

Agenda Item No 3(b)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

10 January 2017

Report of the Strategic Director – Economy, Transport and Communities

**NATIONAL AUDIT REPORT PROTECTING CONSUMERS FROM SCAMS,
UNFAIR TRADING AND UNSAFE GOODS**

(1) **Purpose of Report** To inform the Cabinet Member of the summary, key findings and recommendations of the National Audit Office report into protecting consumers from scams, unfair trading and unsafe goods.

(2) **Information and Analysis** The National Audit Office (NAO) scrutinises public spending for Parliament and is independent of Government. Its vision is to help the nation spend wisely and help Parliament hold Government to account and improve public services. In 2011, Government asked the NAO to carry out a review of the 'Consumer Landscape'¹ which concluded that there was a gap in enforcement between local regulators and national agencies. This prompted the closure of the Office of Fair Trading which was replaced by the Competition and Markets Authority (CMA) and the establishment of a National Trading Standards Board (NTSB) chaired by Lord Toby Harris and comprising of Heads of Trading Standards representing each of the regional trading standards groups.

The Trading Standards East Midlands region is represented by the Head of Nottinghamshire Trading Standards. The NTSB receives some £14m each year to tackle consumer detriment and unfair trading. As well as national teams such as the Scams Team, the funding pays for the Regional Investigation Team (formally known as 'Scambusters') hosted by Nottinghamshire County Council, a regional coordinator (hosted by Lincolnshire) and a regional intelligence manager (hosted by Derbyshire). Approximately £4m is allocated via a National Tasking Group (NTG) to tackle Organised Crime Groups and rogue businesses operating on a national (Level 3) basis. Derbyshire has received some funding to support the investigation into the mis-selling of mobility aids to older people and the recent conviction of a multi-million pound advertising scam (Operation Spinnaker) was funded via the NTG.

¹ See Report: <https://www.nao.org.uk/report/protecting-consumers-the-system-for-enforcing-consumer-law/>

It should be noted that the NTSB is only responsible for the policy areas allocated to the Department for Business, Energy and Industrial Strategy (BEIS – formally the Department for Business Innovation and Skills) which covers ‘fair trading’, product safety and metrology. It does not cover the other local authority responsibilities normally assigned to Trading Standards services which also include animal health and welfare, food and feeding stuffs composition and labelling requirements, road traffic (unroadworthy cars and over-weight lorries), age-restricted products (alcohol, cigarettes, knives), illicit tobacco, safe storage and dispensing of petroleum and supply of fireworks.

Following the changes made by Government to the enforcement regime, it commissioned the NAO to carry out a further review of the Consumer Landscape. Its report was published on 15 December 2016 and listed below are ‘key Facts’ from its review.

Key Facts

£14.8bn	Estimated value of consumer detriment that needs to be tackled by consumer protection bodies
£165m	Estimated cost of the consumer protection system in 2015-16
200	Number of different bodies in the consumer protection system
£1.160 billion	Spend by UK consumers on goods and services in 2015
36%	Proportion of non-food retail sales conducted online in 2015-16
56%	Reduction in Trading Standards officers since 2009
74	Average age of a victim of a mass marketing fraud
£4,500	Average financial loss per victim of a mass marketing fraud aged between 75 and 79 years
Unknown	Impact of consumer detriment on the economy

The estimated consumer detriment of £14.8 billion per annum compares to an estimate of £6.6 billion in the 2011 report and the cost of consumer protections of £165 million is down from a figure of £247m for 2009-10. The report suggests that there has been a 56% reduction in Trading Standards officers since 2009. In Derbyshire, the total net expenditure on Trading Standards in 2009-10 was £2.95m and the trading standards establishment was approximately 60 full time equivalents. The total net budget for trading standards for 2016-17 is £1.3m, a reduction of 56% compared to 2009-10, and the total establishment is currently 39.6 (a reduction of 34%). It is interesting to note that there is no estimate of the impact of consumer detriment on the economy.

A summary of the ‘Key Findings’ from the Report which are produced in full in the appendix to this report are provided below.

“Key Findings

1. *The Department does not routinely cost the consumer protection system but we calculate that it cost £165 million in 2015-16.*
2. *There is limited robust data on the overall scale of consumer detriment, but we estimate that consumers lost at least £14.8 billion in 2014-2015.*
3. *Consumers are facing increasingly complex and wide-ranging threats, in particular from the rise in e-commerce, and scams are becoming more targeted.*
4. *The consumer protection bodies have improved data on consumer threats, but significant gaps still remain.*
5. *The Department has improved the overall co-ordination of consumer protection bodies.*
6. *The Department has little control over the majority of resources, making effective system prioritisation difficult.*
7. *The loss of resource and downsizing of Local Trading Standards services have led to gaps in coverage at the local level.*
8. *The system is addressing national and international issues better but long-term planning is insufficient.*
9. *Government's response has not kept pace with the growth in online consumer fraud.*
10. *The Department has created opportunities for a more preventative approach to consumer protection.*
11. *There is no system-wide reporting of the impacts of consumer protection work.”*

The key findings from the report would appear to be positive about the changes to the Consumer Landscape in terms of tackling consumer detriment in a more coordinated and intelligence led way. However, the reduction in local authority funding for trading standards, as a consequence of the cuts in local authority spending, is having an impact on local enforcement. The report also finds that there is a lack of data about the totality of consumer detriment and the impact of consumer protection work.

One of the consequences of a reduction in resource for Derbyshire Trading Standards Service (DTSS) has been the reduction in support for individual members of the public who need advice about faulty goods or services that they have purchased. In 2005-06, Government established a national call centre, Consumer Direct, to support the public who sought advice when they were dissatisfied with something they bought. Prior to the introduction of Consumer Direct, this service was provided by DTSS and between 10,000 and 11,000 local residents sought advice each year. The number of local residents seeking advice peaked at just under 18,000 in 2008-09 and the numbers have fallen year on year to just under 13,000 during 2015-16. The recent decline has coincided with changes to Consumer Direct which went from a number of regional centres to a national centre, and then was awarded to Citizens Advice in April 2012 and became the Citizens Advice

Consumer Service (CACS). The funding for the service was also reduced and there has been less promotion of the service. This combined with consumers making use of social media to complain direct to businesses is thought to have contributed to the reduction in requests for advice. Appendix 2 shows the changes in numbers of Derbyshire residents seeking advice.

Although the number of individual members of public that DTSS has been able to provide advice and support to has reduced, the Service still prioritises support for vulnerable older people, will seek to assist local residents who are unhappy with a Derbyshire Trusted Trader and still has a statutory duty to investigate breaches of any criminal legislation assigned to the local authority. Any allegation about a breach of criminal legislation is assessed to determine the level of consumer detriment and the pattern of behaviour. If a complaint about a trader is an isolated incident and represents a low level of detriment then the details are recorded and the consumer (unless deemed vulnerable) is provided with civil law advice by CACS.

The NAO makes a number of recommendations in its report. These are primarily that BEIS should seek to identify the amount of consumer detriment; work with the Department for Communities and Local Government (DCLG) and other Government departments to identify the level of risk and how it might best be addressed; and provide funding on a longer term basis rather than just annually to allow for better funding. A summary of the recommendations are provided below and are reproduced in full in Appendix 1 to this report.

“Recommendations

- 1. The Department should ensure that detriment is estimated and reported regularly in a consistent manner.*
- 2. The Department should work with the Consumer Protection Partnership to continue to improve intelligence gathering and sharing across the system as a whole.*
- 3. The Department should work with relevant departments and the Department for Communities and Local Government, towards a shared understanding of risks to consumers.*
- 4. The Department should work with relevant departments, and the Department for Communities and Local Government, to ensure that consumer protection skills and capacity are deployed strategically to reflect how and where detriment occurs.*
- 5. In the face of significant funding reductions, the Department should ensure that the most appropriate and cost effective tool or intervention is made by the system as a whole, including new powers where appropriate.*
- 6. The Department should ensure that its delivery bodies can plan for a longer period than annually.*

7. *The Department, together with the Home Office and other government departments, should coordinate further their separate activities addressing consumer fraud.”*

(3) **Social Value Considerations** The NAO report highlights the positive changes that have occurred to the Consumer Landscape in terms of protecting consumers from scams, unfair trading and unsafe goods. However, it identifies that there is a lack of understanding of the extent of consumer detriment and points out that there has been significant reductions in trading standards resources as a result of Government spending cuts. Further funding reductions are likely to reduce further the Authority’s ability to protect vulnerable local people from unscrupulous rogue traders.

In preparing this report the relevance of the following factors has been considered: financial, legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(4) **Key Decision** No.

(5) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(6) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(7) **OFFICER’S RECOMMENDATION** That the Cabinet Member notes the report.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Appendix 1 – National Audit Office Report into protecting consumers from scams, unfair trading and unsafe goods

This report examines the performance of the UK consumer protection system since our 2011 review, and in the context of the threats currently facing consumers.

Summary

1 UK consumers spend over £1,160 billion a year on goods and services. Confident and active consumers play a key role in driving vigorous competition between firms, which then compete to supply what consumers want at the most efficient price. Consumer confidence is vital for both effective markets and economic growth.

2 Consumer detriment occurs when a customer is accidentally, carelessly or deliberately treated unfairly by a business or trader. It can be caused by a wide range of activities ranging from unfair commercial practices, such as mis-described goods or pressure selling, to scams where criminals operate behind the appearance of a legitimate business.

3 In 2015-16, consumers contacted the Citizens Advice consumer service nearly one million times to seek information on their consumer rights or advice on how to solve specific problems. However, when things go wrong, the effects on consumers can be significant and often include financial loss and psychological impacts; in more severe cases, they can lead to injury or death, for example, from unsafe products. Some 35% of all UK consumers had a consumer problem in 2015. The most vulnerable individuals in society are particularly at risk, for example from being repeatedly targeted by mass marketing scams and rogue traders. Examples of consumer detriment include losses from:

- **Unfair trading.** This is the most prevalent consumer issue, and although generally high volume and low value, can lead to significant individual detriment, for example caused by unfair contractual terms, misleading advertising, no access to redress, or high pressure selling. These problems may often be hidden from the consumer who will be unaware that they have suffered detriment.
- **Mass marketing scams, which are widespread and impact on the elderly and vulnerable.** A typical postal scam victim is 74 years old and living alone. Victims aged between 75 and 79 years lose an average of £4,500 each and many experience psychological problems as a result, requiring the assistance of social services. Criminals typically sell on victims' details, with National Trading Standards recently uncovering a list of over 500,000 names.

- **e-crime, which is the most recorded crime in the UK and can affect anyone.** High-volume low-value frauds, for example copycat websites, can involve individuals paying small amounts of money for a service that is free on the legitimate website. Investment fraud involves criminals defrauding wealthy individuals of large sums of money by selling non-existent investments.
- **Unsafe goods, which can cause injury and fatalities.** Common recent examples include make-up that contained carcinogens, counterfeit medicines, and electrical items which caught fire when charging. Counterfeit items are often sold at huge discounts to the legitimate product and may disproportionately affect the poorest in society.

4 The Department for Business, Energy and Industrial Strategy (the Department) has overall responsibility for consumer policy, with some aspects devolved to the Scottish government. The majority of law enforcement is carried out by local authority Trading Standards services, funded through a centrally distributed revenue support grant (administered by the Department for Communities and Local Government in England and the devolved administrations in Scotland and Wales) and locally raised income such as council tax and business rates. National Trading Standards is funded by the Department and covers regional and national issues. Citizens Advice provides advice and education to consumers, and is the contact point for people who have experienced a problem. The Chartered Trading Standards Institute provides information to businesses on consumer protection legislation. The Competition and Markets Authority uses its consumer powers to tackle market-wide issues to support competition and consumer choice, and has lead responsibility for unfair contract terms and for international consumer issues. Together, these organisations make up the consumer protection system and share responsibilities, including:

- enforcing consumer protection legislation;
- providing information, advice and education to business and consumers; and
- consumer advocacy.

5 Consumer law aims to protect people from consumer detriment. It covers areas such as unfair terms, advertising, aggressive practices, and basic contractual rights. The consumer bodies also use a wide range of other legislation, for example the Fraud Act 2006. Other agencies, such as the National Crime Agency, the Police Service and Her Majesty's Revenue & Customs (HMRC) work with the consumer protection bodies on issues such as trader fraud and imported counterfeit goods.

Scope of the report

6 We evaluated the performance of the UK protection system in our 2011 report *protecting consumers - the system for enforcing consumer law*. The report's findings prompted the government to introduce major structural and legislative changes to the consumer protection landscape. This report examines the performance of the system as a whole in the context of the threats currently facing consumers. It does not evaluate the value for money of the individual bodies that make up the system. It also covers the work of other parts of government where these have a material impact on the work of the consumer protection bodies.

7 We assess:

- the funding and responsibilities of the consumer protection bodies and the changing nature of commerce (Part One);
- how successfully the system identifies consumer threats, and the impact of consumer detriment (Part Two); and
- how effectively the system uses its resources to minimise the occurrence of consumer problems, and how it evaluates outcomes. (Part Three).

8 The organisations that enforce consumer protection law also enforce other areas of law to the benefit of consumers, for example Trading Standards enforces laws on animal health and underage sales, and the Competition and Markets Authority enforces laws on. These are outside the scope of this report, but we treat them as important contextual factors. Consumer advice and advocacy has been devolved in Scotland, and are also outside the scope of this report.

Key findings

Funding of consumer protection

9 **The Department does not routinely cost the consumer protection system but we calculate that it cost £165 million in 2015-16.** Local Trading Standards services, funded at the local level, received £124 million. The Department funds Trading Standards at the national level (£14.8 million), as well as Citizens Advice (£18 million). HM Treasury funds the Competition and Markets Authority, which spent £6 million on its consumer protection work in 2015-16.

Identifying consumer detriment and its impact

10 **There is limited robust data on the overall scale of consumer detriment, but we estimate that consumers lost at least £14.8 billion in 2014-2015.** Detriment is difficult to estimate, in particular because in many cases, for example unfair terms, fraud or counterfeited goods, the consumer may be unaware of the detriment or unwilling to report it. Detriment caused by problems the consumer is aware of costs £10.6 billion annually. Using

available data on doorstep crime, mass marketing scams and counterfeited goods we estimate hidden detriment is at least £4.2 billion. There are no robust data on the overall wider economic impacts of consumer detriment.

11 Consumers are facing increasingly complex and wide-ranging threats, in particular from the rise in e-commerce, and scams are becoming more targeted. The UK's e-commerce market is the largest in Europe and the third largest globally. Consumers often have to give personal data for online transactions, increasing the risks of identity theft and fraud. Resolving problems may be more difficult when traders are based in different jurisdictions. Scams involving extracting personal information from the victim rose 21% in 2015, while Citizens Advice considers that up to one in six products advertised on some e-trading sites are potential scams.

12 The consumer protection bodies have improved data on consumer threats, but significant gaps still remain. Our 2011 report found major shortcomings in intelligence and data systems. Since then National Trading Standards have created a national intelligence team, all regions now have analyst support, and intelligence logs have risen by 70%. All our case study sites considered that the quality of intelligence has improved. However, there are still local authorities with no or few intelligence logs, the proportion of entries on product safety and e-crimes is low (5% and 3% respectively), and there are still issues with accessing other agencies' databases. Furthermore, consumer complaints to Citizens Advice, a critical source of data, have fallen by 18% in the last three years as consumers turn increasingly to social media to complain and self-help online tools.

Addressing consumer detriment

13 The Department has improved the overall co-ordination of consumer protection bodies. Our 2011 report found that the consumer protection system was very fragmented with poor overall system co-ordination. An integrated approach is now even more essential as commerce has become increasingly national and international. The Department created the Consumer Protection Partnership in April 2012, and key bodies now regularly share knowledge and intelligence, and co-ordinate work. The Department also created National Trading Standards to cover national and regional issues and establish system-wide case management.

14 The Department has little control over the majority of resources, making effective system prioritisation difficult. Prioritisation is necessary to use resources cost-effectively to address the highest areas of risk. Some 75% of funding is delivered locally, where local authorities have to balance resources with other services such as social care. We found local authority Trading Standards are incentivised to prioritise local issues, in particular safeguarding, with only around 7% able to organise their service on national priorities. Furthermore, they have to enforce up to 263 different pieces of

legislation, with little direction from government on the relative prioritisation of these.

15 The loss of resource and downsizing of Local Trading Standards services have led to gaps in coverage at the local level. Effective consumer protection relies on sufficient coverage across the local level, in particular to prevent enforcement gaps. Local Trading Standards has lost 56% of full-time equivalent staff since 2009. Twenty services in England have reduced funding by over 60% since 2011 and some now have only one full time officer. The funding of smaller services is no longer sufficient for them to undertake significant enforcement cases, and a number of our case study sites were concerned about the viability of their service. There is no consensus on the minimum service level needed to protect consumers adequately.

16 The system is addressing national and international issues better but long term planning is insufficient. National Trading Standards, which the Department established in 2012, prevented around 345 million worth of detriment since April 2014, with a cost-benefit ratio of around 12.6 to 1. It runs a number of specialist teams which address detriment such as mass marketing scams and the safety of imported products. However, funding of £13.5 million is small set against the size of the problem and annual budgeting prevents proper longer-term planning, with a heavy reliance on short-term staffing arrangements. National Trading Standards was unable to accept any new cases in the last third of the year due to a lack of resources. The Competition and Markets Authority estimates that its consumer enforcement work generates around £74 million of direct financial benefits to consumers annually, at a cost of £6 million.

17 Government's response has not kept pace with the growth in online consumer fraud. The Office for National Statistics estimates that there were 5.6 million incidents of online fraud and computer misuse in England and Wales in the year ending June 2016; the most prevalent recorded crime. Hosted by the City of London Police and funded by the Home Office, Action Fraud, is the UK's national fraud and cyber crime reporting and dissemination centre. However, responsibility for responding is complex and sits with many different parts of government, including with Trading Standards. National Trading Standards has supported cases leading to convictions of 83 defendants with over 60 years of custodial sentences and £400,000 of confiscation orders. However, Trading Standards has lost e-crime expertise at the local level, and has a low profile with National Fraud Intelligence Bureau, receiving around only 5% of the total number of referrals. The National Crime Agency considers that government is being outpaced by cybercriminals.

18 The Department has created opportunities for a more preventative approach to consumer protection. The Department recently introduced

legislation strengthening consumer rights and ability for self-protection when things go wrong, for example, by clarifying the period within which a consumer can return an item, and including new provisions for digital products. The effectiveness of these measures is reliant on consumer and trader awareness of the law, both of which are currently low. The Department has also consulted on giving consumer protection bodies civil fining powers although it has not yet decided on the outcome. The Competition and Markets Authority uses civil fining powers widely to deter businesses behaving anti-competitively in its competition work.

Evaluation of impacts and outcomes

19 There is no system-wide reporting of the impacts of consumer protection work. Individual consumer protection bodies report annually on the impact of their work, but the impact of the consumer protection system as a whole is not measured or reported.

Conclusion on value for money

20 The UK consumer protection system has made progress since our 2011 report and has a framework in place to enable further improvements. The Department has ensured better coordination, in particular by bringing the consumer protection bodies together in the Consumer Protection Partnership, and integrating case management across the system. Furthermore, individual consumer protection bodies have demonstrated that they have achieved good impacts with limited resources.

21 However, the nature of commerce is changing and consumer detriment is increasingly national and international rather than local. The system has not adapted to these changes. The local level, which receives the majority of funding and where the Department has little influence, has suffered from declining status, significantly reduced capacity, and gaps in coverage which leaves consumers inadequately protected. Furthermore, the scale and sustainability of the response at the national level is limited relative to the problem being tackled, and system-wide prioritisation of resources is difficult within the current arrangements. This has left consumers inadequately protected in a number of areas. While the system improvements to date are welcome, the system as a whole has not yet demonstrating that it provides value for money.

Recommendations

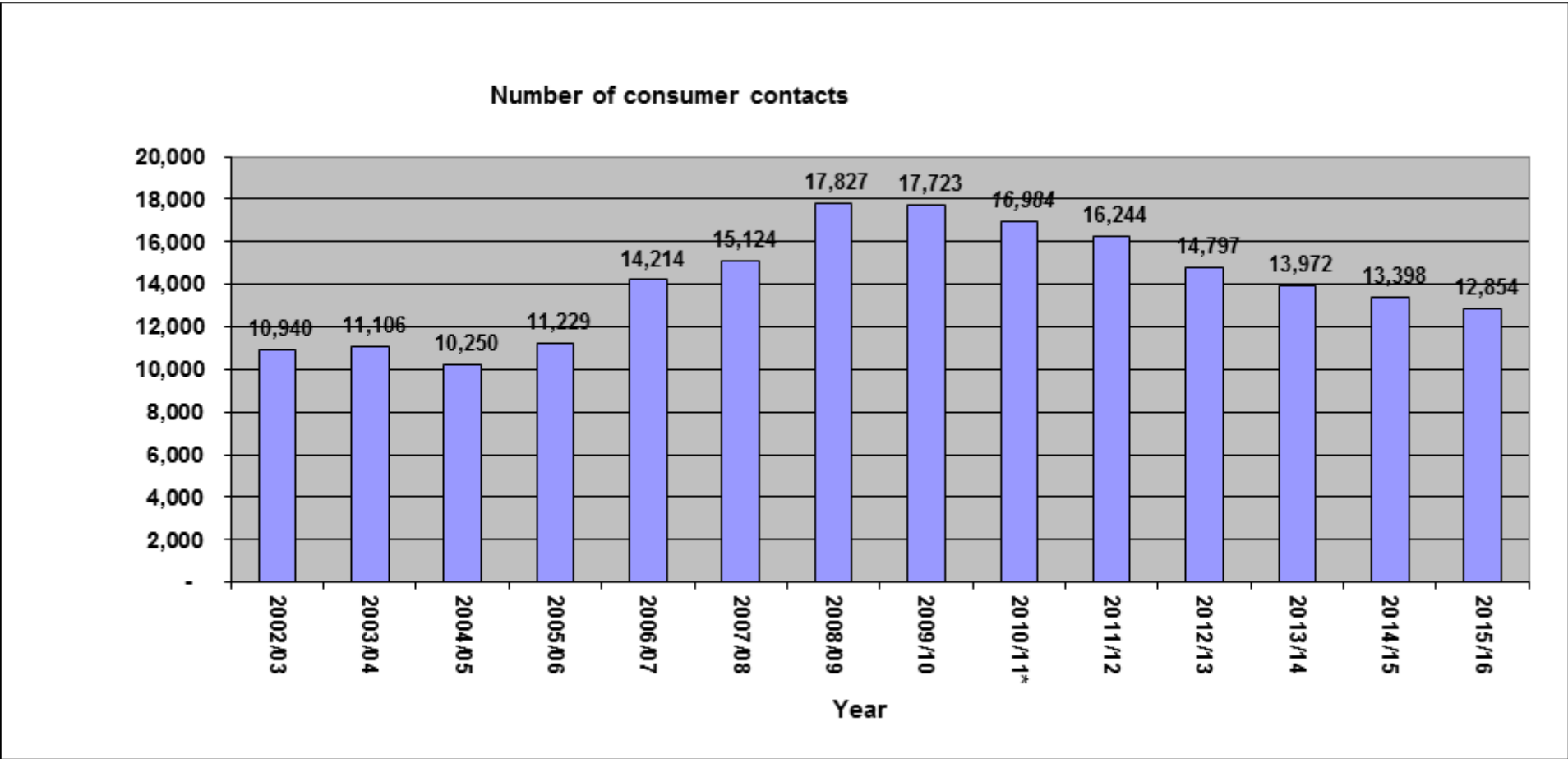
22 Our recommendations are formulated to build on the work that the Department and the consumer protection delivery bodies have done since our last review, and are aimed at promoting greater system coherence across central government departments and local government. Many of these recommendations fall under the responsibility of the Department, but can be taken forward by the Consumer Protection Partnership where relevant, while some recommendations need to be implemented across government more

widely:

- a **The Department should ensure that detriment is estimated and reported regularly in a consistent manner.** This could involve a biennial evaluation commissioned and owned by the Consumer Protection Partnership covering analysis of both, problems that consumers are aware of, and available data on hidden detriment. It will ensure that all bodies have insight on the scale, distribution and trends of consumer problems and can balance the response appropriately.
- b **The Department should work with the Consumer Protection Partnership to continue to improve intelligence gathering and sharing across the system as a whole.** This should involve addressing any barriers to intelligence sharing, and in particular making full use of information from consumer contacts.
- c **The Department should work with relevant departments, and the Department for Communities and Local Government, towards a shared understanding of risks to consumers.** The governance, accountability, and incentives should be aligned with the delivery of outcomes at the appropriate level in line with the risks identified. This should include setting clear and realistic expectations of what each body should deliver, alongside reporting progress, so as to ensure that system priorities are met alongside local priorities. It could also include representation of Local Authority Trading Standards on the Consumer Protection Partnership.
- d **The Department should work relevant departments, and the Department for Communities and Local Government, to ensure that consumer protection skills and capacity are deployed strategically to reflect how and where detriment occurs.** This would help manage gaps at the local level and could include defining what a Trading Standards service is intended to deliver.
- e **In the face of significant funding reductions, the Department should ensure that the most appropriate and cost effective tool or intervention is made by the system as a whole, including new powers where appropriate.** This could involve, for example:
 - Greater use of consumer advice and education to help prevent consumers falling victim to fraud.
 - Further improvements to consumers' ability to resolve complaints directly.
 - The introduction of civil fining powers as a strong deterrent against unfair trading (such as those used in the competition regime).

- f **The Department should ensure that its delivery bodies can plan for a longer period than annually.** This should help build resilience into the system to facilitate better staff development and give greater confidence in dealing with cases that are expected to last longer than a year.
- g **The Department, together with the Home Office and other government departments, should coordinate further their separate activities addressing consumer fraud.** In particular the Department can raise the profile of the work of Trading Standards. This should ensure a more coherent approach to dealing with consumer fraud, including clear roles in identification, response and reporting of detriment according to relevant skills, powers and resources across government, with fuller recording of the detriment identified and prevented.

Appendix 2 Number of Derbyshire Residents seeking advice regarding unsatisfactory goods or services



*estimate