

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

20 JUNE 2018
ALL WARDS

MODERNISING CONSUMER MARKETS CONSUMER GREEN PAPER

1 Summary

- 1.1 The Government recently published a green paper “Modernising Consumer Markets”. The paper proposes a range of approaches aimed at ensuring the UK’s regulatory framework meets the challenges of modern consumer markets, supporting both innovation and the rights of consumers.
- 1.2 The paper poses a series of questions for consultation and welcomes an input from all relevant parties.
- 1.3 This report focuses primarily on Chapters 3 and 4 of the document, directly relevant to Trading Standards work “Digital markets that work for consumers and improving enforcement of Consumer Rights”.

2 Recommendations

- 2.1 That the report be noted.
- 2.2 That a formal response to the consultation document “Modernising Markets” Green Paper be submitted to the Government based on the proposed responses to questions 9, 15 and 16 which are directly relevant to the work of Birmingham Trading Standards and which are contained in the appendix 1 to this report.

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3 Background

- 3.1 The Green Paper taken as a whole, emphasises the need for an enterprising Economy, built on invention, innovation and competition with the view being that competition between firms will drive productivity with long term economic growth, which will inevitably benefit consumers.
- 3.2 The document covers a wide range of issues which affect a number of industry sectors.
- 3.3 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.
 - Consumers should benefit from new technology and new business models.
 - Consumers should be able to get redress when things go wrong - and consumer rights are effectively enforced.
- 3.4 The first chapter of the green paper looks at ensuring competition in the modern markets and the role played by the Competition and Markets Authority (CMA).
- 3.5 The second chapter looks at the regulated markets such as utilities, telecommunications and financial services and how to make data portability work best for all consumers.
- 3.6 In this report however we will focus only on the key proposals most relevant to trading standards with an emphasis upon the proposals aimed at strengthening consumer rights and enforcement powers for regulators in respect of consumer law issues.
- 3.7 In summary, the Green Paper seeks views on the following issues:
 - How best to improve consumers understanding of terms and conditions (T&C's).
 - How best to improve the system of alternative dispute resolution (ADR).
 - Helping consumers benefit from their data and remain protected when they buy and sell online.
 - How best to support enforcement authorities in protecting consumers and strengthening their enforcement powers.

4 Digital Markets Working for Consumers

- 4.1 Chapter 3 of the paper looks at implications of the increasing digital economy and data portability and what approaches the CMA could take to ensure effective completion.
- 4.2 However in this chapter the paper also highlights an interesting issue that of increasing consumer to consumer transactions via online platform market places.
- 4.3 Whilst there are considerable consumer protection measures available for consumer buying from traders, such as goods should be satisfactory quality, under the Consumer Rights Act 2015, there is very little provisions for consumer to consumer transactions. Goods should still be as described, however consumers may not be aware of the difference in their rights when something goes wrong.
- 4.4 Should there be some sort of legal responsibility placed on the host platform provider or should additional rights be introduced for consumers to consumer transactions. Should for example consumers be required to clearly state the condition of the item in the description and highlight any defects or that repair work is necessary. This could particularly be an issue in higher value goods such as electrical goods or second hand cars.
- 4.5 The paper poses the question is the legal framework that covers consumer to consumer transactions appropriate to promote consumer confidence.
- 4.6 The recommended response from your Committee agrees that this area does need to be addressed to give consumers, who may well be from lower income groups, additional protection. Exploration should also be sought as to whether the host platform could be legally made to bear some liability or responsibility.
- 4.7 The Green Paper also looks at issues surrounding unfair terms and conditions.
- 4.8 There are concerns that consumers do not always understand what they have agreed to when accepting a contract, typically terms and conditions of sale (T&Cs). The suggestion is that businesses should be encouraged to use short and simple T&Cs as they are more likely to be understood by consumers as well as to undertake regular reviews to ensure that consumers can understand the key facts.
- 4.9 The Green Paper refers to studies that have shown that the way in which T&Cs are presented can significantly improve consumer comprehension and seeks views on whether businesses in certain sectors should be required to ensure that there is a minimum level of comprehension.
- 4.10 Many businesses are not familiar with the law in relation to unfair terms. Work is therefore ongoing, to improve compliance and reduce the use of unfair terms in consumer contracts, typically concerning deposit and advance

payments, cancellation charges, exclusions of liability and asking customers to agree to privacy rules/data use. The Paper primarily cites the role played by the CMA in this area.

5 Improving Enforcement of Consumer Rights Alternative Dispute Resolution

- 5.1 Chapter 4 of the paper looks at ensuring consumers are able to easily get redress when things go wrong and that consumer rights are effectively enforced.
- 5.2 The Green Paper considers alternative dispute resolution (ADR) schemes in the non-regulated sector to resolve civil disputes without the need to go to the civil courts.
- 5.3 In non-regulated markets where ADR is voluntary, such as general retail, research has shown that very few businesses participate in the ADR process in order to try and resolve disputes with their customers without going to court. It is reported, for instance, that businesses agreed to participate in only 6% of cases received by The Consumer Ombudsman.
- 5.4 However currently because ADR's in the non-regulated sector are voluntary there is no compulsion on traders to join. It is evident that areas that attract the greatest level of complaints and greatest consumer detriment do have a prevalence of 'problem' traders.
- 5.5 In sectors such as building or housing repair or second hand car trade consumers are often left dealing with traders unwilling to fulfil their obligation under the Consumer Rights Act 2015. Often it not even clear who is the owner of the business or a proper address so pursuing a civil action in court is fraught with difficulties.
- 5.6 The Government is consulting on how to make ADR more accessible and simpler for consumers, and how to incentivise more businesses to participate in ADR.
- 5.7 It has asked for views on whether businesses in non-regulated sectors should be given a choice of ADR provider amidst concerns that it confuses consumers, and would like to understand the challenges faced by groups of consumers, particularly vulnerable groups of consumers, when considering ADR.
- 5.8 Consumers are often forced to abandon legitimate complaints and the Government believes that mandatory ADR should be considered for sectors where there are high levels of high value complaints such as second hand cars and home improvements.
- 5.9 The recommendation for your Committee response is that joining a ADR scheme should be made mandatory in problem sectors giving consumers extra confidence that they have a reasonable avenue for redress when things go wrong.

6 Strengthening System of Public Enforcement

- 6.1 The Government recognises public enforcement of consumer law is an essential element of consumer trust in the markets and maintaining a level playing field.
- 6.2 Public enforcement bodies such as trading standards play a key role in protecting consumers from collective harm, such as misleading claims, use of unfair terms, use of unsafe products and instances of fraud.
- 6.3 The paper also recognises significant change in the market with the ever increasing trend towards online shopping.
- 6.4 Currently local authority trading standards departments are the primary enforcer of consumer law and have 75% of total resources. However this is reliant on local authority funding and these prioritise local objectives.
- 6.5 Funding of local authority trading standards has decreased significantly over the last 7 years. A Chartered Trading Standards Institute survey in 2016 reported total GB budget for trading standards has fallen from £213 million to £124 million, since 2009, resulting in a 53% cut in staff. The situation locally in Birmingham shows front line Trading Standards staff had reduced from 57.7 in 2010 to 18.3 in 2018/19.
- 6.6 The paper highlights the role of National Trading Standards (NTS) in improving local authorities' capacity to respond to the increased level of regional and national consumer detriment issues. In the last three years NTS has worked with local authorities with a core budget of £40m. An example cited is the eCrime team funded by NTS looking at national on line scams such as copycat websites and other further online frauds. Local Trading Standards have processes for escalating issues of regional and national importance to NTS. The NTS does not have enforcement powers itself.
- 6.7 Locally a recent example was when NTS recognised the role played by Birmingham Trading Standards in tackling Hajj Fraud and provided funding to tackle significant fraudulent travel agents operating nationally and to share best practice with other local authorities.
- 6.8 Another example is regional intelligence team tackling regional and national scams and frauds the Central England team being hosted by Birmingham.
- 6.9 Trading Standards adopts a Intelligence led approach, and sharing intelligence with the other Central England Local Authorities (CEnTSA) identifies traders and trade sectors of most concern. Resources locally and regionally can then be prioritised and focused on those areas most concern. In some cases the the Regional Investigations Team, funded by NTS , is tasked to instigate investigations , whilst on other occasions request is made via CEnTSA for additional funding for resources from NTS.
- 6.10 More recently the Government has set up the Office of Product Safety and Standards (OPSS) which it is intended will provide a dedicated expertise to

lead on national Product Safety challenges. It will, where necessary, bring together technical and scientific support to coordinate and support the activities of local authority Trading Standards. In the longer terms consideration will be given to making the OPSS an independent body

- 6.11 The Government wants to ensure that the enforcement regime in relation to consumer protection issues provides a robust response to both local and national threats.
- 6.12 The consultation question asks what changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers.
- 6.13 The recommended response from your Committee recognises the role of NTS and looks forward to engaging with the new OPSS. However emphasises the need for Government to provide additional funding for over stretched Local Authority Trading Standards. NTS's budget is limited and escalating regional and potentially national issues for additional funding and resources are not always successful.
- 6.14 The recommended response also requests the government to recognize the huge range of nearly 250 pieces of legislation enforced by Local Trading Standards and that through NTS or BEIS should also provide funding for training in areas where skills gaps have developed with reduction in staff.

7 Consultation

- 7.1 The consultation document sets out 21 questions and is seeking responses from consumer bodies, academics, businesses and enforcement. This report is recommending responding to questions 9, 15 and 16.
- 7.2 The consultation period on the Green Paper closes on 4 July 2018.
- 7.3 We understand that the National Trading Standards (NTS) and Association of Chief Trading Standards Officers (ACTSO) are preparing a joint response. This is expected to be a more detailed response including some of the issues not addressed within this report.

8 Implications for Resources

- 8.1 There is no immediate implication; Trading Standards would currently continue to be accommodated within the resources currently available to your Committee.

9 Implications for Policy Priorities

- 9.1 Within Regulation and Enforcement Our Mission Statement is - locally accountable and responsive fair regulation for all – achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors.
- 9.2 The proposals in the Green paper also reflect existing trading standards contribution to the “succeed economically” strategic outcome, ensuring that all traders conduct their business in a fair and equitable trading environment.

10. Public Sector Equality Duty

- 10.1 The recommendations contained in this report will not have any effect on any of our existing duties under the Equality Act 2010

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Modernising Consumer Markets Consumer Green Paper April 2018

BIRMINGHAM TRADING STANDARDS - MODERNISING CONSUMER MARKETS – CONSUMER GREEN PAPER CONSULTATION

REPONSES TO QUESTIONS - 9, 15 and 16.

9. Is the legal framework that covers consumer -to-consumer transactions appropriate to promote consumer confidence?

It is evident that the advent of online sales platforms such as eBay - more consumers are purchasing goods from other consumers. We agree that protections for such sales are insufficient and we welcome additional legal protection for sales of this nature, particularly in relation to high value goods such as used sales/ electrical/white goods – especially as more often than not, it is consumers that are on low incomes that purchase from such sources.

15. Should there be an automatic right for consumers to access alternative dispute resolution in sectors with the highest levels of consumer harm?

We would agree with such a proposal and would support any movement towards automatic ADR.

In Birmingham as probably in most other Trading Standards authorities, we have high levels of complaints from consumers concerning both used car sales from independent car sales traders and complaints against builders.

These problematic traders would generally have no intention of joining such schemes however if joining such a scheme was a legal requirement then this would clearly benefit consumers and give them added protection.

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

We in Birmingham recognise the contribution from NTS and welcome the establishment of the new Office for Product Safety & Standards and we look forward to engaging with them as and when the need arises concerning significant safety issues.

However both NTS and Local Trading Standards need to be sufficiently funded to effectively protect consumers. The advent of on line trading has presented increasing opportunities to mislead or defraud consumers. New legislation places ever increasing demands on already over stretched staff.

The Government could consider providing direct funding to Local Trading Standards for core trading standards functions to address problem trade sectors or in areas particularly where most vulnerable consumers have been targeted.

The Government could also look at providing greater funding directly to regional bodies such as Central England Trading Standards Authorities for tasking the regional investigations teams so they have greater capacity to address more widespread complex frauds and scams.

The Government also needs to recognise skills gap that has developed with the reduction in staff and take steps through the national bodies to fund additional training to cover the 250 or so pieces of consumer legislation that are currently enforced.