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Chief Executive

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David Evans

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Dear David,

**CONSULTATION ON INSTITUTIONAL CHANGES FOR PROVISION OF
CONSUMER INFORMATION, ADVICE EDUCATION, ADVOCACY AND
ENFORCEMENT**

The Office of Rail Regulation (ORR) is the independent economic and safety regulator for railways across Great Britain. Thank you for providing us with the opportunity to respond to this consultation on proposed changes to the consumer institutional landscape. As a Part 8 enforcer of consumer law and as an authority with a key focus on the needs of the passenger, we are keen to ensure that any future structure is capable of protecting those who travel on our railways and promoting their best interests.

We are pleased to note that the consultation envisages a continuing future role for sector regulators within the new structure. Regulators are particularly well placed to tackle systemic, non company specific issues which can be a feature of network industries such as the railways, where the service is provided by a number of industry parties and the terms and conditions of sale are primarily a product of intra-industry agreements. Our continuing interaction with the industry, including in our role as safety regulator for the sector, also provides us with the unique opportunity to spot issues as they arise and to act accordingly. This does not always mean by formal enforcement action. We fully accord with the view of Government that market-based solutions and self-regulation can also play their part in ensuring better consumer outcomes. We understand that key objectives of the proposals are to reduce the complexity of the consumer landscape; to strengthen the effectiveness of

consumer enforcement; and to ensure more cost-efficient delivery, closer to the consumer front line. We understand that the Government wants to clarify future responsibilities and ensure efficient use of limited enforcement resources through more effective leadership and integration of effort around the country.

We strongly support moves toward unifying structures in a way that prevents overlap and promotes efficiencies. It is vitally important that business is given the certainty it needs to invest and critical to this is a predictable and coherent framework of regulation and enforcement. There is also a clear need to address issues of structure which are hindering rather than helping consumers to access the advice or redress they need.

We are particularly concerned to understand, therefore, how the interface between each of the various bodies is expected to work in practice (including how regulators are expected to fit into the new structure); how lines of responsibility will be agreed and how the structure will retain the capability of delivering cross-sector policy goals where appropriate.

The reasoning used to support the split between the enforcement of “pure” consumer matters from those which arise out of either the behaviour of firms or structural deficiencies is not particularly compelling not least in terms of practicalities. It is not always possible to determine at outset why a problem has arisen and moreover there is not always a single cause. Transferring cases between authorities as the issues unfold is sub-optimal and is likely to increase uncertainty for business and lead to delayed remedy for the consumer. Importantly by splitting expertise in the way proposed there is a real risk of creating policy silos; with no single authority having oversight and responsibility for the delivery of a cohesive consumer strategy.

As noted above we understand that one of the Government’s objectives is to rationalise the number of bodies providing consumer advice and education. We believe, however, there is a case to retain sector advocacy for the foreseeable future not least due to the complex overlay of sector specific consumer protection legislation and rules. In particular we support the continuance of Passenger Focus and consider that it provides a valuable role in undertaking sector specific research; carrying out the National Passenger Survey acting as a statutory complaints body under domestic and European legislation; and importantly interpreting general consumer policy and research within the context of the railways.

The preferred view of Government is supported, however, with some lines of argument which resonate with challenges which we face in this sector. In particular how we can engage the local consumer voice and capture the perspective of consumers in the devolved nations. We can understand how the wide geographical spread of the Citizens Advice service could add significant value here. Further the creation of a powerful and informed sectoral advocacy unit could ensure that the consumer is adequately and fully represented in such highly complex and technical exercises such as periodic

reviews. We would question, however, the view that such benefits could only be achieved from merger and would alternatively advocate closer working relationships between sector specific and general advocacy bodies.

We agree that an ombudsman can play a valuable role in dealing with consumer grievance particularly for issues where the question is one of fairness rather than whether there has been a breach of the law. Access to such schemes can greatly improve consumer confidence and trust in the sector. As such, we broadly agree with the benefits which you set out at paragraph 4.58. As noted in the consultation document, however, the question as to whether or not an ombudsman scheme has a part to play in the transport sector very much depends on whether the Department for Transport considers there to be a continuing need for sector advocacy in the office of Passenger Focus.

We hope that this response is helpful and look forward to hearing the views of others who are vested with making any new structure work. We will be pleased to play our part in this. The consultation does not set out your timetable for reaching conclusions or your proposed next steps. We would, however, welcome the opportunity to discuss any element of your proposals and/or our response with you in advance of you reaching any final conclusions.

I am copying our response to Robin Groth at the Department for Transport who has responsibility for the sponsorship of Passenger Focus.

Our more detailed responses to the questions set out in the consultation document are set out in the attached annex. There is no need to treat any part of this response as confidential.

Yours sincerely,

A handwritten signature in blue ink that reads 'Richard Price'.

RICHARD PRICE
Chief Executive

Chapter 2 – Information, Advice and Education

Q1. How do you think the provision of consumer information to consumers can be improved upon?

Q2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

Q3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

We fully support the Government's consumer empowerment agenda and agree that information is key to consumers being able to choose the product and service which is right for them and also in enabling successful challenge against traders and service providers when products and services fail to deliver. This is equally true for passengers within a railway context and we are focused on the twin aims of ensuring that even limited choice is exploited to positive effect and ensuring that enough data is out there so that consumers (or bodies acting on their behalf) can hold service providers to account. Transparency plays a key role here and we are working toward a world where passengers know precisely what they are buying for their money and can access the lowest fare and plan a journey which is best suited for their needs.

Passenger Focus has provided valuable research in this area particularly around ticketing and fares complexity and has done much to highlight and identify where problems exist. There is no compelling argument that any other body (including the Citizens Advice service) could have done more to improve the passenger experience in this area. Further we have not been provided with any evidence that passengers consistently approach either Consumer Direct or the Citizens Advice service for advice and information on railway matters. It is not clear, therefore, that passengers would necessarily see the existence of Passenger Focus as adding to structural complexity. We are not convinced that there is a case for moving responsibility for information on railway matters to the Citizens Advice service irrespective of arguments which might support the transfer of the OFT's consumer information functions. We make no comment on the latter.

Q4. Do you agree that the OFT's consumer education roles should be transferred to the Citizen's Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

No comment.

Q5. Do you agree that the proposed Trading Standards Policy Board (TSPB) and the TSI should coordinate and support business-facing educational activities?

No comment

Chapter 3 – Consumer Code Approvals

Qs 6-11

No comment

Chapter 4 – Consumer Advocacy

Q12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

Q13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Q14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Q15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Our views on the future of sector advocacy are set out in the covering letter.

Q16. What are your views on these options for the transfer of information gathering powers? What is preferable and why? Are there any other options for information-gathering powers?

No comment

Q17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Our views on this are set out in the covering letter.

Q18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

Q19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

No comment

Chapter 5 – Enforcement of Consumer Protection Legislation

Q20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

Q21. In relation to Option 3; do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

Q22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, should one of the JEB models be the best solution? Which one and why?

Q23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

Q24. How can your preferred new model best work with businesses?

What is important is to ensure that within the new structure there is an authority vested with responsibility for overseeing an enforcement strategy; leading on prioritisation; and critically in promoting joint leadership and collaboration between the various enforcement bodies.

What is also of critical importance is that the structure is designed in such a way as to promote engagement between enforcement bodies and those involved in advocacy and education. We, in our sector, promote close working relationships between ourselves and passenger bodies. We believe this brings significant benefits. The sharing of intelligence means that we can prioritise according to what matters most to the passenger. In turn passenger bodies can focus their efforts where there is more chance of being able to deliver better consumer outcomes and moreover, can advise consumers in full knowledge of developments in enforcement policy. We support proposals which reflect that model of partnership working.

The document provides no clarity, however, on how sector regulators and sector advocacy bodies will fit into the new structure and, therefore, what influence they will have over the prioritisation of cases and how they will continue to have access to developments in consumer and consumer enforcement policy and intelligence gathered through case work. The

proposal to retain the competition concurrency working group has merit in principle but, as explained in our response to question 36 below, we are concerned as to the proposed limited scope of its remit.

Q.25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Q26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

Q28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Q29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

A core strength of the market study system is the ability to look beyond individual breaches of consumer or competition law and examine whole markets to assess the best way of remedying problems. We note the Government's preference that "pure" consumer market studies should not, in future be conducted by the CMA and wonder how this will work particularly since it is not often known at outset of a market study what the underlying causes of a given problem are. As noted in the covering letter, a requirement to transfer studies between agencies mid-way through a study seems to us to add complexity; create uncertainty for business; and delay remedy for the consumer.

Q30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

Q. 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, what level should such funds be set and how best should they be administered?

We entirely agree with the concerns expressed within the consultation that any new structure should be designed to minimise overlap and duplication of effort. We also agree that as well as creating inefficiencies, overlap can perversely lead to enforcement and advocacy gaps should one authority imagine that a case fell more properly within another authority's control.

It is vitally important, therefore, to define responsibilities clearly at outset and establish agreed procedures and expectations around how the interface

between the organisations will work. ORR, for example, has letters of understanding with the Department for Transport and with the Office of Fair Trading setting out our respective roles in relation to consumer protection on the railways. We also have letters of understanding with our sectoral passenger bodies which include the circumstances in which complaints are transferred between us and expectations as to the sharing of intelligence.

In response to question 31 it is not clear how proposals around having some form of ring-fenced resource will work in practice and the extent to which it would effect more collaborative working between the various bodies than can be achieved by formal letters of agreement. The more likely scenario is that it will lead to tension and disagreement on how the resource will be employed particularly in an era where individual budgets are coming under significant pressure.

Q.32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

No comment

Q.33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

We note the proposal to vest professional guidance and training functions with the TSI in the event of creation of a new single Competition and Markets Agency and have no objection to this in principle. Our concern is to ensure that the valuable training resource currently provided by the OFT to regulators in consumer law and enforcement is picked up somewhere within the new structure and that there is an agreed budget for this.

We are particularly concerned with proposals around the creation of national excellence centres (paragraph 5.58 refers) and the risk that this might lead to the loss of a central core of expertise upon which to draw where issues are complex and span a range of legal issues.

Q.34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA as only a limited consumer enforcement role?

Q.35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) Court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

Q.36. Do you agree that responsibility for chairing the consumer concurrencies groups should remain with the CMA?

Q.37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Q.38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

In response to question 36, we receive significant value from being a member of the consumer concurrency working group in terms of the sharing of information and in the transfer of knowledge and lessons learned. We have no objection in principle to the proposal that the CMA retain responsibility for chairing the group and for its continuing existence. We do not entirely agree, however, that the stated reasoning behind this proposal is sound.

It is not clear on what evidence BIS has formed its view that consumer enforcement in the regulated sectors is confined to matters which arise from structural market problems. Moreover, by retaining the group, in its current form, you are potentially creating policy silos and importantly missing an opportunity to promote institutional cohesion at outset.

An alternative option which we believe merits consideration would be a group expanded to include representatives from all bodies within the new structure, perhaps with a rolling Chair.

Q.39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

No comment.

Q.40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

No comment.