

# POWER TO THE PEOPLE?

FORENSIC AND LITIGATION  
CONSULTING

CORPORATE FINANCE/  
RESTRUCTURING

► **ECONOMIC CONSULTING**

TECHNOLOGY

STRATEGIC COMMUNICATIONS

## SUMMARY

This paper provides our thoughts on BIS's consultation on empowering and protecting consumers. Our view is that there is an excessive focus on the "how" and not enough on the "what". Importantly, given this is a consultation about consumers, it is not apparent that consumers have been asked about what really matters to them.



**F T I**<sup>™</sup>  
CONSULTING

CRITICAL THINKING  
AT THE CRITICAL TIME<sup>™</sup>

# POWER TO THE PEOPLE

## Introduction

This paper provides some thoughts on the Department for Business, Innovation and Skills' ("BIS") consultation on institutional changes for the provision of consumer information, advice, education, advocacy and enforcement, "empowering and protecting consumers" ("the Consultation"). The Consultation asks forty questions; in this paper we focus on just a few of these.

*The government believes in handing power over to people ...*

We believe that it is always right to try continuously to improve consumer information, advocacy and enforcement. In doing that we should start from where the consumer is. Our guess is that they want a system that is clear and works, where they know where to go to with a complaint, that delivers back to them in terms of a remedy and is a system that is tough and speedy where wrong-doing has been found. They need to have confidence that the system works. In that sense BIS's objectives for change are sensible; it wants to:

- reduce complexity;
- increase strength by improving consumer enforcement; and
- make provision for more cost effective and efficient delivery, closer to the consumer front-line.

However, we are also clear that government should not re-design the architecture unless it is sure that things will improve. As is the case with most organisational redesigns, something is typically lost so much care is needed when proposing and implementing change.

*...but does not appear to have asked the people what they would like to see*

There is a danger that this is yet another reorganisation proposal, coming very soon after others. Did these fail – what is the evidence? The National Consumer Council, Consumer Voice (ultimately called Consumer Focus), Energywatch, Postwatch, Water Councils, and Ofcom Consumer Panel – a list of organisations that were the subject of previous reviews. We therefore need to be sure of the need for further change following previous appraisals and reorganisations of the consumer policy landscape in 2004 and 2008. Overall, we consider that the Consultation has too much about the "who" rather than about the "what". And, we were surprised that there appears to have been little systematic consultation with consumers on some of the matters. Perhaps BIS would have benefited from running a few focus groups with real consumers rather than solely consulting with stakeholder organisations and other professionals. A plain English summary consultation document aimed directly at consumers would also be useful.<sup>1</sup>

*Overall the policy feels a little like a rationale for a pre-decided reduction in quangos and a need to cut spending*

Overall the policy feels a little like a rationale for a pre-decided reduction in quangos and a need to cut spending, allied with the real politick of Whitehall (so that somewhat irrationally - from a consumer point of view - financial services, health and other public services - are outside the proposals).

## Citizens Advice

Perhaps the most daring of the proposals is to put all consumer information and advocacy functions under Citizens Advice (along with abolishing Consumer Focus). Citizens Advice has a great brand but it is, as it describes itself,

*"...the charity for your community".*

Regarding its functions, it states:

*"The Citizens Advice service helps people resolve their legal, money and other problems by providing free, independent and confidential advice, and by influencing policymakers."*

Much has been debated on the differences between consumers and citizens and we do not focus on such debates here but we do note that there are such differences and ask whether BIS should be inserting consumer matters into an institution that primarily deals with citizen matters.<sup>2</sup>

<sup>1</sup> BIS may have held focus groups and/or commissioned a consumer survey but this is not apparent in the consultation.

<sup>2</sup> Ofcom, for example, was subjected to significant criticism from many stakeholders in its early days after it referred to the "citizen-consumer".

*Any measures that streamline access points and increase brand awareness will be beneficial. However, this objective could surely be met simply by developing a simple one-stop front end called “consumer-rights.gov.uk”*

More practically we conjecture that most people see Citizens Advice as a place to get advice on welfare, housing, finance, and so on, with a bit of small claims as well. It does not have a brand associated with consumerism nor is that a particular specialism of its personnel and management. Indeed the structure of CAB (strong local branches with a degree of autonomy) means it is good at dealing with very local issues and interacting with local agencies (as well as the Department for Work and Pensions etc.) but perhaps less well resourced when the issue revolves around the behaviour of a major corporate at a national scale.

Clearly, at the end of the day it is important that consumers know where to turn to for advice and that that route is simple. Arguably today’s regime doesn’t make the grade – it is confusing for those not in the know. Any measures that streamline access points and increase brand awareness will be beneficial. However, this objective could surely be met simply by developing a straightforward one-stop front end called “consumer-rights.gov.uk” which then directed consumers easily to the right, specialised agency or institution.

The Consultation also refers to reinforcing a simple message to consumers,

*“If you need publicly-funded information or advice, go to Citizen’s Advice”.*

In our view, this may already be complicating matters – will consumers understand the difference between public vs. private in respect of funding the information and advice?

Finally, it will be imperative not to undermine or confuse the public in respect of the role that Which? plays in such provision. Which? probably has the strongest brand name of all in this area.

### **Regulated industry unit**

While the Communications Consumer Panel (previously Ofcom Consumer Panel) managed to fight off its transfer, along with others, into Consumer Focus during the last reform of the consumer landscape in 2008, this time its days are numbered.

The Consultation advocates the transfer of all regulated sector consumer advocacy and information functions to a “Regulated Industries Unit” and then placing that within Citizens Advice. This proposal may be the most controversial. That we have sector-specific regulators demonstrates the need for specialist knowledge and skills. What is most important: synergies and critical mass in consumer matters or the sector itself? We would argue the latter. While expertise in consumer matters is extremely important, we believe that sector expertise should be maintained within sector-specific organisations. While much depends on institutional design, funding and even personalities, the consumer voice is in real danger of having less effect if it is all swallowed up in a larger, amorphous body with plenty of other tasks and priorities. Arguably, the consumer voice may be louder within a sector-specific unit. Moreover, how will those in the Regulated Industry Unit ensure that their sector skills are maintained?

### **Consumer protection and enforcement**

The National Audit Office (“NAO”) was extremely critical about the provision of consumer enforcement – that the current system does not deliver value for money; that it is fragmented, does not function properly, lacking accountability and good governance.<sup>3</sup> Moreover, the NAO also stated that compared to the scale of consumer detriment, expenditure on enforcement is low.

The current system of consumer enforcement involves Trading Standards (“TS”) officers and the Office of Fair Trading (“OFT”). These deal with, respectively, local and national matters, although TS does handle some national cases. BIS also provides some support with regional and national schemes. Accountability for cross-boundary and national matters is considered by some to be unclear. As the system is primarily funded by Local Authorities, currently, owing to austerity measures, such funding is threatened with cuts – an estimated reduction in spending of at least £49 million by 2014. BIS’ view is that cross-boundary and national matters may be disproportionately affected and that a strategy for the longer term is required.

What should not be forgotten is that the enforcement landscape is extremely complex; many organisations may be involved – not just government institutions and local authorities but also others such as the police and the Serious Organised Crime Agency.

*May the Regulated Industry Unit lead to the atrophy of important sector expertise?*

*The NAO makes the case for improvements to the enforcement regime*

<sup>3</sup> See [http://www.nao.org.uk/publications/1012/protecting\\_consumers.aspx](http://www.nao.org.uk/publications/1012/protecting_consumers.aspx)

*The Consultation considers several organisational structures to Improve enforcement*

BIS is considering transferring most or all of the OFT's enforcement powers (and its estate agency function) to TS. The key question here is whether enforcement will be stronger or not as a result of this change? Launching the consultation Consumer Minister Davey claimed that:

*"Trading Standards are trusted by the public to do a good job in enforcing consumer law and standing up for consumers"*<sup>4</sup>.

While TS does have some brand recognition amongst consumers, we doubt that most of the public has a detailed understanding of what TS does. However, a key issue is whether TS has the capability to do a good job; as Robert Peston said:

*"The big question is whether local trading standards offices will have the resources or expertise to really challenge the behaviour of giant businesses"*<sup>5</sup>.

It may be that the bringing together of the various TS groups (the local authority trading services, the Trading Standards Institute, the Association of Chief Trading Officers etc.) will help, but the case is not made.<sup>6</sup>

Government has considered a range of structural options and favours the creation of a new Trading Standards Policy Board ("TSPB"), led by Chief Trading Standards Officers representing their regions. This would be accountable to BIS and ensure that national and cross-border matters are referred to (presumably strengthened) TS and that structural market matters go to the newly created Competition and Markets Authority ("CMA"). The TSPB, CMA and Citizens Advice would form a partnership and share resources. Throw in some clear lines of accountability and at the end of the day, TS builds up long-term credibility. These all sound fine, although, as we discuss in the "people" section below, we do have some concerns about how this may work out in practice.

The second choice option is the less intrusive and well-intentioned creation of the Joint Enforcement Board (JEB). This is not a new institution as such, but it does add another layer to the landscape. Here both CMA and TS would retain their existing powers but the JEB will decide whether CMA or Trading Standards should pursue cases. May this just add to existing confusion? Or indeed delays, particularly if its operation in the early days was not as smooth as expected.

*A practical problem emerges from the splitting of consumer from competition policy which is whether consumers and other potential complaints know where to go*

Any opportunities between enforcement agencies to cut costs should be welcomed; by taking advantage of shared back-office functions including call centre synergies; although the quality of call centre communications must not be undermined. One possibility could be for Which? to become involved; its brand and reputation as a consumer champion makes it a possible candidate for having a principal role in enforcement, at least at the front end.

Given the criticism of the NAO, the threatened cuts to funding together with the inherent complexity of the current regime, this is a key area for consumers and one that BIS has to get right. This is an area where more consideration of both the "what" and the "who" is required, sequentially.

It is hoped that maintaining the market function within the competition authority will help the authority think more about consumers. This we believe is important – we do not want a regime that is competition for competition's sake. Our view is that consumer and competition matters are intertwined. If they are separated, may there be a loss of synergies and increased costs?

For example, it may be important to retain skills in behavioural economics at the CMA to ensure the consistent application of consumer remedies to competition problems. Not all agree – an alternative view is provided by Mark Armstrong:

*"Robust competition is the best single means for protecting consumer interests."*<sup>7,8</sup>

However, a practical problem emerges from the proposed splitting of consumer from competition policy which is whether consumers and other potential complainants know where to go if they are not getting a service they think is decent. Indeed will those eligible to make a super complaint have to decide in advance who to complain to – and what happens if it turns out that the solution to the problem they complained about lies in the hands of the other leg of the system? Will the distinction between structural market conditions vs. consumer law matters always be obvious? Indeed, may such distinctions always be possible, thereby delaying complaint investigations as they arrive at the "wrong" institution.

<sup>4</sup> BIS press notice 21 June 2011

<sup>5</sup> BBC Business news online 14/10/10.

<sup>6</sup> See Hansard Ministerial Statements, 21 June 2011, column 3WS

<sup>7</sup> Mark Armstrong, "Interactions between Competition and Consumer Policy", Competition Policy International, Volume 4, No.1 (Spring 2008).

<sup>8</sup> Timothy Muris, "The Interface of Competition and Consumer Protection", Paper presented at Fordham Corporate Law Institute's 29<sup>th</sup> Annual Conference on International Antitrust Law and Policy, New York (Oct. 31, 2002).

## Consumer Codes

*It is disappointing that the proposals for consumer codes have not been developed further*

Perhaps not one of the most eye-catching proposals in the Consultation, but BIS's proposal on consumer codes is a very important one. Since 2001, the OFT has operated a system of consumer codes – the Consumer Codes Approval Scheme (“CCAS”). Around ten codes are in process and ten have been approved. OFT approval is perceived to be valuable to the companies that are members of the scheme.<sup>9</sup>

BIS states that given its other proposal, to create a single competition authority, the CMA,

*“A continuing role in consumer codes approval does not seem appropriate for the CMA.”*

This reinforces BIS's view that the CMA's focus is more competition; less consumer. BIS has yet to come up with a preferred option for the future – it is considering developing further its “Kitemark” scheme, a scheme operated by TS or the possibility that Which? gets involved. Consumer codes in our view are a simple and effective way of giving consumers confidence and have gained traction partly through having such a strong, semi-governmental brand as the OFT associated with them and it is disappointing that this area has not been developed further.

## People

In proposing changes to organisations – their design, their powers, responsibilities and accountability - it is important that the “people” angle is not relegated down the list. How effective the various functions are will depend, to a large extent, the leadership and its supporting personnel. Consideration needs to be given to possible clashes of cultures, skills, career paths and the attractiveness of the various organisations to professional economists, lawyers, and policy experts. Will TS offer a good career path? How best to deliver adequate training and ensure cross-fertilisation of ideas, skills and sectoral knowledge. Pay structures may also be a thorny issue, particularly when merging front-line Citizens Advice people with back-office professionals. Moreover, what is the brand appeal of Citizens Advice and TS to the requisite professionals? Again, we do not question the capabilities and professionalism of these organisations; we just note that they are very different to those additionally required under the proposed future regime.

## Conclusions

Making sure that our consumer framework works as effectively as possible is crucial for consumer and citizen welfare but also for ensuring that we can pursue economic growth - empowered and informed consumers drive innovation, and the proper allocation of resources. Such a policy is so important and the potential gains so large, that this, rather than targets on the number of quangos, or some small up-front cash savings should dominate policy development.

So far BIS has not shown that this is the case despite some of the proposals having potential to improve the situation. We look forward to the government making its case more strongly, as we go forward.

We are not convinced that Citizens Advice is the best place for consumers to go for consumer information, advocacy and education nor the professionals that serve them. This is not to disrespect the excellent job that Citizens Advice does. But it is a very different type of service. Moreover, it would be a disaster if the quality of its current service was negatively affected as a result of the implementation of BIS' proposals. At the end of the day, the big question is whether the proposed new system improves the experience of consumer following an over-priced car repair or some sub-standard building work?

*September 2011. The views herein are those of the authors alone and are not necessarily the views of FTI Consulting, Inc., its subsidiaries and affiliates or the other professionals at FTI Consulting, Inc., its subsidiaries and affiliates.*

*At the end of the day, will the proposed new system improve the experience of consumer following an over-priced car repair or some sub-standard building work?*

<sup>9</sup> Arguably the OFT also has a strong brand amongst consumers, even if they are not completely sure about what the OFT does.

## About the authors



Alison has considerable experience of assisting clients' competition cases. She has input to defining markets, presented to the Competition Commission, worked for DG Competition and led a number of submissions to competition authorities covering merger and abuse of dominance cases. Her experience includes a merger in the Netherlands TV market, EU roaming charges, UK transport pricing, the collective selling of UK sports rights, UK newspaper and magazine distribution, EU and UK fixed-to-mobile termination rates, the UK outdoor advertising sector, EU local loop and leased lines, GSM spectrum in the Netherlands, and EU pay TV sectors. She also has considerable experience of regulatory and consumer matters including the development of a toolkit that is now used by Ofcom to ensure that it takes into account adequately consumer interests in the formation of regulatory decisions. During her consultancy career, Alison has assisted clients in a variety of industries including: postal services, fixed and mobile telecommunications, electricity, gas, television and radio broadcasting, television production, newspaper and magazines, film, music, sports, advertising, lotteries, football, greyhound racing, salt, and the tobacco industry.

### Alison Sprague D.Phil

Entertainment & Media, Economics  
FTI Consulting  
+ 44 (0)20 7632 5133 (office)  
+ 44 (0)7876 217131 (mobile)  
alison.sprague@fticonsulting.com



### Dan Corry

Policy, Economics  
FTI Consulting  
+ 44 (0) 20 7632 5061 (office)  
+ 44 (0) 7798 820219 (mobile)  
dan.corry@fticonsulting.com

Dan is an economics and public policy expert who has worked at the most senior levels of government in the UK. He joined FTI in January 2011. He was at Downing Street from 2007 to 2010 working for the Prime Minister, first as Head of the No 10 Policy Unit and then as his Senior Adviser on the Economy. From 2006-7 he was Chair of the Council of Economic Advisers at HM Treasury, steering Treasury strategy and advice to the chancellor on many issues including welfare reform, tax policy, public expenditure and public services strategy. Prior to that, he worked as a special adviser to the Secretary of State at the Department for Education and Skills. Between 1997 and 2002, he was a special advisor, providing direct advice to senior Ministers: first at the Department of Trade and Industry where he worked on the 1998 Competition Act and what became the Enterprise Act 2002 and areas such as industrial policy, corporate governance, labour markets, energy and the post office; and then at the Department for Transport, Local Government and the Regions covering all policy areas including the creation of Network Rail.

## FTI in economics

Public policy  
Regulation  
Competition policy  
Business strategy  
Litigation and arbitration



CRITICAL THINKING  
AT THE CRITICAL TIME™

### About FTI Consulting

FTI Consulting is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. With more than 3,000 professionals located in most major business centers in the world, we work closely with clients every day to anticipate, illuminate, and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring. [www.fticonsulting.com](http://www.fticonsulting.com)