



THE FEDERATION OF SMALL BUSINESSES

RESPONSE

TO THE DTI'S CONSULTATION ENTITLED

**"REDUCING ADMINISTRATIVE BURDENS – THE
CONSUMER AND TRADING STANDARDS AGENCY"**

The Federation of Small Businesses (FSB)

The Federation of Small Businesses (FSB) is the UK's leading non-party political lobby organisation existing to promote and protect the interests of all who own and/or manage their own businesses in the UK. With over 190,000 members, the FSB is also the largest group representing the interests of UK small businesses and the self-employed.

The FSB welcomes the opportunity to respond to the DTI's consultation entitled "Reducing Administrative Burdens – the Consumer and Trading Standards Agency".

General comments

The FSB understands the thinking behind a Consumer and Trading Standards Agency (CTSA). It is fully supportive of the Hampton Report's goals and recommendations. However, the FSB considers that the consultation document did not fully reflect the main goal of the Hampton Report to reduce burdens for business and create the right regulatory structure to reduce the burden of administration on business. The FSB considers that the biggest problem is as much about the way that regulations are implemented as it is about the regulations themselves.

The consultation has not necessarily reflected the suggestions in the Hampton Report as appropriately as possible. Some of the options suggested for the formation of the CTSA are complicated. The FSB considers that some caution must be exercised when organising the remit of the CTSA to ensure that the regulatory structure is not further complicated by a new agency.

Detailed Questions

- 1) Do you think the powers listed in paragraph 39 are the right powers to carry out effective performance framework co-ordination? Are any of these powers unnecessary?***

The FSB is concerned that the powers in paragraph 39 are not analogous with the remit of the CTSA as envisaged by the Hampton Report; *"...the review recommends that a new body should be created...to work on consumer protection and trading standards...This body would have lead policy responsibility for trading standards nationally"*. The emphasis within the Hampton Report is on trading standards and although consumer protection is tightly linked to trading standards, the FSB considers that the consultation document places a heavier emphasis on consumer education and consumer protection. Mechanisms for consumer education already exist with Citizens Advice Bureaux etc and there is a solid level of legal protection afforded to the consumer in the UK. The legal protection is being further added to with the introduction of the Unfair Commercial Practices Directive and the EU Regulation on Consumer Protection Co-Operation.

The FSB sees merit in Consumer Direct being placed under the remit of either the CTSA or the OFT, but would not wish for consumer education to take precedence over trading standards with the new CTSA. Each part of the CTSA's remit should be equal.

2) Do you think the application of these powers will be sufficient to achieve the efficiencies/reduction in burdens on business envisaged by Hampton? Do you think they will increase burdens on Local Authorities? If yes, please provide supporting evidence.

In order to reduce the burdens on business, the suggestions of the Hampton Report should be taken on board, particularly with regards to reducing the amount of regulators business needs to deal with, rather than increasing it. If this is effected, and a light-touch regulation policy adopted and actually implemented, burdens felt by local authorities (LAs) should also decrease, along with the burdens on business.

3) If you do not think that the proposed CTSA powers are sufficient (Q2), what additional or alternative role/powers can be given to allow the CTSA to effectively co-ordinate the performance framework?

4) Do you think this is the right approach for the CTSA to take in using its powers? If not, what would be better?

The proposed CTSA powers are sufficient as outlined in the consultation document. However, the CTSA must not be allowed to turn into a large, bureaucratic and cumbersome organisation. As mentioned above, consumer protection and trading standards should be treated equally under the new CTSA body.

5) Do you think this is the best process for identifying Central Government priorities for Trading Standards Service?

The FSB considers that it is sensible to have a three year priority list, tallying with economic plans. However, the FSB notes that there are a lot of stakeholders to input into the priority list. There must be clear and transparent lines of communication between all the organisations. The way that priorities are decided should be readily available in the public domain.

6) Can you suggest a definition for the type of business that the CTSA might cover for Home Authority work? What criteria could be used to assess whether a business falls within the definition?

The FSB believes that achieving consistency on matters of enforcement and regulation implementation is difficult. The FSB has strong evidence recently collated through our experience with the Licensing Act (2003). Members requiring liquor licences under the new regime have noticed that there is a lack of consistency across the board in the behaviour of LAs. With over 400 LAs in the UK, parity of enforcement is difficult to achieve. However, a guiding central hand is needed to eliminate disparities, which can cause disturbance and increased unnecessary cost to business.

The FSB does not have a definition for the type of business that the Home Authority Principle might cover. In terms of the definition of "national", the FSB considers this to be a broad definition applicable to all businesses in the UK who supply within the UK area.

If the Home Authority Principle (HAP) continues, it is important to review staffing levels in the LAs where the greatest numbers of HAP-applicable businesses are based.

7) Do you agree that Option 3 would be the most effective in achieving the increased consistency the Government is trying to achieve?

8) Do you agree that Option 3 would be the most effective in achieving the efficiencies for business proposed by Hampton?

9) Do you think there are better options not identified here for improving consistency of enforcement by the Trading Standards Service?

Of the three options, the FSB believes that Option 1 is the most appropriate when considering the needs of all businesses. The FSB is concerned that Option 3 is more appropriate for larger businesses, as the consultation document itself states: "*The benefits however will be that larger businesses will have a consistent approach and a reduction in the burdens placed on them by numerous inspections*". Yet the cost of compliance in small firms is 35% higher than in large firms¹ and the cost of inspections lie within this cost. It is important for business as a whole to have greater consistency, rather than putting larger businesses before SMEs.

As mentioned above, there is an element of subjectivity to enforcement and parity of enforcement. LAs are currently able to enforce at will, with little or no guidance from central government (cf: the Licensing Act (2003)). Adequate guidance and instruction for LAs from a central point and simultaneously, recourse for business at the same central point, would go some way to solving the problem of inconsistency of enforcement.

10) Do you agree that recognition of good quality ADR schemes would be an appropriate role for the CTSA?

Yes.

¹ Robert Baldwin, "*Better Regulation...Is it better for business?*" FSB publication, September 2004, p8

11) Do you agree that distribution of these recovered assets would be an appropriate role for the CTSA?

Yes.

12) DO you agree that the CTSA should be designated as a third party to bring proceedings on behalf of a group of consumers?

Yes.

13) Do you think that forming the CTSA as a separate body would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are your reasons for your views?

14) What would be the most effective means of achieving the cultural change needed to create a successful CTSA?

15) Can you see any other advantages/disadvantages of this approach?

16) Do you agree with the estimates of the costs of forming the CTSA as a separate body, set out in paragraph 78? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.

17) Are there any other relevant factors that we should consider?

The FSB has concluded that, on the basis of the consultation document, it would be preferable to house the proposed CTSA within the OFT. The FSB recognises that this moves away from the preferred recommendation of the Hampton Report, but it does not feel that the consultation document reflected adequately the need for a "*streamlined central regulatory structure*"². There should be clear evidence of the link between policy makers and where the ultimate decision for decision-taking lies, whatever formation the CTSA takes.

² The Hampton Report – final report, May 2005, p64.

In addition, the FSB believes that the link between consumer and competition policy should be kept very tight. Consumers are extremely important for effective competition and active consumer power can achieve market change. Placing the CTSA within the walls of the OFT should ensure this. This will also facilitate good and more easily maintainable communications between the two organisations.

The FSB acknowledges that it would be easier to foster a new culture to reflect the new organisation if the CTSA were a separate body. The decision rests on whether a new culture is considered to be more important than the actual task at hand – to streamline and ease regulatory burdens.

The FSB is also concerned about the cost of the CTSA if it is to be a separate body. Although the estimated figure of between £7 and £11 million is modest in comparison to the mergers of both OFCOM and the FSA (Financial Services Authority), there is always the potential for costs to rise. The merger of OFCOM cost £52.3 million and the merger of the FSA cost £37 million.³

18) Do you agree with our recommendations on the likely effectiveness of these measures?

19) What combination of these measures do you think would be most effective in embedding the consumer/competition links between the CTSA and the OFT at all levels?

20) Are there any other measures you can identify that could be effective in maintaining this link?

21) How far do you think the link between consumer and competition issues should be embedded within the organisation? Is a link at senior level sufficient, or should there be links between the CTSA and the OFT at all levels?

The obligation of a chain of communication from the OFT to the CTSA and vice versa were the CTSA to be a separate organisation is sensible. However, the

³ The Hampton Review, final report, p69

formality of the obligation makes it a rigid one. The issue of possible time-delays are also of concern.

The FSB considers that communications should be maintained at all levels; not just in the higher echelons of the OFT and the CTSA. It is important for all staff to be aware and to have communications with their opposite numbers in closely-working departments. If the CTSA and the OFT were in the same building, it would be easier to maintain communication and this would be more ad hoc at all levels, encouraging a greater understanding of the different remits of competition and consumer/trading issues.

22) If the CTSA is formed as a new body, how close do you think the relationship between that new body and Government Ministers should be? What are the reasons for your views?

23) Do you think the link between consumer and competition enforcement is made satisfactorily at present? Is it working effectively?

This is a difficult question on which to comment. The FSB considers that the OFT is very strong on the competition element of its brief. Sometimes, the competition element has been over-zealously implemented – eg: magazine distribution and the OFT’s near-final decision to open the wholesale part of the supply chain up to competition. This is a decision which benefits neither the consumer nor the businesses that sell or publish magazines.⁴ This is an example of where the link between consumer and competition enforcement has not been appropriately considered and the final decision outcome may be to the detriment of free press and consumer choice.

24) Can you think of ways in which this link might be strengthened if the CTSA were to be formed within the OFT?

The FSB believes that forming the CTSA within the OFT would ensure communication channels are used fully. The relationship between consumer and competition enforcement should be fully understood and embedded in the

⁴ Even Which? the consumer protection group fails to see the benefit in opening up the distribution part of the magazine supply chain to competition.

culture of the changed organisation. However, the FSB notes that adding the CTSA in to the OFT may disturb the balance of work because there is already over 200 officials working on consumer issues within the OFT. This could be a concern. As mentioned above, the FSB would like a greater emphasis on business burden reduction and a fully comprehensive regulatory structure with clear guidance for business.

25) Do you think that forming the CTSA within the OFT would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are your reasons for your views?

The FSB believes that forming the CTSA within the OFT would create a more streamlined regulatory structure, because it would not add to the number of regulators business has to deal with. It would be a step on the way to reducing the number of regulators with whom business has to deal.

In addition, the link between competition and consumer enforcement should be strongly encouraged and maintained. An easy way in which to do this is for the CTSA to be part of the OFT.

The FSB considers that the size of the CTSA is more likely to be proportionate if it exists within the OFT rather than as a separate body. If the CTSA is formed within the OFT, there may also be scope for fitting some consumer parts of the CTSA in with the officials on the OFT already working on consumer issues.

The relationship with Ministers will be reflected in a way similar to that of the OFT, if the CTSA is formed within the OFT. It will ensure a level of independence.

26) What would be the most effective means of achieving the cultural change needed to create a successful CTSA?

Paragraph 105 of the consultation document details the difficulties that may be incurred by trying to establish the CTSA as part of the OFT. The FSB acknowledged that it is likely to be more difficult to foster cultural change for

the CTSA within the OFT rather than as a separate organisation. However, the problem cited about senior staff could not “*focus wholly on setting up the CTSA*” could be avoided if there was investment in new senior staff, rather than just simply using the senior staff within the OFT, as the consultation document appears to infer.

27) Can you see any other advantages/disadvantages of this approach?

28) Do you agree with the estimates of the costs of forming the CTSA within the OFT? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.

As a final comment, the CTSA must have a clear remit, with transparent channels of communication with business, consumers and government stakeholders (local and central). There should be an emphasis on improving business education as well as consumer education. The new CTSA should be a light-touch regulator (perhaps following the example of Postcomm in their implementation of a new licensing framework for postal services) and enterprise-friendly. As mentioned above, often it is not the actual regulation that is the burden for business, but the way it is interpreted and enforced and the guidance issued with it.

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