

**Citizens Advice submission to
the Regulatory Reform
Committee Inquiry on
*Themes and trends in
regulatory reform***

March 2009

1. Introduction

- 1.1. Citizens Advice is the national body for Citizens Advice Bureaux (CABx) in England, Wales and Northern Ireland. The CAB service is the largest independent network of free advice centres in Europe, with 430 main bureaux in England, Wales and Northern Ireland. Bureaux provide advice from over 3,300 outlets, including bureaux in the high street, community centres, health settings, courts and prisons. All Citizens Advice Bureaux are registered charities. CAB clients are often disadvantaged and many are on low incomes or benefits, or are disadvantaged in some way. For example, research by MORI for Citizens Advice England & Wales found that CAB users tend to be in social grades DE and unemployed, or living in social housing.¹
- 1.2. The CAB service aims are to provide the advice people need for the problems they face, and to improve the policies and practices that affect people's lives.
- 1.3. In 2007/8 Citizens Advice in England & Wales helped 1.9 million people to deal with more than 5.5 million issues, including
 - 1.7m debt issues, including mortgage arrears and credit problems, and 115,000 financial products and services issues
 - 476,000 employment issues
 - 399,000 housing issues
 - 130,000 consumer goods and services issues, 95,000 utilities and communications issues and 38,000 travel, transport and holiday issues.
 - 274,000 legal issues
- 1.4. Citizens Advice welcomes this timely opportunity to submit evidence to the Regulatory Reform Committee's inquiry on Themes and Trends in Regulatory Reform. In our policy and advice work, we see the impact of different regulators' methods of regulation and the effectiveness of these methods. The regulators we have most experience of include:
 - the Office of Fair Trading (OFT)
 - the Financial Services Authority (FSA)
 - Trading Standards
 - Ofgem
 - Ofcom
 - Phonepayplus
 - Ofwat
 - The Gangmasters Licensing Authority (GLA)
 - The Employment Agency Standards Inspectorate
 - The Ministry of Justice's Claims Management Regulation

¹ *Financial Overcommitment*, research study conducted for Citizens Advice by MORI, July 2003

- The Solicitors Regulatory Authority
- HMRC's enforcement of the National Minimum Wage

1.5. Citizens Advice is, therefore, able to offer a unique perspective on how consumers and employees in particular are affected by regulation and how the consumer experience in one area may vary widely from another. Based on this experience, Citizens Advice believes that regulation to date, whether principles-based or rules-based, has not understood and protected consumers and employees sufficiently.

1.6. This submission will cover the following areas:

- Regulation and the current economic climate
- Different models of regulation and how these work in practice
- What elements contribute to effective regulation
- The design of regulations

2. The current economic climate and regulation

2.1. The consequences of the current crisis in global financial markets are now being seen by Citizens Advice Bureaux. Between April 2008 and January 2009 the number of enquiries relating to unemployment and difficulties meeting basic living expenses has risen sharply. In this period:

- Enquiries about redundancy increased by 153 per cent
- Enquiries about jobseekers allowance, the benefit for people who have lost their job and are now seeking work, increased by 138 per cent
- Enquiries about mortgage and secured loan arrears increased by 49 per cent
- Enquiries about council tax debts increased by 23 per cent

2.2. Much has been said about the link between the causes of the current economic downturn to regulatory failures in the financial services sector. Citizens Advice does not have the expertise to comment on this directly but we believe this link raises a key point that should be a starting point for any current debate about regulation, **namely that there can be significant negative consequences resulting from regulatory failure.**

2.3. While this seems fairly obvious now, it is not at all clear that the 'pre-credit crunch' discourse on regulation was sufficiently concerned with what outcomes regulation should be trying to achieve or indeed the consequences of failing to meet these objectives. A summary of this (in respect of financial services regulation) is given by Lord Turner in recent evidence to the Treasury Committee. The uncorrected transcript quotes Lord Turner as stating how the Financial Services Authority had carried out

‘competent execution of a style of regulation and a philosophy of regulation which was, in retrospect, mistaken’².

- 2.4. Furthermore, Lord Turner then described this style of regulation as arising from ‘a political philosophy where all the pressure on the FSA was not to say: "Are you looking more closely at these business models?" but to say: "Why are you being so heavy and intrusive? Can you not make your regulation a bit more light touch?"'. From our perspective as an advice charity that is intimately concerned with the day to day problems that consumers actually face, we would argue that this is not only true of regulation of financial markets by the FSA but could be applied to the prevailing discourse on regulation more generally.
- 2.5. We have got very used to hearing phrases such as ‘light touch’, ‘regulatory burden’ and ‘red tape’ as the touchstones for debates about regulation. But the underlying concern of this philosophy – to let business get on with it – seemed increasingly at odds with our experience of consumers suffering often severe detriment from bad practice across a broad spectrum of goods and services markets. It is important to note that it is not just small ‘rogue’ traders that are responsible for this consumer detriment. Many, if not most, of the problems CAB clients face are with high street brands and household names. CAB evidence shows again and again how unfair and detrimental practices can become common, even ingrained, where regulatory standards do not exist, are weak or are poorly enforced by regulators. For example:

A Norfolk CAB reported that a woman had contacted Trading Standards about a plumber she had found in Yellow Pages. They insisted she pay £500 as cash for a job they priced at £1,175 before they did the work and then failed to turn up as promised. As the cesspit was blocked she had to find another trader to do the job. The trader offered a part refund then failed to deliver. Trading Standards explained that whilst they could act to stop the unfair practice for future consumers, they could not enforce the promised repayment.

A Surrey CAB reported that a woman had paid a trader up front for removals. He failed to turn up to do the job and she had been unable to get her money returned. It would appear he had gone into liquidation, and she could not trace him. The bureau was concerned that, in addition to regulation, consumers needed to be warned about such cases whenever enforcers became aware of them.

A CAB client in Gloucestershire was told she had won gym membership but was told there would be a maintenance fee. Verbally the gym said she could cancel the direct debit for payments and given a cut off date. She did cancel but found the credit provider whose agreement she found she had signed threatened to damage her credit record if she didn’t pay up.

² Uncorrected oral evidence taken before Treasury Committee on 25 February 2009. See response to question Q2144.

The local Trading Standards were already aware of this gym but had not acted, presumably whilst a proportionate level of cases are built up.

- 2.6. For instance, the CAB service sees a continual stream of problems arising from bad practice in the mobile phones market. The following case highlights problems with mobile phone retailers, who we believe are not subject to effective regulation, despite this being a significant consumer market.

A CAB in North London saw a 48 year old man who said that when his mobile phone contract was due for renewal he was contacted with offer of new upgrade by a mobile phone retailer. The salesperson said they were from the retailer that he normally dealt with, so he thought nothing of it. He was offered new phones and accepted. However, when the phones arrived the man saw they were from entirely different retailer. He realised that this is not how his normal upgrades are dealt with and decided to reject the phones but found that there were details on how to do this. He said that he contacted the phone retailer several times and spoke with different advisers who were reluctant to provide him with the information he required to return the goods. It was approximately two weeks before he managed to obtain a return address from the retailer and that was only after his service provider intervened, advising him that they had experienced problems with this retailer. The service provider advised him that he was within his time limit for returning the goods and should not therefore be liable for the contractual charges. Finally the retailer provided a return address for the goods and the man returned them by recorded delivery. But he was billed continuously since this time at £31 per month. The client had paid one bill of £90 because he was told that this would end the matter. Instead the retailer passed the matter to debt collectors and he has been warned that he was locked into an 18 month contract.

- 2.7. Another example comes from the banking sector where we continue to see cases of banks exercising their right of set off in a way that can cause extreme hardship to lower income households. The right of set off is an ancient banking practice where a bank will take money from a customer's current account to meet payments of other credit contracts that the consumer has with the bank. As the following cases show, this can mean that the bank takes income that is needed for essential living expenses.

A CAB in Essex saw a lone parent in receipt of income support, child benefit and child tax credit, all of which were paid into her bank account. The woman had a credit card debt with the bank and, with the help of the CAB, had arranged to pay a token offer of £1 per month as this was the most she could afford. The bank sent her a payment book and the client was making the £1 per month payments. Despite this, the bank informed the client that they were going to exercise their right to set-off around £127 from her current account against her credit card debt. This left her seriously short of day to day funds to live on.

A CAB in Greater Manchester saw a 25 year old man who had two accounts with the same bank - a current account that was overdrawn and a 'cash card' account which was used solely for receipt of housing benefit and payment of his rent. But as the housing benefit was deposited into the cash card account, the Bank took the funds to pay off the overdraft leaving him unable to pay his rent. Only when the CAB intervened did the bank reverse the transaction.

- 2.8. The point here is that both regulatory guidance from the Office of Fair Trading (the Debt Collection Guidance) and industry self regulation (through the Banking Code) put nominal controls on the practice of set off. But firms do not necessarily comply with the standards, to the detriment of often vulnerable consumers.
- 2.9. With this background of uncontrolled consumer detriment in mind, our immediate concern is that the current economic conditions will produce many more examples of bad practice.
- 2.10. Firstly, consumers facing uncertain futures or actual financial hardship may be particularly vulnerable to unfair practices and scams. Unfortunately CAB evidence highlights numerous cases of traders seeking to take advantage of these vulnerabilities in a variety of ways.

A CAB in Surrey saw a 40 year old man who was looking for work. A few weeks earlier he had applied for a job as a chef with a catering firm via the job centre. He was expected to go for a 'trial day' as part of their two week program of trial days. He worked the trial day but was unsuccessful and did not receive any remuneration for his efforts. The same job was then advertised again in Jobcentre Plus with the same procedure of a 'trial day' set up. The man pointed out that the firm could be securing up to four weeks work from possible candidates for free. He was then offered another 'interview' - ie practice work day with another company in the following week which would also involve him working potentially for nothing. The man was worried that this could be a scam.

A CAB in Hertfordshire saw a 38 year old man who had debt problems. He had approached a debt management company about getting an individual voluntary arrangement (IVA) to deal with his debts. The firm advised that he needed to offer £300 per month if his five creditors were to agree to an IVA. He told the firm that he could not afford this, but they told him to pay for a couple of months then he could renegotiate downwards. He managed to pay for two months but then defaulted for several months. The IVA provider then told him that if he paid for two more months they would renegotiate. The man's new partner agreed to pay £600 for him. But once the firm had received the money they wrote to the man to say that they would no longer represent him and were keeping the £600 in respect of their admin charges.

A CAB in Northumberland reported that a man had seen an advert in his local paper from a company who claimed that they could wipe out any loans or credit cards if he signed the agreement before 6th April 2007 because there is a good chance that the agreement was made incorrectly and therefore unenforceable. The client contacted the company and he explained that he had taken out a bank loan in February 2007 for £20,000 to buy a car with. The client then received a letter from the company saying that if he signed the paperwork they would charge him £295 for checking his agreement through and if they could not get the loan wiped out, they would refund £245, keeping £50 for admin charges. The CAB commented that in the present economic climate, this was a very tempting offer, especially for vulnerable people who were trying to make ends meet in a time where money is very scarce. The CAB felt that the client could end up paying the money only to find that the loan was enforceable.

2.11. Secondly, as falling incomes and prices put the squeeze on both consumers and businesses, there is a danger that 'good' firms that are properly concerned with the way they treat their customers will be undercut by less scrupulous rivals. In other words there is a danger that good business practices will be undercut by bad practices.

2.12. One example of this comes from the bailiff industry, where a number of bailiff firms have agreed with Citizens Advice in calling for independent regulation of private bailiffs. In part this is because the bailiff sector has long been associated with some very bad practices, which more enlightened firms would like to see cleaned up. But in addition, it is argued that intense competition between bailiff firms for the enforcement business of large creditors (such as local authority council tax debt) can give incentives to firms to maximise the possible revenue from the cases they receive. As these cases may often involve low income and vulnerable households in severe financial difficulties, the potential for bad enforcement practices is clear.

A CAB in the West Midlands reported that they were helping a disabled 47 year old man with 8 dependant children (all under the age of 10), with an outstanding magistrates court fine which had been sent to the bailiffs for enforcement. The CAB had alerted the bailiffs several times that the client should be recognised as 'vulnerable' under the National Standards for Enforcement Agents. However, the bailiffs had ignored these approaches, refused to accept a new payment plan and had threatened to force entry into the client's home. Furthermore, whenever the CAB had tried to make contact with the relevant bailiff, the phone has either been engaged or switched off. The client felt extremely distressed by his treatment by the bailiffs, particularly as he had made every effort to repay the debt to the best of his ability.

A Sussex CAB reported that a man who was unable to work due to illness, left his home locally and went to live with his parents for six months whilst he recovered. On his return home, he found a bailiff's distress warrant for

non-payment of council tax taped to his door. As the client was now able to work and repay the bailiffs, he offered them an initial payment of £500 in a week's time, a second payment of £500 the following month and the balance in April. However, the bailiff he spoke to insisted on full immediate payment. The bailiff also alleged he could legally break into the house to levy goods. Although this was incorrect, when the client complained to the bailiff company, they backed up what their bailiff had told the client. The client subsequently complained to the local authority who said that they would not take back the case from the bailiffs, and that although the client could make a complaint about the intimidation from the bailiffs, they would take no action on it.

2.13. Another example is the sale and rent back sector (SARB). This is a type of transaction where homeowners, usually facing mortgage possession action or other severe debt problems, sell their home at a discount to market value to a firm that allows them to remain in occupation as a tenant. As this was an unregulated sector, any firm could set themselves up as a SARB provider with little or no safeguards for consumers. Perhaps as a result, as the number of people seeking advice about mortgage arrears began to grow from around 2005 onwards, bureaux also began to see cases of homeowners who had suffered severe detriment as a result of entering into SARB agreements. Around this time we spoke to several firms in the sector who were keen to establish a framework of regulation, either voluntary or statutory, that would create standards and help consumers to distinguish legitimate traders from the rogues.

A CAB in Yorkshire reported that a retired couple in receipt of pension credit and disability living allowance had sold their home, in which they had lived for many years, to a sale and rent back company to release funds to repay their numerous credit debts and were renting it back. The clients were paid £53,000 for the property, although it was probably worth about £90,000. They were also promised a further unspecified amount in ten years time. The income from the sale did not clear the debts in full, and the clients were still struggling to repay these from their disability living allowance. Their financial situation was exacerbated because the clients were not entitled to housing benefit for five years, because they had owned the house they were renting. The CAB commented that the clients had sold their house in desperation, thinking their debts would be cleared and they could have a happy retirement. The company had taken advantage of elderly people who did not realise the implications of selling their property and the impact this would have on benefit income.

A CAB in Tyne and Wear reported that a man had got into financial difficulties after his partner left him and he was off work sick. He therefore decided to sell his home and rent it back to a company offering such arrangements. The client had maintained his rental payments of £650 per month, and was therefore extremely shocked to receive a letter from a mortgage company to tell him that they were seeking possession of his home as the landlord had failed to pay the mortgage. The client, who had

lived in the house for over 30 years, tried to contact the landlord, but to no avail. The CAB had to advise the client that there was no regulation of sale and rent back schemes and that his rights as a tenant would not prevail over those of the mortgage lender.

2.14. These two examples demonstrate that effective regulation requires a swift and effective response from government to evidence of problems in the market. As a result of concerns raised by Citizens Advice and others about the SARB sector, the government announced in the 2008 Budget report that the OFT would carry out a market study of the SARB sector. This was duly done by the OFT with impressive urgency, with the resulting report published in October 2008 recommending that the government bring the SARB sector under regulation by the FSA. In February this year both HM Treasury and the FSA issued consultations on the detail of how regulation might be brought forward. Indeed the FSA are proposing to introduce an interim regulatory framework in July 2009. This strikes us as an efficient and timely response to an area of severe consumer detriment.

2.15. In contrast, progress on bailiff regulation has been extremely slow. The Ministry of Justice (then Department for Constitutional Affairs) announced its intention to regulate bailiffs in the 2003 White Paper, *Effective enforcement*. However these plans were then put on hold before being revived during the passing of the Tribunal, Courts and Enforcement Act 2007. Widespread concern over provisions in that Act that would give bailiffs wider forced entry powers led to the Ministry of Justice (MoJ) announcing in March 2007 that these powers would not be commenced until 'those bailiffs who are not Crown employees are licensed by an independent regulator'. MoJ had launched a consultation on the detail of bailiff regulation in January 2007 but did not publish a response confirming its intention to proceed with this until March 2008. Since then there has been no further publicly visible progress towards bailiff regulation. Six years on from **Effective enforcement, regulation** of a sector that has repeatedly thrown up cases of severe consumer detriment looks very remote despite always unanimous agreement on the need for this from stakeholders and MoJ itself.

2.16. We believe that the contrast between these two examples is instructive. Effective regulation ultimately rests on the commitment of ministers to take action to safeguard the interests of consumers where evidence of detriment arises in areas under their departmental brief. The key question would therefore seem to be why the Government's response to two different but pressing problems should be so different.

2.17. Finally, where regulators are funded through licence fees or levies on the firms they regulate, falling business turnover and reducing licence applications are likely to mean fewer resources to deal with bad practices. Perhaps an example of this is the oversight of consumer credit markets by the Office of Fair Trading. Concern over bad practice in consumer credit markets led to parliament passing the Consumer Credit Act 2006. This

updated previous legislation and granted the OFT new powers and sanctions to deal with problems in the market. However the problem of monitoring the way firms actually comply with regulatory guidance remains.

- 2.18. The OFT is funded to regulate consumer credit by a levy on consumer credit licence holders. We understand that an immediate effect of the current recession is a reduction in applications for consumer credit licences and we are concerned that this might well effect the ability of the OFT to carry out its regulatory functions effectively. In addition we would question whether the levy provided the OFT with sufficient resources even before the economic downturn began to bit. For instance, we understand that the levy raised from the five biggest banks amounts to only around £3,000 per year. While we fully support the need for regulation to be efficient and economic, these considerations should not undermine the need for effectiveness.

3. Different methods of regulation

- 3.1. There are three broad methods of regulation designed to protect consumers and employees:

- Principles-based regulation
- Prescriptive or rules-based regulation
- A regulatory regime that does little other than badge firms

- 3.2. Firstly, principles-based regulation is where there are high-level and quite general requirements on firms to behave in a certain way. This can be backed up by guidance, which may or may not be binding. In theory, the principles-based regulation may encourage firms to focus on delivering better outcomes for consumers. Examples of principles-based regulation include:

- The FSA's Treating Customers Fairly initiative
- The Advertising Standards Authority code on advertising which follows the idea of legal, decent, honest and truthful.
- The proposed method for the FSA to regulate retail banking from the end of 2009.

- 3.3. However, in practice, the benefits depend on how the high-level principles are translated into the everyday practices of firms. For example, how easy is it for consumers or their advisers to both understand the application of such principles and hold firms to account where they fail to adhere to them?

- 3.4. For example, under the FSA's proposals to regulate retail banking, the detailed rules contained in the self-regulatory Banking Code will be replaced with high level principles, backed up with voluntary guidance. The content of the current Banking Code and associated guidance for subscribers is vital for vulnerable consumers because of its specific and detailed provisions which set out what customers can expect in certain situations. This provides customers and their advisers with clarity about what is and is

not permitted under the regulatory regime, thereby enabling them to assert their rights where they are infringed in any way. Removing this level of detail will have negative consequences, with consumers and their advisers unsure and unclear about whether firms are complying with high-level principles. It will also lead to conflicting interpretations of what it means to treat customers fairly since the onus is on the firm to interpret high-level principles, and any interpretation is likely to vary from firm to firm.

- 3.5. Under the Banking Code subscribers must comply both with the Code itself **and** the Guidance that underpins them if they wish to avoid enforcement action by the Banking Code Standards Board (BCSB). These arrangements provide transparency to: (i) banks who know to a fairly detailed level exactly what is expected of them to achieve compliance; and (ii) consumers and CAB advisers who similarly know what they can expect from banks and building societies, and therefore where they can challenge banks about their failure to comply with certain undertakings.
- 3.6. The FSA's move to high-level principles-based regulation will remove this level of detail. The FSA proposes that to accompany its high-level principles for regulation of retail banking "industry may wish to develop voluntary industry guidance, suggesting ways to comply with these requirements, which would preserve valuable elements of the current Codes and relevant material." We do not think that such voluntary industry guidance as currently constituted would fulfil the same valuable function as that provided by the Banking Code guidance. This is because while the BCSB will enforce against its guidance, this does not appear to be the case for the FSA.
- 3.7. Secondly, prescriptive or rules-based regulation sets out detailed rules that firms should follow. We believe that in many cases, regulators need to be prescriptive in telling firms what behaviour is acceptable, and what is not. In some sectors, this needs to drill down to specific practices. The OFT's Debt Collection Guidance is an effective example of this. However, we believe that if prescriptive regulation is to address consumer detriment effectively, it must be accompanied by swift and effective enforcement. For example, the national minimum wage rules are clear, and the regulator has effective enforcement powers, but there are insufficient resources to ensure universal compliance.
- 3.8. Finally, some regulation may operate as little more than a badging scheme, with little in the way of either high level principles or prescriptive rules. An example of this is the regulation of wheel clamping firms by the Security Industry Authority (SIA). Currently the SIA seems to do little more than issue licences on the basis of criminal record and other basic checks on applicants. Licensed firms are only required to do things: firstly, not to clamp, block or tow away vehicles with a valid disabled badge or those which are a marked emergency service vehicle, and secondly to provide a receipt which must include the location where the vehicle was clamped or towed, their own name and signature, their licence number and the date.

There are no requirements in relation to the amount of fees which can be charged or the manner in which wheel clampers carry out their duties. Citizens Advice believes that this form of regulation is inadequate to tackle consumer detriment.

4. Effective and proportionate regulation

- 4.1. The points we have raised in the previous section highlight an inevitable and obvious tension between ensuring good standards of business practice across markets and the costs that this would entail for firms. We are conscious of the need for regulation to be proportionate and not to place any unnecessary burden on business, not least because these costs tend to get passed on to consumers in one way or another. But we believe that the 'light touch' discourse that prevailed in the recent past tended to go too far in prioritising these concerns.
- 4.2. The inescapable fact is that good practice does have a short-term cost attached to it. But we believe that right-thinking firms will want to ensure that their customers feel they are being treated fairly, as this is a vital indicator of the long running health of the market they are trading in. Here the current economic turmoil illustrates exactly how this long-term health can be undermined. We believe that more businesses could now go under, because some aspects of regulation were perhaps too light touch, resulting in poor and unsustainable business practices being allowed to flourish.
- 4.3. Citizens Advice believes that, for business as a whole to succeed, underhand business practices must be curtailed and businesses that persist in using them should be prevented from trading. We believe that this is unlikely to happen in a regulatory environment that values a 'light touch' above all else. Some of the persistent problems faced by CAB clients would seem to confirm this point. Firms should pay a price to enter into markets for consumer goods and services and that price is a commitment to best practice and the regulatory framework needed to ensure this.
- 4.4. Our view is that regulation should be driven by outcomes and should link to consumer detriment. As such, the objectives behind regulation should:
 - Reflect the damage and detriment caused;
 - have deterrent value; including asset recovery and financial sanctions when a business has gained financially as a result of failure to comply with regulation;
 - allow for individuals affected by the poor business practices to obtain redress.
 - reward and encourage good practice.
- 4.5. If the above serves as a high-level critique of calls for deregulation, the next step is for us to suggest some of the key features that we believe regulatory systems need to work properly in consumer facing markets.

5. Regulators must focus on outcomes

- 5.1. There is probably near universal agreement that regulatory regimes need to be proportionate and risk-based. However by themselves these phrases may not mean very much. In the past regulators have tended to concentrate on processes and outputs such as producing rules and guidance rather than on the effect these have on the business practices that consumers encounter.
- 5.2. Citizens Advice believes that regulators should be more focused on the outcomes of their regulatory frameworks. This means having effective ongoing strategies to deal with (or, better still, prevent) both specific problems and general areas of consumer detriment in a timely and effective manner.

6. Regulators must empower consumers

- 6.1. From a consumer advocacy perspective, Citizens Advice believes that regulatory frameworks need to properly anticipate the sort of problems consumers are likely to face. Regulators need to make sure they actively develop and regularly update their understanding of consumers' problems. This means having a clear strategy to gather evidence of consumer experience and then using this experience to review the effectiveness of regulatory frameworks. Where there are insufficient enforcement sanctions available to a regulator, they should be able to work in conjunction with any other regulator that does have the required powers to effectively address the detriment. We think this may be starting to happen with the OFT's compliance partnerships work. However, to date we believe that regulators have a patchy track record of achieving this, both in terms of the timeliness of reviews and the extent of engagement with actual consumer problems.
- 6.2. But beyond this it means giving consumers clear and concrete signals about the way they can expect to be treated by firms, the way regulators expect firms to behave towards them and what they should do if they feel these standards have not been met. Making this work for consumers means regulators should be consistently thinking about the following issues:
 - Are rules and guidance easily accessible for consumers, in plain language and are they talking about the problems consumers face?
 - How do regulators ensure that consumers understand the requirements that regulatory frameworks place on firms – does information about standards flow from regulator to firm to consumer to regulator in an even flow?
 - Do regulators encourage consumers to give feedback when they think a firm has not followed rules or guidance? How do regulators do this?
 - How well do regulators communicate the outcomes of consumer feedback or complaints about firms?
 - Are regulators providing sufficient information about their investigations to consumers in a timely and effective way? Doing so

would alert consumers to any potential pitfalls when dealing with a business and ensure that consumers are able to engage with and contribute to a regulator's investigation.

7. The need to get firms to do more to demonstrate compliance

- 7.1. We believe that ensuring compliance with rules, guidance and practice standards is one of the most significant weaknesses with the regulation of consumer facing markets. Policy makers can produce fantastic regulatory frameworks that will be completely ineffective to deal with substantial non compliance. However even well resourced regulators may find it difficult to monitor the entire range of firms they regulate at any one time. While this can be in part remedied by developing risk based regulation models, such models may involve unfortunate trade offs between competing sources of possible consumer detriment. Worse still, risk based models may incentivise regulators to concentrate on the 'low hanging fruit', for instance by prioritising action against small local traders rather than large firms because it is easier to get a result.
- 7.2. We believe regulators need to do more to encourage firms to demonstrate how they will adapt rules, guidance and standards to their business practices. More specifically we believe that regulators need to do more to ensure that firms communicate this to consumers. If firms are sufficiently transparent about how their practices comply with regulatory standards, then every consumer and consumer adviser can help regulators to monitor compliance.

8. Joint regulatory action

- 8.1. Activities that require regulatory attention do not always fall neatly into the regime of one regulator. For example the same salesman may sell a package of products which are regulated by different regulators. . For example, the sale of legal services may include the sale of a linked credit agreement. When rogue traders act fraudulently, for example in scam lotteries, they can potentially cross the remits of several regulators. To ensure that all regulatory angles are addressed, we would like to see more effective joint working between regulators so that:
 - Regulators discuss who can do what to tackle the problem fully.
 - Regulatory action can be taken by more than one regulator against the same offender at the same time and in a proportionate fashion, saving the need for two separate investigations.
 - Where there are self-regulatory paths that tackle the problem identified and deliver a real sanction, these are also considered as well. For example, under the Consumer, Estate Agents and Redress Act there are legal requirements for estate agents, fuel companies, and postal companies to belong to an ADR provision and some providers are achieving this through trade association membership where a code of practice includes a CEAR approved ADR provider. Barring

membership following failure to maintain the behaviour required under the code would effectively mean that trader could not continue to trade.

- Detriment to those affected can be reflected using all the available powers or sanctions.

8.2. A good example of how Government can ensure more effective joint regulatory action can be seen through its current efforts, led by BERR, to ensure that the various workplace rights enforcement bodies work together more effectively.

9. Resourcing enforcement action

9.1. Enforcement action needs to be properly resourced. However, not all types of regulation appear to receive sufficient (or indeed any) income to resource enforcement. Economic regulators such as OFGEM, OFCOM and FSA are funded through a levy from all the businesses in the sector. Other regulators, such as the OFT, charge a licence fee. However, as we have highlighted earlier in our submission, the OFT only charges a small licence fee, even for large multi-national companies. It is unclear whether this fee covers more than just the administrative cost of issuing the licence.

9.2. Under the Consumer Protection from Unfair Trading Regulations (CPRs), a wide range of businesses not connected with a licensing regime are also regulated by the OFT. As there is no requirement for a licence to trade, the mechanism to charge for policing the business is not available.

9.3. Trading Standards and Environmental Health Departments have historically had little or no access to business funding for the regulation they deliver. Both are expected to carry out functions across many pieces of legislation from the money provided by their local authority employers. Whilst the Government helps fund local authorities, most of their income is raised through local taxation. Consequently, if regulators do not have the resources to take action, consumer detriment will continue unchecked. As such, we believe that it is important to build in automatic redress for consumers, so that there is a greater incentive for firms to abide by the rules.

9.4. In this respect, the RES Act's provisions for Principle Authorities to charge businesses for inspection are welcome.

10. Available regulatory sanctions

10.1. We believe that regulators enforcing compliance need the most appropriate enforcement tools and sanctions to do their job well. The Regulatory, Enforcement & Sanctions Act 2008 provides a range of tools for regulators and enforcers. The idea is that the tool chosen reflects the seriousness of the breach of regulation or legislation. Much the same approach has been taken to the transposition of the EU Unfair Commercial Practices Directive

into UK legislation. The UK Government retained the criminal sanctions of the original legislation that the new law replaced for use in the worst cases. Civil sanctions of undertakings and injunctions are also available where these would be more appropriate. These are quicker and cheaper, but need a backstop threat of the heftier criminal sanction to ensure compliance with the law.

10.2. Economic regulators such as OFGEM and OFCOM have licence conditions to ensure that utility companies act fairly in their dealings with consumers. Where these licence conditions are breached, the regulator can take action against that business. Commonly, the relevant EU Directives for consumer protection have included economic regulators as enforcers, as well as Trading Standards and the OFT. OFGEM could therefore use either the Distance Selling Regulations or the licence condition on sales to tackle poor tele-selling. Having this option allows the regulator to choose the most appropriate sanction.

11. Design of new regulation

11.1. From what we have previously outlined, it would be easy to argue that the mindset behind regulation to date, together with the current economic climate, shows that the Government and regulators have not understood business well enough. What we would argue, however, is that the Government and regulators need to better understand consumers and employees more effectively and ensure that business works for them, through improved protections for example.

11.2. For example, employment regulations (i.e. those governing the workplace rights of workers) can sometimes be unduly complex and, in many cases, little if any thought appears to have been given to how such undue complexity will impact on compliance and enforcement. One notable example is the not-yet-implemented provisions in sections 3 to 10 of the Work & Families Act 2006, under which up to 6 months of statutory maternity leave (and pay) can be transferred from the mother to the father. Although not yet implemented, the Government has said it aims to implement these provisions by the end of this Parliament (along with increasing statutory maternity leave from the current 9 months, to 12 months).

11.3. The Regulations governing these provisions will be extremely complicated, given that in the vast majority of cases the process will involve not one but two employers (both the mother's and the father's), who will need to liaise to ensure, for example, that the mother has returned to work before the father begins his leave. At the time these provisions were proposed, in 2005, we noted that this complexity will "intensify the already significant compliance challenge for employers - and especially for small employers in low-profitability sectors of the economy" (in *Hard labour: making maternity and paternity rights at work a reality for all*, Citizens Advice, November 2005). Workers will only be able to enforce these rights by bringing an employment

tribunal claim, but of course the time surrounding childbirth is a very challenging time and, as we noted in *Hard labour*, pregnant women, new and lone parents are very unlikely to bring an employment tribunal claim. In contrast, the Government established a whole new compliance and enforcement regime to go with the National Minimum Wage in 1999, with the NMW being proactively enforced by HMRC.