

Business, Energy and Industrial Strategy Committee

Oral evidence: Post-pandemic economic growth: state aid and post-Brexit competition policy, HC 742

Tuesday 1 March 2022

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Members present: Darren Jones (Chair); Richard Fuller; Ms Nusrat Ghani; Paul Howell; Mark Jenkinson; Andy McDonald; Alexander Stafford.

Questions 168 - 227

Witnesses

I: Rocio Concha, Director of Policy and Advocacy and Chief Economist, Which?; Matthew Vickers, CEO and Chief Ombudsman, Ombudsman Services; Matthew Upton, Director of Policy, Citizens Advice; Steve Ruddy, Chair of the Board, Chartered Trading Standards Institute.

Written evidence from witnesses:

- Rocio Concha, Director of Policy and Advocacy and Chief Economist, Which? [[SBC0004](#)]



Examination of witnesses

Witnesses: Rocio Concha, Matthew Vickers, Matthew Upton and Steve Ruddy.

Q168 **Chair:** Welcome to this morning's session of the Business, Energy and Industrial Strategy Committee for our hearing today as part of our state aid and post-Brexit competition policy inquiry, with a particular focus today on consumer rights. I am delighted to welcome to the room Rocio Concha from Which?, Matthew Vickers from the Ombudsman Services, Steve Ruddy from the Chartered Trading Standards Institute and Matthew Upton from Citizens Advice. Good morning to all of you.

I have a couple of questions to kick off the discussion today. We have been doing a survey of the public to ask them about their awareness of consumer rights and their ability to enforce them. In a nutshell, could you give us a feel, from your organisations' perspective, about how you feel consumers are generally aware of their rights and how effectively they are able to enforce them?

Matthew Upton: Thank you for inviting me to speak today. Awareness is pretty good, compared perhaps to other nations. We will get on to confidence later, but we have an economy where people feel pretty good making purchases and are pretty confident that, if things go wrong, there will be some form of redress to protect them, something to fall back on.

One obvious point is that that statement hugely varies according to the kinds of people that you are talking to. There are a lot of stereotypes around the sharp-elbowed, middle-class consumer who is very good at understanding and enforcing their rights. There is a lot of truth to those stereotypes and a lot of the people who we see at Citizens Advice have much lower levels of awareness and struggle to back themselves in what are increasingly complex markets. That obviously leads to pain, harm and detriment for them.

I would say it is not a bad picture by any means.

Steve Ruddy: From a trading standards perspective, it feels slightly less rosy. As Matthew was indicating, there is a mixed level of awareness of consumer rights across the UK. It is an area that would benefit from further research, to be honest. The limited research that I am aware of shows something from the Consumer Council of Northern Ireland in 2021, which found that the awareness of consumer rights was around 38% and consumer understanding of what rights this legislation actually meant in practice was only 27%. Interestingly, awareness among 16 to 34-year-olds was significantly higher than those aged 35 to 40, which is not what I would necessarily expect.

That indicates quite a potential problem, because consumer education and consumer awareness of rights is pretty central and important for a well-functioning economy and for effective competition. It is an area that could benefit from further research.



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In terms of anecdotal evidence, from the trading standards perspective, the referrals and complaints that we receive from consumers indicate a mixed level of awareness. There is a particular issue with vulnerable consumers, as has been mentioned. Some consumers will have a good awareness and a good ability to pursue their own remedies and rights, but a high proportion would be classed as vulnerable. Vulnerability is something that is quite dynamic. It is not a static thing. Vulnerability increases with complexity in markets, in issues in relation to things like Covid, Brexit and other changing markets, such as within the green economy. Vulnerability is crucial here as well.

Matthew Vickers: At Ombudsman Services we are in energy and telecoms, so I can talk most obviously about those, rather than the general picture. We did some research, the Consumer Action Monitor, which we do every year. About 4,500 people respond. That showed that about 80% of people had heard of some form of ombudsman. When you pressed a bit further and said, "What does an ombudsman actually do?", 40% said they were not really clear at all about what an ombudsman does. There is a big part about how we get awareness of individual complaint-handling and dispute resolution and what that looks like.

The pattern varies again. If you look in regulated sectors like energy and telecoms, currently we have good provision of alternative dispute resolution. If you start looking beyond that—I am sure that that is something that Rocio might well talk about later—there is a very different picture across the whole economy.

As Matt talked about earlier, it is true that there are differences once you start looking at diversity, so particularly around ethnic diversity. There are some challenges around age group as well, about whether we get a consumer base that is typical of the UK. The answer is that no, we do not, rather as Matt was saying. There is a lot of work that needs to be done around that.

I would pick up and reinforce Steve's points earlier as well around dynamic vulnerability. Coming through the pandemic, we have seen a new tranche of people who previously none of us would have seen as being vulnerable, who perhaps do not know their way around the system as well, do not know what their rights are. We are finding that we are having to reach into that group as well. In summary, it is a fairly mixed picture, better in regulated sectors than elsewhere, but a lot of joining up still to be done.

Q169 **Chair:** When you say new types of people who you did not previously expect to be vulnerable, could you give us an example?

Matthew Vickers: For example, this would be where people who had been in jobs, if we think back to April and May 2020, and who would have considered themselves relatively well off, had what they felt were stable jobs at the time, but through the pandemic suddenly found themselves in a situation where savings evaporated quite quickly and did not have the



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support that they thought they would have. For some people, unfortunately, in their lives they are used to dealing with benefits systems and rights. For some, this was a completely new world and there were sometimes barriers of social stigma around that and a lack of awareness. It is that sort of tranche that we would be talking about.

Rocio Concha: From our perspective, it is definitely a mixed picture. When you think about it, the rights and protections of consumers vary depending on the sector, whether you are online or offline. It is fair to say that it is difficult for consumers to know all the rights and protections. That is why it is important for organisations like ours, represented on this panel, to provide the right information when consumers need it, but also for businesses to make sure that they are providing that information when consumers are facing a problem. Enforcement bodies and the Government need to make sure that the businesses are actually providing that information and the route to solve any problems.

It is definitely a mixed picture. I completely endorse what others have said. It is even more difficult for vulnerable consumers to understand what the rights and protections are.

Q170 **Chair:** Steve, can I come back to you on that point around the level of awareness in businesses? I should declare that part of my legal practice before I was a parliamentarian included consumer law. I often end up having to advise customer services what the law is in order to get something resolved, which I confess I quite enjoy. My experience is that not many customer service lines, for example, really know what their obligations are. Do you find that from a trading standards perspective as well?

Steve Ruddy: Absolutely, that is entirely true. Part of the trading standards role is to give information, advice and support to businesses to help them meet their legal responsibilities. Again, we find a very mixed picture there. Some businesses are well aware and have good systems in place. Many businesses have a very poor level of awareness of their responsibilities and consumer rights and responsibilities. There is a gap there as well.

In terms of the trading standards role locally, local services support businesses in doing that and, nationally, bodies like the CTSI provide a business companion service, which is online advice to businesses. That is funded by BEIS. That is a helpful and useful tool for businesses and could be further promoted.

Q171 **Richard Fuller:** If, as a consumer, I want to get a GP appointment, which of you is responsible for that? If, as a consumer, I wished to have my child go to the local village school, which of you is responsible for my rights there? Which of you is responsible if I want the pothole fixed on my road? What is the difference between my rights as a consumer of those services and my rights as a consumer of the services that you cover? Why is no one here today answering for my rights as a consumer of those



services?

Steve Ruddy: In some of those services, your rights are through the complaints processes, as with any business, the right complaints processes of the organisation providing those services, and then the backstop would be the local government ombudsman. The ombudsman service there for local government would look at complaints and deal with those.

From my own perspective, if you wanted to complain about trading standards services, we would deal with the complaint internally. It would be dealt with independently within the council and then we would go to the local government ombudsman, so there is a mechanism there to do that. That would also apply to things like potholes and schools.

Q172 **Richard Fuller:** Ms Concha, philosophically, as a consumer, do you think that the rights for the services I have mentioned should be broadly covered in the same way as the rights that you and the other organisations here cover?

Rocio Concha: Consumers need to have access to the right information when they need it. It needs to be easy for them to know where to find that information. That information should be provided in an accessible way, so absolutely.

Steve Ruddy: If I could elaborate slightly, in terms of serious breaches of legislation, which is often the way that some of these consumer protection issues fall, if any organisation breaches legislation, they can be subject to criminal law as well. My organisation, for example, in my local authority trading standards services, regularly investigates and prosecutes serious criminal breaches, including frauds. That applies across all different sectors and to individuals, directors and people responsible behind companies as well. There is a mechanism there through the criminal law.

Q173 **Paul Howell:** Following up on what you were saying about the different business awareness, we have just listened to the situation in terms of the consumer awareness. Do you think that business awareness is driven by new businesses becoming more vulnerable, because they are suddenly exposed to these problems and situations in the same way as we described on the consumer side? Or is it because the businesses that are more aware of it are more used to being in, for want of a better phrase, combative situations and therefore are naturally dealing with business lawyers? Is it a moving feast on that?

Steve Ruddy: It is a difficult question to answer completely accurately. There is a variety of different things happening. Small businesses and new businesses are often unaware, need education and support and would be actively looking for that education and support to do the right thing. Some businesses are fully aware and fully compliant. Many businesses actually are that.



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Some businesses are not as focused on meeting the needs of consumers as they perhaps could be, right through to the extremes that some businesses deliberately make false claims, misleading statements and even, in some cases, defraud consumers. It is a small percentage, but it has a significant impact on consumers.

Q174 **Paul Howell:** I have a slight follow-up. It felt as though, in the consumer side, there had been a step change, though, because of the way Covid had impacted. The world changed so dramatically. Is the same reflected in the business community or is that just a normal state of affairs: that you always have the new guys that are coming in that are less aware, the smaller businesses that are evolving and do not have a full grasp of the legal world, if you like? Has there been the similar sort of Covid-driven impact on businesses that was not there before?

Steve Ruddy: I do not have the figures in front of me, but, anecdotally, Covid saw a big rise in business start-ups. We have seen big increases in small food businesses initiated, for example, and new businesses online. There has been a significant increase in business start-ups in certain sectors and hence probably an increased need for education and advice in those sectors.

Q175 **Chair:** The Consumer Rights Act was derived from EU legislation, with a bit of gold-plating on the UK side. It is not part of the level playing field provisions in the trade and co-operation agreement, which means that the UK can diverge if it wishes to. Should it?

Steve Ruddy: That is, essentially, a political question. In terms of the practical question of consumer protection, the Consumer Rights Act brought a range of benefits for consumers. If there is a move to move away from the Consumer Rights Act, we would want to see at least equivalent protections in legislation, with at least equivalent ability for regulators and enforcement bodies to sanction appropriately.

It is a political question, but it brought significant benefits. It is helpful to have it in place. There are benefits in terms of consistency and coherence across different regimes. If it were to be replaced, we would be looking for equivalent or better standards to replace it.

Having said that, one key thing about any policy or legislation to bear in mind is that it is often only as effective as the tools and resources behind it to make sure that it is enforced. There is a question about joining up of regulatory and enforcement capacity and a significant diminution of resources within local authority trading standards services over the last 10 or 12 years. That issue of active enforcement is really important and there is an issue with that currently. The two strands are important. One is the legislation; the other is the tools to enforce it.

Rocio Concha: I fully endorse that. Any divergence should be to improve the protections that we have in the UK. There are areas where we are arguing that we need to do more, in particular areas in the digital space.



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We do not want to see divergence weakening our rights in the UK. We need the rights and then we need the bodies with the right powers and the tools to make sure that our rights are enforced.

Q176 **Chair:** Can you give me that example in a bit more detail? You said that you wanted to improve some of the digital goods and services rights. Is there an example?

Rocio Concha: Yes. I hope that we are going to talk about this in more detail later. I think about the things that we are seeing in the digital space about fake reviews. We are seeing a large amount of fake reviews. We need to tackle this. In the area of safety, from our investigations we are seeing that the online platforms are selling products that do not meet our safety standards. We want to see these online platforms having the legal responsibility to do that, as the retailers in your high street have that legal responsibility. There is a range of areas where we could provide much better protections in the UK now that we are outside the EU.

Q177 **Chair:** Citizens Advice, Ombudsman Services, are you happy with the Consumer Rights Act?

Matthew Upton: It is a similar point. The Consumer Rights Act was very strong. There was a lot of conversation in the lead-up to Brexit about the UK having a world-leading consumer rights framework and system. As people have said, there are problems with divergence. Our focus has been more on ensuring that rights are maintained and built on, if anything.

There has been a lot of debate about opportunities for deregulation from Brexit freeing up businesses and so on. You might expect me to say this, but consumer rights, as an area, is genuinely one of those win-win fields. If you have strong consumer rights, consumers shop with confidence, which means they spend more money. They have confidence that they are going to get money back if things go wrong, they will be treated fairly, et cetera. It allows good businesses to flourish. I do not think that it is one of those areas that would be logical to look at from a deregulatory point of view.

Matthew Vickers: Similarly, the mechanisms that we rely on were from UK legislation before 2015. In that sense, there should not be too much of a change there. We would see that there are opportunities or things for us to think about, particularly as energy develops beyond where regulation is currently, so as you start to look at some of the things that we might need for net zero, how we think about that, what that means in terms of remit. As Rocio has talked about, digital is a whole other area where we need to be looking at how we build trust in a digital marketplace. I suspect that how we do that is going to involve us all working quite differently from what we do at the moment.

Q178 **Chair:** By that, you mean that you would like the remit of Ombudsman Services for energy to be expanded to include home insulation and



retrofit services.

Matthew Vickers: Correct, things like that, electric vehicles, heat pumps and so on. If we felt that it was important back in 2006 and 2007 to have an ombudsman of energy, we have to recognise that the energy market now looks very different from then. It will look very different again come 2050. That is really important to support trust in the sector.

Q179 **Andy McDonald:** I am going to ask some questions around post Brexit and the consequences thereof. Mr Ruddy, now that we have left, if a UK consumer is buying goods, services or digital content from an EU-based trader, if they get into difficulties they may need to bring that to court. That may have to be in the EU, rather than here in the UK. Is that going to negatively impact on people's willingness and their confidence in taking these matters forward?

Steve Ruddy: It is very likely to do that. Consumers generally are reluctant to go to court in any event, even within the UK. The prospect of going through a court process in another country is likely to be even more off-putting, so that is likely to be true.

Q180 **Andy McDonald:** Following up from that, one of the other consequences is that UK customers have lost their access to EU-based ADR, the online facilities, as well. You can still use ADR in this country, but, when trying to then enforce it or resolve cross-border issues, it becomes a little less relevant. Have you any thoughts as to how those cross-border disputes could be progressed and resolved without massive expense to consumers?

Steve Ruddy: There is the existence of the UK International Consumer Centre, which was formerly the UK European Consumer Centre, which was delivered through CTSI-raised funds. That provides advice and information to consumers who are dealing with EU transactions. That is an important mechanism to provide advice, and there is an opportunity for that body to liaise with other partners outside the UK.

Functionality is limited and it becomes more difficult for that to be effective outside that European framework. It exists and is there to give at least some level of advice and information, which would be important to consumers in attempting to pursue those disputes, albeit that the practical challenges would still be there. It is worth stressing that that is important. The likelihood is that consumers will be less likely to pursue those issues and that undermines that issue around cross-border and online trading, to some degree.

Matthew Vickers: The other point on that is that the risk is that we rely increasingly on data for intelligence. One other risk is that, if that is going somewhere else that is more difficult for us to access or build a big picture from, it makes some of the monitoring work or spotting risk a bit more difficult. It is not necessarily within the UK or within a framework that is easy to access. There is that side to it.



Rocio Concha: To add to that, there needs also to be a focus on how the enforcement bodies in this country have access to information that other enforcement bodies have in different countries. When we were part of the EU, the CMA was part of the consumer protection co-operation network. That was a very effective network of intelligence. They share intelligence. They also co-ordinate enforcement. Many of these companies are global companies. We want to see, as a part of the trade and co-operation agreement, the Government trying to find ways to make sure that this co-operation continues.

I say formal cooperation; there is a lot of good will and bilateral relationships that the enforcement bodies have with other agencies in other countries. That is very good. Sometimes you need the formal agreement to make sure that you can exchange formal information on data. That can be quite useful to identify problems.

Q181 **Andy McDonald:** Do you see enough progress being made on the formalisation of those arrangements for enforcement? What should be the next steps to better protect consumers in that way?

Rocio Concha: For example, we have the trade and co-operation agreement. We should use that agreement to get that co-operation. When we are negotiating the trade deals, there is an opportunity to include that formal co-operation there.

Q182 **Chair:** Were any of your organisations plugged into any official counterparts in the EU where you have now lost capacity, or were you all just domestically UK based? You are saying you are UK domestically based.

Steve Ruddy: We are primarily domestically UK-based. There are still some issues in terms of some exchange of information that would have been available previously, particularly to do with product safety, for example. Those issues are still being worked through. There may be some future risks there, in terms of information, intelligence sharing, in terms of some forms of product safety. There is work under way to try to address that. I am not sure how far that has been resolved at this stage.

Q183 **Andy McDonald:** I wondered whether it was perhaps incumbent on the variety of organisations in front of us to have those sorts of informal intelligence relationships with European counterparts. From our trip to Brussels, we found that there was a real need and demand for people to invest their energies in those conversations, notwithstanding that there has been this separation. It redoubles the need for further co-operation and understanding what is going on in other jurisdictions. Do we not think that that is a duty?

Matthew Vickers: Yes, very much so. Oddly enough, in energy, we were a founding member of NEON, which is the national energy ombudsman of Europe association. As it happens, since Brexit we have actually become the president of it, funnily enough. It is more timing, rather than anything that was particularly triggered by Brexit. As Rocio has pointed



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out, many of the big energy companies are multinationals, so it is really important for regulatory intelligence, but also for building capabilities within the companies and helping them to improve, that we have that international view of some of the risks.

Q184 Chair: Can you give me a small update on the UK's successes in the CE marking scheme and how the interaction is currently taking place between the UK and the EU on the product safety point you mentioned earlier?

Steve Ruddy: In terms of product safety, OPSS take the lead on co-ordinating that work within the UK and doing a huge amount of work to share intelligence about potentially unsafe products coming into the UK. There is a network where OPSS works closely with individual local authority trading standards services to ensure that there is appropriate surveillance at various ports of entry, both seaports and airports. There is quite a lot of active surveillance and sharing of information and intelligence to target work there.

In terms of CE marking itself, I am not sure of the current state of that. I know that there is an alternative marking available. That has been recently introduced. That has led to some confusion with businesses, but OPSS and trading standards services are working with others to educate and inform businesses to ensure appropriate levels of compliance. I am not sure what the current level of difficulty is in that market.

Q185 Chair: It might be worth trying to get some updates on that. Presumably, if a business is making a physical good in the UK that it maybe continues to supply into the EU as it did before, it is going to need both marks, is it?

Steve Ruddy: Certainly if you are exporting products into the EU, they will need the appropriate level of compliance. There has been an issue with the ability of test houses to certificate to the appropriate standards, both in the UK and externally. That two-way process is significant and it adds to the degree of complexity and, arguably, red tape for businesses, in terms of ensuring that compliance. If there is a specific update that the Committee would like on that, we can pull something together, if that would be helpful.

Q186 Chair: Thank you. I am straying a little bit beyond the terms of reference, but the main issue here is that consumers understand what the marks mean, that it implies a level of safety and how they can enforce that.

Steve Ruddy: Time will help with that. There is not a good level of consumer understanding even with the previous system.

Q187 Chair: I thought the CE marking was pretty universally understood. It was an assumption.



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Steve Ruddy: In certain marketplaces it would and should be, but I would not say that that was comprehensive by any means.

Q188 **Alexander Stafford:** My questions are about the CMA. This is a very quick question for all of you. Does the CMA have adequate enforcement powers?

Rocio Concha: No. This has been very clear during the pandemic. The CMA is trying to use its powers to their maximum capacity, but it is clear that it needs administrative powers, in terms of enforcing consumer law, equivalent to what it has on competition law. Within that, that reform is overdue, to be frankly honest. We want to see a new consumer and competition Bill as a part of the Queen's Speech to make sure that the CMA has that power.

To give you a couple of examples, Viagogo is a clear case where the CMA was trying to make sure that it complied with the law. It took six years for the CMA, resources and money that it could have put into a different area, to get to the courts. The case that it has with the Norton AntiVirus practices has taken three years. Again, it is a huge waste of time for the CMA, and finally, this company is compliant with the law. Absolutely, it needs more powers.

Q189 **Alexander Stafford:** Would you therefore agree with what Lord Andrew Tyrie said in the *Financial Times* about the CMA having that statutory duty to promote the consumer interest and to act swiftly? Do you think that would make a difference?

Rocio Concha: That will not be instead of having the powers. You need to have the administrative powers. In addition, it would be quite useful for the statutory duty also to reflect—at the moment, if you look at the statutory duty, there is a focus on competition, but actually the CMA has a duty to enforce competition and consumer law. Their mission is more about making sure the markets deliver for consumers, business and economy, so it is broader. This is a body that is here to enforce both competition and consumer protection.

It would be really helpful to have it there in the statutory duty to make sure that this is prioritised. At the moment, we are seeing the CMA putting a lot of effort into ensuring that consumer protection is enforced. If there is a change in leadership, for example, the priorities may change, unless it has been well defined in the statutory duty.

Q190 **Alexander Stafford:** Mr Vickers, do you agree with that?

Matthew Vickers: We have two strong sets of regulators in Ofgem and Ofcom, which we have more to do with than the CMA. My comments are perhaps a bit broader about regulatory matters. As we touched on earlier, it is really important that regulatory remits keep pace with markets. We are at a point where markets are changing very rapidly. In that context, remit is very important.



It is not just a question of power and enforcement, although that matters. Effective regulation and consumer protection is as much about how you build intelligence across the ecosystem, use the data across the ecosystem and start thinking about how different functions might be delivered through partnerships and collaborative working. In that sense, from my limited knowledge, the CMA has done a lot of work around the Digital Markets Unit and so on to address that side of things. That is just as important as saying, "What powers or enforcement abilities does it have?"

Steve Ruddy: From a trading standards perspective, we support the extension of powers to the CMA. It has an important role to play and would benefit from clearer statutory responsibilities and an extension of administrative powers. The CMA responded effectively in a number of markets in relation to Covid and worked well with trading standards services locally, particularly in areas where airlines were refusing to meet consumer communication responsibilities, or even practical things like wedding venues. In a variety of marketplaces and particular problems in relation to Covid, the CMA was quite active and worked well with partners in shifting levels of compliance.

I agree with the point about effective intelligence sharing between regulatory partners. The CMA would and should continue to work closely with national and local trading standards services and other regulators. There is something about that regulatory infrastructure. The CMA has a national role. Working with bodies like National Trading Standards and local authority trading standards services, there is a need to deliver more locally and effectively in local areas as well, where particular problems might arise and particular businesses might be causing issues. Consumer protection infrastructure itself is really important. It is not just about the national body. It is about how that works across the piece.

Q191 **Alexander Stafford:** You thought that the CMA worked relatively effectively during Covid, probably a once-in-a-lifetime event, in a period where there had been a lot of stress. You talk about some structures. If that is working fine, why would we need to give any extra powers? Does it really make a difference? If the CMA can survive and do a good job in a time of stress, surely that showed that you do not need anything more.

Steve Ruddy: That is wrong. That is not what I was trying to say. I was trying to say that there are some specific examples where it can work effectively within its current remit. That does not take away the fact that it has been restricted and restrained in a variety of other things and taken much longer than it should have. I agree completely with Rocio's point earlier that there will be strong benefits in giving it more administrative powers.

Rocio Concha: We still have a lot of problems with the level of response and airlines and holiday companies not complying with the law. The CMA has been trying, but not all of them have been complying with that law and the CMA does not have enough powers to make them comply. That



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power is absolutely necessary. Also, it should not really take six years for a company to comply with the law. There is a waste of resources and time and harm.

Q192 **Alexander Stafford:** From some of your three points, the CMA is working well currently when dealing with, frankly, good companies, responsible companies. When there are companies that are not so good and responsible, it fails.

Steve Ruddy: No, there were different types of issues in different sectors in different circumstances. There were some examples where things have worked effectively and some examples of where things have not worked as effectively and taken longer. I do not think that there is a direct comparison to be made.

Matthew Upton: We very much agree that a duty to promote consumer interests would send a very powerful message alongside the powers that have been referred to already. We work very closely with the CMA. As you can imagine, we tend to bring them a shopping list of problems that we see and try to encourage them to take action. There was a time when we were fairly critical of the way in which the CMA used to respond to consumer concerns. Whether that was down to the interpretation of its duty to focus explicitly on competition is an interesting question.

It feels like there has been a real change in terms of at least the will. Covid really demonstrated that, in terms of its will to be a bit more pragmatic and willing to go after companies that were not doing right by consumers. This is a slightly emotional way to put it, rather than hard facts, but one of the best evidences we have for the need for powers is, when you bring them examples, you can see in the eyes of well-meaning officials their will to take action, but you can see them working through the ways in which they are going to get tied up in knots for years, in the way that Rocio referred to. They know that they do not have the toolkit to really act on the things that we are talking about.

The other point is that it has all the downsides, the lack of powers, tying up, opportunity costs, et cetera, but it would be silly to assume that it does not have a strange incentive effect on businesses. If you know the people there to clamp down on you have no real powers to do so, it is clearly not going to help your incentives to behave in the way that you should do. There are several reasons to give them the powers they want and need.

Q193 **Richard Fuller:** Can I follow up on that? You said that there are no powers. Is competition not the power? If you are getting poor service from someone, you have the right to go to another provider. You said it as though, if you do not have these additional powers for the consumer, there was no choice for consumers. Maybe I did not hear you correctly.

Matthew Upton: It is a good point and I am not here to toe an ideological line that competition is not a good way to improve consumer



outcomes. There are many examples where it is. When you look at the way in which the CMA is unable to clamp down on certain practices, it demonstrates that competition is not the answer to every single consumer problem. That is where, as Rocio highlighted, the fact that the toolkit on the consumer side does not match up to the toolkit on the competition side causes real problems.

Rocio Concha: You need both. If consumers do not have the right protection in place, they will not shop around. They will not try to use services. They will not try a new company and competition will fail. You need both. You need effective competition policy and the right protections in place so consumers have the confidence to engage in markets.

Steve Ruddy: You are right that competition should be the central driver for an effective economy and fair trading. You have to also bear in mind that that has limited impact where markets are complex, information is complex, switching is hard, where consumers are vulnerable, where there are one-off purchases or where there are deliberate fraud or scams. In all those areas, competition is ineffective in protecting customers.

Richard Fuller: I was mainly trying to make the point that, before we exert a new level of additional regulatory effect, you have competition. People can switch to other companies. We can make progress in making switching easier, which is the point that you were making, Mr Ruddy. That is in Mr Penrose's report. I wanted to make sure that you were not rushing to say "Additional regulation" or "Different regulation". There are other options there.

Q194 **Alexander Stafford:** Mr Upton, how effective do you find the CPP—the Consumer Protection Partnership? Bearing in mind that it has not published an updated report since 2017, what has the CPP been doing since its last report? It is quite a long time. The world has changed a lot.

Matthew Upton: Do people have a decent understanding of what the Consumer Protection Partnership is?

Alexander Stafford: Maybe you could give us a very quick outline.

Matthew Upton: It is a convening group chaired by BEIS, a Government Department, to bring together a number of the key actors in the consumer landscape, so those with enforcement powers, those who give advice and education and those who have the intelligence to potentially act. In many ways, it almost owns consumer detriment as a whole and can act appropriately.

Is it effective? The concept is sound. Bringing those bodies together is the right thing. We have probably all sat on convening bodies where you think it possibly could be a little more effective in terms of how dynamically it acts, the priorities it has and things like that. However, it does a good job. It is hugely beneficial in terms of sharing intelligence about the big consumer problems of the day. For example, when consumers started to experience problems around Brexit, when Covid hit,



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it was a very good forum for ensuring that intelligence was raised to the right levels and then could be acted on by the various bodies in the room.

There are a number of examples where joint work can be really beneficial. It was the Consumer Protection Partnership that did the real grunt work that led to the pledge of action against subscription traps and the problems that consumers were experiencing there. I am not going to say that it is perfect. There are times when I get frustrated as much as anyone else does with how it functions, but it is a good thing.

There is the question of whether it should have issued a more regular update report on its activity. It is more of a question for BEIS, as the chair and sponsor of the CPP. It is not something it is statutorily obliged to do. A bit of transparency might be helpful, in terms of sharing what the activity is. Equally, I have been in lots of these kinds of bodies where you get these reports on activity that do not add a huge amount of value. It is a genuinely good question. I am not going to sit here and say that it is a good thing that an updated report has not been given.

Q195 Alexander Stafford: Are you disappointed that it has not published a report?

Matthew Upton: I would not say disappointed, because I am involved in the CPP. I have confidence that the activity that it takes forward is a positive. There has not been a time when I have looked at it and thought issuing a report would materially affect the behaviour or actions of the CPP. It is an interesting question for BEIS about whether it should have issued one.

Q196 Alexander Stafford: What action has it been doing since 2017?

Matthew Upton: The main examples would be Brexit and Covid—these big, existential events that have hit us consecutively. We will scan the range of intelligence sources, from people ringing the consumer service at Citizens Advice, the online searches, complaints to the CMA, et cetera. We will look at what messages they are telling us. It might be around things like problems with holidays—that was obviously a big one—various bookings, weddings, et cetera.

Then there will be either bilateral action between different CPP partners to take action on that, or there will be projects. A specific example of a project would be work on parcel surcharging, which particularly affects customers in Northern Ireland and Scotland. Work is being done to try to limit the effect on consumers in those areas. There is a whole raft of different things.

Q197 Alexander Stafford: As BEIS is the sponsoring body, as legislators, we want to see what is going on. Although it is doing good work, if I want to go and sit down and read about what it is doing, apart from, I presume, trawling the website—does it have a website? It is quite an opaque body. You have told us that the body is doing great work, but I cannot evaluate that myself. Is it worth having a body at all?



Matthew Upton: It is worth having a body for the reasons that I have given. Whether it would benefit from the light of day, transparency, et cetera, in the way you have described is a good question for BEIS.

Q198 **Mark Jenkinson:** We heard from John Penrose that improved redress from ombudsman services, alternative redress systems and stronger trading standards bodies are needed to deal with issues of consumer trust. Is that a fair characterisation, Steve? Is the current trading standards system enough to protect consumer rights? How could we strengthen existing ombudsman and trading standards services?

Steve Ruddy: That is a very broad-ranging question. Existing trading standards services are doing an amazing job locally with extremely limited resources to protect consumers in a whole variety of different sectors, from consumer protection issues more traditionally through to product safety, food standards, animal health and even weights and measures. There is a whole variety of different things that trading standards services are doing locally to protect consumers. They work very closely in partnership with other sectoral and national regulators.

There is a question mark created by the significant reduction in resources that local authority trading standards services have faced over the last 12 years. The data from CTSI and elsewhere demonstrates that there has been a reduction of more than 50% in capacity in that period. At the same time, trading standards services have in many cases had more responsibilities, in terms of new legislation they are responsible for enforcing, more complexity in changing marketplaces, increased demand and the crisis around Covid in particular and the complexity around Brexit.

There is a range of different things we are trying to deliver locally with very limited resources. Beneficially, BEIS has supported National Trading Standards to create regional investigative teams and some national teams to deliver on areas of particular consumer concern. For example, there is a national scams team and a national estate agents and lettings team, so particular consumer protection areas that trading standards has a responsibility for have national leads as well.

That national support has been helpful in keeping the system coherent and manageable. It has not actually filled the gaps that have been created locally. That local trading standards presence is under severe strain. That is something that needs to be recognised. There are means to help address that through more support for bodies like National Trading Standards, more commissioning for particular areas of activity and more recognition, to be honest, of the role that trading standards services have in protecting consumers, supporting the economy, protecting public health and in new sectors to help ensure consumer confidence in the green economy.

There are areas where trading standards services are very effective in supporting local authority priorities and Government priorities as well, but



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those priorities are not sufficiently joined up or visible enough to have been effective in securing the level of resources that are required to deliver that fully, effectively and consistently across the country. There are some gaps there.

Having said that, the data that the Association of Chief Trading Standards Officers and CTSI have collated about the work and the impact of trading standards services over the course of the last few years demonstrates a huge level of activity, a huge number of criminals, rogue traders and scam artists who are being brought to justice through the work of trading standards services, the huge number of vulnerable consumers and victims of scams who have been actively supported by those trading standards services locally and the preventive work that is effectively being carried on with businesses across the country.

There is a huge amount of work that is often unnoticed and undervalued, to be honest. There is a piece of work for my organisation and others to work harder to demonstrate that value and impact so that the service is adequately resourced for the future.

Matthew Vickers: I would answer this in two ways, first from my own organisation and maybe a bit broader. We tend to think about this in four areas. If we think about four things that make an ombudsman service effective, the first one would be around access. How do you make more people aware of your services, or how do you make it easier for people to approach you? With that, we have done a lot of work digitising. We have done a number of things to make the process quicker and easier, but we have realised that we also have to do some things because the risk is around digital inclusion there. There is a lot of work that we have done around access.

The second part, which is related to that, is around the resolution techniques that you use. There is a danger that sometimes, when we are on Committees like this, ADR gets elided into one thing and treated all the same way. Actually, there are all sorts of different flavours about how we do things. In my own organisation, we are consciously very informal and we try not to be legalistic, on the basis that those things otherwise put up barriers to people coming to complain and can tend to lead to imbalances of power within a complaint. There is a lot that we do there around the different resolution techniques that we use. That is the second area.

Where we then see that you can have a massive impact is in the final two areas, the first one being insight and the second one being engagement. There is an awful lot that we do. We have touched before on partnership working. We work very closely with Citizens Advice and Ofgem in a tripartite arrangement that looks at saying, "Where are the risks that sit out there?" That is not just for those consumers who are coming to you but what some of the wider issues that you might see across a particular company or an industry as a whole are. Those are ways that you can



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maximise impact and have an impact more quickly and cost-effectively than just waiting as a second-tier failure demand mechanism. We think that that is a really important part of what we should be doing.

That takes us on to engagement. So much of what we are looking at is to say, “How can we help business to improve?” There is that point, as Rocio mentioned before. Both have a role to play. Consumer protection and competition are not opposites. One can reinforce the other. We work very closely with the particular companies that we have under our jurisdiction to help them with those questions of execution. We see a lot of the time that it is not so much a failure of intent. It is not so much that companies are going out deliberately trying to do wrong. On occasion some of them are. We have certainly seen that in energy, with some suppliers that have failed—not all but some.

So much of this is about execution. Execution is always difficult, whatever business you work in. As markets become more complex, execution gets harder. We are looking at how we can take the insights from all the data we have, because we deal with, across energy and telecoms, about 130,000 cases a year. That is a lot of data that we could be using to help improve execution. We think that focusing on those areas is what makes an ombudsman more effective.

Coming on to the broader point, we are in the happy position that we are in a regulated sector where we have worked hard with the regulator. In the case of energy, we have worked hard with Citizens Advice, as a statutory consumer advocate. That is not the same position in telecoms where we are, where we are not the sole ombudsman. That makes things more complicated, having more than one ADR body in the sector, and there is no statutory consumer advocate.

Again, it is about design and co-ordination of the different areas. Once you start looking at other areas that are on the fringes that either are not regulated at the moment, as we touched on earlier—unregulated energy and what that means for the future of net zero—or are emerging markets, like digital or areas like online harms, that again means that we are going to have to think quite carefully about how we combine data, intelligence, insights and different capacities that different organisations can bring to fix this. There is absolutely a role that can be played, but I am sure Rocio will want to come in with the work that Which? did that showed that not all ADR was created equal.

Q199 Mark Jenkinson: Rocio, you touched on the matter of consumer trust before. Mr Penrose’s report told us that high-trust economies perform better than low-trust economies. It is what you pointed out. Consumers do not have to be wary every time they buy an item. What characterises a high-trust compared to a low-trust economy? To what extent do we currently have a low-trust system? I am interested in some of the ways that we could build that trust.



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Rocio Concha: I completely agree with John Penrose about this. There is a high cost to lack of trust, due to the points I mentioned before. If consumers do not trust that they have the right protections in place, they will not shop around, or they do not engage with a particular new sector or service, or, if they engage, they sometimes go to the incumbent. They do not try new businesses because they are worried that if something goes wrong they will not have the right protections in place.

What causes an economy to have a good level of trust is having the right protections in place and the right enforcement of those protections, so consumers have confidence that, if something goes wrong, you have the protection. Also, if something goes wrong and the companies do not comply with those protections, the Government, the regulators and the enforcement agencies will have your back and make sure that these companies do that.

Do we have a high-trust economy? It is a mixed picture. We have some consumer trackers that try to look at trust in relative terms. We are seeing, in relative terms, higher levels of trust, for example, in things like water and groceries, but low trust in airlines, in particular since Covid. There has been a decrease in trust in those areas. It depends on the sector. When you look at the numbers, in sectors where you see a lot of problems—that consumers have a lot of problems, because they do not have the right protection or the right protection has not been enforced, you can see the level of trust going down.

Matthew Vickers: There is some great work that Ipsos MORI has done recently, with its trustworthiness monitor on this that has come out. That looks across different sectors. No matter what organisation, whether you are talking local government or whatever, the key thing is that it comes down to a basic level of trust, which is simply execution. It has drawn on some of the work of Philip Pettit on this, looking at different trust models. It is relatively simple. It just comes down to whether you are able to deliver on a transaction.

That is where organisations like ours can help, to help consumers feel like they are being treated fairly and to build trust as a system asset, because it is needed for new markets. As Rocio said, it is the most effective way of promoting competition. These are points that we should all be looking at, about how we work together to develop.

Q200 **Mark Jenkinson:** Matthew Upton, do you have anything to add?

Matthew Upton: I agree with everything that has been said. One of the risks to the high-trust environment that we want that is coming down the track fast is the increasing complexity of markets, particularly online. You get more of a habit now of people feeling like they are herded or shepherded into decisions online using clever nudges and techniques to perhaps make them make decisions that are not in their best interests.



One of the very high-profile examples here is around buy now, pay later and the huge growth of the sector. Some people follow well-designed checkout systems and so on and then suddenly, as our research has shown, realise they have signed a credit agreement without even realising what they were getting into. You see it a lot with the big digital companies as well. People almost have a temptation to throw their hands up and feel like, "I do not know how to navigate these markets anymore". I have no evidence that that leads to them withdrawing from the market, but it is an interesting challenge. People might increasingly decide, "It is too complex. I do not know how to make good decisions on this. I am just going to stay out", which obviously would be a risk to the whole economy.

Q201 Mark Jenkinson: I have one more quick question for Rocio. In the *Creating a successful enforcement system for UK consumers* report, Which? stated that there is a lack of data sharing between local authorities, regulators and enforcement bodies. How can we improve that data sharing? What is your solution to that?

Rocio Concha: There are different pockets of data. We were talking about the Consumer Protection Partnership having data and sharing intelligence, but we have also been talking about ADR. ADR schemes have access to a lot of valuable data, not only for the cases that they deal with but also for cases that they cannot deal with because they do not have the scope. That data is quite valuable, because it can tell you areas of the market where there are problems. At the moment, there is not a route for consumers to resolve that problem, in terms of ADR.

Another area within which there is huge opportunity and which the National Audit Office published a report on very recently is safety. There is the opportunity for the OPSS and trading standards to work together to identify areas of risk where incidents in relation to safety are happening in some markets that may not be covered by regulation and to identify those markets before that becomes a big problem. There is a huge opportunity to combine all that data to give us access to what sectors are having problems, what businesses are seeing the majority of the problems, and to give us an indication of where problems are growing, so that we are able to tackle them before they become a big problem.

Q202 Andy McDonald: I listened very carefully to what Matthew and Rocio had to say about ADR. Rocio, could I come back to you? I think Which? published a report back in 2019. Seven recommendations were made, the seventh of which was to address some of these consumer confidence issues to deliver an effective ADR system to sit alongside a robust public enforcement regime for customers. I think you have said that ADR could be slow, have weak decisions and inadequate oversight. Court systems are often slow as well, so that is not an alternative. What do you see as the precise measures that can be taken to improve these processes so people have confidence in them?



Rocio Concha: ADRs are very important for consumers. We have touched before on making sure the consumers are aware that they exist. There are sectors where we do not have ADRs, sectors, for example, with complex and expensive transactions. The Government have proposed to introduce ADR in home improvement, car sales and services and the airline sector. We endorse that. We need ADRs there.

We also need ADRs that deliver objectively and help to deal with disputes between businesses and consumers in an objective manner. At the moment, there are some ADRs where you have the competent authority that is the regulator, as in the case of energy, that work with the regulator. There are other voluntary ADRs that do not have full supervision. There is an opportunity to have an overarching organisation that looks at the performance of those ADRs to make sure that these ADRs are actually working as they are supposed to be working and making objective evidence-based decisions. At the moment, it is quite mixed. We put some of those examples in the report. We need to make sure that these ADRs are working well.

In some sectors, we have several ADRs. That does not mean that the consumer has a choice. The consumer does not really have a choice of ADR. They have to go to the ADR that the businesses decide to partner with. What do you think the business will do? They will go to the ADR that they think will have more sympathy for the business side. That is where competition is not really working. Competition can work in identifying an organisation that is in charge of the ADR for, say, three years and then you have another competitive tender to make sure that the ADR has the pressure to make sure that they are performing well for both businesses and consumers.

Q203 **Chair:** Rocio, we did a survey as part of this inquiry, which was an open survey. We have had over 1,000 responses and so far what is interesting is that the area where respondents have said they have had the most problems is around physical goods, but, from my understanding, the law on that is pretty clear. You have the rights of repair, replacement or refund. It is not overly complicated in the same way as maybe a house retrofit or digital services. Do you have any thoughts as to why people are having such a poor experience around enforcing their consumer rights for goods?

Rocio Concha: I have not seen the results of the survey, but there is an area in relation to safety. At the moment, product safety is a complex combination of voluntary standards and mandatory regulations and we often see that for some businesses, sometimes it is difficult to navigate what standards they need to comply with.

We know that the OPSS is developing reforms to the system and what we say to them is we need to make sure that there is full clarity for the business about what the standards are that they need to comply with and if there are changes in these standards that they are aware that these changes are happening.



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We also want to see the OPSS do more with trading standards to identify risk in markets where there is no regulation and there are no safety standards, for example, voluntary or mandatory, to make sure that we identify areas where more standards are required.

Also, the online platform is a key part of all of this. At the moment, if you are a consumer, you buy in the online platform and you assume that those products that are available in the UK through that online platform comply with all the safety standards and all the regulations in the UK, but they do not have a legal responsibility to ensure that that is the case.

Q204 **Chair:** It is more the platform, not the good.

Rocio Concha: It is both. We have the platforms in the sense that we are seeing a lot of products there that do not comply with the standards in the UK and there needs to be a way for the platforms that are the gatekeepers, because consumers will not know, to make sure that these products comply with all the standards. In the area of safety standards, there needs to be a review, as the OPSS is doing. It is putting proposals together in relation to that.

Q205 **Andy McDonald:** The point is not that there has been a breach. It is established that the standards have not been maintained. It is the remedy that people are securing. Is that not the point of the survey? We are not arguing about whether something is up to snuff or not. It is not. It is about getting redress and remedy.

Rocio Concha: Yes, exactly.

Q206 **Chair:** I will not name any names, but for a number of providers they call up, go on the chatbot on their website or email—their washing machine is not working or something—and there is a problem there. Is it because general goods are not regulated by a specific sector regulator or ombudsman service? Do you disagree with that assessment?

Steve Ruddy: There is an issue about businesses' willingness to provide consumers with their rights and whether they choose not to or whether they are not aware of them is questionable. There is an issue from a trading standards perspective that most of those sorts of breaches are going to be civil law breaches, and we have a distinction between how we deal with civil law breaches and criminal law breaches. Whether it is a deceptive claim, a false statement or a mispricing, there is a whole variety of things that will fall into the criminal sphere and a range of things that fall into the civil sphere.

We get intelligence from Citizens Advice on a minute-by-minute, daily, hourly basis. Data comes into our databases and local trading standards services target their response based on an assessment of harm and risk on that intelligence that comes in. It is fair to say that it will only be a small percentage of individual complaints that could ever be picked up by a local authority trading standards service. We are talking probably less than 5% of the volume of stuff that comes through that one portal.



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Obviously we are getting information and intelligence from other sources as well.

Inevitably, those interventions are targeted at the areas of greatest consumer vulnerability, harm and risk, which will be things like product safety, as an example, and more traditional "The business will not give me my money back" issues would not be hitting those triggers for high harm and high risk, unless we got large volumes of those. That would not lead normally, on an individual basis, to an interaction with the regulator.

Q207 **Chair:** That is the problem, is it not? Where do you go? You just have to escalate it internally in the business.

Steve Ruddy: That is from the local authority enforcement arm. There are other routes in terms of individuals pursuing their civil rights and their civil remedies on their own. That is through the Ombudsman Services, the courts process and other advisory routes. The two things run concurrently. I am talking about the active intervention of the regulator, which would only be targeted at those high-harm, high-risk and high-volume intelligence issues, which is very crucially informed by the data that is provided by Citizens Advice.

Matthew Vickers: We learned from this. In 2015 when the ADR directive was brought across into UK law we had, to be honest, a failed attempt to become a wider consumer ombudsman, where we spent a lot of money on a system, a website and access and awareness to try to get people to come along and say, "Did they want to bring complaints to us?" The problem was when the directive was brought across, ADR was not mandatory. As Rocio says, there are some areas now that are being looked at to say, "Should they be mandatory?"

We found that there was a demand there. We had about 8,000 queries in the first three months. The process was that we asked consumers to come forward to say, "I have a problem", and we would get in touch with the business. Only about 3% of the businesses we approached said, "Yes, we do want you to look at that".

Some good work has been done around voluntary redress. There are some good trade association schemes. There are some good ombudsmen who do not have that kind of statutory backing that we do, but just preaching to the choir is the risk as well. The types of organisations that will join these sorts of ombudsmen tend to be the ones who want to improve and that is not where the risk sits.

We are starting to think about whether there are other ways of doing this to promote that as a benefit to business. If they see it as, "What you are really helping me with is customer service capability. You are helping me with ways that I can improve my business", they are far more ready to sign up than, "Hang on, I pay a case fee to join you and pay a case fee when something happens, and the result of that is you might make a binding decision against me where I would pay some compensation. How



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does that work?" That is a much tougher sell than saying, "Let us work with you to build your capability, understand your risks and build a better system".

Q208 **Chair:** Is it legitimate that there are higher levels of consumer enforcement in some sectors than other sectors? You work with Ofcom and Ofgem in very regulated environments where those regulators are often in quite constant communication with the regulated entities on switching, cancellation pathways and order journeys. Then in some areas there is just nothing. Is that legitimate or should there be a level playing field?

Matthew Vickers: To an extent, it is. I know some people advocate that ADR should be mandatory everywhere. That is not our position. That would be disproportionate, but it is worth thinking about, and Steve did a great summary earlier of where there are markets that look like people would be particularly at risk, where substitutability is difficult or where there are asymmetries around power or information. Those sorts of areas feel like they should be protected more, but literally saying, "There should be an ombudsman for crisps", or something like that, feels a little excessive.

Q209 **Chair:** We were asking earlier whether the CMA needed its powers to be updated in legislation. If the Government were minded to do that, do there need to be equivalent changes to the existing sector regulators, like Ofcom and Ofgem, or are they content with where they are?

Matthew Vickers: There is the question we touched on earlier. Taking energy, for example, Ofgem itself is currently in the process of becoming the regulator for heat networks, for example, which are key, but there are other parts of that road to net zero where Ofgem effectively does not have regulatory power at the moment. There are some areas like that.

Q210 **Chair:** That is scope, is it not, not enforcement power? The discussion with the CMA was about administrative powers and powers of enforcement. Are you saying that with Ofcom, Ofgem and other such regulators, it is more just about scope?

Matthew Vickers: There is a scope challenge. It is interesting. There is a lot of work. Professor Chris Hodges at Oxford University has done a lot of work on OBCR, which is outcome-based collaborative regulation, and it is more around that route of saying again, "How do we bring the existing powers or capabilities all together in a system where the regulator becomes more of a convener, connector and capability-builder rather than the answer always being top-down enforcement?"

A lot of this is about how you change culture and behaviour, and that is not always done through fines or enforcement. In fact, there is very little evidence that fines are effective at changing behaviour. It is much more done through building that kind of shared capability and capacity while retaining that ability to in some cases deal with an element that requires enforcement.



Q211 **Chair:** Does anybody disagree with that? The Department's consultation asked a question about fines and the CMA being able to issue fines, but you have just said fines do not really work.

Steve Ruddy: My inclination is to disagree with that. You need to look at more what creates deterrents and what changes behaviour in business. Low-level fines for major businesses are an administrative cost and are not really significant at all, so in those areas fines can be shrugged off. That is part of the rationale for the argument of increasing the potential level of fines to proportions of turnover, so they become more meaningful and, therefore, can act as more of a deterrent. That is my position.

Rocio Concha: I completely agree with that. The two things that make fines effective as a deterrent are the level and the enforceability. You may have a very high fine, but if the likelihood of a business being fined is very low, then this is not a deterrent, so you need both things. I agree with the recommendation from the Department about the level of the fines.

Q212 **Chair:** What is Citizens Advice's view on the fine?

Matthew Upton: It is not something that we have done research on, but I agree with everything that has been said.

Q213 **Richard Fuller:** Mr Upton, earlier I made a point about consumer rights when it comes to consuming a GP appointment or getting a school place in a local village. As your title is director of policy for consumer and public services, I did not know if you thought that the same regulation should apply to those as well.

Matthew Upton: It is an interesting question. I was thinking about coming in when you first asked it. You will know this much better than I do. You could argue that it is not as necessary because there is that level of democratic accountability, which should ensure good levels of service in some of those areas. Whether that bites is a really interesting one. I used to work in local government, which covered a lot of the services that you talked about. I will say nothing other than it is an interesting question.

I have a slightly split view on this. On the one hand, I would be reluctant to treat every service that could be seen as a market in a typical market way. On the other hand, we did some really interesting research around the private rented sector, as an example, which could have been one of the services you mentioned. That was a few years ago. As a tenant in the private rented sector, you effectively have fewer rights than if you were buying a toaster. You do not have all the classic things that you might expect, like the ability to kick back against your landlord if they treat you badly, because you have the power of section 21 evictions. Imagine if a company could just effectively kick you out of their product if you raised any problems about it. That is what a landlord can do. That is why people do not enforce their rights.



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There are other areas where tenants have much weaker rights than in a lot of more established consumer markets. I have a lot of sympathy for looking at where protections apply in regulated sectors and thinking about what you could learn, but I would not necessarily jump to mapping over the same protections.

Q214 **Richard Fuller:** Let me just press you again on that. You went a bit away from specific public services; you start talking about private renting. Let us go back to my consumer rights to be able to get an appointment with my GP and to be able to get a good service from my GP. Why should my consumer rights be in a different plane from my consumer rights for buying a toaster or renting an apartment?

Matthew Upton: I am not going to particularly push back. As I say, it is an interesting question. It would be that for those services, let us say GP appointments as an example, there are currently, whether they are good or not, other forms of accountability, if you look at, say, foundation trusts in terms of your ability to go through what are increasingly democratic processes there and your ability to go to the complaints process. I have not done a huge amount of work on it.

Q215 **Richard Fuller:** They are not democratic though. My fundamental point is that we rely on public service consumer rights to be decided by producer organisations. None of you represent, directly at least, producer organisations, so therefore you are independent of the producer. There is an interesting asymmetry there, but I need to move on to another asymmetry, which is the asymmetry of information online between the producer and the consumer. We have talked about it quite a bit. What more should be done? What could be done to help on that asymmetry?

Matthew Upton: This is a bit of a general view. There is not a way to solve it through education alone. We have these conversations a lot with regulators and Government Departments, the sense being you can tackle the asymmetry of information through just pumping out good information, consumer awareness campaigns, et cetera. I am all for those things in their right place, but the asymmetry of information is just a fact of the market. You cannot expect a consumer, no matter how engaged they are, to go up against a big, well-resourced firm in terms of the amount of information they want to have. It is why you have organisations like ourselves and Which?, to effectively advocate on behalf of consumers in those kinds of areas.

The answer here is a couple of things. One is to have good, tight consumer legislation. I talked about buy now, pay later as an example where you have a huge asymmetry of information and consumers make poor choices as a result of that. There is a big question about whether that sector should be regulated—it looks like it will be—and how that regulation takes force through the FCA. Things like that are a no-brainer, to try to at least deal with the impact of that asymmetry of information and give consumers some protections.



The other is a funding challenge. We have talked about funding problems in terms of enforcement, but it is worth looking at advice as well. One of the main ways consumers get their information is from advice from Which?, Citizens Advice, Martin Lewis, et cetera. We are funded to provide some of that advice. We run the consumer service, where people can call with some of the sorts of general consumer problems that we have been talking about.

Our funding has been flat for eight years. It is essentially a 20% cut. We cannot provide the level of advice that we have been able to do in the past and that we want to do. That is only going to get worse as inflation rises in terms of our costs and it is only going to get worse as the cost of living crisis bites and the impact of those consumer problems is increasingly felt. Advice is a really key way to tackle that asymmetry of information. Part of the answer is, unfortunately as always, funding.

Q216 Richard Fuller: It is not always additional funding. There are lots of people in the public sector and private sector who do better with less money each year, which brings me to Mr Vickers, if I may, on the efforts to use technology in your services. The 2018 report said that, "We are creating a digital, efficient and transparent way of resolving complaints in a new case management system". Does that provide an answer to the challenge Mr Upton has of trying to deliver services when budgets are tight? How is it going?

Matthew Vickers: It is going very well. I would say that, but, yes, it is going very well. What has it allowed us to do? A few things. It has allowed us to use different types of techniques. Particularly through the pandemic, we have found that using digital resolution techniques meant that, at points when the first tier of complaint handling, so complaint handling at companies, really broke down, because it did through that April/May period of 2020, we had a lot of volume coming, but we were much more resilient in being able to deal with that without being left with a backlog. We are in a fortunate position compared with some others in this sector around how we have come out of Covid.

What the case management system has given us is resilience, so that we are able to do things more cheaply and quickly, but it has also given us much better data that we can then structure and again get into more of that preventive work that Rocio was talking about. It has really unlocked our ability to be able to use that data and insight with regulators and industry.

Q217 Richard Fuller: Do you manage this through your subsidiary, Lumen Tech?

Matthew Vickers: We do.

Q218 Richard Fuller: Did you do a bespoke software development or did you buy off the peg?

Matthew Vickers: No, we did a bespoke.



Q219 **Richard Fuller:** Why?

Matthew Vickers: We were originally on a Microsoft system and the cost of licences alone was ridiculous, so we found that building our own bespoke system was better than what we could find out there in the market. Funnily enough, we were all talking outside about some of the challenges that there are for organisations like ours with digital capability. We have invested very heavily in digital capability because we think it lets us develop more targeted tools that benefit not just us and the consumers who use us, but that wider intelligence landscape.

Q220 **Richard Fuller:** As a consumer, what would be better in terms of interaction using your digital approach compared to how it was in the past?

Matthew Vickers: We have done all the things that you typically would do learning from software developers and designers, so it is just a bit less clunky. It is easier to upload information. It is not perfect, but it is easier to upload information than it was. It is a more streamlined and seamless flow through the system, so the system does a lot of the work for you around, say, when it will escalate things through the system. It is those sorts of things really from a consumer perspective that we have done. We have tried to make the experience as easy as we possibly can.

Q221 **Richard Fuller:** There is one question that I had about a new competition Act; Ms Concha has mentioned it and I think others have, so we may have covered that sufficiently, but I would ask Ms Concha if you were writing that new competition and consumer act you mentioned, what would be your No. 1 clause or the most important thing?

Rocio Concha: Do you mean from competition or from both competition and consumer protection?

Q222 **Richard Fuller:** You asked for a competition and consumer Act.

Rocio Concha: Brilliant. From a competition perspective, it would be giving the Digital Markets Unit the right powers. As you know, the CMA has already set up the Digital Markets Unit, but they need the powers to put a code of conduct in markets where we have companies with market powers and strategic market status and also to make sure that they put in pro-competitive measures when they are required to make sure that these markets are competitive. Give them the right powers.

In terms of consumer protection, it would be giving the CMA the right powers to enforce the current protections and updating the current protections for the digital world. There is a lot to do on that and we were talking about selective information and all this in the digital space. We are seeing quite a lot of problems on manipulating consumers in a way that you cannot see in the offline world, because they are able to test a number of things with real consumers to see how they can lead you to do something that may not be in your best interests.



Q223 **Paul Howell:** I would just like to digress into a specific sector now and talk about the aviation sector. The survey that the BEIS Committee did found the second most affected area, after consumer goods, was aviation. What measures do you think could be taken in relation to the aviation sector to protect customers? The Covid impact could not have been more dramatic in terms of what happened there.

Rocio Concha: We were talking before about other regulators and the additional powers. The CAA, the regulator, needs additional administrative powers to enforce the law, and what we saw during Covid reflects that. Many companies were not compliant with the current regulations about giving refunds to consumers and, actually, the CAA could not do much about it because they do not have the right powers. That is one.

The other one is mandatory ADR in the airline sector. These two things are being proposed by the Department for Transport. The airline sector is one of the regulated sectors that does not have mandatory ADR and, as you said, we are seeing a lot of problems that consumers have in that sector, so that is a sector where mandatory ADR is definitely required. As I said before, that should be one ADR that is also overseen to make sure that they are doing the right job as an ADR.

Q224 **Paul Howell:** Do you think this needs anything more? The ADR that is proposed by the Transport Secretary is already a proposal. Is there anything more that should be added to that?

Rocio Concha: They are proposing to have a mandatory ADR, which we fully endorse. What we also want is the mechanism that is going to be used to make sure that there is monitoring of the work of the ADR, to make sure that that ADR scheme is actually doing the job that it is supposed to be doing.

Matthew Vickers: I agree with Rocio's point there. It is important, as we touched on earlier, that we do not just see ADR as the answer, because there are types of ADR and there are different ways that you can do it. It is important that as far as possible, you would want a sector to have one provider rather than a multitude, and you would also want to think about that in what I would call strategic redress.

Do not just see ADR as it sits off on its own and it says, "Let us have this backstop failure demand". It is an important role and it does help thousands of people, but it leaves on the table all sorts of opportunities to link that up as part of the regulatory toolkit and part of the framework. It would take us back to those points about how tech and data could help you to share advice and share intelligence. The aim should not be to have a larger and larger second-tier ADR complaint handler all the time. That shows it is not working. It is how you get the right ADR provider that plugs into a wider toolkit.

Q225 **Paul Howell:** Just looking at the aviation sector, there are clearly two



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parts to it, namely the established carriers and then the low-cost carriers that have come in and really largely dominated consumer travel. Do you think there has been an issue with the market dominance of these low-cost carriers that has impacted consumer confidence because of the way things have happened with the lack of redress that they have had through Covid?

Rocio Concha: We have not observed that, because we have seen both low-cost airlines and also some of the legacy carriers not complying with the law, so we did not see that the low-cost airlines were more likely to not comply with this. We do not have evidence to say that this is a problem because of the low-cost airlines. We saw problems in both. In both sectors, there were companies that were not compliant with the law.

Q226 **Paul Howell:** I do not know if “dominance” is the right word in terms of the low-cost carriers, particularly in the public travel rather than business travel world, but do you think that there has been an impact on consumer confidence in terms of using those businesses because of the way they have reacted through Covid, or is that the same as any other sector at the moment?

Rocio Concha: Yes, we have seen trust in that sector in general going down because of the way that some of these companies dealt with the pandemic.

Steve Ruddy: I was wondering whether the survey results you got were related to a Covid spike, for example, because of the disruption in the marketplace there, because certainly from a trading standards perspective, it is not normally an area of high volumes of complaints that we would pick up and deal with. That may be more related to the fact that we tend to deal with more vulnerable residents and issues of high harm and risk, so the sort of sector where we will intervene is slightly different. It may be an issue that is less relevant to more vulnerable consumers.

Going back to that issue of trust, it is not just Covid-related behaviour. It is also to do with some of the practices of some low-cost carriers in terms of things like hidden prices and prices increasing dramatically as you click through processes. Some of those practices there have led to some consumer dissatisfaction and distrust of those businesses.

Q227 **Paul Howell:** I appreciate that is probably one of the possible considerations. Do you think there is a breakdown of trust because of the not necessarily contractual linkage between the online travel agents and the low-cost carriers? We have seen sometimes that there actually has not been a follow-through between who was booked with and who was actually the end provider.

Matthew Vickers: Perhaps more broadly, it is this question about the fact that, when we look at trust in businesses, it goes beyond just delivering what you are contractually obliged to do. More and more in today’s society we are seeing that across a whole range of industries, not



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just aviation. Whether that is things like ESG or the sustainability agenda, increasingly consumers, rightly—because, going to your earlier point, consumers are also citizens—have expectations that will go beyond what is purely there in the contract about what is fair. That, again, is why, as an ombudsman, we set up a fair and reasonable test, not just a test that says, “What does contract law or consumer law say?”

Chair: We have just timed over, so that was a good point to finish. Thank you all for your contributions this morning.