty). The “fine print” can hide a myriad of detail – much of which is not considered by the consumer prior to entering into an agreement. Consumers are often not aware of their “statutory rights”, which follow from their paying for a supplier for goods or services.

4.4.2 Consumers need to be made aware of their rights under *all* consumer legislation and their avenues of redress. This must apply to public service providers as well as to the private sector. Often the recipients of public services are the most vulnerable and excluded. It may be that a gulf is growing between the informed (e.g. in health, the so-called “worried well”) and those who are deprived of their rights through lack of knowledge, communication skills or access.

4.5 Corporate Responsibility

4.5.1 Corporate Social Responsibility (CSR) is now a standard discipline within any sizable business. Firms recognise both the obligation and value of helping to sustain and improve society. This requires high standards of business behaviour that endure through all activities and relationships with their various stakeholders, including employees, suppliers, customers and the communities on which they impact (including fair trading). But the benefits of CSR can only be fully realised if customers have the right and the ability to *know* about the CSR records of the organisation they are dealing with.

Questions

8. *What information should retailers, manufacturers and service providers be obliged to give? And where and when should this information be held / presented?*
9. *What is the appropriate role for consumer-led review websites; and the internet in general?*
10. *In all areas, how can information be best supplied to the most vulnerable groups in society?*
11. *How can we equip people to be more assertive, knowledgeable and engaged consumers?*
12. *What can government do to improve carbon labelling and make it more widely available?*

13. *What other steps can government take to promote environmentally-friendly purchasing? Should environmentally damaging products be phased out? Which ones, and how?*
14. *Whose responsibility should it be to ensure that consumers understand the long term financial commitment (e.g. a stream of future, potentially variable, payments) involved in a purchase?*
15. *How can we ensure that contractual terms of provision are clear, easily understood and fair?*
16. *How can we improve the communication of complex consumer protection legislation, so that consumers know what they are entitled to?*
17. *How can companies' CSR performance be sensibly conveyed to their respective customers?*

Consumer Protection

5.0.1 No new consumer protection policy can begin without an understanding of the current policy environment and new developments. DBERR (and the Law Commission, part of the Ministry of Justice) are currently undertaking a review of consumer law, but because existing consumer legislation is so fragmented (see Appendix 1), an overall review of consumer protection policy is not an easy exercise to undertake.

5.0.2 There are currently four main European Directives designed to protect consumers. These cover: unfair contract terms, sales and guarantees, distance selling, and doorstep selling.

5.0.3 The new proposal currently in progress is the draft Consumer Rights Directive (CRD). The CRD aims to merge the four existing directives into a single framework: removing inconsistencies and closing gaps. It concerns contracts for all business-to-consumer sales of goods and services (covering purchases made in a shop, at a distance or away from business premises).

5.0.4 The European Consumer Commissioner Meglena Kuneva has outlined 12 priority areas:

- Tough new rules on delivery across the EU, including new rules on late delivery, non delivery and damage in transport
- An end to hidden charges – “no display no pay”
- A strengthened EU wide 14-day “cooling off” period and right of withdrawal for consumers
- A new ban on default pre-ticked boxes
- A new “see through clause” to tackle the problem of omissions in required information for consumers
- A major crackdown on pressure selling
- Closing the loopholes for distance selling
- New transparency obligations
- New protection for mobile-commerce and tele-commerce
- A new EU “black list” and “grey list” of unfair and abusive contract terms
- New EU-wide protection for online auctions
- Clear information about consumer rights at the point of sale itself

5.1 *Problems with current/forthcoming legal framework*

5.1.1 There is a clear danger that the existing myriad of separate and self-standing pieces of legislation has left people with no clear sense of their rights as a consumer. The CRD is attempting to address this and so we broadly welcome the both the clarity and the new protections which the draft CRD, in theory, will provide.

5.1.2 However, it would be difficult to produce an all embracing “Consumer Code” because rights necessarily vary considerably between different purchases according to:

- the nature of the product being supplied
- how the product is “bundled” with other goods and services
- what sort of credit (if any) is involved

- how the purchase is transacted (for example distance and doorstep sales versus over-the-counter).

5.1.3 Many have called for a general duty to trade fairly. That is, a legal obligation to trade fairly, regardless of matters such as trade association membership, definition of contract term or type of business. There is still no general duty to trade fairly in UK legislation, or indeed the draft CRD. While there are difficulties in ensuring how this works in practice; this idea deserves consideration.

5.1.4 The CRD proposal will move away from the minimum harmonisation approach followed in the four existing Directives (i.e. Member States may maintain or adopt stricter national rules than those laid down in the Directive) to embrace a full harmonisation approach (i.e. Member States cannot maintain or adopt provisions diverging from those laid down in the Directive). In some areas, however, full harmonisation could come at the expense of weaker protections for UK consumers.

5.2 Pressure Selling

5.2.1 As discussed in Section 3, sellers do not, and indeed should not, have to wait for customers to arrive at the door. Marketing embraces a vast range of activities, including public relations, sponsorship, product promotion by way of samples or discounts, media advertising and targeted direct sales. Provided that the information to customers is or is believed to be true and the methods used to bring the product to their attention do not place prospective purchasers under duress, then the market may be considered to be operating fairly.

5.2.2 However, some types of business operating in highly competitive sectors are notorious for their aggressive sales methods, e.g. property time share and double glazing, and the advent of "chuggers" (charity muggers) on our streets shows that these methods are not confined to profit making concerns. Although at various times some of these sectors have tried to regulate themselves, where marketing and sales techniques invade privacy, become a nuisance or are so aggressive that a customer feels pressurised into buying formal regulatory protection becomes necessary, especially for the more vulnerable.

5.3 Fraud

5.3.1 Whilst victims of a fraud can seek redress under the common law and certain specific pieces of legislation, the presumption of "caveat emptor" still permeates law and Government policy and, other than in respect of financial services, there is very little by way of legislation that might deter the establishment of fraudulent schemes or discourage potential victims from being drawn into them. In fact most "scams" fall outside the reach of the Financial Services Authority and as they are frequently perpetrated by organisations based outside the EU, preventative measures become essential as it is unlikely that redress can be obtained.

5.3.2 We list at Appendix 2 a brief description of a number of the common scams currently appearing in the UK. With the exception of "directory advertising", where money is demanded after the provision of a valueless service, all require their targets to make payments in advance, either by way of fees, purchase of stocks (which usually can't be sold on except to other targets) or investment. Although one or two, such as "holiday clubs" and "property investment", do provide purchasers with some form of tangible asset, the real rate of return on outlay after so-

called management charges is very low even in the best of cases and the asset would not realise its purchase price if indeed it can be sold on at all. There are, of course, many variants of these schemes and, at the margins it is not always easy to determine which are legitimate and which are not.

5.3.3 Presently the OFT only has powers to decide what is and what is not an acceptable business practice generally and ban registration, freeze assets and close down UK organisations and individuals deemed to be operating scams following a DTI investigation, which can take many years. These powers could be extended to allow the OFT to take pre-emptive action, but key issues to consider would include whether this would constitute a restraint of trade, conflict with human rights and whether, by not having investigated or closed down a business practice, OFT might be perceived as having sanctioned it.

5.3.4 Though it offers advice to victims and may take action with other agencies to investigate scams and suspect organisations operating in the UK, the OFT will rarely, if ever, advise on or investigate a fraud emanating from outside UK. Between them the Serious Fraud Office and the Serious and Organised Crime Agency handle a limited number of such cases but the former is more concerned with “white collar” crime and the latter with “organised” crime. There is an EU consumers unit which does investigate scams and alerts member states’ agencies but this work is generally after the fact.

5.4 *Insolvency*

5.4.1 There are certain circumstances in which customers for goods and services are, quite legitimately and with justification, required to make a partial or full payment in advance. This particularly applies to situations where the supplier must buy in materials or otherwise incur time and expenditure in order to design or fabricate something bespoke for that customer e.g. double glazing installation or professional advice. Redress can be sought under the Sale of Goods Act or the contract between the parties if the supplier fails to deliver to the specification but the customer is exposed if the supplier’s business fails during the period between the advance payment and delivery. In the event of insolvency, and unless specific contractual arrangements have been made, the deposit will not enjoy any preference and will be ranked with ordinary creditors.

5.4.2 The Government is presently considering options to address this problem. Some professional institutes and trade bodies operate indemnity schemes specifically to cover deposits held on behalf of customers, e.g. the Law Society, the Association of British Travel Agents, the National Housebuilders Confederation and FENSA (for double glazing). Deposits paid with a credit card (but not debit card, cheque or cash) are covered up to a value of £30,000 by the card issuer - presumably the credit card company having satisfied itself as to the bona fides of an organisation before allowing it to trade using its franchise.

5.5 *Licence to Practise*

5.5.1 In the UK and internationally, there are many types of goods or services for which some kind of licence is required to allow someone to supply those goods or services, as a guarantee of good quality. This can be because there are serious health and safety consequences to poor quality work, or because it is a kind of service whose quality is very difficult for the consumer to judge. Examples include the professional regulation arrangements of professions like medicine or

law, but also schemes like CORGI registration for gas operatives. There are also schemes which are voluntary rather than statutory. Licence to Practise could be a driver to improve levels of training and professionalism in industries which currently suffer from a reputation for 'cowboy' traders. On the other hand, the additional cost and bureaucracy of any schemes need to be taken into account. Trades where there can be serious consequences from poor quality work and which are not currently covered by Licence to Practise include electrical installation and domestic plumbing.

Questions

- 18. Do consumers need more rights? Would further codification or simplification of existing legislation be of significant benefit?*
- 19. Should there be a general duty to trade fairly? If so, how would it work and how would it interact with existing legislation?*
- 20. Can we avoid the pitfall whereby full harmonisation of consumer protection within the EU may reduce protection to UK consumers?*
- 21. What is the proper borderline between acceptable salesmanship, and unacceptably aggressive pressure to purchase?*
- 22. What steps, if any, can be taken to outlaw unacceptably aggressive pressure to purchase?*
- 23. Does the Advertising Standards Authority sufficiently control unacceptable advertising? Does it keep advertising "legal, decent, honest and truthful"?*
- 24. Should the OFT or other agencies have greater powers enabling them to decide what is and what is not an acceptable business practice generally and ban registration, freeze assets and close down UK organisations and individuals deemed to be operating scams?*
- 25. Apart from blocking registration of companies and directors, how should the public be made more aware of unacceptable business practices?*
- 26. Should we require any organisation taking customer deposits, to hold insurance or be part of a trade body indemnity scheme? Should there be a cash threshold above which such a requirement is imposed and if so what?*
- 27. Should we encourage new Licence to Practise schemes, whether statutory or voluntary? If so, in which sectors?*
- 28. How can we educate young people more effectively about their rights as consumers (of both private and public goods and services)?*

Effective Redress

6.1 *A hierarchy of redress*

6.1.1 Any new policy framework for consumer redress is bound to feature a hierarchy of approaches which people can make. For example:

- An effective, responsive and free complaints procedure *within* the business/organisation itself
- An effective, publicly organised, complaints procedure
- Cooperative trade organisations providing free dispute resolution service
- Alternative dispute resolution services
- Litigation routes
- An overarching consumers' ombudsman service (operating much like the current Financial Services Ombudsman)

Any new framework would need to recognise existing structures, and envelop them in a consistent and easy-to-understand way.

6.2 *Consumer Focus*

6.2.1 On 1st October 2008, the new Consumer Focus organisation came into formal being (subsuming Energywatch, Postwatch and the National Consumer Council). Consumer Focus is an attempt to create a single statutory consumer organisation which has:

*the right to investigate **any** consumer complaint if they are of wider interest, the right to open up information from providers, the power to conduct research and the ability to make an official super-complaint about failing services.¹*

6.2.2 Consumer Focus is an advocacy body rather than a consumer advice service (such as Consumer Direct or Citizens Advice) or a statutory regulator (OFT). It remains to be seen if it can become a clear and visible presence to the general public seeking redress.

6.3 *Enforcement*

6.3.1 The shift to "principles based regulation" makes enforcement more rather than less important. One of the most effective enforcement tools is the "stop now" injunctive power that Trading Standards can use under the Enterprise Act. Enforcement needs to be pro-active and focussed, for example on scam-busting. But we need to investigate whether trading standards and OFT officers are equally effective across the regions and sectors.

6.4 *Clarity of purpose and roles within and between institutions*

6.4.1 For example, following the Consumer, Estate Agents and Redress Act, it remains unclear how the Local Better Regulation Offices will work with local Trading Standards offices. The Regulatory Enforcement and Sanctions Act also raises the issues of where and how Trading Standards should operate with criminal law powers – and therefore complicates the trading

¹ See www.consumerfocus.org.uk

standards officers' relationships with law enforcement. And there is the bigger question of how Consumer Focus will work alongside Consumer Direct, other bodies such as Citizens Advice and Which?, and the statutory regulators.

6.5 Complaints, dispute resolution & litigation

6.5.1 There are a number of avenues open to consumers who are in need of redress. However, few consumers have the means or inclination to seek formal legal advice. There is a clear requirement for legal advice and representation to be available to consumers at reasonable cost. The emasculation of legal aid over recent years has made legal services more difficult to access.

6.5.2 There are a number of national and EU networks that can provide advice and help with alternative dispute resolution, but there are calls for stronger tools. This includes making it easier for consumers to access and work with different legal and judicial systems, and the ability for consumers to seek redress collectively to overcome the financial burden of seeking redress.

Questions:

29. *How can avenues for redress and dispute resolution be strengthened?*
30. *Should there be an additional private right to redress for breaches of statutory duties under consumer protection legislation?*
31. *Regarding Ombudsman Schemes, should there be a single consumer ombudsman? An "ombudsman of ombudsmen"?*
32. *How can avenues for redress and dispute resolution be strengthened?*
33. *How can consumers be better assisted to launch and pursue small claims?*
34. *How can collective redress options be strengthened?*
35. *If consumers are to be encouraged to shop cross-border, how can we make sure that there are systems in place to help them should they experience problems?*
36. *Are there areas of discrimination in the supply of goods and services that call for further extension of Equalities legislation in the consumer field?*

Sector-Specific Policy

7.1 We recognise that certain sectors of the economy have features which require special consideration from a consumer protection angle, whether because of monopoly, imbalance of information between providers and consumers, health and safety concerns, or other reasons. These include:

- Financial services, particularly banking and pensions
- Insurance (including bundled products such as travel insurance, extended warranties, payment protection insurance), exclusions, warranties, claims handling
- Professional advice
- Property
- Utilities, including water, gas and electricity
- Transport, including fuel
- Small retail goods
- Large retail goods (eg cars)
- Food
- Healthcare, including pharmaceuticals
- Internet accessed services (including online data and ID protection)

Questions

37. *What are the specific problems in these sectors?*

38. *What sector-specific policy responses are required?*

Appropriate Government

8.1 Few would argue that government is “joined up” on consumer issues. One problem is that government is both a regulator and enforcement officer *and* a service provider.

8.2 The overall responsibility for consumer policy rests with the Department for Business, Enterprise and Regulatory Reform. But consumer issues do not sit naturally with DBERR’s responsibility for promoting the interest of UK businesses as *producers*. There are also overlaps with the Department for Work and Pensions responsibilities toward pensioners and benefit claimants; the Ministry of Justice’s role as overseer of the civil justice system and the roles of the Department Health as the sponsor department for the Food Standards Agency and the Treasury as sponsor of the Financial Services authority. Where there are overlaps, there may be gaps.

8.3 Local Government also has a vital role, for example through Trading Standing Officers and Local Better Regulation Offices.

8.4 Liberal Democrats have called for the abolition of the DBERR, and fought the last election on a manifesto which included the creation of a separate Department of Consumer Affairs.

8.5 Although the OFT does much good work, it is significantly under-resourced and struggles to keep on top of abuses of market power.

Questions

39. *How should consumer policy issues be handled at Departmental level?*

40. *Should there be any structural reforms to the OFT and Competition Commission, or is simply resourcing their main constraint?*

41. *What is the proper role of local government in consumer protection?*

Appendix One: Consumer Legislation

Act & year	Purpose
Consumer Protection from Unfair Trading Regulations 2008	<p>(Implements the European Directive <i>Unfair Commercial Practices</i>, 2005). Establishes common rules giving consumers the same protection against unfair (misleading or aggressive) practices and rogue traders wherever they are buying. Bans certain commercial practices, such as:</p> <ul style="list-style-type: none"> • Falsely claiming to be a signatory to a code of conduct • “Bait” advertising • Direct exhortations to children • Pyramid schemes • Emotional/guilt/persistent pressure • Falsely giving the impression that a prize has already been won • “Inertial” selling.
The Consumers, Estate Agents and Redress Act 2007	<p>Establishes a new “Consumer Focus”, in place of the existing National Consumer Council, Postwatch & Energywatch. Enables regulators in gas, electricity, post & water sectors to require companies to join redress schemes. Requires estate agents to join an ombudsman scheme.</p>
<p>EU Consumer Policy Strategy 2007 – 2013</p> <p>Various European Directives have been/are being transposed into UK law²</p>	<p>Addresses:</p> <ul style="list-style-type: none"> • Fragmentation of EU internal market • Improving outcomes for consumers • Shifting focus of regulation towards “citizen-focused outcomes” • Guaranteeing access to essential services at affordable prices • Empowering citizens to make sustainable environmental choices. <p>Priorities listed are:</p> <ul style="list-style-type: none"> • Better monitoring of national consumer markets and policies • Better consumer protection regulation • Better enforcement & redress • Better informed and educated consumers • Consumers at the heart of EU policies.
Consumer Credit Act 2006 (updating 1974 Act)	<p>Act deals with:</p> <ul style="list-style-type: none"> • Regulation & licensing of consumer credit & hire agreements and businesses (and related appeals from OFT decisions); • Provision of information to debtors and hirers after the agreement is made; • Unfair relationships between debtors and creditors; • Extension of the jurisdiction of the Financial Ombudsman Service established under the Financial Services and Markets Act 2000.
“A Fair Deal For All” 2005	<p>This DTI “consumer Strategy” paper outlined a number of “commitments”, including:</p> <ul style="list-style-type: none"> • Promote open & competitive markets • Roll-out Consumer Directive nationwide • “Strengthen & streamline” consumer advocacy

² Namely: Commercial Agents (86/653 EC), Consumer Credit (90/88), Distance Selling (97/7 EC), Doorstep Selling (85/577 EEC), General product Safety (92/59 EEC), Injunctions – Stop Now Orders (98/27 EC), Misleading and Comparative Advertising (84/450 EEC and 97/55 EC), Package Travel (90/314 EEC), Price Indications (98/6 EC), Product Liability (99/34 EEC), Sale of Goods and Associated Guarantees (99/44/EC), Sales Promotions (proposed Regulation), Timeshare (94/47 EC), Unfair Contract Terms (93/13 EEC).

	<ul style="list-style-type: none"> • Simplify the legal framework • Pilot use of CD to refer to ADR schemes • Representative actions for consumers • National minimum standards for the Trading Standards Service.
Enterprise Act 2002	<p>Contains measures reforming competition law (formal creation of the OFT), strengthening consumer protection and modernising the insolvency regime.</p> <p>In particular, designated consumer bodies are able to make “super complaints” to the OFT, who is required to respond within 90 days. And makes it easier for consumers to bring damages claims due to anti-competitive behaviour.</p>
Distance Selling Regulations 2000 & Electronic Commerce Directive 2000 (Implementing European Directive <i>Consumer Protection (Distance Selling) 1997</i>)	<p>Applies to goods and services where contract is made without any face-to-face contact between supplier and consumer.</p> <p>Designates OFT and Trading Standards offices as designated enforcement authorities.</p>
Unfair Terms in Consumer Contracts Regulations 1994 (& Unfair Contract Terms Act 1977)	<p>Regulates clauses in contracts purporting to restrict or exclude liability under the implied terms as to title, correspondence with description, fitness of purpose etc.</p> <p>Outlines what could constitute “unfair” in a standard (non-negotiated) term.</p> <p>Also requires terms of contract to be in plain, intelligible language.</p> <p>1977 Act states that a trader cannot use an exclusion clause to exclude liability for death or injury resulting from negligence.</p>
Supply of Goods and Services Act 1982 (amended by the Sale and Supply of Goods to Consumers Regulations 2002)	<p>Requires a supplier of a service (in England, Wales & NI) to act with reasonable care and skill and, unless agreed to the contrary, within a reasonable time and charge.</p> <p>Consumer can seek redress if contract is breached and can seek refund/repair/replacement or compensation (damages)</p>
Sale of Goods Act 1979 (amended by the Sale and Supply of Goods to Consumers Regulations)	<p>Goods must “conform to contract” (as described, fit for purpose, satisfactory quality as judged by a “reasonable person”).</p> <p>Responsibility lies with <i>seller</i>, not manufacturer.</p> <p>Purchasers can demand money back, <i>and</i> damages equating to the cost of repair or replacement</p>

2002)	
Trading Standards (Various Acts from 1974 – 2002) ³	Trading Standards offices are a local government service which enforce the laws that govern the buying, hiring and selling of goods and services. They cover: <ul style="list-style-type: none"> • Fair trading • Consumer safety • Weights & Measures • Consumer credit • Under-age sales • Food safety • Animal health & welfare

Appendix Two: Common Scams

Directory Advertising – organisation offers free listing in directory, obtains a signature for listing then invoices substantial sum claiming this was contracted. In large businesses these invoices sometimes slip through the controls

Church Cults – organisation establishes a church or religious denomination under self proclaimed minister. Uses associates to entice in “congregants” who are required to tithe their income and purchase the cult’s services (including insurance and mortgages - which for some reason (presumably for the same as those that exclude most charges by bona fide religious orders) are not covered by FSA).

Holiday Clubs – purchasers are sold time slots in perpetuity at holiday villages which they can exchange for other slots at other villages within the club. Apart from the questionable selling methods of these organisations and the misleading information they use, these organisations make substantial annual management charges and the overall return on the outlay, in comparison to the cost of similar accommodation independently booked, is poor.

Property Clubs – these involve purchasing a share of one or more investment properties, usually offering “guaranteed” minimum yields. The properties are often found to be sub-standard buildings that are used for short term rentals (often DSS) and which experience high levels of voids.

Pyramid Selling – “partners” are recruited to sell a range of products and have to outlay a substantial sum to purchase stocks. They are encouraged to find other “partners” and sell stock to them and earn extra commission. The only people to make money are those at the top of the pyramid - those at the bottom can’t sell the stock and would need to recruit impossible numbers of “partners” in order to recover their investment.

Work at Home Schemes – there take various forms but again recruits are invited to purchase stocks or pay a franchise fee to undertake basic poorly paid administrative tasks for which there may or may not be an ultimate user. Some schemes seek homeworkers to act as recipients for illicit funds and to perhaps unwittingly “launder” them by making legitimate purchases on the fraudsters’ behalf for which they will be paid a commission.

³ The Weights and Measures Act 1985; The Trade Descriptions Act 1968; The Consumer Protection Act 1986; The Consumer Credit Act 1974; Enforcement provisions under Part 8 of the Enterprise Act 2002.

Lottery - Targets are notified that they have won a large sum of money in a lottery that they have not even entered but that to release the prize they must pay administrative charges. This fraud also uses **Premium Rate Phone Calls** so that when the "prizewinner" calls to claim the prize they are kept on the line whilst a premium charge is being ratcheted up.

419 – so-called because of section 419 of the Nigerian Criminal Code which deals with obtaining money under false pretences, but is known under various other names. Targets are invited to assist the fraudster to transfer "unused" funds from government contracts by making available their bank account and paying administrative charges to release the money.