

Brexit: Transposition of Laws

**What's the point
if ENFORCEMENT
is weak?**

**NCF Consumer Congress
December 2017
Summary Report and Key
Messages**



National Consumer Federation (NCF)



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CONTENTS

1. FOREWARD.....	4
2. SUMMARY OF CONCLUSIONS.....	5
3. BACKGROUND.....	6
3.1 Consumer Congress April 2017.....	6
3.2 Key consumer messages on Brexit.....	6
4. INTRODUCTION.....	8
4.1 The Importance of consumer rights and protections.....	8
4.2 Congress Purpose and Objectives.....	8
5. ENFORCEMENT CHALLENGES.....	9
5.1 Strengthening product safety: enforcement.....	9
5.2 Enforcement in the EU.....	11
5.3 Product safety, recalls and other corrective actions.....	13
5.4 Is consumer protection an issue?.....	14
5.5 Enforcement and product safety.....	16
5.6 “Each Home Counts”: a relationship between enforcement and quality.....	16
5.7 Enforcement and the economy.....	18
6. ENFORCEMENT SOLUTIONS.....	20
6.1 The politics and economics of enforcement.....	20
6.2 Central enforcement body and funding.....	21
6.3 The importance of evidence.....	22
6.4 Informing consumers.....	23
6.5 Influencing businesses to respect the rules and do better.....	24
6.6 Conclusion and summary.....	25
ANNEX 1 – CONGRESS PROGRAMME.....	27
ANNEX 2 – QUESTIONS FOR DISCUSSION.....	28
ABOUT THE NCF.....	29

1. FOREWORD

The consumer protection coin has two sides. On one side, is the body of law and standards that protects consumers' rights. On the other, is effective enforcement to ensure compliance with that consumer law. To concentrate activities on transposing the ninety or so European Directives that currently protect United Kingdom consumers as we leave the European Union is to address only one side of this coin.



It is arguable that the other side, effective enforcement, is at least as important, or perhaps even more important to address. For what is the point of all the efforts to transpose laws if they can be ignored once incorporated into the laws of the United Kingdom?

The National Consumer Federation recognises that resources for enforcement are limited. Since 2009, trading standards teams have lost over half of their full time equivalent staff and expertise due to local authority economies. An innovative approach is needed to achieve effective enforcement to balance the two sides of the consumer coin. Because of the success of this NCF Consumer Congress and our long track record of consumer advocacy, we believe that the NCF has an essential role in assisting Government and business to achieve the most beneficial balance between the two.

NCF Consumer Congresses, on 6 April and 5 December 2017, have addressed a number of the issues raised in the House of Lords European Union Committee 9th Report of Session 2017-19 *Brexit: will consumers be protected*. This report of the NCF Consumer Congress held on 5 December 2017 provides the detailed consumer perspective on effective enforcement.

In 2018, we shall be taking this perspective forward collaboratively to make cost effective proposals to Government and businesses on how to achieve and maintain an effective balance between legislation and enforcement post-Brexit.

**Arnold Pindar
Chairman
National Consumer Federation**

2. SUMMARY OF CONCLUSIONS

- Put the costs of consumer detriment and the resultant impact on consumers and the economy firmly on the political agenda.
- Create a consumer expert working group to take forward issues and push at a political level, not just on enforcement, but on all consumer issues, including those related to Brexit.
- Develop a Consumer Charter for Enforcement, to detail consumer expectations and clarify what good looks like.
- Create a centralised enforcement body – a national agency which would act as a central hub of enforcement expertise.
- Develop innovative methods of funding enforcement, such as a levy on businesses to establish and maintain a central agency, with rebates for those businesses which exhibit evidence of good consumer practices.
- Improve collection and sharing of data about potentially unsafe products and services and consumer detriment, utilising new technology.
- Encourage new and better ways for enforcers and business to communicate with consumers e.g. the dissemination of information about unsafe products, poor services and rogue traders.
- Provide a single, publicly searchable database compiled from multiple sources to give consumers access to transparent intelligence about unsafe products, fraudulent services and recalls.
- Overhaul the product recall system and provide clear guidance for businesses.
- Challenge the primary authority model and introduce independent, accredited compliance advisors for businesses who could advise and support both SMEs and larger companies.
- Educate businesses on consumer rights and regulatory compliance to reduce the likelihood of problems later.
- Ensure that there are real consequences for traders who fail to meet standards and comply with the law.

3 . BACKGROUND

3.1 Consumer Congress April 2017

On 6th April 2017 UK consumer experts came together at the National Consumer Federation (NCF) Congress in Whitehall, to discuss *The Best of Brexit for Consumers*. This Congress was attended by more than 80 representatives from a range of key consumer and public interest organisations including: *Which?* Citizens Advice, Ombudsman Services, TrustMark, British Standards Institution (BSI) Chartered Trading Standards Institute (CTSI) Electrical Safety First (ESF) and Age UK, plus representatives from government.

The main objectives of this meeting were to:

- discuss the best ways to maintain and enhance consumer protection after our departure from the EU;
- develop key consumer messages relating to Brexit;
- ensure that these are communicated to the relevant decision-makers in government at a point in the process when change is still possible.

3.2 Key consumer messages on Brexit

The April 2017 Consumer Congress delivered eleven clear messages to Government about the importance of consumer protection and what needs to be done to maintain and enhance these protections. See below:

- 1) **Consumer participation and collaboration** – the consumer voice must be central to Brexit discussions from the start.
- 2) **Support and funding for UK consumer organisations** – the government must ensure adequate resources to minimise consumer detriment.
- 3) **UK policy to protect consumers** – Brexit should not diminish levels of consumer protection.
- 4) **Remain active on the European and international stages** – a global economy requires global solutions.
- 5) **Ensure safety of products and services** – consumer safety must remain a priority.
- 6) **Support UK businesses** – the government must ensure that businesses have adequate information and support.
- 7) **Single standards solutions** – voluntary standards valuable to facilitate cross-border trade and protect consumers.
- 8) **Market surveillance and enforcement** – adequate resources vital to ensure consumer rights and protections are meaningful.

- 9) **Redress without borders** – accessible and effective mechanisms of redress that operate in a global market.
- 10) **Consumer vulnerability** – legislation to recognise and protect consumers in vulnerable situations.
- 11) **Information and advice** – consumers and businesses need clear, timely information and advice about Brexit.

A [full report](#) of the event, with detailed key messages, is available on the NCF website: www.consumer.network/hcf

4. INTRODUCTION

4.1 The Importance of consumer rights and protections

Consumers play a vital role in our economy, spending £1.2 trillion each year on products and services.¹ They are the end users of products and services delivered by businesses in the UK and abroad, governments and other organisations. Protecting consumers is not optional; it is essential to a successful UK economy. Consumer confidence in markets is an essential driver of positive purchasing behaviour. When consumers feel that they can trust the safety, quality and fairness of products and services, and have faith in the redress system, they are more likely to spend and support the economy. Delivering key consumer rights and protections is therefore vital, not only to a successful Brexit, but to a successful UK economy in the years ahead.

4.2 Congress purpose and objectives

The purpose of the 5 December 2017 Consumer Congress was to focus on issues surrounding Key Message 8 – market surveillance and enforcement, one of the principal messages from the April Consumer Congress and an often-overlooked element in the market place that is vital to the success of the market and to consumer trust. More specifically, as Baroness Judith Wilcox, President of the NCF, stated in her introduction, the objective was to drill down into the issues surrounding enforcement and market surveillance; to expose weaknesses and to celebrate successes; to recognise constraints, but to come up with innovative ways forward to ensure that good businesses thrive and poor performers either improve to become good businesses, or pay the price for their failures.

She made the point that effective enforcement encourages businesses to maintain high standards, even if that enforcement is light-touch, and posed an important question to Congress, “How might we reduce the compliance burden on good companies whilst delivering effective enforcement on the bad?”

Forty-seven delegates took part in the Congress, including many independent consumer consultants and representatives from a wide range of organisations such as Which?, British Standards Institution (BSI) European Association for the Co-ordination of Consumer Representation in Standardisation (ANEC) the Chartered Trading Standards Institute (CTSI) Electrical Safety First (ESF) Department for Business, Energy and Industrial Strategy (BEIS) TrustMark and the National Consumer Federation (NCF). Key speakers summarised the main challenges relating to market surveillance and enforcement (see programme in **Annex 1**). Delegates then discussed solutions to these challenges in breakout groups. These challenges and the recommended solutions are detailed in **Chapters 5** and **6** of this report.

¹ ONS Household expenditure (Q4 2015 to Q3 2016)

5. ENFORCEMENT CHALLENGES

5.1 Strengthening product safety: enforcement

Sue Davies MBE, Chief Policy Advisor, *Which?*

Introduction

The UK's fragmented product safety and recall system is not fit-for-purpose and is potentially putting people's lives at risk through a lack of joined-up national oversight and action. The current system is heavily reliant on individual local authority trading standards services to enforce product safety law and oversee product recall. At the same time, there is an over-reliance on businesses self-checking and certifying their own compliance with product safety regulations.

Local trading standards teams have lost more than half (56%) of their full time equivalent staff and expertise since 2009 due to local authority economies. This has hugely diminished their capacity to be proactive in the face of the vast array of issues that they confront.

Which? published a report in July 2017 – [Strengthening the consumer product safety regime](#) which set out some of the challenges at a national level and the wider issues raised by Brexit and made recommendations to government to set up a new national body to take responsibility for product safety and recalls as a matter of urgency, with the resources and expertise to identify dangerous goods and to make sure they are removed from people's homes.

Weaknesses of the current product safety regime

The current product safety regime is a mixture of light-touch regulation and standards, where the level of independent oversight is relative to the nature of the consumer product and the perceived risk to consumers. For example, for medicines and food, while there is an onus on business responsibility, there is a high level of independent oversight. At the other end of the spectrum, for consumer products such as electrical appliances and toys, there is considerably less independent oversight and an over-reliance on trusting businesses to do the right thing by consumers and recall faulty products. Underpinning this regime, is an unreliable assumption that there is effective market surveillance and an appropriate level of independent challenge and enforcement, i.e. the notion that if traders break the rules, they know that there is a good chance they will get caught.

Currently, there is no coordinated, centralised approach to product safety issues despite the technical complexity involved and the considerable risks, which need to be properly understood. There is a lack of coordinated intelligence on product safety, and despite the fact that there are systems for sharing information, this is not done systematically. Government emphasis on reducing regulatory burdens on businesses and the focus on primary authority partnerships working with businesses, has taken

the emphasis on their market surveillance and enforcement role away from Trading Standards Departments. Therefore, the primary authority approach needs re-thinking. While it makes sense to have a single point of contact for multinational corporations, this clearly constrains enforcement by local Trading Standards Departments.

Whirlpool – an example

Once again, *Which?* is finding that it is having to do a considerable amount of work on product safety – an aspect of consumer protection that many would have thought had been addressed quite some time ago. It is about basic things – people not being able to trust that their tumble drier or fridge freezer is not going to set fire to their homes and the difficulty of finding out if a product in your home has been recalled. Some seven hundred and fifty fires have been linked to faults in Whirlpool tumble driers and Whirlpool failed to recall a further million potentially faulty appliances.

People were not told to avoid using their appliances and nothing was done to enforce recalls until *Which?* initiated judicial proceedings against Peterborough Trading Standards, the primary authority for Whirlpool. This finally led to Whirlpool advising people not to use their machines until the problem was rectified. This highlights the potential conflict between giving primary authority advice to a business and stepping in and enforcing the law when required. Even when dealing with large, multinational corporations, the responsibility to enforce falls on local trading standards departments and *Which?* does not feel that this is sustainable going forward.

There are issues with other white goods, with sunscreens that do not work and with non-functioning carbon monoxide and smoke detectors imported from China. The proliferation in internet sales is a major factor in increases to product safety risks. Will learnings from Whirlpool and Grenfell lead to a more balanced approach to enforcement?

Impact of Brexit on product safety legislation

Brexit will bring new challenges and pressures. However, it also means that some of the challenges that have been on the agenda for several years can no longer be ignored. If we are to compete globally, we need to ensure long-term consumer confidence. Our EU exit should be seen as an opportunity for a fundamental re-think of the UK system, while aiming to retain the benefits from the current EU regulatory framework.

The EU Withdrawal Bill raises questions about how the UK can operationalise consumer protection legislation when EU bodies are currently referred to in the legislation and there is no UK equivalent at national level, e.g. European Chemicals Agency (ECHA) and the Scientific Committee on Consumer Safety (SCCS). Should we remain linked to these bodies or do we need to create national capacity? What balance do we need to strike? What do we do about networks and intelligence sharing systems, e.g. the Rapid Alert System for dangerous non-food products (Rapex)?

What will happen regarding our membership of European standards bodies such as CEN, CENELEC and ETSI?

The new trading patterns that are likely to emerge as we develop new trading relationships create an opportunity to look more broadly at how we work with international organisations. e.g. OECD, UN, ISO and IEC. However, the UK will need to improve national-level market surveillance as well as co-ordination arrangements with other countries, both in the EU and beyond.

A coordinated, centralised approach to product safety

The over-reliance on a local approach to a national problem poses serious risks to consumers. We need a centralised consumer-focused product safety national body which has all of the tools it needs to get unsafe products out of people's homes and is prepared to collaborate and cooperate with international partners.

It needs to be:

- independent from those it regulates
- unambiguously focused on consumer interests
- proactive in terms of market surveillance, i.e. able to gather intelligence and identify issues which present potential threats, take swift action to resolve them and
- proactive in making sure that consumers are informed about where to go for information and the actions they need to take.

A single, reliable and well-publicised website – acting as a 'one-stop-shop' – needs to be created to provide authoritative information and advice when dangerous products are identified, or recalls are required.

Consumer protection models in other countries, while not directly applicable to the UK situation, may be useful in helping us to shape a new approach. Three examples which are not transferable in their entirety, but should be reviewed, are the US Consumer Product Safety Commission (CPSC) the Australian Competition and Consumer Commission (ACCC) and the Netherlands Food and Consumer Product Safety Authority (NVWA).

5.2 Enforcement in the EU

Stephen Russell, Secretary General, ANEC

For too long, in both EU institutions and member states, the emphasis has been on consumer protection policy and regulatory development, rather than implementation. The thinking was that the simple act of transposing a directive or regulation into law was sufficient to make it happen.

Failure of Regulation 765 – accreditation and market surveillance

It was not until Regulation 765 was introduced in 2008 that market surveillance and enforcement were even mentioned in a European instrument. Regulation 765 has two aims: First, to improve the functioning of the single market by strengthening the protection of the public interest through the reduction of non-compliant products in the marketplace and second, to ensure a level playing field where all businesses apply EU legislation.

An external evaluation of the effectiveness of the regulation, conducted for the Commission from 2010 to 2013 and published in 2017, showed that it has been ineffective in meeting its objectives, notably in the areas of enhanced cooperation within and between member states to deliver a uniform and sufficiently rigorous level of market surveillance and in border controls on imported products. The evaluation demonstrated that not one provision in the regulation had been implemented identically in at least two member states – there were wide variations in the availability of resources and the number of inspections.

The total budget for market surveillance and enforcement of the 19 member states that responded to the financial question, showed that the budget fell from €142 million in 2010 to €135 million in 2013. The budget allocated across these member states amounts to a few euros per 1,000 citizens and from 0 – 1 inspector per 2 million inhabitants.

Impact on businesses and consumers

The result is that European consumers remain exposed to non-compliant and sometimes dangerous products and legitimate European businesses continue to be exposed to unfair competition from economic operators operating outside the law. According to Orgalime (the European Engineering Industries Association) fewer than one in a hundred related products imported into the EU are checked at EU ports for compliance with EU harmonisation legislation. Almost none are checked for compliance with legal requirements relating to energy or the environment. The chain of enforcement is only as strong as its weakest link.

Better planning of surveillance and enforcement needed regionally

Whether we want more Europe or less Europe, hard Brexit or soft Brexit, how can it make sense that market surveillance and enforcement are not better planned and managed at a regional level? Neither standards, nor legislation are of value without enforcement. This is an area where the UK and EU should continue to work together.

How should the EU move forward on market surveillance and enforcement?

We need an ambitious proposal to move us forward, especially now that we are facing the double challenge of sales through digital platforms and risks to privacy related to the Internet of Things. In today's world, can a product be considered safe if it is not also secure? But is there light at the end of the enforcement tunnel? As a result of

the evaluation of Regulation 765, the Commission has assessed the options for strengthening enforcement, the harmonisation of product legislation and increasing compliance, and will publish its proposals in December 2017. In particular, it intends to incentivise economic operators to comply, to increase deterrence, to reduce fragmentation and to increase the efficiency of available resources. The Report was published on 19 December 2017.²

The question is: even if the proposal is not denuded in the European Parliament or the Council, as was the product safety package, will there ever be the budget to support it? General elections across Europe are not won on a platform that promises better market surveillance and enforcement.

5.3 Product safety, recalls and other corrective actions

Gordon Maddan, Programme Manager, Regulatory Delivery Directorate, BEIS

We need to support businesses to make sure that they ensure products are safe and make recalls and take other corrective actions in the rare event that these actions are required. Local authorities have the duty of enforcing product safety legislation at local level but looking for unsafe products by inspection is like looking for a needle in a haystack. Therefore, the nature of how compliance is achieved has changed.

Primary Authority Scheme

One area that we have responsibility for in BEIS is the Primary Authority Scheme. The purpose of Primary Authorities is to build a closer relationship between business and regulators to ensure a strategic approach to the way in which businesses operate in relation to compliance and enforcement. This approach enables businesses to get the upstream advice and support they need to put adequate systems and procedures in place to ensure compliance.

Primary Authority Schemes are funded on a cost recovery basis, making the system more sustainable in terms of providing advice to the business community and there are safeguards built into the system. Any other local authority can act as an enforcer and challenge the guidance a primary authority has given to a business. If disagreements cannot be resolved, issues can be escalated to the Regulatory Delivery Directorate for informal resolution or more formal action such as a judicial review, if required.

Recommendations of the working group on product recalls and safety

As a result of Lynn Faulds-Woods' report on Product Safety in 2016, government followed through by setting up a working group of stakeholders from business, third sector groups and enforcement bodies to review and take forward a number of her recommendations regarding enforcement.

² [EC Press release - Safe products in the EU Single Market: Commission acts to reinforce trust](#)

In October 2016, Margot James, the newly appointed Minister for Business, strengthened that group by bringing in an independent Chair – Neil Gibbons, a former Chief Fire Officer, and a number of other independent parties, including BSI.

This group reported to government in July this year and made a number of recommendations.

Among these were some that the UK would benefit from:

- Having a central resource to support local authorities in enforcement activities by providing them technical expertise and a related review capability;
- A code of best practice and guidance on product recalls and other corrective actions for regulators and businesses. (This is due for publication in February 2018).

5.4 Is consumer protection an issue?

Leon Livermore, CEO, Chartered Trading Standards Institute

How do we regulate a modern economy?

If you think about the many unique goods and services we encounter as individuals in our daily lives, it is evident that we have access to a market place of billions of unique goods and services. These goods and services do not originate in the high street, yet we have a model of enforcement that is based on place. It has grown out of high streets, shopping centres and towns, but it is not a reflection of the modern economy in which we live. Leaving Brexit aside, one of the challenges we face is how do we regulate that modern economy?

Regulation is more effective than it used to be

In terms of regulation, we are better off than we were twenty or thirty years ago for two reasons. The first reason is that we have a better understanding of what regulation is trying to achieve. In the past, regulation was simply about control and compliance, now it is about better outcomes for business and consumers. Now, we listen to the vulnerable with compassion and understanding instead of regarding people who are scammed as greedy or stupid.

Scams are an example of where we have a proper joined-up system. The National Trading Standards scam team coordinate intelligence and pass it to local trading standards, whose role it is to look after the victim and go after the perpetrator, who is may be in Europe or elsewhere in the world. It is not the legislation that delivers the better outcomes, but rather the relationships forged with local colleagues and colleagues abroad.

The second reason is that we now have a much better understanding of how to use intelligence. For example, in the past, in Cambridgeshire, if you looked at the most complained about traders, they would be the biggest players, but there was no consideration of the size of organisation and its impact on the market place.

Three ways of thinking about regulation

1. Place

This is about consideration of the things we do around licencing in a specific locality, e.g. the impact of alcohol sales to underage individuals on both the individuals and the community.

2. Product

We are not talking about market surveillance, we are talking about product. The standard is one part of the product, the legislation is another. The key thing is what is the risk to consumers of that product and what is the risk and integrity of the supply chain? How can we task regulators to intervene more effectively?

3. Person

People are the perpetrators and also the victims. One thing that we have got wrong is that regulators are further from consumers than they ever were. The rationale for Consumers Direct and Citizens Advice taking over is understandable but that has become a barrier between local trading standards and local communities, which is something that needs to be addressed.

Getting consumer protection right

There is a lot to be commended in the work done by *Which?*, not just on Whirlpool but in driving the conversation around product safety. The Food Standards Agency (FSA) provides a good model of a national regulator with powers and accountability, which places consumers at its heart, working with local regulators to make strategic interventions.

When we get strategic interventions right, they have a huge impact, e.g. the work of National Trading Standards on product safety and the work they do at ports of entry (which are significant risk points in the supply chain to the UK) have a dramatic impact – thousands of unsafe (not merely non-compliant) goods are removed from the marketplace, protecting both consumers and the public purse.

We should not have separate conversations with citizens and businesses. Communities are made up of both, so let's have sector based conversations where we combine the intelligence and understanding of the business sector with what consumers really want. It is noticeable that organisations like the CBI and the Federation of Small Businesses no longer say that regulation is bad, what they say is that they need appropriate regulation that protects UK businesses and consumers alike and this is what we need to focus on.

5.5 Enforcement and product safety

Martyn Allen, Technical Director, Electrical Safety First

Product safety legislation in the UK and Europe is fairly robust and covers the majority of the major risks (although there are some gaps) so it is not legislation that is the main problem. If we had effective enforcement of the legislation we would be in a much better place.

We have an abundance of standards in which we invest a lot of development time. They are largely where they need to be and they provide a level playing field for businesses and support regulatory compliance. ESF adds what it can do to enhance electrical product safety. Even where there is no standard in place, the legislation theoretically kicks in to ensure that products are safe.

If you are a trader and you break the rules the authorities are unlikely to come knocking at your door because there simply are not enough of them! Trade associations are doing more market surveillance, but when they raise issues with the authorities, little or nothing is done, even when brands are clearly counterfeit.

Enforcement is not just about compliance, it is about assessing risks and ensuring good outcomes for consumers and that is where there are gaps in the system. One of the reasons that enforcement authorities find it challenging to achieve effective market surveillance is that injury data is not as available to them as it needs to be. To that point: insurance companies have a massive amount of data but do not share it.

Much of the necessary product safety expertise sits outside government. Therefore, is there a need for accredited expert advisers if we are to strengthen the enforcement regime?

5.6 “Each Home Counts”: a relationship between enforcement and quality

Simon Ayers, CEO, Trustmark

“Each Home Counts” is about bringing together a number of Government areas around energy and construction to deliver a single quality mark – “in and around the home”.

What does the “Each Home Counts” quality mark encompass?

For consumers, it is about meeting their expectations, i.e. having work in and around the home undertaken by competent and qualified businesses and being protected if things go wrong.

For businesses it means operating on a fair and equal playing field and being supported when required, having the options to make choices related to the business and taking responsibility where things go wrong.

The scheme providers offer registration and support services to businesses to help compliance and effective business delivery.

Service quality and enforcement

In how many cases do we reinvent a standard and how often do we try to deal with something that is not the root cause of the problem? Obtaining good tradespeople to provide good quality services is very challenging. Currently, we are short of around 70,000 engineers and other service people in this country.

You then need to think about the audit and compliance that sits alongside tradespeople. Compliance is the first step to ensuring that someone is delivering a service correctly to the required standard, before we even think about all the areas of enforcement. Audits are performed to verify conformance to standards through review of objective evidence.

Our definition of service quality is that it is a comparison of perceived expectations of a service with perceived performance delivered. We see enforcement as the process of ensuring compliance with laws, regulations, rules, and standards. With cuts to Trading Standards, we have to do something different. For “Each Home Counts”, we are looking to change the model. Rather than send a case to Trading Standards, or to local Building Control, we will engage those functions directly.

Keep it simple

To ensure service quality and effective enforcement, we need to keep it simple. We need to:

- deal with systemic root causes
- engage and educate all of the audiences – businesses and consumers (a lot of businesses are not sure what they have to do)
- allow quality to become the norm (often consumer expectations are less than they should be)
- ensure effective audit compliance is achieved
- provide enforcement options where required (new models)
- try to drive the right behaviours to support quality and support the product

We want to provide the consumer with choice, build confidence in the system and ensure they are protected with good quality products and services delivered.

5.7 Enforcement and the economy

Arnold Pindar, Chairman, NCF

The significance of consumer spending in the economy

Since 2008 the NCF has been working on relating consumer issues to the economy. 86% of the UK economy is represented by consumer goods and services. Breaking that figure down, household expenditure is 66% of GDP and expenditure on consumer public services such as health, housing, social care, education comprises the remaining 20%. Consumers are incredibly significant to the vibrancy, or otherwise, of the economy.

The economic scale of consumer detriment

Last year, Citizens Advice undertook some excellent research into the scale of detriment examining:

- the direct monetary costs borne by consumers who experience problems – for example, when a broken toy is simply written off or when a poorly fitted boiler causes knock-on problems.
- resulting loss of earnings
- the value of any leisure time given up by the consumer in experiencing or attempting to resolve the issue, the so-called ‘time costs’, which might include things like time wasted on a delayed train, or time spent in a phone queue to get through to customer services.
- compensation payments awarded in light of any claims made by the consumer (These were taken off the detriment total).

Causes of detriment – nothing has changed

In 2009, the NCF undertook a simple scoping exercise on detriment and its costs which helped to underpin our [Consumer Charter for Regulators](#). The scale of detriment is about the same then as it is now. The NCF worked from OFT data when they were responsible for consumer detriment research. We included the direct costs to consumers from OFT data and then added different factors from research into:

- pricing practices that overcharged consumers
- the costs incurred by organisations when handling consumer complaints.

As the Citizens Advice report states, the amount is staggering. Neither Citizens Advice, nor the NCF believe that everything has been covered. However, combining all the factors quantified so far, brings us to about £50 billion pa.

It is important to note that the main sources of detriment remain the same today as they did in 2009, i.e. home maintenance, professional services, construction, property services, pensions and investments, holidays, phone and Internet, train and bus, energy, television and domestic appliances.

How do we discourage the bad guys?

Who needs to be removed from the market or stopped from providing public services? It's not the good guys ... it's the bad guys. We want to see a focus on making sure that all the codes of practice for the good guys are fair, reasonable, and providing the right quality. Additionally, these codes should have well-run consumer feedback and rating systems, which need to be as independent as possible and better than most that are available on the market currently. We need the enforcement resource to discourage and remove the bad guys – the scammers, unfair traders, and rogues.

So, we asked ourselves – what discourages or stops the bad guys from operating? We see a simple equation: if they think they aren't going to get caught and permanently stopped they will step up their activities and create even more detriment. If they don't think they are going to get caught then the size of the penalty is much less relevant to deterrence.

The importance of investing in enforcement in economic terms

Aside from the stress and financial loss suffered by consumers, consumer detriment represents a significant economic cost to the UK economy. Under-investing in enforcement to protect consumers is a great way of putting a drag on 86% of our GDP. This is a serious issue, especially in the light of Brexit. Politicians need to be made aware of the economic costs of detriment and the UK needs to up its game. A Consumer Charter for Enforcement could provide the necessary impetus.

6. ENFORCEMENT SOLUTIONS

Overview

It is widely recognised and accepted that there are funding issues in the area of enforcement, so although it would be beneficial to have more funding, it is not helpful to simply say that this is the solution to all the problems of enforcement. We have to be realistic and work with the resources we have. At the same time, we need to think about new ways to do things, and innovative ways of generating funds.

6.1 The politics and economics of enforcement

6.1.1 Raise the political profile of enforcement

Consumer protection should be a political priority currently and currently it is not. The costs of consumer detriment and the resultant impact on consumers and the economy need to be placed firmly on the political agenda. For this to happen, there needs to be better collaboration between consumer organisations to avoid duplication of effort and they need to stand together as a single voice. There also needs to be better cooperation between consumer organisations and the bodies responsible for consumer policy.

6.1.2 Create a consumer expert working group

Collectively, consumer organisations need to relate consumer issues to the economy, to show relevance and value, reporting major scams and product safety issues and employing evocative cases to pierce the consciousness of politicians. In essence, scams are fraud and are predicated on the grooming of the vulnerable. There is a wealth of statistics available about the impact of scams on the elderly and other vulnerable people. The consequences go well beyond the financial losses involved and there is often a knock-on effect on social care and legitimate businesses, so raising the profile of scams really matters. There would be value in creating a consumer expert working group to take forward these issues and push at a political level, not just on enforcement, but on all consumer issues, including those related to Brexit.

6.1.3 NCF Consumer Charter for Enforcement

There was wide support for a Consumer Charter for Enforcement, to detail consumer expectations in this area and clarify what good looks like. Such a Charter would give power, focus and authority to consumer representation, provide consumers with confidence in their rights and be a key element in raising the political profile of enforcement. It would complement the Consumer Charter for Regulators published by the NCF in 2012 after collaborative development across the UK consumer movement.

Recommendations

- Relate consumer issues to the economy to demonstrate benefits, relevance and value
- Improve collaboration between consumer groups
- Create a consumer expert working group
- Develop a Consumer Charter for Enforcement

6.2 Central enforcement body and funding

6.2.1 Create a central hub of enforcement expertise

There was wide agreement that there needs to be a centralised enforcement body – a national agency which would act as a central hub of enforcement expertise to deal with any product or service issue that poses a risk to consumers. It was suggested that this might operate as the Office of Fair Trading did in the past, but with an enhanced enforcement and audit role, which would enable it to act independently and hold enforcement agencies to account.

This centralised enforcement body would focus on consumer rather than business interests and would work closely with local trading standards and others to gather and act on intelligence. This would include coordinating and facilitating communication and intelligence across borders at local and national level to reflect the globalised nature of business activity and consumer purchasing. Within this centralised body there would need to be strategic allocation of resources, with specialised, expert staff taking the lead on specific consumer issues (as is currently the case for fraud and scams).

6.2.2 Benchmark consumer protection models in other countries

Centralised consumer protection models in other countries (as Sue Davies mentioned in her speech) while not templates directly applicable to the UK situation, may be useful in helping us to shape and develop our own central enforcement body. Three examples which need to be reviewed critically, are the US Consumer Product Safety Commission (CPSC) the Australian Competition and Consumer Commission (ACCC) and the Netherlands Food and Consumer Product Safety Authority (NVWA). There is a number of practices and approaches within these models which are radically different from what we do in the UK, e.g. the CPSC aggressively fines people and entities for not reporting safety breaches. In Europe, some models place more emphasis on private redress, where consumer organisations have a greater role in securing compensation. There is a case for considering both public and private mechanisms for redress.

6.2.3 Develop innovative methods of funding

Although there is limited funding for enforcement currently, a central enforcement body will need to be adequately funded. Making the political and economic case for enforcement to government (see 4.1.1 above) may result in some additional funding, but this cannot be counted upon. Therefore, some innovative approaches to funding will be required. It was suggested that there could be a levy on businesses to establish and maintain a central agency, with rebates for those businesses which exhibit evidence of good consumer practices. Other potential funding streams also need to be considered.

Recommendations

- Create a central enforcement body to act as a central hub of enforcement expertise.
- Benchmark consumer protection models in other countries.
- Develop innovative approaches to funding, e.g. a levy on businesses.

6.3 The importance of evidence

6.3.1 Collect and share market intelligence

Enforcement agencies cannot operate without intelligence, so improving this aspect of market surveillance and enforcement is vital. There is a need to improve collection and sharing of data about potentially unsafe products and services and consumer detriment caused by rogue traders, and telephone, email, and internet scams. There is also an ongoing need for an accident and injury database to provide essential information about consumer detriment. Additionally, the expectations of consumers need to be underpinned with robust data.

6.3.2 Obtain intelligence data from multiple sources and act upon it

Relevant intelligence data can be obtained from multiple sources, e.g. complaints to Citizens Advice, insurance companies, hospitals, manufacturers (in the UK and abroad) and consumer complaints, but needs to be channelled to a central database operated by a central enforcement body, whose role is either to act upon it nationally, or disseminate it to local trading standards departments for action as appropriate. Equally, local trading standards have access to important local intelligence that will often need to be communicated to a central enforcement body for wider dissemination or national action. Supply chains are complex and global and the digital world knows no borders. Therefore, we need to have reciprocal arrangements for intelligence sharing cross-border with enforcement agencies globally.

6.3.3 Utilise new technology

New technology will help with achieving wider and more cost-effective data collection and analysis and inevitably, the collection of much more data. It may also help with getting information to consumers e.g. regarding scams and safety warnings. However, new technology also presents new challenges, especially for data security and privacy. With so much data being available, there is also a prioritisation challenge. Do you deal with the cowboy builders down the road or the internet scammers who are harder to get at, but may cause even more damage, detriment and hardship and even risk to life (e.g. exploding hoverboards and phone chargers)?

Recommendations

- Improve collection and sharing of market intelligence.
- Reinstate an accident and injury database (possibly at European or global level).
- Obtain intelligence data from multiple sources and channel it into a central database.
- Encourage reciprocal arrangements for intelligence sharing cross-border.
- Utilise new technology to collect and manage data.

6.4 Informing consumers

6.4.1 Encourage better communication with consumers

We need to encourage new and better ways for enforcers and business to communicate with consumers, e.g. the dissemination of information about unsafe products, poor services and rogue traders. In doing so, there needs to be more effective use of digital technology, such as the employment of social media to target the vulnerable and victims of scams. This should be two-way: at present, enforcers are paying insufficient attention to consumer-generated content, e.g. Facebook, Twitter and customer reviews.

6.4.2 Provide better information about products to consumers

There needs to be better, simpler information for consumers about products, e.g. as with food products and food hygiene – ‘scores on the doors’. A straightforward system could also be applied to businesses, e.g. a simple traffic light system – red, amber, green.

6.4.3 Give consumers access to negative product and service intelligence

Consumers need ‘one port of call’ access to transparent intelligence about unsafe products, fraudulent services and recalls. This needs to be a single, publicly searchable database compiled from multiple sources. (This could work like Rapex). A site of this nature could be used to publicise poor business practices and ‘name and

shame' offenders. There is a plethora of consumer review schemes, many of which have questionable integrity. Would it be feasible to have a review scheme managed by a single independent body?

6.4.4 Overhaul the product recall system

Businesses should be required to contact and follow-up with consumers who have bought specific items that require recalls or other actions. These need to be direct notifications, not passive, undirected methods such as placing an advertisement in a newspaper and hoping that affected consumers will see it. (To be able to do this, manufacturers will need to access, manage and maintain security of customer information much more effectively than at present).

This problem implies that the entire recall system requires overhauling (Do we need a new BSI standard/ PAS for this?). A further issue is that in recent years there has been a number of high-profile consumer data breaches. Businesses have a duty to ensure that customer information is protected, secure and confidential.

Recommendations

- Encourage new and better ways for enforcers and business to communicate with consumers when there is a problem.
- Provide better, simpler information for consumers about products.
- Provide 'one port of call' access to transparent intelligence about unsafe products.
- Overhaul the product recall system.

6.5 Influencing businesses to respect the rules and do better

6.5.1 Challenge the Primary Authority Model

Concerns were expressed about the primary authority role of local authority trading standards departments in enforcing legislation against traders and also acting as advisers to them. There is a potential conflict of interest between giving primary authority advice to a business and stepping in and enforcing when required (highlighted by the Whirlpool case). It was suggested that the primary authority model should be challenged and that there should be independent, accredited compliance advisors for businesses who could advise and support both SMEs and larger companies. A simple accreditation scheme would be needed to authorise such independent advisers

6.5.2 Encourage good practice

It is important to recognise that not all businesses who break the law do so intentionally. We need to make it easier for businesses that want to comply with the

law by educating them on consumer rights and regulatory compliance to reduce the likelihood of problems later.

This is an important element of encouraging businesses to focus on self-regulation, thus enabling a reduction of market surveillance resources and pressure on the 'good guys' and making it possible for enforcers to concentrate their efforts on the 'bad guys'.

It was suggested that this could be achieved by providing businesses with a checklist of what constitutes good practice. A simple accreditation scheme for a quality mark with one recognisable logo could be introduced, based on a BSI standard for quality marks (one scheme, one mark). Businesses could be encouraged to sign-up to a code of practice.

6.5.3 Make sure that there are real consequences for non-compliance

Quality should be the norm. However, there needs to be real consequences for failure to meet standards and comply with the law. Rogue traders need to know that there is a genuine risk that they will be caught and face stiff penalties. Unfortunately, lack of resources means that currently enforcement is weak and there is a risk that this issue could be exacerbated by Brexit. However, on the positive side, Brexit may also present an opportunity to make improvements and strengthen the system.

Recommendations

- Challenge the primary authority model and introduce independent, accredited advisers to businesses.
- Encourage good practices through educating businesses and providing quality mark accreditation.
- Make sure that there are real consequences for failure to meet standards and comply with the law.

6.6 Conclusion and summary

At the April 2017 Consumer Congress, *The Best of Brexit for Consumers*, one delegate said: "regulation without enforcement is tantamount to **no** regulation". Clearly, there is no point having strong regulation in place if there are no mechanisms to check that the rules are being followed. It is essential that however our regulatory system develops over time, it is supported by a strengthened and effective market surveillance and enforcement regime, which is able to ensure that non-conformance is met with serious penalties. The main enforcement solutions recommended by Congress are summarised below:

- Put the costs of consumer detriment and the resultant impact on consumers and the economy firmly on the political agenda.

- Create a consumer expert working group to take forward issues and push at a political level, not just on enforcement, but on all consumer issues, including those related to Brexit.
- Develop a Consumer Charter for Enforcement, to detail consumer expectations and clarify what good looks like.
- Create a centralised enforcement body – a national agency which would act as a central hub of enforcement expertise.
- Develop innovative methods of funding enforcement, such as a levy on businesses to establish and maintain a central agency, with rebates for those businesses which exhibit evidence of good consumer practices.
- Improve collection and sharing of data about potentially unsafe products and services and consumer detriment, utilising new technology.
- Encourage new and better ways for enforcers and business to communicate with consumers e.g. the dissemination of information about unsafe products, poor services and rogue traders.
- Provide a single, publicly searchable database compiled from multiple sources to give consumers access to transparent intelligence about unsafe products, fraudulent services and recalls.
- Overhaul the product recall system and provide clear guidance for businesses.
- Challenge the primary authority model and introduce independent, accredited compliance advisors for businesses who could advise and support both SMEs and larger companies.
- Educate businesses on consumer rights and regulatory compliance to reduce the likelihood of problems later.
- Ensure that there are real consequences for traders who fail to meet standards and comply with the law.

ANNEX 1 – CONGRESS PROGRAMME

Moderator: Jackie Minor, Former Director for Consumer Policy and Head of European Commission Representation in the UK

13.30 Registration

14.00 Welcome and Introduction **Baroness Wilcox of Plymouth**
President, NCF

14.10 Strengthening Product Safety: Enforcement **Sue Davies MBE**
Chief Policy Advisor Which?

Panel Session

14.25 Enforcement in the EU **Stephen Russell**
Secretary General, ANEC

Product Safety, Recalls and Other Corrective Actions **Gordon Maddan**
Programme Manager – Business, BEIS

Is Consumer Protection a Local Issue? **Leon Livermore**
CEO, Chartered Trading Standards Institute

Enforcement and Product Safety **Martyn Allen**
Technical Director, Electrical Safety First

Each Home Counts: A Relationship Between Quality and Enforcement **Simon Ayers**
CEO, TrustMark

Enforcement and the Economy **Arnold Pindar**
Chairman, NCF

Round Table Discussions

15.10 Speakers will provide discussion questions and tables will be invited to consider the issues and way forward for United Kingdom enforcement, taking account of Brexit. The aim is to establish key messages to deliver to Government.

16.00 Plenary Report Back

16.30 Round-Up **Jackie Minor**
Moderator

16.45 Close

ANNEX 2 – QUESTIONS FOR DISCUSSION

Below are the questions provided by the speakers for the round table discussions:

- What are the benefits of different models for product safety enforcement, including those in countries such as the USA and Australia?
- In the expectation that the resources for market surveillance and enforcement remain inadequate across the UK and EU countries for the foreseeable future, what innovations could be introduced to increase the effectiveness of the resources that are available?
- Given that recall effectiveness is hampered by the ability of businesses to trace consumers and the location of products how can data capture be significantly improved, what are the inhibiting factors and how can they best be overcome?
- Given the political pressures of Brexit, social care and education amongst other things, how do we raise the issues of consumers and consumer protection as a political priority?
- Effective surveillance and enforcement is essential for providing a competitive, but level playing field for business as well as for protecting consumers. What monitoring and measurement mechanisms need to be in place to demonstrate that surveillance and enforcement is meeting business and consumer expectations, so government can be held to account where necessary?
- The market for consumers to have work undertaken in and around the home has grown rapidly over the last years and now supports a multi-billion pound set of industries. In simple terms what do we as consumers expect enforcement to look like, what does it mean when we have experienced poor quality work in our homes from the businesses engaged in this industry, and does that view change with the size of the business?
- Should the NCF bring consumers together to produce a Consumer Charter for Enforcement that builds on the previous work of the Consumer Charter for Regulators, i.e. what consumers reasonably expect of enforcement law, enforcement action and resourcing by regulators and others, market surveillance, enforcement effectiveness and impact?

ABOUT THE NCF

The National Consumer Federation (NCF) represents the voice of UK consumers. We are an independent, not-for-profit charity, with 50 years' experience of tackling issues that affect large numbers of consumers, and campaigning for positive change. Our aim is to influence Government, regulators and businesses to ensure the consumer voice is at the heart of decision-making.



We provide a platform for everyone interested in consumer protection – from individuals, to local groups and national consumer organisations - bringing them together to share their knowledge, skills and experience.

Our expertise adds value to the collective consumer voice, making it a more powerful force for change. To find out more please visit www.consumer.network, follow us on Twitter [@NCFvoice](https://twitter.com/NCFvoice), or like us on Facebook [National Consumer Federation \(NCF\)](https://www.facebook.com/NationalConsumerFederation).

