

December 2012

CAB evidence briefing:

# Redressing the balance

Why consumers need better means of resolving problems with faulty goods and services

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# Summary

The Citizens Advice service is dealing with high demand for advice on consumer problems. From April to September 2012, half a million people sought advice about a consumer problem from a bureau or our consumer helpline and there were 1.8 million views of the consumer rights information on our website.

Faulty goods and sub-standard services are a major cause of complaints to the Citizens Advice consumer service. From April to September 2012 one in four calls to this service concerned faulty goods which are estimated to be worth £369 million, and a further 88,700 people sought advice about sub-standard services worth £263 million.

Our own research of the general public and clients of the Citizens Advice service has shown that consumer problems with goods and services are widespread. Nearly three quarters of the clients that we surveyed had experienced a problem which is covered by current consumer law. Ninety four per cent of these people had complained, but only 10 per cent of these were completely successful.

Most people wanted more ways to obtain redress than their current right to take a business to court. Only nine per cent of the general public felt that court action was enough.

The Government intends to bring forward legislation to improve consumers' rights in the 2013 Queen's Speech. We believe that any new consumer legislation must include measures to improve access to redress which are supported by consumers themselves.

Our research shows that there is strong support for the following:

- Set time limits for traders to provide consumer redress.
- Measures to encourage more businesses to join independent dispute resolution schemes.
- Traders to provide point of sale information about consumer rights.
- Consumer protection bodies being able to order compensation when they take enforcement action.
- Class actions where consumers can take a joint case to get compensation or a problem put right.

The Consumer Rights Bill, which will be in the 2013 Queen's Speech, needs to include options to improve consumers' access to redress for faulty good and substandard service.

# Introduction

Currently consumers have rights where they buy goods or services which turn out to be faulty or sub-standard. Depending on the circumstances, businesses that they purchase from should refund the money, repair or replace the goods or make good the services.

In the current economic climate, consumers need these rights more than ever. Research by the Office for National Statistics shows that households are spending more, but getting fewer goods and services for the money.<sup>1</sup> Many people cannot afford to put up with faulty goods or sub-standard services. They need businesses to comply with the law, and if this does not happen, they need easy ways to use their rights to get the redress they are entitled to. If this does not happen, they need advice on what to do next.

It is clear from our advice services that this is not happening. From April to September 2012 more than half a million consumers sought advice about resolving a problem with goods and services from the Citizens Advice service.<sup>2</sup> They either rang our Consumer Advice Service helpline or approached a local Citizens Advice Bureau. Those consumers calling the helpline alone reported problems they had with £2.47 billion worth of purchases. There were a further 1.8 million views of consumer information on our website during this period.

So what are these problems about? A look at our top 10 consumer enquiries for this period shows that consumers are seeking advice about a wide range of everyday purchases. These are goods and services that consumers need and cannot afford to go wrong.

**Table 1 – Top 10 consumer enquiries received by the Citizens Advice service from 1 April to 30 September 2012**

Types of goods and services	Number of enquiries
Second hand vehicles	46,752
Fuel	36,320
Building repairs and improvements	36,138
Furniture, furnishings and floor coverings	32,667
Electrical and electronic appliances and repairs	27,543
Vehicle repairs and servicing	18,104
Computer hardware and software	15,268
Clothing and footwear	14,799
Mobile phones	16,437
Parking and congestion	11,555

Problems with faulty goods and poor services like these should be relatively easy for consumers to sort out. We have a long established system of consumer protection law in the UK which gives consumers clear rights to reject goods that are not of a satisfactory quality, as described or fit for purpose.

But the numbers of people asking for advice about problems with goods and services suggests that whilst many businesses do treat consumers fairly, including putting things right and delivering redress when things go wrong, many still do not.

And this is why it is no surprise that Consumer Focus has estimated that across the economy as a whole 'consumer detriment' – which is the problems consumers experience with goods and services – is costing consumers an estimated £3.08 billion per annum and that one in five consumers say they have cause for complaint about goods and services each year.

1. ONS, Consumer Trends Quarter 2, 2012

2. 414,947 from the Citizens Advice Consumer Advice Service plus 182,712 from Citizens Advice Bureaux in England and Wales.

Apart from consumers being ill able to afford to lose £3.08 billion per annum due to unfair trading, the impact of this goes beyond monetary value. There are a wide range of impacts and consequences when consumers have problems and cannot easily resolve them:

- Consumers suffer financially because what they have paid for is not performing correctly or cannot be used.
- Rogue traders who side step the law unfairly undermine good businesses in our economy.
- Consumers lose confidence in the law.
- The reputation of the business sector suffers.
- Consumer confidence to buy is dented.
- The cost of disputes is expensive in money, time and anxiety levels for consumers and for business.

So what is going wrong? What are the key problems consumers have resolving problems with goods and services? And how can these problems be more easily resolved, reduced or prevented in future?

This report looks at:

- The extent and nature of consumer problems with goods and services.
- Action consumers take to resolve problems.
- Difficulties consumers have gaining redress.
- Consumers' views on how things can be improved in future.
- Propositions for change.

## Research methodology

Citizens Advice wanted to find out what consumers think about using their current rights now to sort out faulty and sub-standard purchases and what would make sure these rights work effectively in the future. We undertook research into these issues through the following means:

1. A survey of a nationally representative sample of 1,944 people aged 15+ across Great Britain was carried out by Ipsos MORI on its face-to-face omnibus survey between 2-8 March 2012.<sup>3</sup> This was to see what support there was in the general population for a number of options for improving access to redress for consumer problems.
2. A Citizens Advice survey of people with experience of trying to resolve consumer problems was carried out in June and July 2012 on our websites and in bureaux waiting rooms. A total of 1,092 people took part in the survey, although not every question was answered by every respondent, so base rates vary for each question. The objective of the CAB survey was to ask people with direct experience of trying to resolve a consumer problem how resolving disputes with traders could be made easier in future.
3. We have also used statistical data from calls to the Citizens Advice Consumer Advice service and cases reported directly to us by Citizens Advice Bureaux in England and Wales to provide further detail about the problems that consumers were trying to resolve.

3. Capibus, Ipsos MORI's in-home, face-to-face omnibus study. Interviews are carried out by interviewers using CAPI (Computer Aided Personal Interviewing) laptops. A quota sample of respondents are interviewed and the survey data are weighted by age, gender, social grade to be nationally representative of respondents ages 15+ in Great Britain.

# The extent of consumer problems

The scale of consumer detriment is substantial. Recent research by Consumer Focus estimated that consumers in the UK are experiencing 15.7 million problems with goods and services a year. This included 5.87 million problems with services such as fuel and post, 4.1 million problems with household fittings and appliances ranging from home improvements to domestic appliances and 3.8 million problems with everyday household purchases from food to dry cleaning.<sup>4</sup>

Faulty goods and sub-standard services are a major cause of complaints to the Citizens Advice consumer service. From April to September 2012 one in four calls to this service, nearly 124,000 people, concerned faulty goods which are estimated to be worth £369 million, and a further 88,700 people sought advice about sub-standard services worth £263 million.

We asked consumers about their experiences. 74 per cent (812 of 1092 responses) of people responding to the Citizens Advice survey said they had had a problem with something they had bought in the last 12 months. Our survey is not representative of the general population as it was targeted at people looking for advice and therefore likely to have had a problem.

Most people responding to the Citizens Advice survey told us about the cause of their problem. Table 2 sets out the nature of the problems consumers experienced and whether the cause of the problem would entitle them to redress under current legislation. At least 72 per cent of people had experienced a problem that entitled them to redress under current consumer law.

**Table 2: Problems with faulty or sub-standard purchases experienced by consumers responding to the Citizens Advice survey**

What was the problem?	Total	Percentage	Legally entitled to a refund, replacement or repair/service put right?
There was a fault with the item I bought	272	25%	Yes
The service (e.g. building work, dentistry, travel) was done badly or not finished	130	12%	Yes
It wasn't the same as they said or advertised	128	12%	Yes
I never received it	94	9%	Yes
There was still a problem after the repair / replacement	92	8%	Yes
I didn't agree with the price they charged	63	6%	No
They promised money back but never sent it	61	6%	Yes
The repair / replacement took too long	58	5%	Possibly
It wasn't what I wanted e.g. wrong size or colour	49	5%	No
Other	137	13%	Not applicable
Grand total	1084		

Base: 1084 consumers responding to the Citizens Advice survey on problems with goods and services

4. Consumer Detriment 2012 – prepared for Consumer Focus by TNS BMRB. Consumer Focus October 2012.

Two thirds of people responding to the Citizens Advice survey (696) also told us which goods and services were problematic. As can be seen in the table below, they were experiencing problems with everyday goods and services:

**Table 3: Products and services that were faulty or sub-standard purchased by consumers responding to the Citizens Advice survey.**

Please tell us what you bought	Response base	Percentage
Electrical and household appliances e.g. washing machine, TV, computer	130	19%
Car or other vehicles including servicing and/or repairs	118	17%
Home improvements and repairs e.g. building work, plumbing and double glazing/conservatories	66	9%
Clothes and shoes	65	9%
Furniture and carpets etc.	57	8%
Other, including broadband and phone services, holidays, leisure goods and renting property.	260	38%
Grand total	696	

## Consumers do try but often fail to get redress

Ninety four per cent of the consumers taking part in the Citizens Advice survey told us they had complained, attempted to get a refund or tried to get the problem put right. But only 10 per cent were able to say this was successful. Most had hit a brick wall. Seventy four per cent said they were not successful at all and 16 per cent said they were only partially successful.

This lack of resolution is a huge and constant problem in the general population too. The recent Consumer Focus research on consumer detriment found that nearly half consumers' problems were either not resolved or only partly resolved.

There is a problem for consumer confidence and for fair competition when the rules for sorting out consumer problems do not work. So what is stopping the law working?

# Consumers are often fobbed off by businesses avoiding their obligations

Although the Citizens Advice survey did not specifically ask people about their experiences on the barriers to redress, some told us about the barriers they faced when they tried to sort out their consumer problems in the final question of the survey. These comments give a flavour of how frustrated people feel when they know their rights are being refused. Bureaux also regularly report cases where retailers have fobbed clients off when they have asked for redress.

These comments and cases show that there are a number of barriers that consumers come across when they try to exercise their rights to obtain redress from traders.

Firstly, shop staff apply their policy on returning unwanted goods to situations where the consumer is legally entitled to redress for faulty goods:

A CAB in the North West of England saw a 75 year old man. He had bought a radio from a well known electrical retailer. He had checked with the salesman to make sure that the reception would be good. Reception and sound quality were poor so he returned the radio to the shop. Instead of refunding him the money, the shop manager pointed to a leaflet attached to the receipt. The leaflet stated that the shop would only exchange goods for seven days after purchase and only if the box, in which the goods had been sold, had not been opened.

*"I did not get a refund I was entitled to as the [shoe shop] are not giving refund stating that it is not their policy to give refunds on goods in the sale. I said but this is faulty, they said that was why they were in the sale but [they] did not tell me that... Their head office is siding with the shop."*

*"[The] customer services manageress stated [the store] did not have to comply with Trading Standards guarantees and customer rights and the store manager refused to see me. [I was] followed by security threatening to throw me out..."*

Secondly, retailers do not provide refunds when goods can be shown to be faulty soon after purchase. In this situation the law says that consumers can reject the goods and get their money back:

A CAB in the South East of England saw a couple who had asked for a refund when, three weeks after purchase, they discovered that the £858 sofa they had bought from a high street retailer was faulty. The trader's independent expert agreed it was faulty, but only offered a repair. The clients wanted a refund because the fault had occurred so soon after purchase, and they had lost faith in the sofa. They told the bureau that the shop was insisting on a repair that they did not want to accept.

Thirdly, consumers do not get their money back on goods they buy which prove not to be as described:

A CAB in the North East of England saw a 64 year old man who had bought what he thought was a leather three piece suite costing £899.95, together with a five year guarantee. A few months after purchase, he accidentally nicked the fabric on the arm of a chair. As the guarantee covered accidental damage, he contacted the shop who sent someone out to look at the chair. The man who came to inspect it said the suite was vinyl, not leather, even though the client's paperwork referred to a leather suite. The client filled in a claim form for the warranty and someone else came out to look at the suite and took pictures.

When the client telephoned the shop some months later, he was told that the chair should have been repaired. The client kept on chasing the shop, but got nowhere. Five months after he had informed the shop about the problem, they finally told him that they would not pay his claim because they felt that the damage was caused by wear and tear.

A CAB in the East of England saw a man who had bought a motorcycle jacket for £150. The jacket included a pocket labelled "waterproof". Whilst on holiday in France, he found it was not waterproof and his passport got wet. On his return home, he took the jacket back to the shop for a refund. The assistant told him the manager was not there so a refund could not be authorised and that he would contact the manufacturer. The client felt that the goods were not fit for purpose and wanted a refund.

Fourthly, the law says that consumers are entitled to get some money back if repairs and replacements fail or take too long. Our evidence is that some traders do not offer this redress:

A CAB in the South East of England advised a couple who had asked for a refund when the two bespoke assistive chairs costing £4,500 proved to be uncomfortable and they noticed loose wires. The couple were told by the retailer that they were not entitled to a refund and the chairs were collected. Two months later they were still awaiting a decision about whether a repair or a replacement would be offered. A temporary replacement had been lent for the husband, who was disabled, but it was too low for him to use as he could not get out of it.

A CAB in the North East of England saw a woman who had bought a fridge-freezer from a well known retailer. Within two months a fault had developed. The same fault was repaired six times within five months, and on the last occasion the engineer had requested a replacement.

When the bureau contacted the business on behalf of the client, they were told the client would have to contact the manufacturers.

Finally, consumers are entitled to have services provided with reasonable care and skill, and in a reasonable time. They should not have to put up with shoddy services which take too long:

A CAB in the East Midlands advised a woman who had bought a warranty on a washing machine that promised service within 48 hours. It had taken four weeks for the service provider to visit, despite the woman's repeated phone calls. Her washing machine had broken down and the client, who had three small children, had been taking washing to relatives and the launderette.

A CAB in the East Midlands saw a disabled man who had signed a contract with a building firm to resurface his driveway for a cost of £575. He was promised a 10 year guarantee on the work done. A few days after work was carried out, the cement used on the drive started to break up. When the client contacted the builders, they stated that the workmen had used the wrong type of cement mix on the driveway and recommended a sealant be applied to prevent further cracks appearing. The client requested that the sealant be of a similar colour to the cement on the driveway (grey) but the sealant that was applied was black. The sealant never set properly and had started to flake apart. The driveway was uneven and dangerous for the client and his wife to walk on. The man told the CAB that they had repeatedly attempted to contact the company via phone to arrange an inspection of the driveway and to get the repair work started, but every time an appointment was made, the workmen had not turned up. The client also told the CAB that the builders had been aggressive and insisted on extra money to inspect the driveway, despite the fact that they had given the client a 10 year guarantee.

# Consumers would like better rights to gain redress in future

The cases above are not isolated examples of rogue traders. Several involve businesses that are well known high street retailers, who may be denying many people their legal right to a refund for faulty goods.

It is clear that consumers want more ways to get redress for faulty purchases and sub-standard services. Research by the Lincoln Law School in 2008 on representative actions found that consumers were put off taking court action themselves because they felt it was too complex, risky and costly.<sup>5</sup> Only nine per cent of the people who responded to our Ipsos MORI survey felt that there was no need for further redress options as being able to take court action was enough. As a consumer who responded to the Citizens Advice survey told us:

"[I had an] issue with a trader repairing my roof which caused damage. [I cannot] afford to go to court to get my money back. It would be nice to have a cheaper, easier alternative."

We therefore asked consumers who took part in the Citizens Advice survey and the Ipsos MORI survey what would make resolving their consumer problems easier in future.

We set out below seven potential ideas for improvement:

- Traders should have to provide refunds within set time limits
- Traders should have time limits for dealing with consumer problems
- An ombudsman scheme
- Self-regulation
- Improving information about consumer rights
- Consumer protection bodies being able to order compensation when they take enforcement action
- Class actions where consumers can take a joint case to get compensation or a problem put right

In the Citizens Advice survey we added an additional question about the need for point of sale information because of the nature and level of enquiries we were receiving via the Citizens Advice consumer service.

## Proposition 1

### A set time limit for making refunds

We asked consumers for their views on whether a right to receive a promised refund within a set period would be helpful. Ninety two per cent of respondents to the Ipsos MORI survey thought that this would be very or fairly useful to help avoid disagreements with business.

When asked about what would be a reasonable time limit when a refund is due, most respondents opted for the shortest time currently possible that they could choose. A third (33 per cent) said within up to seven days. But 26 per cent opted for up to 14 days; and 30 per cent thought that up to 30 days was reasonable. Cumulatively 89 per cent thought that a reasonable time limit should be no more than 30 days. The options for longer time limits (up to two months) were deemed reasonable by no more than four per cent of respondents with only two per cent saying up to three months and just one per cent saying up to six months or longer.

## Proposition 2

### Time limits for businesses to deal with consumer problems

We asked those responding to the Ipsos MORI survey how useful it would be to have a right to have problems resolved within a set time and a right to some or all of the money back if it could not be done in this time, to replace the "reasonable time" rule. Ninety one per cent said this would be very or fairly useful.

5. University of Lincoln, Lincoln Law School (2008): Representative Actions and Restorative Justice. Report for the government department for Business, Enforcement and Regulatory Reform

When we asked what consumers thought would be a reasonable time limit for completing repairs or replacements, to sort the problem out and a right to some or all of the money back if the repair or replacement could not be done in this time, 17 per cent thought that up to seven days was a reasonable time limit and 26 per cent opted for up to 14 days. Thirty seven per cent said up to 30 days, making this the most popular option. Twenty six per cent thought that up to 14 days was enough and 17 per cent opted for up to seven days. Altogether 81 per cent wanted repairs or replacements to take no longer than 30 days.

### Further propositions for change

In the Ipsos MORI survey, respondents were asked to consider a situation of dealing with a trader regarding faulty goods or services. They were then presented with four propositions (proposition 3, 4, 5 and 6) and asked to rank them in terms of how useful they perceived them to be in giving them the most confidence to get a solution to the problem. In the Citizens Advice survey, respondents were asked what would help them to resolve problems that they might have in the future

### Proposition 3

#### An ombudsman scheme/ADR to refer complaints to

"An independent body, such as an ombudsman, that you can take your claim to" was ranked the most useful in giving them confidence in this respect by one third (33 per cent) of respondents to the Ipsos MORI survey. Forty three per cent of those responding to the Citizens Advice question said an independent organisation (sometimes called a dispute resolution service) would help them.

### Proposition 4

#### Businesses being ordered to pay compensation by enforcers

Following this, "a system for consumers to be compensated as a result of the action taken by bodies like Trading Standards, Office of Fair Trading" was ranked the most useful in giving them confidence by 28 per cent of respondents. In the Citizens Advice survey 44 per cent of respondents asked said this would help them to resolve problems with a trader.

### Proposition 5

#### A voluntary trusted traders scheme

One in eight (13 per cent) of respondents to the Ipsos MORI survey ranked "Knowing that the business belongs to a voluntary scheme (like ABTA, Trustmark) or a trusted traders scheme designed to improve customer service" as the most useful in this respect.

### Proposition 6

#### Collective redress in court

Finally, approaching one in ten (8 per cent) ranked "An easy way to make a joint claim with other people who have experienced the same problem, sometimes called a representative action or collective redress" as the most useful. Nearly a quarter (23 per cent) of those responding to the question about options to improve consumer redress in the Citizens Advice survey said it would help them to resolve problems with a trader.

Whilst 82 per cent of respondents to the Ipsos MORI survey ranked one or more of the four propositions, nine per cent claimed that they felt "nothing more is needed, the current right to take a business to court if we cannot agree a solution is enough"

### Proposition 7

#### Improving information

Forty three per cent of those responding to this question in the Citizens Advice survey said that information about their rights on receipts, at the till and on web sites would help them to resolve problems with a trader.

# Conclusions and recommendations

Our research has shown that consumer problems with goods and services are widespread, and a significant number of consumers cannot get redress even where they take action to complain. Consumers support a number of potential improvements to their redress rights in future.

It is clear that consumers want more than they currently have, and they prefer solutions that are simple and clear – like time limits for traders to deal with consumer problems and better information on their rights at point of sale. They are also supportive of options where others can obtain redress for them – like ombudsman schemes and redress as part of enforcement action. They are not so supportive of ideas for redress which were not simple, clear and cheap, such as collective redress and trusted trader schemes.

## Opportunities to improve access to redress – trusted traders and ADR

We were disappointed at the low priority that consumers gave to trusted traders schemes. This is perhaps not surprising given that so few self regulatory codes of practice were approved by the Office of Fair Trading (OFT), and it has not proved easy to promote the fact that firms are members of approved schemes.

The Trading Standards Institute (TSI), who are taking over trade association codes approval from the OFT in April 2013, will need to consider how to get more codes approved and how their scheme could be better promoted to consumers. The TSI's proposed new criteria for codes approval include the option for trade associations to choose between two pre-approved ADR schemes, which should help extend access to ADR for many consumers.

## Opportunities to improve access to redress – the Consumer Rights Bill

The Government has an opportunity to improve consumers' rights in forthcoming legislation. The next Queen's Speech will include a Consumer Rights Bill to modernise consumer legislation, provide stronger consumer protection, and to empower consumers.<sup>6</sup> Whilst the Bill has not yet been published, Government consultations reveal that it is likely to contain some measures changing current consumer rights to redress:

- Limiting the consumer's right to return faulty goods for a full refund to 30 days after purchase, and to limit the number of repairs and replacements before consumers are entitled to money back.<sup>7</sup> Currently the law states that this can be done within a "reasonable time", if the consumer has not "accepted the goods". Case law on the meaning of these phrases is complex, making it difficult for consumers and business to be certain about their rights and responsibilities.
- Collective redress for both businesses and consumers who have experienced anti-competitive practices.<sup>8</sup>
- Allowing trading standards services and courts to impose a wider range of penalties on businesses who have broken consumer law, including compensating consumers.<sup>9</sup> The consultation asks whether the wider range of penalties should apply to cases where court action is taken and where the business gives trading standards an undertaking to mend their ways.

6. BIS press notice 19 September 2011

7. Enhancing consumer confidence by clarifying consumer law, BIS, July 2012

8. Private actions in competition law – consultation on options for reform, BIS, May 2012

9. Civil enforcement remedies - extending the range of remedies available to public enforcers of consumer law, BIS, November 2012

These proposals are broadly welcome, but do not go far enough to provide consumers with the means to easily obtain the redress that they are legally entitled to. Given the level of detriment consumers are experiencing because their problems are not resolved, we feel that the legislation needs to go further to address why consumer protection legislation does not work:

Balancing the proposed new 30 day limit for rejecting faulty goods with requirements on businesses to pay refunds, and complete repairs and replacements of faulty or sub-standard purchases, within 30 days of agreeing these actions

Whilst consumers will gain from clearer rights to a refund for faulty goods, many purchases will only prove faulty after 30 days have elapsed. In this situation it is envisaged that consumers will only have the right to a repair or replacement. They will only be entitled to a partial or full refund if the repair or replacement does not work. Whilst the proposals include a limit on the number of repairs and replacements, there are no rights to also have things put right within a time limit.

This is not a completely new concept. Time limits on refunds are recognised in EU legislation which gives consumers cancellation rights, for example in distance selling. This ensures that consumers have a cut off point after which they can take further action.

## A requirement that businesses provide point of sale information about consumer rights

Retail businesses often have a notice displayed at their checkouts to tell consumers about their policy for returning **unwanted** goods. These notices often assure customers that their statutory rights are not affected, but fail to tell consumers what their rights are in relation to redress for **faulty** goods.

This lack of information about consumer rights is well known, and research for the Law Commission in 2008 found that consumers would welcome point of sale information about their rights.<sup>10</sup> The real advantage is that consumers and businesses can resolve disputes quickly and cheaply by referring to information close at hand.

It is possible that the EU Consumer Rights Directive, which the Government will need to implement in the UK by July 2014, will require this to happen. The Directive includes information that businesses must supply to consumers, including a "reminder of the existence of a legal guarantee of conformity".<sup>11</sup> It is unclear what this means, but it could allow for point of sale information about consumers' legal rights.

10. Consumer Remedies for Faulty Goods. The Law Commission consultation paper no. 188 and the Scottish Law Commission discussion paper no. 139. 2008.

11. Article 5.1 (e) and Article 6.1 (l) of the Consumer Rights Directive 2011/83/EU

Giving trading standards services the power to require business against which they have taken any enforcement action to compensate consumers

Businesses who break consumer law do so at the expense of both consumers and businesses that comply with the law. Some sector specific regulators can level the playing field by requiring businesses who have breached the rules to automatically compensate all consumers affected by the breach. They do not have to take court action to do this. For example, the Financial Service Authority's recent enforcement action against CPP Ltd for mis-selling insurance products included a requirement for them to compensate affected consumers.<sup>12</sup>

Currently there is no equivalent access to compensation for consumers when general consumer protection legislation is breached, so unscrupulous businesses can profit from breaking the law. The current Government had originally proposed to give courts this power where Trading Standards were seeking an enforcement order. But only seven court applications for enforcement orders were made in 2011/12.<sup>13</sup>

This would severely limit the scope of this proposal, as most enforcement cases result in voluntary undertakings between Trading Standards and business. The Government is now looking at giving Trading Standards Services the power to agree compensation for affected consumers with businesses in undertakings under the Enterprise Act 2002. This is something which we strongly support.

Collective redress for consumers based on a model which guards against inappropriate claims and avoids a claims culture

Group actions to obtain redress are rare in England and Wales. Whilst civil courts can make Group Litigation Orders, it depends on a) a number of cases of a similar nature being taken to court and b) the court recognising the similarities and joining the cases together. Consequently, the wider group of consumers affected will not benefit, so the business may only have to compensate those people with the time, money and confidence to take court action.

Research carried out by the European Commission in 2011 found that there was considerable appetite for collective redress in the UK – 87 per cent said they would be more willing to defend their rights in court if they could join with other consumers who were complaining about the same thing.<sup>14</sup>

The Government proposes that the Consumer Rights Bill will include the option of collective redress for anti-competitive practices.<sup>15</sup> These proposals recognise that where a large number of people have lost a small sum, it is not cost effective for an individual to take a case to court. It suggests the use of Alternative Dispute Resolution (ADR) mechanisms first so that the courts are only used as a last resort. Where the case does go to court, the court can allow opt-out collective actions, so that the case helps all those who are affected unless they opt out. An initial hearing would check the suitability of the case and of the body acting for consumers, to stop a compensation culture developing.

We think that this model should be applied to all consumer law cases, not just those about compensation for anti-competitive practices. It would prevent vexatious actions, see if ADR could solve the problem without the need for court action and discourage a compensation culture.

12. FSA press release, 15 November 2012

13. Civil enforcement remedies – impact assessment on extending the range of remedies available to public enforcers of consumer law, BIS, November 2012

14. Europeans, Development Aid and the Millennium Development Goals. Flash Barometer 299 Brussels: European Commission (2010)

15. Private Actions in Competition Law: a consultation on options for reform (April 2012). FSA press release, 15 November 2012

**Written by** Susan Marks

### **Our aims**

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people's lives.

### **Our principles**

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

Citizens Advice  
Myddelton House  
115–123 Pentonville Road  
London N1 9LZ

Telephone: 020 7833 2181

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)  
[www.adviceguide.org.uk](http://www.adviceguide.org.uk)

Citizens Advice is an operating name of The National Association of Citizens Advice Bureaux.  
Registered charity number 279057.

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