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## **Draft Response to Empowering and Protecting Consumers consultation**

### **Introduction**

1. The Local Government Group (LG Group) is a voluntary membership body and our 422 member authorities cover every part of England and Wales. We work to promote, support and improve local government. This LG Group response has been drafted with the input from the LG Group's Stronger and Safer Communities Board and also its Economy and Transport Board. The response also draws on views put forward by chief trading standards officers.

### **Background**

2. The LG Group believes that radical changes need to be made to the provision of consumer information, advice, education, advocacy and enforcement. We therefore agree with the government's objective of simplify the confusing and overlapping provisions around consumer protection, strengthening the effectiveness of consumer enforcement, with more cost-efficient delivery that is closer to the consumer front line.
3. We also believe it is right that public funding is concentrated on bodies that consumers trust and already turn to for advice – Local Authority Trading Standards Services (LATSS) and the Citizens Advice service. It is the right way forward in the LG Group's view for the consumer protection functions delivered nationally by the OFT to be delivered by LATSS provided there is also a transfer of resources and funding. We also support the Citizens Advice service becoming the single service that consumers can turn to for information and advice, with the consumer advice currently delivered by the OFT under the banner 'Consumer Direct' being transferred to Citizens Advice from April 2012.
4. The LG Group has focussed most of this response on the proposals relating to changes in the enforcement landscape as that is the key priority for local government. Whilst recognising all other aspects of the proposals, it is in the enforcement arena where trading standards services could have a fundamentally different role in future.

### **The consultation questions**

#### **Chapter 2 – Information, advice and education**

##### *Key Proposals*

- Citizens Advice to lead on all information and advice for consumers (outside health and financial services).

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- The Citizens Advice service to take over responsibility for Consumer Direct.
- The Extra Help Unit for vulnerable consumers of energy and postal services to be transferred to the Citizens Advice service.
- Citizens Advice service to take on national co-ordination of consumer education (except on financial services). Coordination of consumer education activities locally to be done by collaboration between Citizens Advice and the Trading Standards community.

1. *How do you think the provision of consumer information to consumers can be improved upon?*

**Suggested Response:** Consumers should be able to get a range of high quality consumer information and advice. This advice should be available face to face, as well as via the telephone and online. The internet provides a valuable resource of information to empower consumers to take action or seek information. However, some consumers, particularly the more vulnerable, are often happier speaking to someone face to face and this service should still be available in the new model, either directly via their LATSS or through specific local partnership arrangements with local Citizens Advice Bureaux.

It is important that the high level of consumer advice is maintained. Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. We would not support any reduction in the standards of advice from that currently provided.

2. *Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?*

**Suggested Response:** The LG Group would be happy for the OFT's consumer information role to be transferred to Citizens Advice, providing Citizens Advice works with LATSS both nationally and locally in the provision of this consumer information service, as the OFT has previously done.

3. *Do you agree that the OFT's consumer education roles should be transferred to Citizen's Advice? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?*

**Suggested Response:** We agree with the Government's proposal that the OFT's publicly-funded consumer education role at national level be transferred to Citizens Advice, if other related advice services are transferred. We believe that Citizens Advice will need to work closely with the Trading

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Standards community to ensure that education provision is well coordinated, including the distribution of educational materials and sharing of best practice.

**Chapter 5 – Enforcement of Consumer Protection Legislation**

*Key Proposals:*

- *To establish a Trading Standards Policy Board (TSPB) to lead the prioritisation and coordination of national, regional and cross local authority boundary consumer enforcement work in England and Wales.*
- *In England and Wales, national enforcement to be undertaken by Primary or Home Authorities and by expanded regional teams supported by a small number of lead regions and/or authorities with specialist areas of expertise. Money for enforcement against national and cross boundary threats to be ring-fenced for this purpose.*
- *The proposed new Competition and Markets Authority (CMA) to retain a market studies role in relation to markets where there may be both structural competition issues and consumer-related (demand-side) market failures.*
- *The CMA to retain powers to take action against breaches of consumer law wherever these breaches may inhibit the effective functioning of competition in markets.*
- *Powers to make supercomplaints to CMA to be retained by existing bodies.*
- *The TSPB, CMA, Citizens Advice service and Which? to be transparent about enforcement and market analysis priorities and to share work plans as far as possible, working in partnership on cases which risk crossing over the boundaries between them.*
- *The TSI to take on the OFT's current guidance, training, international liaison and policy functions.*
- *"Established Means" code of practice promoters to be able to formally request action against businesses breaking the relevant laws which the TSPB would have a duty to consider.*
- *If the creation of the CMA is delayed, these consumer enforcement landscape changes should go ahead with OFT taking the role proposed for the CMA.*

**Options for reform**

4. *Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?*

**Suggested Response:** The LG Group believes Option 3, with the transfer of the majority of the OFT's consumer enforcement functions to LATSS with some functions (for cases involving structural market problems) remaining with the CMA is the most appropriate way to achieve the three objectives set out in the consultation document. The LG Group believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see.

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As well as helping local consumers and businesses, LATSS already do consumer protection work which has a regional and/or national impact. This includes LATSS providing Home Authority/Primary Authority support for businesses; dealing with e-crime, internet scams and national pricing rip-offs; working at ports and airports; dealing with rogue traders who act outside their local council areas targeting some of the most vulnerable consumers; and helping to support legitimate businesses, who comply with the law, but face unfair competition from those who do not.

Option 3 will enable the building up of skills and capability in LATSS as they take on to regional and national work. It will enable the development of better resilience for existing regional infrastructures which are crucial to effective engagement and delivery between the local and national levels. It will also enable transformational changes within LATSS in terms of strengthening leadership and influence in order to support more effective action against cross-boundary threats. Furthermore Option 3 fits in well with the government's localism agenda as it gives LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally.

*5. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?*

**Suggested Response:** Establishing an effective governance structure to bring together LATSS, and to ensure the work undertaken on national, regional and cross-council boundary threats is a priority for the public will be the most crucial element of ensuring that the changes to enforcement work effectively. As such we have broken our response to this question down into separate elements.

We agree with the Government's principles of the need for the coordination of enforcement against regional and national threats, and that national funding could be used to support such efforts. We are not yet convinced the proposed TSPB consisting solely of chief trading standards officers is the right governance structure for this, and particularly that the LG Group has a role to play in this. Officer input, especially on technical matters is vital, but there are questions around leaving decisions on the prioritisation of cases and how resources should be allocated to officers, without the wider context of the issues councils face being taken into account.

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Political Oversight and Scrutiny

We understand that clear political accountability and oversight is regarded as very important. We would agree. However we would also point out the limited capacity of the LG Group to actually carry this out. We believe it will be important to get the direct input of councils into the enforcement work being done and this need not come through the LG Group. In our view the risks to the LG Group outweigh any benefits and we are not convinced that the best way to add value to the work of councils at a national level is for the Group to be involved in this work.

Financial Oversight

Clear financial oversight and auditing is also crucial. A decision will have to be taken as to who would hold the funding and provide the necessary accounting and audit services to ensure total probity. The LG Group would not want to take on this role itself.

Membership

As outlined above we are not convinced that the membership of the proposed TSPB is yet right.

Involving heads of trading standards services will be crucial. The heads of service involved in any Board must effectively represent each English region and Wales. For officers the Welsh/English regional representatives would need to be nominated via their relevant chief officer groups and be mandated to take decision at the TSPB on behalf of their areas. We recognise that effective co-ordination at a regional level is essential to achieve this. In addition we would expect there to be representation from Association of Chief Trading Standards Officers, Welsh Heads of Trading Standards, Society of Chief Officers of Trading Standards in Scotland and the Trading Standards Institute on that Board plus other representatives such as BIS.

However we do not yet take the view that the Board's membership is the right one, or how political oversight of the TSPB is provided has been solved. In our view this needs to be explored further.

Indemnity Fund

There is a particular concern that any individual local authority taking on a national case should not be put at significant financial/legal risk, and as such, BIS would need to find a method of underwriting or insuring against any such risk.

It will be essential that the resources are available to cover all the costs of the investigations and legal liabilities are underwritten. Without the indemnity fund we would not recommend that any council should undertake any of these national high risk cases.

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*6. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards?*

**Suggested Response:** Maintaining the status quo but with the creation of a new Joint Enforcement Board (JEB) would create additional bureaucracy and costs associated with a new organisation but few clear benefits. As is identified in the consultation paper there would not be the resources to create national and regional enforcement infrastructures in LATSS. The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way.

The role of the proposed Competition and Markets Authority

*7. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?*

**Suggested Response:** We would agree that there are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems.

We believe that there must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.

Other current OFT roles

*8. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?*

**Suggested Response:** LATSS already have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact. Councils take far more prosecutions than the OFT and are confiscating tens of millions of pounds of assets from serious criminals in the consumer protection field.

We believe that their threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes. LATSS have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc. We do not believe

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that there will be any problems with an enforcement model branded as run by LATSS.

*9. Do you agree that the proposed changes to the consumer landscape should go ahead in April 2013 regardless of whether the CMA is created by then or not? If not, why not?*

**Suggested Response:** We suggest that the proposed changes to the consumer landscape should go ahead in April 2013 if possible.