

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

07 June 2018

Report of the Strategic Director – Commissioning, Communities and Policy

MODERNISING CONSUMER MARKETS GREEN PAPER

1 Purpose of the report:

To inform the Cabinet Members of the publication of the Modernising Consumer Markets Green Paper and to seek approval to respond to the Government consultation on the proposals.

2 Information and analysis:

On 11th April 2018 the Secretary of State for Business, Energy and Industrial Strategy (BEIS) published a Green Paper¹ seeking views on how to ensure that the regulatory, competition and enforcement regimes are suitable for the modern economy and the modern consumer. The Green Paper sets out three principles for responding to the challenges and opportunities of modern consumer markets:

- *competition should be central to our approach and the Government should always look to remove barriers to competition where they arise,*
- *consumers should benefit from new technology and new business models, with competition and regulation working together in the consumer interest,*
- *consumers should be able to get redress when things go wrong and consumer rights are effectively enforced.*

The Paper is in five chapters relating to the following:

- Chapter 1 - Competition drives better consumer outcomes
- Chapter 2 - Better outcomes in regulated markets
- Chapter 3 - Digital markets that work for consumers
- Chapter 4 - Improving enforcement of consumer rights
- Chapter 5 - A regulatory and competition framework for the future

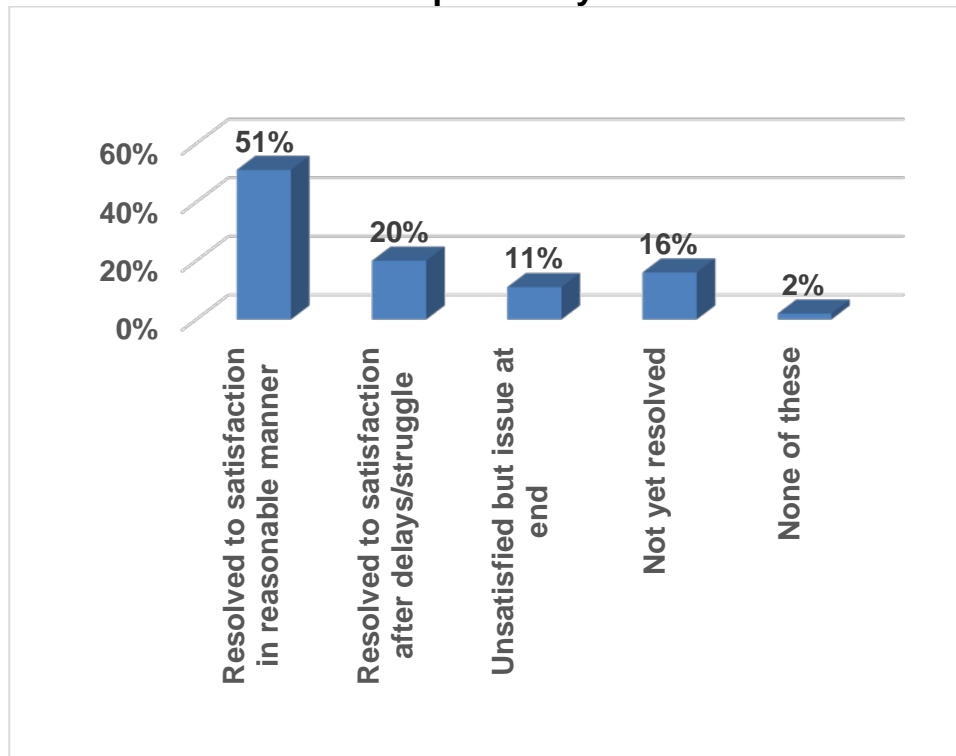
The Chapter most relevant to Trading Standards Services is Chapter 4, improving enforcement of consumer rights. The Government's objective is to ensure consumers can easily get redress when things go wrong and that consumer rights are effectively enforced. As such, BEIS are seeking views on:

¹ See link: <https://www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets>

- how to improve consumers' awareness of alternative dispute resolution and their experience of the process,
- how to improve consumer access to alternative dispute resolution,
- how to support local and national enforcers to work together to protect consumers.

In terms of consumer redress, the Green Paper reports a Citizens Advice study dated 2016 entitled, '*Consumer detriment: counting the cost of consumer problems*'² which found that thirty five per cent of consumers experienced at least one consumer problem in 2015, but only half of those who pursued a complaint resolved their problem satisfactorily and in a reasonable manner, as illustrated by Chart 1 below. The Citizens Advice Consumer Service (CACS) was set up to provide advice and support to members of the public who were dissatisfied with something that they had bought, but complaints to this service have fallen.

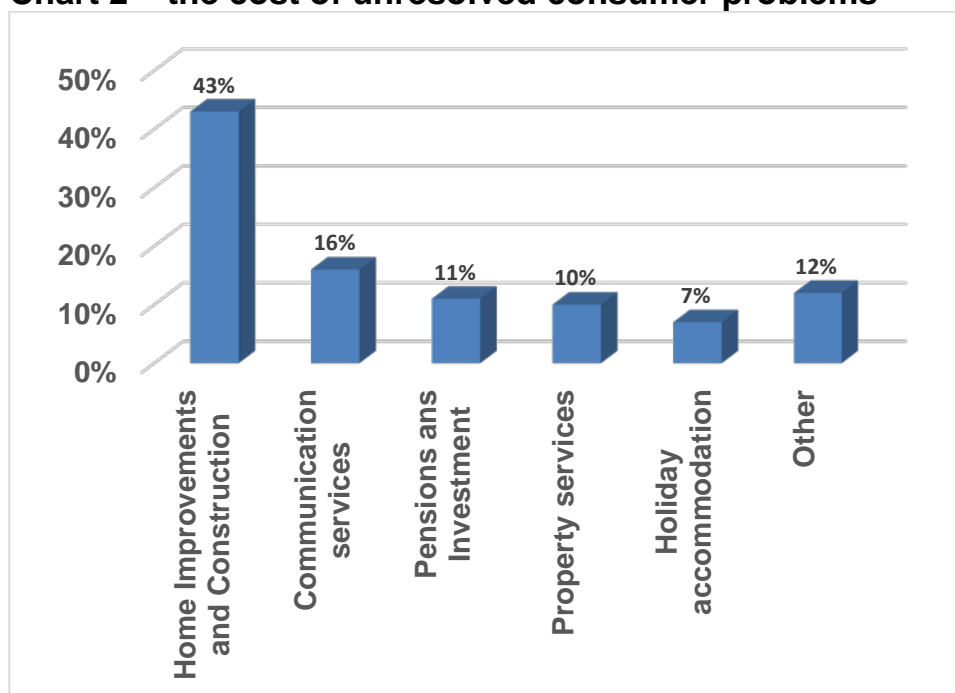
Chart 1 - Outcome of complaints by consumers



Research by BEIS also suggests that tens of thousands of consumers ultimately have to go to court to seek to resolve their complaint. Of those that responded to a BEIS survey, 47% said that this was because the business had refused to participate in a cheaper, quicker alternative dispute resolution process. Many consumers lack the confidence or capability to use the courts and may be forced to abandon a legitimate complaint. The cost of unresolved complaints is estimated to be £10.6b per year with home improvements and construction forming the largest sector of unresolved problems as shown in Chart 2 below.

² <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/consumer-detriment-counting-the-cost-of-consumer-problems/>

Chart 2 – the cost of unresolved consumer problems



The Green Paper poses the following questions as part of its consultation:

1. How can we improve consumer awareness and take-up of alternative dispute resolution?
2. What model of alternative dispute resolution provision would deliver the best experience for consumers?
3. How could we incentivise more businesses to participate in alternative dispute resolution?
4. Should there be an automatic right for consumers to access alternative dispute resolution in sectors with the highest levels of consumer harm?

Chapter 4 also addresses the need to strengthen the system of public enforcement.

Public enforcement of consumer law is an essential element of consumers' trust in markets and also helps maintain effective competition, by ensuring a level playing field. This includes acting on the systemic and hidden detriment that individual consumers have neither the capacity nor incentive to address. It is the backstop to protect consumers in instances of collective harm, such as misleading claims, use of unfair terms, the sale of unsafe products and instances of fraud. Tackling such practices is also important to business because they are unfair trading practices and can sometimes undermine consumer confidence in an entire sector.

The Green Paper identifies that many of the issues facing local authority trading standards services, such as mass marketing scams and the sale of fake and counterfeit goods, are national rather than just local. It suggests that despite the fact that, according to the National Audit Report, at least £4.2b of the total

estimated consumer harm of £15b is national rather than local, expenditure on tackling consumer harm does not reflect this as 75% of the total resources rest with Local Authorities. It further suggests that:

Local Authorities fund these departments which prioritise enforcement in areas which support local objectives, such as discouraging anti-social behaviour and supporting older people.

The Paper recognises that *'the system of public enforcement is under considerable pressure...and the NAO has 'raised concerns about its sustainability'* and pointing out that two-thirds of English local authorities have reported that they do not have the expertise to cover fully the range of statutory duties required of trading standards teams. Online and economic fraud, product safety and use of unfair terms are specifically identified as being challenging for local authorities and it is suggested that incentives to take on such cases – particularly cross-boundary investigations – are weak. It is also acknowledged that the National Trading Standards Board, which was established following the Consumer Landscape Review, is not a public body and therefore has no power or duties to protect consumers, nor is it accountable to Parliament.

To address these concerns, Government is considering establishing a national body with statutory powers and duties that could provide leadership and specific expertise and lead complex national enforcement cases where necessary. As with the current model, it suggests that there should be a close relationship with local authorities to help prioritise and coordinate responses to national threats and ensure that a wider range of consumer problems such as misleading pricing and unfair terms are tackled at local and national level.

The Green Paper makes reference to the new Office for Product Safety and Standards (OPPS) that was established in January this year by BEIS in response to the Grenfell tragedy and following a report by Lynn Faulds Wood into the safety of consumer products. As well as absorbing the responsibilities of Regulatory Delivery, the new Office was established to provide dedicated expertise to lead on national product safety challenges which will ensure that consumers receive a high level of protection from unsafe goods.

The specific question that Government has posed as part of the Green Paper consultation is:

What changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers?

The final part of Chapter 4 sets out the Government's intention to introduce legislation to give civil courts the power to impose financial penalties on companies for breaches of consumer law. This is seen as an alternative to instigating proceedings through the criminal courts with the expectation that it will speed up the process of bringing businesses into compliance and also reduce costs. There is also a commitment to improve cross border enforcement to protect consumers when they buy goods from abroad by:

- improving global standards of consumer protection;
- improving cross-border enforcement outcomes to protect UK consumers from harm; and
- ensuring consumer views and protections are a key part of Government negotiations for new Free Trade Agreements.

The deadline for responses to the consultation is 4 July 2018.

3 Considerations:

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 Background Papers:

Held on file within the Commissioning, Communities and Policy Department.
Officer contact details – Robert Taylour, extension 39830.

5 Key Decision:

No

6 Call-in:

Is it required that call-in be waived for any decision on this report?

No

7 Strategic Director Recommendation:

That the Cabinet Member:

- notes the publication of the Modernising Consumer Markets Green Paper.
- approves a formal response to the Government consultation on proposals to modernise consumer markets.

Emma Alexander
Strategic Director – Commissioning, Communities and Policy