

# **Review of Consumer Protection in Jersey**

**Mark Boleat**

July 2001

**Boleat Consulting  
26 Westbury Road  
Northwood  
Middlesex HA6 3BU  
Tel: 07770 441377  
Fax: 01923 836682  
E-mail: [Mark.Boleat@btinternet.com](mailto:Mark.Boleat@btinternet.com)  
Website: [www.martex.co.uk/boleat](http://www.martex.co.uk/boleat)**

**Price: £2.00**

# Contents

Introduction	3
Executive summary	4
1. Protecting consumers – theoretical issues	7
2. An overview of the UK position	9
3. The current position in Jersey	14
4. Issues that need addressing	20
5. Outline of a future strategy	25
6. Legislation	26
7. Self-regulation	30
8. Redress	34
9. Representation	37
10. Dealing with anti-competitive practices	41
11. Institutions	45
12. Agenda for action	51
Appendix 1 Summary of recommendations	53
Appendix 2 Terms of reference	54
Appendix 3 Methodology	56
Appendix 4 UK legislation and institutions	58
Appendix 5 Guernsey and the Isle of Man	64
Appendix 6 The UK model for consultation	67
Appendix 7 The Jersey Consumer Council	70
The author	73

## **Introduction**

Consumerism has been a major force in many industrialised countries in recent years. A succession of laws has been introduced, all designed to give the consumer greater protection, either in respect of all goods and services or in respect of a specific sector, such as financial services, travel or the utilities. Legislation has been influenced by action at the European level with national governments having to implement a number of European directives. The importance of soft law – in particular codes of practice – has also increased. The media and non-governmental organisations have had an increasing influence, albeit mainly on politically popular sectors (banks and supermarkets for example) rather than those where there are real consumer problems (car repairs and building work for example).

Jersey presents a strange contrast to this position. There is virtually no legislation and a fairly primitive institutional framework. Do consumers in Jersey get a rough deal as a result? Or, rather, do special factors – in particular the fact that Jersey is a small island with strong trading relationships with the UK – mean that the Jersey consumer is well protected without the need for detailed regulations and numerous organisations looking after their interests?

This report, which has been commissioned by the States of Jersey Industries Committee, addresses this question. After briefly analysing theoretical issues, it reviews the current positions in Jersey and the UK, identifies the special position of Jersey in respect of consumer protection, identifies issues that need addressing and finally makes proposals.

The author gratefully acknowledges the assistance given by many people in Jersey – individual consumers who expressed their views, business representatives who explained how they operated, in particular in relation to UK legislation and codes of practice, consumer representatives who explained the problems they see facing consumers, States members and officials and those directly involved in consumer protection. Particular thanks are due to Alison Youngs, Deputy Chief Trading Standards Officer, who assisted me throughout the project.

Mark Boleat  
Boleat Consulting  
July 2001

## **Executive summary**

1. Jersey is a leading international financial centre and tourist destination. The fact that transport links from the airport and the harbour are appalling is an indication of the low weight that has been accorded to the consumer interest in the Island. More generally, Jersey's framework for consumer protection is woefully inadequate. Fortunately, by luck rather than judgment, there have been no major consumer protection problems. Jersey would be wise not to rely on luck for the future.

### **Protecting consumers – theoretical issues**

2. The consumer is best protected by a competitive marketplace. However, there is an imbalance of power between the consumer and the trader. This imbalance needs to be addressed by regulation and other means. It is not sufficient to rely on market forces alone.

### **An overview of the UK position**

3. The UK position is relevant to Jersey because many goods and services sold on the Island are imported from the UK or are sold by UK based organisations, because the UK framework is familiar to people in Jersey and because UK legislation is tried and tested.

4. There are a number of UK laws that imply terms into contracts so as to protect consumers. Some sectors are also subject to specific regulation while in others codes of practice apply. Responsibility at national level for consumer protection rests with the Department of Trade and Industry and the Office of Fair Trading. At local level, trading standards departments are responsible for enforcing many laws and regulations. The National Consumer Council is the official consumer advocate, and there are also a large number of lobby groups with an interest in protecting the consumer.

### **The current position in Jersey**

5. Because Jersey is an island, and given the nature of its trading relationship with the UK, the Jersey consumer is afforded a great deal of protection without any legislation. Many goods and services are sold according to UK laws and codes of practice and there is less scope for rogue traders.

6. Jersey has modest and out-of-date consumer protection legislation. The Jersey Consumer Council has a wide remit but which overlaps with that of other bodies. There is no institutional mechanism for ensuring that the consumer interest is properly taken into account in the decision taking process.

### **Issues that need addressing**

7. There are four major types of issue that need addressing in the consumer protection strategy –

- The legislative framework for purchasers of goods and services generally.
- More specific protection in a number of problem areas such as the motor trade, building and e-commerce.
- Protection from anti-competitive practices.

- Consumer representation.

### **Principles for a future strategy**

8. The consumer protection strategy for Jersey should rest on three principles –
- There should be a Jersey solution recognising the particular circumstances of the Island.
  - There should be no additional burdens on reputable businesses.
  - New arrangements should build on existing arrangements as far as possible.

### **Legislation**

9. There is a need for legislation to –
- Impose a general duty on traders in respect of product safety.
  - Imply terms into consumer contracts so as to prevent the consumer from being misled and dishonestly treated.
  - Regulate distance selling (mail order, telephone sales and e-commerce) in accordance with accepted international standards.
10. The legislation should in no circumstances go beyond the requirements of UK law.

### **Self-regulation**

11. Self-regulation should give protection over and above that conferred by law. Currently, the Jersey Chamber of Commerce and the Jersey Motor Trades Federation operate codes of practice.
12. When the States has made a decision about legislation the need for a general code of practice under the auspices of the Chamber of Commerce and specific codes of practice for the building industry and the motor trade in particular should be reviewed.

### **Redress**

13. The Petty Debts Court should be made more accessible to consumers. There is no strong case for replacing the court with a UK-style Small Claims Court.
14. When new legislation is in place the Chamber of Commerce should seek to develop appropriate alternative dispute resolution procedures linked to codes of practice.

### **Representation**

15. The quality of consultation, and therefore of policy making, in Jersey is poor. An improved consultative mechanism must make proper provision for consumer views to be obtained.
16. A strong consumer body is needed to ensure proper consumer input into the decision-taking process.

### **Dealing with anti-competitive practices**

17. There is a distinction between competition policy, which deals with the abuse of market power, and consumer protection, which seeks to prevent traders from treating consumers unfairly. The Jersey Competition Regulatory Authority (JCRA) has been established to deal with competition policy issues. Consumer protection policy is linked to, and must be in step with, competition policy. The JCRA also needs an effective mechanism to obtain consumer input.

### **Institutions**

18. The Industries Committee should remain responsible for consumer protection policy. Executive responsibility for consumer protection should rest with a consumer protection division of the Department for Economic and Commercial Development. Responsibility for dealing with consumer complaints should return from the Citizens Advice Bureaux to the Trading Standards Service.

19. Jersey needs a well-resourced consumer council, independent of the States and business interests, charged with ensuring an appropriate consumer input into the decision taking process. The existing Jersey Consumer Council was established in different circumstances to meet different needs.

# Chapter 1

## Protecting consumers – theoretical issues

1.1 Before asking the question of whether consumer protection is working adequately in Jersey, it is first helpful to ask why consumer protection is necessary at all. Could we not manage with the competitive marketplace and the application of the law of contract?

### The value and limitations of the free market

1.2 An economics textbook will describe how consumer welfare is maximised when there is a free market and will demonstrate how consumer welfare can be adversely affected if government policy limits the operation of a free market, for example by the imposition of price controls.

1.3 But a free market will maximise consumer welfare only if certain conditions are met, in particular that the buyer and the seller have the same information and bargaining power and that there are no barriers to entry into the market. In practice, these conditions can be met fully only for some basic low value items such as national newspapers and food and drink products. For most goods and services, there is a divergence between the knowledge available to the customer and that available to the producer, and considerable differences between the economic power of a single consumer and that of a large manufacturer or retailer. In some markets there are also barriers to entry.

### Policy instruments

1.4 Consumer policy is designed to help make markets work. The government and specific regulators will generally make explicit their objective of removing market imperfections so that the consumer can benefit from a competitive marketplace. Regulatory action therefore properly seeks to give the consumer more information that is useful in the buying process, and to even up the bargaining power between a producer and an individual consumer.

1.5 Legislation can help ensure that the consumer has the information needed to exercise bargaining power. Regulators and government departments will generally cite this as justification for any new requirement for information to be given to the consumer. At a simple level, the requirement to state a price in relation to specific units for cheese or meat helps to give the consumer information to shop around if only in a particular supermarket. There are also requirements relating to advertising that prevent manufacturers or retailers claiming that a good or service has characteristics which it does not.

1.6 The point about bargaining power can be addressed through a number of devices including legal aid, small claims courts and enforcement work by trading standards officers. It is unrealistic to expect the individual consumer to be able to take legal action against someone who has provided poor service. Trading standards officers are able to play an important role where there is clear evidence of a trader not complying with a contract that they have entered into.

1.7 Properly, governments take power to deal with anti-competitive practices that adversely affect the consumer through competition legislation.

1.8 The nature of some goods and services is such that general laws on trade descriptions or advertising may not be regarded as sufficient and, accordingly, there will be a demand for special regulation. Financial services has been singled out in most countries because the nature of many financial products is that their value cannot easily be ascertained until the end of a rather lengthy period of time, after which it is costly to attempt to undo the transaction. Similarly, there are also specific regulatory regimes for the utilities, recognising the quasi-monopoly position that some of these have and the special nature of the industries, in particular they need to serve every customer, even those who might be uneconomic to serve because of their location. In some sectors, the government has also addressed the bargaining power point by providing for specific ombudsmen. These are most common in the public sector.



## Chapter 2

### An overview of the UK position

2.1 This chapter first explains why the position in the UK is relevant to Jersey and then briefly describes the framework for consumer protection in the UK. There is a fuller description of the UK position in Appendix 4.

#### Why the UK is relevant

2.2 There are a number of reasons why the framework for consumer protection in the UK is relevant to Jersey –

- Most goods and services sold in the Island are either imported from the UK or are sold by UK based organisations. Often, traders are complying with UK laws, regulations and codes of practice when they sell in Jersey even though they are under no obligation to do so.
- Jersey people buy many goods directly from the UK either when they visit Britain, by telephone, by mail order or by Internet. They therefore benefit from, and have some knowledge of, the UK framework for consumer protection.
- Jersey has many visitors from the UK and also many people visit the Island for business reasons during which time they may be consumers. A significant proportion of consumer expenditure in Jersey is by non-residents, mainly from the UK. While they have no right to expect UK legislation to apply they are nevertheless familiar with it and where standards are markedly different this may cause problems.
- The framework for consumer protection in the UK has been built up over a period of years. It is tried and tested. There have been successes and failures. These should usefully be drawn on.

#### National laws and regulations

2.3 In the UK and in Jersey consumers are protected by the law of contract. This means that if, for example, a trader sells a good that he has falsely described or which does not work as it should (say a TV set that simply does not work) then the consumer can sue the trader for breach of contract and recover damages. However, this is not realistic for small value transactions; court action is always expensive and rogue traders can simply disappear. In order to give consumers greater protection certain practices are made offences under criminal law. A trader who commits such offences can be prosecuted by the police, trading standards departments or other enforcement bodies. However, the main purpose of the law is to prevent rogue traders operating in the first place – because they know they will be caught and prosecuted.

2.4 In the UK there are a number of Acts of Parliament and regulations which give consumers greater rights or which create criminal offences. The major ones are –

- The Consumer Protection Act 1987 and the General Product Safety Regulations 1994 require that products sold to consumers must be safe.
- The Sale of Goods Act 1979 implies certain terms into contracts of the sale of goods. Goods must be as described, of satisfactory quality and fit for the purpose for which the goods are commonly supplied and for any purpose that the consumer makes known to the seller.

- The Supply of Goods and Services Act 1982 implies into contracts for the supply of a service the terms that the service will be carried out with reasonable care and skill in a reasonable time and, where no price has been agreed, for a reasonable charge.
- The Unfair Contract Terms Act 1977 provides that a person cannot exclude or restrict his liability for death or personal injury resulting from negligence and will generally prevent a trader from opting out of their obligations.
- The Unfair Terms in Consumer Contracts Regulations 1999 provide that a term that has not been individually negotiated in a consumer contract is unfair if it causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer.
- The Control of Misleading Advertisements Regulations 1988 provides legislative back up to a self-regulatory system on misleading and comparative advertisements.
- The Price Marking Order 1999 sets out pricing requirements for products with the objective of providing price transparency.
- The Consumer Protection Act 1987 makes it an offence for a person to give false or misleading price indications to consumers by any means.
- The Trade Descriptions Act 1968 makes it an offence for a trader to apply false or misleading statements to goods or knowingly or recklessly to make such statements in relation to services.
- The Distance Selling Regulations 2000 give protection to consumers who shop by phone, mail order or Internet.
- The Unsolicited Goods and Services Act 1971 makes it an offence to demand payments for goods known to be unsolicited.

### **Specific regulations**

2.5 In addition to general legislation, which covers all goods and services, there is also specifically legislation giving additional protection to consumers in some sectors. In particular –

- Gas, water, telecommunications and electricity are subject to specific regulatory regimes that include strong regulators and well-resourced consumer councils.
- Financial services are regulated by the Financial Services Authority. The new regime, which will be fully in place later this year, includes an ombudsman scheme and a compensation scheme.
- There are specific regulations applying to the travel industry.

### **Codes of practice**

2.6 In many industries there are codes of conduct, often made in response to government pressure, and which are little different in their effect from legislation. Perhaps the most important codes are those governing advertising, which incidentally are applied in Jersey. There are also cross-industry codes in respect of electronic commerce. The strongest sectoral codes tend to be in regulated industries such as financial services. The codes in respect of banking, mortgages and general insurance are particularly important, covering virtually 100% of the industry, giving the consumer substantial additional protection above that conferred by law and including ombudsman schemes. There are hundreds of other codes that range from being very effective (but often with a small take up) to those which are merely advertising and

which have no effect on the behaviour of their members. The regime for codes of practice in the UK is currently being reviewed by the Office of Fair Trading. There is considerable dissatisfaction that the present position whereby a consumer has no means of knowing whether a code of practice is of any benefit. Some would like to see codes being much tougher. However, codes are voluntary and the danger with this approach is that there will be few volunteers.

### **Investigations**

2.7 In addition to enforcement agencies dealing with specific breaches of laws, regulations or codes of practice, the power to investigate is also important. This can draw attention to policies and practices that unfairly impact on consumers and can, in some circumstances, lead to regulatory action. Investigations can be conducted by government agencies, such as the Office of Fair Trading, and private organisations such as the Consumers' Association.

2.8 The government also has the power to investigate particular practices or to draw attention to them using formal methods such as setting up a committee of enquiry or informal methods such as using the lobby system to criticise a product or an industry. Recent examples are the enquiries into banking, fund management and collective investment schemes announced by the Chancellor. Ministers also have substantial power, simply because they are ministers, to influence business practices.

### **Climate of opinion**

2.9 The climate of opinion plays an important part in consumer protection. It is influenced by the factors already covered in this chapter.

2.10 If the government or the Office of Fair Trading simply says that the consumer is being unfairly treated in a particular market, then this in itself is sufficient to generate a climate of opinion. It will probably be taken up by the media and also consumer organisations. Conversely, if the media decide to run a campaign on a particular issue, then this could well influence the government to launch its own investigation or to take action. Similarly, the consumer lobby can seek to influence the climate of opinion using either or both the press and the government.

2.11 The final factor influencing the climate of opinion is developments at an international level. Given the increasing globalisation of the economy, developments at the European or international level increasingly impact on the sale of goods and services in Britain. European directives are, of course, important, as are international agreements, for example on environmental protection.

### **Institutions**

2.12 Responsibility for consumer protection rests with the Department of Trade and Industry (DTI). A Parliamentary Under Secretary of State at the DTI is designated as the Consumer Affairs Minister. The Consumer Affairs Division, which deals largely with policy issues, has 95 staff in four sections: consumer safety, consumer rights, consumer information and law and strategy.

2.13 The main official body with responsibility for undertaking investigations is the Office of Fair Trading. The OFT has powers to promote and safeguard the economic interests of consumers. The OFT lists the aims of its Consumer Affairs Division –

- Exercises the Director General's various statutory powers, including regulatory action against individual traders and firms, and advises the Government on fair trading issues generally.
- Keeps the United Kingdom market for goods and services under review in order to identify and investigate trading practices that appear to affect the economic interests of consumers adversely.
- Keeps in close touch with consumer concerns generally and with the concerns of business about consumer issues, and seeks to ensure that government policy takes them properly into account.
- Provides information for consumers.
- Develops proposals for legislative or regulatory changes (or proposals for self-regulation) where consumers' interests are affected.

2.14 Consumer affairs is a relatively small part of the work of the OFT. Its main responsibility is the implementation of competition policy.

2.15 Another government agency is the National Consumer Council. This has no powers, but again does have the ability to investigate products and markets and to make recommendations. Because it is a government-established body with a good reputation for research, its views are generally given considerable weight.

2.16 At local authority level, the trading standards departments are the main bodies. Many duties are placed on them to enforce regulations and there are many more tasks that are discretionary. In fact they have responsibility for implementing over 1,200 separate regulations and pieces of legislation. A common complaint of trading standards officers is that they are not resourced to undertake all of the duties that are imposed on them. Responsibility for trading standards departments rests with local authorities and they take differing views about the resources that are to be devoted to the service and how they are to be utilised. This leads to very patchy performance across the country.

2.17 A fairly recent development in Britain is the introduction of ombudsman schemes in the private sector. Broadly speaking, an ombudsman scheme provides a cheap and informal means by which the consumer can seek redress against a supplier of goods or services. Ombudsman schemes are free to the consumer and generally binding on the trader but not on the consumer. Ombudsman schemes currently exist in the financial services sector, the utilities and for some other sectors such as funerals and estate agents.

2.18 At European level, the European Commission, through Directorate General XXIV (Health and Consumer Protection), is taking an increasingly high profile role on consumer policy. It can make proposals for a directive, which then have to be agreed by member states and implemented through national legislation. This has already been done in Britain, for example, through the Unfair Terms in Consumer Contracts Regulations. Even where Commission proposals do not lead to legislation, the Commission and, indeed, the institutions of the European Union generally, are able to have an increasing influence on the direction of consumer protection policy in the UK.

2.19 There are also private sector organisations that promote themselves as representing the interests of consumers. The best known is the Consumers' Association, but there are many others ranging from think-tanks to one-issue pressure groups. Among those in the 'As' section of the *PIMS Guide to Interest Groups* are Action for Victims of Medical Accidents, Advocates for Animals, Age Concern, Air Safety Group, Alarm UK, Alcohol Concern, Anaphylaxis Campaign, Anglers' Conservation Society, Animal Aid, Animal Concern and Anti-Bullying Campaign.

## Chapter 3

### The current position in Jersey

3.1 This chapter begins by describing some special features of Jersey relevant to consumer protection legislation and then goes on to outline the existing framework for consumer protection.

#### The environment

3.2 The special nature of Jersey (an island with very strong trading links with the UK) means there are some special factors that influence, generally favourably, consumer protection in the Island. These need to be taken into account when framing a consumer protection strategy for Jersey.

3.3 Jersey is an island but it is by no means insular. There is a huge amount of two-way travel between Jersey and the UK, and to a lesser extent France. In Britain, as people have become more affluent and prefer to shop by car so retailing has shifted from the traditional high streets to out-of-town shopping centres. As a result, high streets are declining and the choice facing those people without cars is diminishing. The same pressures are evident in Jersey. However, the difference is that increasingly Jersey people are making their major purchases from Britain and to a lesser extent France. They are doing so by direct visits and by telephone and Internet. Many Jersey people, for example, purchase much of their clothing from the UK. People increasingly are buying furniture and white goods from the UK, having them shipped to Portsmouth and then to Jersey by one of a number of companies offering this service.

3.4 It should be noted that the effect of this would be to reduce the range of shopping outlets in the Island over time. The trend will impact particularly adversely on those not able to travel outside Jersey or who are reluctant to make their purchases other than in person. This is something beyond the scope of this paper and should simply be noted. What is more relevant to the paper is that where people buy in the UK then in practice they receive the full benefit of UK legislation, regulation and codes of practice.

3.5 While Jersey people increasingly are spending outside the Island, a high proportion of consumer expenditure in Jersey is by non-residents, mainly people from the UK on holiday or on business. Such expenditure is concentrated in a number of sectors, such as hotels, restaurants, leisure facilities, public transport and small, high value goods, such as watches and jewellery.

3.6 It is a common complaint in Jersey that the price of some goods is too high and also that it is very difficult to purchase some services, in particular building work. These factors may well be true. The same comments can be heard in London and many other parts of the UK. Again, they are outside the scope of this paper. However, it is worth commenting on the general position. It is too easy to compare prices for a basket of shopping in Jersey and the UK. In practice, such comparisons are fraught with difficulty. Some people seem to assume that prices in Jersey should

be the UK price less VAT (ie in round terms 15% cheaper). Retailers can charge whatever price they like. UK retailers charge different prices in different parts of the country, broadly speaking higher prices where competition is weakest. Some prices in Jersey may be higher than in the UK for a variety of reasons. Freight costs are often quoted. A more important factor is probably the small size of the Jersey market, which means that the Island cannot benefit from economies of scale. This factor will become more important over time as Jersey residents increasingly shop outside the Island. This factor cannot be wished away. Living in Jersey offers huge advantages – but also some drawbacks. Jersey people cannot expect all the benefits of living on a small beautiful island with the consumer choice that goes with living in London.

3.7 There may be sectors where prices are too high because of the lack of competition. This is a matter for competition policy, not consumer protection legislation. However, the two are closely linked, a point developed later in this paper.

### **Consumer protection resulting from being an island**

3.8 Everywhere, there are rogue traders who seek to rip off consumers and often are able to do so successfully. Ripping off is something that generally can be done once only therefore a rogue trader needs either to have a big potential market or alternatively to move on when he or she is found out.

3.9 Jersey is largely protected from such rogue traders. The Island is not large enough as a market for most potential rogue traders. Secondly, and more importantly, there is nowhere for a rogue trader to hide in Jersey. Reputations move quickly and a trader known to be ripping off consumers would soon be well known throughout the Island.

3.10 The Regulation of Undertakings Law may be controversial in respect of its main purpose but it performs a valuable role in protecting consumers, allied with regulations on hawking. For example, if a non-resident wishes to trade in Jersey then a licence has to be purchased at a cost of £2,000. The licence can be refused on the grounds of “commercial and financial integrity of the island”. Broadly speaking, these two measures make it virtually impossible for someone to come to Jersey with a view to ripping off consumers in a short period of time by selling sub-standard goods and then moving on.

### **Protection from UK law and codes of practice**

3.11 The point has been made that most goods and services that are sold in Jersey are either imported from the United Kingdom or are sold by local branches of UK based organisations. In such cases it is very likely that the manufacturer of the product and, albeit to a lesser extent, the seller of the product will operate according to the law of the United Kingdom. Companies, as far as possible, like to make as few changes to their systems as possible when serving the Jersey market and more generally there is no reason why they should seek to give the Jersey consumer less protection than they give the UK consumer. However, in some cases UK procedures have to be disappled, for example because redress mechanisms may not be available.

3.12 In some sectors codes of practice applied in the UK are also applied in Jersey. For example, advertising in the *Jersey Evening Post* and on commercial radio and television is governed by the UK advertising regulations. This is not imposed by the UK but rather is a voluntary decision by the local organisations. Some travel agents and estate agents in Jersey voluntarily belong to UK trade associations and apply their codes of practice.

3.13 It is understood that major local stores and mail order businesses seek to apply UK laws and regulations as far as practicable.

### **Jersey legislation**

3.14 There are just four pieces of general legislation on consumer protection in Jersey.

3.15 The Weights and Measures (Jersey) Law 1967 is broadly similar to UK legislation and seeks to provide that weighing and measuring equipment is accurate and properly used. The regime is generally considered to be satisfactory.

3.16 The Consumer Protection (Jersey) Law 1964 provides for orders to be made in respect of particular products that are considered to be unsafe. Orders are currently in force in respect of furniture and furnishing, toys, electrical appliances, nightdresses and the safety of cosmetic products. These orders follow UK/EU requirements in respect of free trade in goods. Unlike in the UK, there is no general safety requirement for consumer goods.

3.17 The Trademarks (Jersey) Law 2000 seeks to prevent unauthorised use of registered trademarks.

3.18 The Merchandise Marks (Jersey) 1958 makes it an offence for traders, and also private individuals, to make false or deceptive statements in respect of the sale of goods. There is no equivalent legislation for services.

3.19 There is specific legislation on hotel accommodation and food, drink and drugs with the aim of ensuring the safety of the public.

### **Jersey institutions**

3.20 Political responsibility for consumer protection in Jersey rests with the Industries Committee, itself a relatively new committee of the States. This is in accordance with the practice in most industrialised countries.

3.21 The Trading Standards Service is responsible for enforcing the weights and measures and trade marks legislation and in practice the other two pieces of legislation. The Service comes under the auspices of the Industries Committee. The Service currently comprises two qualified trading standards officers. In practice it operates in a broadly similar way to its UK counterparts, almost exactly so in the case of weights and measures. The Service is fully plugged into the UK network of trading standards officers through the professional body, the Trading Standards Institute. This means that it can draw on the experience of other departments. It subscribes to



the “home authority” arrangement by which for firms that operate beyond a single local authority a single trading standards department will deal with issues. For example, complaints about Boots will be referred to Nottingham and complaints about Vodafone will be referred to Newbury. Conversely any complaints in the UK about mail order companies based in the Jersey will be referred to the Island.

3.22 However, the Service does not have anywhere near the same powers as its UK counterparts. It often has to rely on persuasion, as practices that are against the law in the UK are not illegal in Jersey. In practice there have been some problems with Jersey companies trading in the UK in respect of misleading claims, but it is not clear that the problem is materially worse than it is for UK companies.

3.23 Tourism is responsible for enforcing legislation on hotel accommodation and places of refreshment although it is seeking to divest itself of these responsibilities. The Department of Agriculture and Fisheries is responsible for enforcement of legislation and regulations on food and drinks.

3.24 In addition the Environmental Health Service, which operates under the auspices of the Health and Social Services Department, has much the same functions as its counterparts in other countries. It administers the Food and Drugs (Jersey) Law 1966 and subordinate and amending legislation. It shares information with the Trading Standards Service although there is no great overlap of work.

3.25 There is a strong Citizens Advice Bureau, largely funded by Health and Social Services, which provides the same services as its British counterparts. However, in an unusual arrangement the CAB also now provides a consumer advice service, replacing some of the work previously done by the Trading Standards Service. This means that where people have complaints against traders they are now generally referred to the CAB.

3.26 The Petty Debts Court provides a speedy, low cost means of seeking redress, either for a trader against a customer or for a customer against a trader.

3.27 The Jersey Consumer Council completes the institutional framework. It’s role and constitution are unlike those of consumer bodies elsewhere. It is constituted as a body of representatives chaired by a States member and its stated functions overlap with those of the CAB, the Trading Standards Service and the States itself.

3.28 There is no institutional mechanism for ensuring that the consumer interest is properly taking into account in the decision taking process.

### **Codes of Practice**

3.29 The point has already been made that some UK codes of practice are specifically applied to Jersey (in particular the codes governing advertising), some Jersey companies voluntarily apply UK codes (travel and estate agents for example) and that Jersey outlets of UK traders in practice apply UK standards to their business in the Island.

3.30 There are also some local codes. The Chamber of Commerce operate a “Fair Trader” scheme that seeks to give Jersey consumers some of the same rights that British consumers have. The Jersey Motor Trades Federation operates a code that is broadly similar to the code that applies in the UK.

### **Pressure groups**

3.31 Jersey has more than its fair share of pressure groups – the symptom of an affluent society. Pressure groups come in all shapes and forms. Some represent people with, for example, a particular illness and can be very effective in working with the health service. Generally, however, pressure groups are most powerful in promoting the interests of better and more sophisticated consumers. Air passengers therefore make more noise than bus passengers, university students (or rather their parents) make more noise than the unskilled, and mortgage holders make more noise than tenants.

### **Recent developments**

3.32 The deficiencies of consumer protection in Jersey have been accepted for many years. In its “25 years ago” column the *Jersey Evening Post* recently reported on a draft Trade Descriptions Act. In 1991 following a review carried out with the assistance of the National Consumer Council from the UK, a Fair Trading Law was drafted. However, this made no progress; it is understood that the general feeling was that it tried to go too far. The Law Officers shared these concerns. Indeed, the prevailing UK view has moved away from onerous consumer protection legislation embracing concepts such as “unconscionable conduct”. In 1995 the Jersey Consumer Council was established. It had been intended to set up the Council alongside the Fair Trading Law, but eventually a decision was taken to go ahead with the Council only.

3.33 In 1997 the draft Fair Trading Law was split into two – a draft Supply of Goods, Services and Accommodation Law and a draft Business Malpractices Law, the latter being the more controversial. However, neither draft law was ever presented to the States for consideration by the Public Services Committee.

3.34 In 1999 responsibility for consumer protection moved from the Public Services Committee to the newly established Industries Committee. Responsibility for the Jersey Consumer Council moved to the Industries Committee from the Policy and Resources Committee.

### **A brief comparison of the Jersey and UK positions**

3.35 The consumer protection regime in Jersey can be contrasted with the UK regime –

- The UK has a huge amount of legislation, Jersey has virtually none.
- The Trading Standards Service in Jersey is small by UK standards and has to operate largely by persuasion.
- The CAB is well resourced and effective, but its consumer advice function is one that in the UK rests with trading standards departments.
- The Jersey Consumer Council has no equivalent in the UK; similarly the advocacy that the National Consumer Council and other bodies play in the UK is missing in Jersey.

3.36 It is helpful to make a general comment on consumer protection in the UK. The impression might be given that the UK is a consumers' paradise with an impressive array of laws and institutions to protect the public. This is not the case. Trading standards departments simply cannot enforce all the laws for which they are responsible and rogue traders flourish. It also seems that some people in Jersey are inclined to say that certain practices that happen in Jersey could not happen in the UK because they are illegal when in fact they are not.

### **How Jersey compares with other small territories**

3.37 There are two territories that Jersey can usefully be compared with – Guernsey and the Isle of Man. Both are islands with relatively small populations and very close trading links with the UK.

3.38 In Guernsey –

- The trading standards function is far better resourced than in Jersey with three qualified officers, a trainee, a technical officer and a consumer advisory officer.
- There is no official consumer council, but rather a private Guernsey Consumer Group, which now has members who have been elected to the States.
- Legislation is broadly similar to that in Jersey – and recognised as being out-of-date. There are plans to update the legislation.
- A utilities regulator has been established; the licences it will issue will include a requirement to consult consumers.

3.39 In the Isle of Man –

- Legislation largely mirrors that in the UK.
- There is an Office of Fair Trading with wide ranging responsibilities. It is constituted as a Board of the Tynwald.
- There is no consumer body.

3.41 The positions in Guernsey and the Isle of Man are described in more detail in Appendix 5.

## Chapter 4

### Issues that need addressing

4.1 This chapter identifies actual and potential consumer protection issues that need addressing.

#### **The views of the Jersey CAB and the Trading Standards Service**

4.2 It has not been part of the remit for this project to undertake research among consumers about areas where they feel they need greater protection. Rather, the study draws on existing information and the views of the many people who the consultant talked to as part of the project. The obvious starting point is complaints made to the Jersey Citizens Advice Bureau (CAB).

4.3 The CAB received 521 complaints between September and December 2000. In respect of types of goods and services, they broke down as follows –

House fittings and appliances	178	(34%)
Other household requirements	44	(8%)
Personal goods and services	105	(29%)
Professional and financial services	40	(8%)
Transport	93	(18%)
Leisure	60	(12%)
Unspecified	1	-

4.4 The nature of the complaints divided as follows –

Defective goods or substandard service	172	(33%)
Difficulty in getting faults corrected or inadequate redress	138	(26%)
Prices and pricing (including value for money)	79	(15%)
Non-delivery of goods or non-completion of services	49	(9%)
Selling techniques	46	(9%)
Unfair terms and conditions	33	(6%)
Other	4	(1%)

4.5 The CAB identified the top ten complaints as: home maintenance, repairs and improvements; clothing and clothing fabrics; secondhand cars; radio, TV and audio visual equipment; large white goods and major appliances; motor vehicle repairs and servicing; personal computers and equipment; professional services; pharmaceuticals and medical, and laundry and dry cleaning.

4.6 Interestingly, these figures are very similar to those reported by Citizens Advice Bureaux (CABx) and trading standards departments in the UK. The Office of Fair Trading publishes an analysis of complaints made to CABx and trading standards departments. In the third quarter of 2000, 35% of complaints were in respect of house fittings and appliances, 15% were for personal goods and services, 18% for transport, 12% for other household requirements, 11% for leisure and 7% for professional and financial services. In terms of numbers, the CAB in Jersey seems to have around 50% more complaints per head of population than the UK departments. However, this is

probably more a symptom of the strength of the CAB service than the real number of consumer concerns.

4.7 These statistics are useful but they do not tell the whole story and need to be treated with caution –

- They ignore problems of which the consumer is unaware. For example, survey evidence in Britain shows a satisfaction rate of over 90% for car servicing and repairs and also that 40% of work is seriously defective. A customer who is wrongly told that a serious fault in his car has been corrected may be satisfied even though he has been ripped off.
- Not surprisingly, people are more inclined to complain about a large item of expenditure rather than a small one. Consumer response to poor quality goods or services that cost little is to vote with their feet. By contrast, a botched building job or a secondhand car that does not work is a matter of serious consumer concern.

4.8 In a letter to the President of the Industries Committee on 2 February 2001 the Manager of the CAB identified “two recurring problems which may need to be addressed in any forthcoming legislation” –

- Purchase of secondhand vehicles. The CAB argued that unlike in the UK there is nothing to prevent a dealer selling a vehicle that is not roadworthy. The CAB also noted the problem of people buying cars that were subject to a finance arrangement. (In fact there is legislation in Jersey aimed at preventing unsafe cars being sold. The problem of people buying cars subject to a finance arrangement also exists in the UK.)
- Double-glazing – where the problems included bad workmanship, difficulties in getting faults put right and worthless guarantees.

4.9 The Trading Standards Service has identified the following major issues –

- Safety. Because the Trading Standards Service has no powers it has to rely on persuasion. This is generally sufficient but there are some traders who are aware of the lack of powers and who sell goods that the Trading Standards Service knows to be potentially unsafe and which could be the subject of regulatory action in the UK.
- Consumer rights. Some locally established shops display notices that seek to restrict consumer rights and which would be prohibited under the UK Restriction on Statements Order 1976. There is also no protection for purchasers of secondhand goods (particularly cars) and unreasonable time limits in which purchasers can return faulty goods.
- Misleading credit advertisements, in particular which do not quote APRs (a standard method of calculating interest rates).
- Unfair contract terms.
- False descriptions in respect of services. For example, the Trading Standards Service is unable to take action against a hotel that misdescribes its location, a nursing agency that does not provide nurses or a garage which charges for a full service but which does not carry it out.
- Misleading price indications.

4.10 In general the concerns are no worse in the UK. It seems that the absence of legislation is largely counteracted by the special nature of the Island.

### **Views of consumers**

4.11 The Jersey Consumer Council, in its Newsletter published in July, invited the public to write to the consultant with their views. This generated 13 letters and phone calls. In addition two people wrote to the consultant following the announcement of the review. It is worth noting the points made. Most of the letters were concerned with prices, either comparisons with the UK, whether prices are VAT or duty free, the 5% surcharge that Marks & Spencer charges on food and a particular point about ferry prices. There were two valid complaints about the way stores had handled the return of goods. One businessman reported a serious case of misleading advertising which would quickly be stamped on in the UK but which was not unlawful in Jersey. One person made the point about the importance of “word of mouth” in the Island and was concerned to avoid over-legislating.

### **Specific sectors**

4.12 There is a particular problem in the UK with the building, car servicing and repairs and car dealing industries. The nature of these industries means that there is substantial scope for consumer detriment. Each transaction is individual, purchases are made infrequently and there is a huge imbalance of information between trader and purchaser. It is very likely that there are similar problems in Jersey.

4.13 The problems have not been addressed satisfactorily in the UK. Dealing with the **motor trade** first, survey evidence shows that about 40% of car servicing and repairs is unsatisfactory. Rogue traders get away with it because there is little prospect of the consumer knowing they are being ripped off or of them being caught. To address the problem the Department of Trade and Industry last year established a Task Force. However, it seems to be floundering largely because the trade associations are unwilling to implement a proper code of practice, and in any event many companies in the sector do not belong to trade associations. The only action that works is mystery shopping by trading standards departments followed by prosecution. However, this is expensive and in practice most local authorities will not commit the necessary resources.

4.14 The UK has also failed to deal satisfactorily with **building work** (widely defined, including home improvements). There are some good sectoral codes of practice, particular one run by the Federation of Master Builders. However, few builders are covered by such codes. The Department of the Environment, Regions and Transport has produced a Quality Mark scheme that was supposed to drive cowboys out of the business. In practice the scheme has been a dismal flop – largely because the standards were set too high (a good example of “the best being the enemy of the good”).

### **Representation**

4.15 Consumer representation in Jersey is very poor. Indeed this comment applies to the policy making process generally. The mechanisms for establishing the views of consumers are inadequate, and the weight given to the consumer interest is unduly low compared with the weight given to the producer interest.

### **Anti-competitive practices**

4.17 Consumers suffer when one or more suppliers in a market have such market power that they are able to abuse it by charging higher prices than are reasonable, restricting supply or otherwise providing a poor service. This is a particular problem in Jersey given the small size of the market. Such issues are a matter for competition policy not consumer protection policy. However, the two are closely related and there must be proper co-ordination between them.

### **Potential disaster areas**

4.18 It is helpful to end this chapter by identifying areas where there is scope for consumers in Jersey to be seriously disadvantaged as a result of the inadequate legislative and institutional framework. The following areas can be identified –

- Purchasers of new houses have very limited protection. For example, if a housebuilder goes bust or simply out of business (it is the practice of many builders to establish separate companies for individual building projects) and the house subsequently is found to be seriously defective then the purchaser has no remedy, although some housebuilders do offer protection for housebuyers against latent defects. By contrast, in Britain purchasers of all new houses are protected by insurance arrangements operated either by the National Housebuilding Council or Zurich Insurance Company.
- Building work is a potential disaster everywhere. Problems include poor quality work, worthless guarantees and purchasers risking losing deposits when purchasing new kitchens and conservatories. In the UK the consumer has limited protection through trade association codes and guarantee schemes if they wish to use them. That protection does not exist in Jersey.
- While a rogue trader in the motor trade would not stay in business very long the absence of an effective mechanism to put such traders out of business means that they could undertake servicing and repair work in such a way that the safety of the car owner and of the public at large could be put at risk. It has to be said that this problem also exists in the UK. The purchase of cars subject to finance agreements is seen by some as a potential disaster area. However, the Jersey purchaser is in little different position to the UK purchaser; the problem can probably be addressed by consumer education.
- A particularly difficult trader might persist in selling goods that were unsafe even though he or she had been advised that such goods posed a threat to the public. In Britain, trading standards departments could take action to prevent unsafe goods being sold whereas in Jersey the Trading Standards Service has to rely on persuasion. Jersey is a potential market for "dumping" goods that may no longer be sold in the UK or other territories.
- Distance selling (mail order and e-commerce) by its nature is international and regulation has to be at something more than the national level. There is a danger that a company based in Jersey could sell, through the Internet, to people in the UK and other countries who might think that they have standard level of protection but who, in practice, would have no protection at all. While this may not be damaging to the Jersey consumer it would be very damaging to the reputation of Jersey.

- Pensions is an area where potential disasters can remain hidden for years. It is understood that some occupational schemes in Jersey give very poor protection to early leavers.
- There is no legislation on consumer credit although in practice the banks and the major stores generally apply UK standards. But there is scope for unscrupulous traders to target vulnerable consumers who need, but who currently do not have, some protection. There is a potential problem with respect to credit cards – whether Jersey consumers are entitled to the protection afforded by the Consumer Credit Act in the UK.
- There are no adequate arrangements in place to protect consumers against tour operators failing or estate agents acting improperly.



## Chapter 5

### Outline of a future strategy

5.1 This chapter briefly sets out the framework for a consumer protection strategy for Jersey. Principles are set out and there is then a brief description of the action that needs to be taken in respect of legislation, self-regulation, redress, anti-competitive practices and representation. These areas are then covered in more detail in the following chapters.

5.2 Jersey needs a consumer protection strategy that is tailor-made for the Island and does not slavishly follow the United Kingdom model or the model for other smaller territories. The strategy has to recognise the very strong trading links between the UK and Jersey and the island nature of Jersey.

5.3 The strategy should aim to deal with existing concerns and to anticipate future consumer protection issues that might arise. The strategy should not be concerned with highly theoretical potential problems. The strategy should also not assume that the solution to any problem is legislation.

5.4 The consultation process as part of the preparation of this report indicated a preference for avoiding additional burdens on business and also overloading the consumer with information that he or she may not want.

5.5 There is a clear wish to keep things simple so that consumers and traders know where they stand. Equally, there is no wish to try to cover every eventuality or to seek to create a world within which all responsibility is removed from the individual consumer.

5.6 Finally, the strategy has to be based on the premise that actually the Jersey consumer is rather well protected at present, not through legislation but because of the particular nature of the Island economy. Radical surgery is not needed; rather the present satisfactory position needs to be made a little better and put on a firmer footing and arrangements need to be put in place to ensure that there are no disasters.

5.7 The strategy needs to embrace -

- Legislation to provide basic consumer protection and to protect the good name of the Island.
- Self-regulation, to enable good traders to differentiate themselves from others by offering protection significantly better than that provided by the law.
- The provision of advice to consumers and an effective mechanism to deal with complaints by consumers.
- Redress, both through the courts and alternative dispute resolution methods.
- Action against anti-competitive practices that result in unreasonably high prices.
- Representation, to ensure that the consumer interest is sufficiently taken into account.
- Institutions to make the strategy work and generally meet the needs of the Island.

## **Chapter 6**

### **Legislation**

6.1 This chapter sets out the proposed content of three pieces of legislation that should be introduced at the earliest possible opportunity. The proposed laws incorporate the key features of a number of UK Acts of Parliament and regulations. This is sensible. If there is to be legislation then the closer it follows the UK model the better given that in practice the UK model already applies to a high proportion of consumer expenditure and is familiar to both traders and consumers.

6.2 Draft laws should be prepared which should then be the subject of public consultation.

#### **Consumer safety law**

6.3 The Consumer Protection (Jersey) Law 1964 is hopelessly deficient because action can be taken only in respect of goods where an order has been made.

6.4 Jersey needs to bring its law up to date so that the Jersey consumer is afforded the same protection as that which exists in the UK and other countries.

6.5 In fact, work to draft the law has already largely been undertaken and there is in draft a Consumer Safety Law. It is a sad reflection of the priority that is accorded to this issue that the drafting of this law began in 1988. The main purpose of this law would be to introduce a requirement for consumer goods to be safe and to provide a means of assessing whether goods satisfy this requirement. The law would confer power on the Industries Committee to make safety orders containing provisions intended to ensure that goods are safe and suspension notices served on individual traders prohibiting them during a period of up to six months from supplying goods suspected of being unsafe.

6.6 There is nothing in the proposed law that the Jersey trader need have any concerns about. The law goes no further than the equivalent UK law and would provide the Trading Standards Service with the authority it needs to take action where they become aware of goods on sale which are unsafe. However, the proposed law seems unnecessarily complex and seeks to set up bureaucratic procedures. It should be shortened and simplified as far as possible.

#### **Supply of goods and services law**

6.7 There is a need for basic legal protection that enables action to be taken against the trader who makes statements knowing them to be untrue about the goods and services being sold or their price and also ensures that where a good or service has been ordered then it is delivered to the customer who has paid for it.

6.8 Again, there is already draft legislation that meets these requirements - the draft Supply of Goods, Services and Accommodation (Jersey) Law. The main effect of this law would be to imply terms into agreements between suppliers and consumers

- That the supplier has title to the goods being supplied.
- Where goods are supplied by description they must correspond to that description.
- Goods supplied are free of latent defects.
- Goods must be of satisfactory quality.
- Goods must be reasonably fit for their purpose, extended to a consumer who has made his wishes known to the trader.
- The supplier will exercise reasonable skill and care when supplying goods, services or accommodation to a consumer.
- Goods will be supplied or services carried out within a reasonable time.
- The trader must not make any false, deceptive or misleading representation about a material matter in the course of supplying or exposing for supply goods, services or accommodation.
- Any unfair terms of an agreement with a supplier and a consumer are ineffective.
- A right of a consumer to cancel an agreement during a visit by a supplier to his home or at a similar location.
- A prohibition on suppliers who send unsolicited goods to a person from asserting any title to the goods if he fails to collect them from that person within a specified time or from asserting any right to payment for the goods.

6.9 With one possible exception all of these requirements are unexceptionable. They merely require traders to be honest and to deliver goods and services that have been paid for.

6.10 It may be argued that terms such as “reasonable” are meaningless. Courts have to take a view on what is reasonable. There does not seem to have been a problem in interpreting the word “reasonable” in the United Kingdom or indeed in other contexts in Jersey.

6.11 The one article in the proposed law that is more controversial is Article 11, which makes ineffective any unfair term of an agreement between supplier and consumer. This mirrors provisions in the Unfair Terms in Consumer Contracts Regulations in the United Kingdom. This can be a valuable protection to the consumer. The sort of unfair terms it guards against are requirements on people purchasing, for example, a conservatory or a house extension to pay the whole of the cost upfront exposing themselves to a huge risk if the supplier goes out of business. Other terms that can be deemed to be unfair are those hidden in the small print that might, for example, impose onerous conditions where a consumer wishes to cancel a contract.

6.12 The merits of Article 11 should be debated more widely. This is precisely the sort of issue where good consultation is essential. The consultation process mentioned at the beginning of this chapter should specifically identify this as an issue on which views would be welcome.

6.13 The legislation could usefully include a provision allowing regulations to be made regulating the terms on which business is undertaken in the building, car selling, servicing and repair, estate agency and travel markets. These are all problem sectors. The sort of regulations that could be introduced would include –

- A requirement on those selling new homes to provide a satisfactory guarantee.
- A prohibition on those undertaking building work requiring full payment before the work is completed.
- A requirement on tour operators to have satisfactory bonding arrangements in place.

6.14 It may well be that regulations would never be made. It is envisaged that if proper investigation showed that there was an issue that needed addressing then the relevant States body, together with the industry, would develop the best way forward. This could be a voluntary code of practice or it could be regulations applying to the whole sector. Agreement to comply with a voluntary code is more likely if the industry knows that statutory regulation could be introduced quickly.

### **Distance selling**

6.15 Legislation in this area is not designed to protect the Jersey consumer. Rather, it seeks to protect consumers in other territories – not unreasonable bearing in mind the protection that consumers get from UK legislation. More selfishly, it is needed to protect the international reputation of Jersey. Jersey will get a bad name if the Island is used as a base for selling goods and services in a way that deliberately avoids consumer protection legislation in other countries.

6.16 The problem is how to achieve this. Already the Regulation of Undertakings Law can be used to prevent organisations establishing in Jersey. However, some businesses already established in Jersey might use their existing capacity to seek to sell outside the UK in a way that could threaten the Island's reputation. Problems could arise either because of the nature of the product (pornography for example), the selling process (for example medical supplies without proper diagnosis) or refund policy (for example refusing refunds).

6.17 The obvious solution would be to incorporate into Jersey law the provisions of the European Union Distance Selling Directive 1997 using the UK Consumer Protection Distance Selling Regulations (2000) as a model. This could be done either in separate legislation or as part of the proposed supply of goods and services law. This would enable the Island to say to the world that it is complying with generally accepted good practice. It should not pose problems for reputable organisations in the Island because they will already be seeking to comply with the regulations.

6.18 The regulations cover selling by phone, fax, internet and mail order. They require the consumer to be given prior information including the seller's name and, if payment is required in advance, his postal address; a description of the goods and service; the price including all taxes; delivery costs and arrangements for payment; arrangements for and date of delivery; the right to cancel the order; and how long the offer or price remains valid. After making a purchase the consumer must be sent information and the consumer has a cooling off period of seven days.

### **Business malpractices**

6.19 There exists in draft the Business Malpractices (Jersey) Law, dated September 1997. This proposed the establishment of a Business Practices Tribunal to adjudicate on particular practices. It is understood that this has not made progress because it is

considered to be too wide-ranging. The Crown Officers considered that the draft law conflicted with the customary laws of the Island, in particular the concept of a “business malpractice”. This is correct. This draft law would go well beyond what exists in the UK and is unnecessary. The UK sentiment that inspired the proposal no longer exists. However, there are some elements of the draft law could be included within the main sale of goods and services law, for example the requirements in respect of tour operators.

## Chapter 7

### Self-regulation

7.1 Self-regulation is a difficult subject conceptually and causes policy makers around the world much anxiety. Broadly speaking, self-regulation is a system by which an industrial sector or a profession regulates its own activities. The principle sounds fine. Businesses, after all, know better than anyone else where the problem areas are and the argument runs that if the industry regulates itself effectively then the public will have greater confidence in using the industry so everyone benefits. Also, self-regulation can be more flexible than legislation with the companies concerned feeling an obligation to operate in accordance with the spirit of self-regulation whereas it is more generally accepted that if something is a matter of law then it is the letter of the law that matters.

7.2 But there are many difficulties with self-regulation. Typically, self-regulation is in the hands of trade organisations whose primary responsibility is to promote their members not to regulate them. If a trade association tries to introduce an onerous self-regulatory regime it runs the risk of losing its members. Trade associations also have difficulty in enforcing self-regulatory regimes. They are hardly likely to discipline, still less to expel, one of their largest members who does not comply with their code of practice. Also, membership of trade associations is not compulsory and it is open to companies to operate outside of a code of practice perhaps enjoying the halo that results from the existence of the code.

7.3 In practice, self-regulatory regimes are always unstable. They tend to work best in sectors that are semi-regulated and that largely comprise large companies on whom political and media pressure can be brought to bear. In the United Kingdom, for example, the most effective codes of practice operate in the financial services sector, which is regulated, and also in the utilities, which again are specifically regulated. In areas that are not subject to specific regulation where there is significant consumer detriment, such as building work and car repairs, there may be many codes of practice but their coverage is limited as is their effectiveness.

7.4 What is the position in Jersey?

#### **The Chamber of Commerce Code**

7.5 The nature of the Island's economy suggests that the Jersey Chamber of Commerce is well placed to operate a code of practice. It duly does so. The code of practice was devised in 1996 in anticipation of the proposed fair trading law being passed. In the event the law was not passed. The code of practice can be criticised in a number of respects. It certainly would not meet the tests which the OFT is likely to impose in Britain. However, it is significantly better than nothing. In particular the requirements on displaying prices, advertising, handling of complaints, and refunds go well beyond what is required under Jersey law. There is also provision for a conciliation service and arbitration. The arbitration arrangements have not been used for a number of years but the conciliation service has successfully resolved a number of complaints.

7.7 The code of practice is binding on all members of the Chamber who are obliged to display the symbol of the Chamber as indicating adherence to the code of practice. A quick perusal of shops in the town suggests that either very few belong to the Chamber of Commerce or that they choose to ignore this particular requirement. Some shops were displaying a fair trader logo dating back to 1995.

7.8 Notwithstanding these criticisms the spirit behind the code is exactly right. It has probably made traders think carefully about their policies in some areas and goes some way to making up for the deficiencies in the existing law.

### **Industry Codes**

7.9 There are a number of specific industry codes that apply (with varying degrees of effectiveness) in the Island. A study of the Yellow Pages of the 2001 Jersey telephone directory showed there were six Jersey associations that had their own display advertisements –

- The Jersey Association of Chartered and Certified Architects
- The Jersey Electrical Contractors Association (“In the interests of safety entrust your electrical work to one of the members of this Association”)
- The Jersey Association of Chartered and Certified Accountants
- The Association of Jersey State Registered Chiropodists and Podiatrists
- The Jersey Association of Complementary Therapists
- The Jersey Association of Plumbing and Heating Engineers

7.10 In addition, a number of Jersey associations are mentioned in the advertisements of individual traders, in particular –

- The Jersey Chamber of Commerce
- The Jersey Builders and Allied Traders Employers’ Association
- The Channel Islands Association of Chimney Lining Engineers
- The Channel Islands Association of Chimney Sweeps
- The Jersey Driving Instructors’ Association
- The Jersey Association of Estate Agents
- The Jersey Building Federation

7.11 In addition, 45 United Kingdom associations are mentioned by advertisers. These include, for example, the National Fireplace Association, the Fine Art Trade Guild, the Glass and Glazing Federation and the British Decorators’ Association.

Three of these associations have display advertisements –

- The National Inspection Council for Electrical Installation Contractors (“Your guarantee of a safe electrical installation”). This logo is frequently used in advertisements, albeit often illegibly.
- The National Association of Professional Inspectors and Testers
- The Chartered Society of Physiotherapy.

7.12 Trade association names and logos in Yellow Pages advertisements are of little help to the consumer who is seeking a trader. Many are illegible and some are in respect of meaningless organisations, such the Guild of Master Craftsmen. Taking a specific example, one company advertises that it is a member of the British Decorators’ Association. There are no contact details for that organisation and a person would have no way of knowing whether the British Decorators’ Association is

a reputable organisation which operates a stringent code of practice or rather whether it is an organisation run by one man, consisting entirely of companies run by members of his family.

7.13 This issue has concerned policy makers in Britain for some years, as a result of which the Yellow Pages now carry a section on trade associations, although this is far from adequate.

7.14 There are two issues that need to be addressed, that is sectoral codes of practice and Yellow Page advertisements.

7.15 In some sectors there is a need for a code of practice run by a local organisation. The sectors where this is most needed are those where each transaction is unique and where there is an imbalance of bargaining power and knowledge between the trader and the consumer. Second hand car sales, car repairs and servicing and all forms of building work come within this definition.

7.16 The Jersey Motor Trades Federation operates a code of practice, largely modelled on the Retail Motor Industry Federation in the UK. As a code it can be faulted in a number of respects. In particular, there are no compliance arrangements. Also, one suspects that the code is not universally adhered to and there is probably even ignorance of it among the members of the Federation. In this respect it is no different from the RMIF code. However, the code is better than nothing. It gives the consumer rights over and above those conferred in law. The Code also provides for a conciliation service and beyond that an arbitration service. The Federation does have a mechanism in place to deal with complaints and it is understood that these are resolved satisfactorily. However, two problems remain: about 40% of work is done by companies which are not members of the Federation and there is probably a great deal of unsatisfactory work done by members of the Federation which would be detected only by mystery shopping.

7.17 There are no equivalent codes for the building trade. However, the Jersey Builders and Allied Traders Employers' Federation, the Jersey Association of Heating and Plumbing Engineers and the Jersey Electrical Contractors Association will try to resolve complaints against their members and seem reasonably effective in doing so. These arrangements are a good example of "the Jersey system" at work. Even though there are no codes of practice and no formal complaints mechanisms there is the goodwill to resolve problems. The consumer is probably as well served by such arrangements as they are by the formal arrangements in the UK.

### **Future action**

7.18 The question of codes of practice cannot sensibly be considered until after a decision has been taken on new legislation - given that codes should give protection over and above that afforded by legislation. Also, there is merit in waiting until the position in the UK becomes clearer. It is recommended that at that time the Industries Committee and the Jersey Chamber of Commerce consider how the existing Chamber Code can be modified and what arrangements can be put in place for other sectors.



7.19 On the Yellow Pages it is recommended that Jersey Telecoms adopts the following policy in respect of trade associations and logos–

- No logo should be accepted unless the name of the organisation is given in full and in a type size that is no smaller than that used for the company advertisement.
- There should be a section of the Yellow Pages giving contact details (mainly in the UK) of any organisation whose logo is used by an advertiser. This would be an easy task as the information is already given in any of the UK Yellow Pages.
- Where a trade association advertises then it should give contact details and it should be encouraged to explain briefly in the advertisement what membership of the association means.

## Chapter 8

### Redress

8.1 The consumer is entitled to seek redress against a trader who has sold him or her a good or service that has failed to achieve reasonable standards. For example, somebody who has commissioned building work is entitled to expect that the work will be completed in accordance with the contract and that, for example, a new conservatory will not leak and a new wall will not collapse. Similarly, someone who purchases a car described as being in top quality condition who then finds the car breaks down after a few weeks and, in practice, was in very poor condition is entitled to seek redress. The mere fact that the consumer can seek redress is in itself a powerful discipline on rogue traders who are generally in a much better bargaining position than their customers.

8.2 In all jurisdictions there are, broadly speaking, three ways in which the consumer obtains redress against traders –

- The court system, that is in Britain the County Court and in Jersey the Royal Court.
- A specialist court dealing with small claims.
- Alternative dispute resolution procedures such as ombudsmen and arbitration.

8.3 The Jersey legal system is beyond the scope of this report and therefore the Royal Court is ignored.

#### **Handling small claims**

8.4 In Jersey there is a Petty Debts Court. This currently deals with claims up to £2,500. The procedure is fairly simple and requires the plaintiff to provide the necessary information to the Court that then issues a summons. In practice, the mere act of issuing the summons is sufficient and very few cases go to trial.

8.5 Comparisons have been made with the Small Claims Courts in the United Kingdom. At first sight these may seem more satisfactory. The name “Small Claims Court” implies that it is there to serve consumers whereas “Petty Debts Court” gives the clear impression that the Court is there to help traders to get their money from consumers. While the Small Claims Court and the Petty Debts Court are designed to meet similar circumstances they operate in very different ways.

8.6 In the UK, a fair amount of work is needed before a case can be taken to court. For example, there is a requirement on the plaintiff to provide relevant documents and witness statements to the defendant. In practice, many claimants are assisted in taking their case to court by the CAB or another organization. Because so much of the work is done before the case gets to court the actual court proceedings can be fairly swift. By contrast, in Jersey people are largely left to their own devices in bringing a case to court although they do receive help from the Magistrate Court’s Greffe. The defendant is asked to respond to the summons issued on behalf of the plaintiff, which may then require the plaintiff to provide further information. The system is therefore more time consuming when it gets to court than the English system but in practice the

whole process is fairly quick and probably as user-friendly, if not more so, than the English system.

8.7 There is no case for seeking to change the existing system in Jersey. But, there are a number of improvements that could be made which would make the Court more accessible to consumers who have been badly treated. The Greffe already has these on board to some extent. There are draft proposals that would change the rules of the Petty Debts Court along the following lines –

- The Court will have three divisions, one of which will be known as the Civil Claims Division (the other two are tenancy and family).
- The limit for claims that will be heard by the Court will be increased to £10,000.

8.8 These changes would be an improvement. However, it would be even better if the expression “Petty Debts Court” could be dropped entirely.

8.9 The documentation given to plaintiffs is well written. However, it could be made even more user-friendly. It is recommended that the Greffe commissions an expert in “plain English” to redraft the documentation. Even with better documentation, most people seeking to take court action need hand-holding but cannot afford legal advice. It is recommended that the CAB service should provide the necessary assistance as it does in the UK.

### **Alternative dispute resolution**

8.10 There is an increasing wish in many countries for issues to be settled out of court as far as possible. There is a range of alternative dispute resolution procedures (ADR) ranging from information conciliation to formal arbitration. These mechanisms all exist in Jersey although the size of the Island makes it difficult to run schemes for particular businesses.

8.11 In Britain, for example, there are a number of ombudsmen for particular sectors, such as banking, insurance, funerals and estate agency. Many trade associations run informal complaints services that, in practice, are able to sort out 90% of complaints.

8.12 In Jersey there are three separate proposals to establish ombudsman schemes –

- The Jersey Financial Services Commission is proposing to establish a financial services ombudsman, though any cases the ombudsman hears are likely to be in respect of customers resident outside Jersey.
- The Clothier Report recommended the establishment of an ombudsman to handle complaints against the States.
- Health and Social Services is considering establishing an ombudsman scheme.

8.13 Currently in Jersey, the Chamber of Commerce and the Jersey Motor Trades Federation operate conciliation schemes and make provision for arbitration, although this has seldom been used. The three major associations in the building trade will consider and try to resolve complaints against their members although not on the basis of a code of practice.

8.14 In its consultation paper on the proposed financial services ombudsman scheme the Jersey Financial Services Commission said that in practice it considered complaints it received and tried to resolve them through mediation. The CAB and Trading Standards Service seek to do this more generally.

8.15 It has already been recommended that when a decision is taken on legislation the Chamber of Commerce should review the question of codes of practice with the Industries Committee. That would be the appropriate time to consider also conciliation services and arbitration and ombudsman schemes. However, it must be understood that participation in such arrangements is voluntary. Hopefully, over time, the good traders would wish to be involved in such schemes, would advertise this and would get more business as a result. Customers using traders that did not belong to such a scheme would duly be on notice that they had less protection.

8.16 In practice, it seems difficult to see how private sector ombudsman schemes could be developed in Jersey. They are expensive and over time tend to become more expensive and bureaucratic. It is significant that the ombudsman scheme for the financial services industry will have an annual budget in excess of £200,000. One cannot have an ombudsman scheme that applies to a number of sectors because the rules of any scheme have to be specific to that sector.

8.17 However, there is scope for an arbitration arrangement under the auspices of the Chartered Institute of Arbitrators. This Institute runs arbitration schemes for many trade associations and individual companies and could no doubt operate a scheme for the Chamber of Commerce and other trade associations.

## Chapter 9

### Representation

#### **The need for representation and consultation**

9.1 Good government in any jurisdiction means informed policy-making. Public officials and elected representatives do not have a monopoly of knowledge and generally have a relatively poor understanding of how markets work and what people want. Good policymaking requires an input from those likely to be affected, which includes businesses and also consumers. That input is not confined to giving views about desirable outcomes but often, and more importantly, is concerned with more practical issues about whether a particular approach will or will not achieve the desired results.

9.2 It is far easier to obtain an input into the policy-making process from business than it is from consumers. Businesses are well resourced, understand the issues fully, are accustomed to making policy, if only in respect of their own businesses, and understand how the policy-making process works. Businesses can have an input either directly or through representative bodies such as trade associations and chambers of commerce.

9.3 There is no such mechanism for consumers to get together to have an input. Consumers will not voluntarily get together to fund an organisation to provide comments to government departments or agencies on their policies. It might be argued that the Consumers' Association in Britain does this. In practice, however, people belong to the Consumers' Association in order to buy *Which?* and it cannot claim to be a representative body of consumers, although it is certainly a powerful advocate for consumers and is recognised as such.

#### **Effective consultation**

9.4 It was a common theme of those consulted for this review that the States is poor at consulting generally. This is confirmed by a brief analysis of documents that purport to be consultation documents. Although it is largely outside the scope of this paper the point must therefore be made that there is a need for the States generally to consult more effectively. Policy decisions should be preceded by consultation documents that are carefully drafted and are user-friendly, for example, by specifically asking questions on which views are sought. It may be appropriate to hold meetings with interested groups or even to facilitate research exercises among those most likely to be affected. These comments echo those made in the Clothier Report, which commented on the poor performance of the States and recommended a more effective consultation mechanism.

9.5 The views of consumers are not going to be obtained merely by inviting them in the footnote to a consultation document that will not be seen by consumers, still less by an advertisement in the *Jersey Evening Post* inviting views or by an open meeting at the Town Hall. Consumer views can be obtained only through more sophisticated methods such as establishing appropriate bodies, well-resourced and charged with putting forward the views of consumers and, more directly, by market

research, whether in the form of large scale surveys or focus groups. Input from consumers must be independent of those making decisions otherwise it will have little credibility.

9.6 A study of documents produced by a number of State departments and agencies shows virtually no attempt to obtain the views of consumers. Occasionally public meetings have been called but it is understood that these are largely attended by the same people regardless of the issue. They can hardly be representative.

9.7 There are some examples of good practice. Health and Social Services has long-standing arrangements for consulting user groups and surveying users. It has used focus groups and recently has consulted on its overall strategy. The Department has strong links with the CAB, which provides valuable feedback to it. Jersey Post participates in a regular omnibus survey of consumers, it mystery shops sub post offices and it seeks to benchmark itself against the UK and Guernsey. It has valued feedback from Age Concern. The Housing Department has done consumer satisfaction surveys and has had useful feedback from the CAB and church groups.

9.8 However, examples of good practice are still relatively rare. And to the extent that there is consultation it tends to be with producers rather than consumers.

### **The UK model**

9.9 The UK consultation machinery is described in Appendix 6. In summary –

- Government departments and agencies must comply with a code of practice on written consultation exercises.
- There are established procedures on how to consult users and consumers generally.
- In a number of sectors (financial services, the utilities and transport) there are well-resourced consumer councils that operate in accordance with guidelines that are designed to ensure their independence.
- The National Consumer Council seeks to ensure that the consumer view is fully taken into account throughout the decision taking machinery of government.

### **Alternative models for Jersey**

9.10 Clearly the full-blown UK model is not appropriate to Jersey. The Island is too small and it would be prohibitively costly to have properly resourced consumer bodies for, for example, the postal and telecom industries, as well as a general consumer body. It also needs to be recognised that Jersey is starting from a very low base in respect of representing consumers. It is important to build up a body of expertise that can draw on the experience not only of the United Kingdom but of other territories as well.

9.11 The two main alternatives are a strong independent consumer council with a wide-ranging remit or institutionalising the consumer interest into relevant committees. These options are explored in detail in the next chapter.

### **The consumer interest generally and the role of the States**

9.12 More generally, the consumer interest is not given adequate weight in Jersey. The States seems to bend over backwards to take into account the views of producers and traders but makes little effort to ascertain and take fully into account the views of consumers. This is amply illustrated by the opening comment in this report that is that public transport facilities from the airport and the harbour are appalling. The antiquated laws on Sunday trading are another example of the consumer interest (particularly including the interests of tourists, who are consumers) being given inadequate weight.

9.13 There are two main reasons for this problem. The first is that inadequate arrangements have been made for the consumer voice to be heard by the States. The second is that there is in parts a reluctance to seek to take into account the views of consumers even where the mechanisms exist to do so.

9.14 There is no better illustration of this than the report lodged au Greffe on 26 October 1999 by the Policy and Resources Committee setting out the terms of reference of the Industries Committee and the transfer of functions. Draft terms of reference were given for strategic development boards covering finance, communications, utilities, the supply industry, construction, transportation and emerging industries. It was clear that the terms of reference regarded the boards as representing the various industries. There was no provision for consumer representation. For example, the Utilities Board would comprise a chairman, who would be a member of the Industries Committee, two other States members and then representatives of four utilities, one of whom would be vice chairman. Similarly, the Transportation Industries Board would have five representatives of the transport industry, one of whom would be vice chairman, but no consumer representation.

9.15 A previous report lodged au Greffe on 6 July 1999 set out a précis of points made by industry representatives during the consultation process. It was clearly not regarded as necessary to consult other interests. Under the heading of consumer protection it was suggested that the “new Industry Committee could highlight high standards of service provided by commerce and could also play an important role in destroying “consumer rip off” myths”.

9.16 A strong consumer voice would be a useful counterweight to the producer interest in the States and on States committees but the States itself needs to do more and put in place effective arrangements for taking into account the consumer interest. Adoption of guidelines for consultation exercises would be a good start.

9.17 Where no effective consumer bodies exist then the vacuum is partly filled by pressure groups which can be of varying effectiveness but which almost certainly are unrepresentative and unaccountable. Generally, such pressure groups serve the middle classes, as they are better at organising. There is therefore a more effective pressure group for air passengers than for bus passengers. The States Tenants Action Group is another example of a pressure group developing in the absence of a proper consultative mechanism. Such self-appointed groups are often effective lobbying organisations. However, it is important to understand the extent to which they are representative and not to rely on them as the sole voice of the users of a service. For

example, the recent Jersey Airport 2020 Masterplan records the Jersey Air Passengers Association as a stakeholder. The Institute of Directors and Chamber of Commerce are also listed as stakeholders. Passengers generally appear not to be stakeholders. Is the Airport recognising the JAPA as the voice of non-business passengers? Would it not be better to have a properly constituted users' committee?



## Chapter 10

### Dealing with anti-competitive practices

10.1 This chapter addresses the overlap between competition policy and consumer protection policy and then how the proposed new regime for consumer protection ties in with the plans for the development of the Jersey Competition Regulatory Authority (JCRA).

#### **The distinction between competition policy and consumer protection**

10.2 There is much confusion between competition policy and consumer protection policy, partly aided by the fact that in many countries the two subjects are handled by a single agency (the Office of Fair Trading in the United Kingdom). In fact the two are different and require different techniques for dealing with them. Nevertheless, there is an overlap between them. That overlap and the distinctions need to be understood by policy makers.

10.3 Competition policy is concerned with anti-competitive practices, which generally have the effect of causing prices to be higher than they should be, or of reducing the supply of a good or service. Such practices occur almost inevitably where there is a monopoly. For this reason in almost every country the utilities, which are natural monopolies, are either nationalised or, if not, are closely regulated in respect of the prices they can charge and the services they provide. Anti-competitive practices can also occur where there is an oligopoly – that is where a small number of producers dominate a market. In a small island community such as Jersey there are oligopolies because the market is not big enough to sustain more than one or two companies. In his report on inflation for the States, Michael Parr concluded that there was insufficient competition in many product markets, not least in the public utilities.

10.4 Anti-competitive practices are not confined to causing prices to be higher than they might otherwise be. They can also include restricting supply so as to make life easy for producers, that is they do not have to bother to provide good service or indeed at times any service at all. Public transport throughout the world suffers from this particular problem. A dominant supplier can also adopt predatory pricing, that is seeking to cut competitors out of the market by deliberately pricing at below cost for a time and then, when the competition has been removed, raising prices to a monopoly level again.

10.5 Anti-competitive practices are deliberate acts of firms at company level and generally do not involve treating a particular customer, or at least a particular individual, badly. Rather, all individuals who purchase the good or service are treated equally badly.

10.6 Dealing with anti-competitive practices requires considerable analytical skill to identify where there is an anti-competitive practice and then how to deal with it. In most countries, although not Jersey, anti-competitive practices, such as two or more suppliers getting together to rig a market, are illegal and if caught (a very big “if”) large fines can be levied. In practice, matters are seldom clear cut with competition

authorities tending to use the term “complex monopoly”. Remedies can include requiring some companies to divest themselves of part of their business, restrictions on prices, banning of particular practices (for example, travel agents have been banned from tying in travel insurance to holidays) and otherwise seeking to lower barriers to entry to a market (as the Government is currently attempting to do in Britain in respect of transfers of bank accounts).

10.7 Consumer protection is more concerned with the actions of individual traders either against individual customers or more generally. For example, if there is a perfectly competitive market in building work or in car repairs and consumers receive poor service because work that has been commissioned is not properly undertaken and is not as described then this is a consumer protection matter not a competition matter. Similarly, charging a price different from that which is displayed or providing a good or service different from that which is advertised is a consumer protection matter not a competition matter.

10.8 It can be easier for traders to get away with inappropriate practices in a market that is not competitive. So there is significant overlap between competition and consumer protection issues. For example, London Transport is a monopoly provider of public transport in London. It is extremely inefficient and it operates significant unfair practices, such as not giving refunds automatically when it fails to provide a service.

10.9 Finally on this theoretical point, all of the comments made so far in this chapter are not confined to the private sector. In Jersey, as in other territories, the public needs protecting from the government as much as from private monopolies. Any monopoly tends to engender complacency and a disregard for the customer. It is no different when the monopoly supplier is a government body rather than a private company. The States of Jersey directly is a supplier of goods and services, including education, health services, housing, postal services and telecommunications, and through licensing arrangements it influences the supply of other goods and services such as water, gas and electricity and public transport.

10.10 Different institutional arrangements are needed to deal with anti-competitive practices and consumer protection issues, even where they are combined under a single body. For example, the Office of Fair Trading in Britain has two quite distinct divisions, one dealing with competition matters and one with consumer protection. Although the two can be combined the general view is that there is not a great deal of synergy between them. Consumer protection involves dealing with individual complaints and practices and requires much field work while competition issues require more analytical work. Starting with a clean sheet of paper in Britain the two functions would probably be separate.

### **The Jersey Competition Regulatory Authority (JCRA)**

10.11 The States has established by legislation the JCRA. The law establishing the Authority merely sets it up and provides that it will have the functions conferred on it by the Law itself or any other enactment. The intention initially is that the JCRA will regulate the postal and telecommunications sectors. Legislation is planned for later this year that will result in the incorporation of Jersey Post and Jersey Telecoms.

However, there is an intention that the JCRA should develop into a fully-fledged competition authority dealing with the utilities and also private sector anti-competitive practices. It remains to be seen whether the States will allow it to deal also with public sector anti-competitive practices.

10.12 The Chairman of the JCRA, Dr Patrick McNutt, has already indicated how he expects the Authority to develop. He has said that consultation, including with consumers, will be a key role of the JCRA. It will, among other things, be complaints driven, that is it will consider complaints from any person that a company or companies in Jersey are operating anti-competitive practices. Hopefully, it will also be able to begin investigations into a sector on its own initiative. However, initially it is intended that it will be able to undertake investigations at the request of the Industries Committee. The Industries Committee has promised a Competition Bill later in the year. One interesting issue is what action will be taken as a result of the investigations carried out by the Authority. Will it, or the Courts, be able to instruct companies to do or not do certain things or will there be an ability to fine? This is not yet clear.

### **The relationship between the JCRA and the implementation of consumer protection policy**

10.13 For the purposes of this report the development of the JCRA, as it has been described in the previous section, is taken as given. There are a number of implications for consumer protection.

10.14 The organisation charged with responsibility for consumer protection policy will, in the course of its work, identify issues that properly are competition policy issues. For example, there may be a string of complaints against a trader that in the normal course of events would lead to the trader going out of business because they provide such bad service. The trader may be able to continue in business because they have a dominant position in the market. The appropriate route would seem to be for the consumer protection organisation to raise the matter with the Industries Committee, which would then consider asking the JCRA to investigate.

10.15 There is also a flow of business the other way. When it becomes known that the JCRA is open to receiving complaints it will probably be overwhelmed, given the propensity of the Jersey people to complain. Many of the complaints received will not be about competition issues but will rather be about consumer protection issues. It is essential that the States has in place adequate legislation and institutions to handle consumer protection issues otherwise the expectations of the public will be raised in an unreasonable way. It would be unwise for the States to press ahead with a fully-fledged and effective competition policy while leaving consumer protection in its current unsatisfactory position.

10.16 The JCRA will be seeking an input from consumers on the various issues for which it is responsible such as the licences for Jersey Post and Jersey Telecoms. The JCRA has explicit power to “recognize or establish, or assist or encourage the establishment of, bodies that have expertise in, or represent persons having interests in, any matter concerning competition, monopolies, utilities or any matters connected with the provision of goods or services to which the Authority’s functions relate”.

The functions of those bodies are listed as “the provision to the authority of advice, information and proposals in relation to any one or more of those matters” and “the representation of the views of any one or more of those persons”.

10.17 This report identifies the need for a strong independent consumer council. If this can be established quickly and effectively then there is every reason to expect the JCRA to recognise that consumer council and even perhaps to require funding of it from the institutions that it regulates. If, on the other hand, the States drags its feet in respect of consumer protection, the JCRA might find itself having to establish specific consumer watchdogs in respect of telecommunications and postal services, as is currently the case in the UK. In due course further consumer councils might be established for the utilities. Jersey is too small to justify a plethora of consumer councils.

# Chapter 11

## Institutions

### General

11.1 Somewhere in the official machinery in Jersey there needs to be a few top quality officials who are able to identify consumer issues and develop ideas on how to deal with them. Those officials could be in the Department of Economic and Commercial Development, the JCRA, an Office of Fair Trading or even a consumer council. In particular someone has to decide what issues merit special investigation and what the appropriate response is to particular problems – do nothing, seek to introduce a voluntary code of practice, use the existing law where possible or introduce new legislation. This applies to sectors where prices may be high as a result of lack of competition or where consumers may be disadvantaged by practices that cannot be addressed by existing legislation.

### Policy

11.2 A States committee must ultimately be responsible for consumer protection strategy. The responsibility currently resides with the Industries Committee. Some have criticised this arrangement, arguing that the Industries Committee has the primary purpose of promoting business. This is an incorrect interpretation of the position. The mandate of the Industries Committee is to –

- (a) To form, through Strategic Development Boards a comprehensive, integrated, industrial and economic strategy for the Island, encompassing responsibility for economic policy as it relates to all industries and the Island's workforce, and to oversee its implementation, once agreed by the States as one of a set of government strategies contained in the States' strategic plan;
- (b) To perform a range of regulatory functions through an appropriate regulatory and licensing framework with the intention of developing and economic regulatory Commission for industries other than the finance industry which will continue to be regulated by the Financial services Commission;
- (c) To establish an Office of Fair Trading aimed at protecting the consumer and safeguarding the public interest; and
- (d) To ensure that the Island's economic and commercial strategies are portrayed accurately and to promote and enhance the image of the island as a place to do business.

11.3 The position in Jersey is fairly similar to that in the UK where responsibility for consumer protection rests with the Department of Trade and Industry, and also with the position in Guernsey.

11.4 It may sound very tempting, at least in theory, to have a "Department of Consumer Protection". In practice few such departments exist and where they do they have been ineffective because a department which is seen simply to have a regulatory

or advocacy role can never in practice compete with a department with more wide ranging responsibilities.

11.5 It is recommended that the Industries Committee remains responsible for consumer protection policy. The Clothier Report has recommended a substantial reduction in the number of committees such that a new Industries Department would embrace the current committees for industries, finance, tourism, agriculture and fisheries, employment, transport, gambling control, harbours and airports, and telecoms and postal. Again, consumer protection properly belongs in such a department. There is a case for a sub-committee of the Industries Committee to have specific responsibility for consumer protection, particularly if the Clothier Report recommendation is implemented.

### **Executive responsibility**

11.6 The remit of the Industries Committee includes “To establish an Office of Fair Trading aimed at protecting the consumer and safeguarding the public interest”. This is an unhelpful remit as an Office of Fair Trading can be anything from one person with no powers to an all-powerful regulator dealing with both competition issues and fair trading issues. It is not clear whether the establishment of the JCRA, the responsibilities of which are purely in the competition field, means that an Office of Fair Trading is no longer regarded as an objective. This report is not so much concerned with titles but rather with substance. However, it is worth making the point that an Office of Fair Trading with no resources and no powers is worthy of prosecution under trades description legislation.

11.7 What is beyond question is that resources are needed to put in place and administer new legislation, to liaise with other relevant bodies and to identify problem areas and develop solutions to those problems. The existing Trading Standards Service and the consumer advice service that should be returned to it are part of those resources, but at two people they are by no means sufficient. By contrast, the Office of Fair Trading in the Isle of Man has 13 full time staff – although with a slight wider remit.

11.8 There are basically three options –

- Expand the remit of the JCRA, through the forthcoming competition law, to include consumer protection. This would follow the model of the UK with a single body – the Office of Fair Trading in the case of the UK.
- Establish an “Office of Fair Trading” or a “Consumer Protection Agency” as a semi-autonomous body on a very similar basis to the JCRA.
- Establish a consumer protection division of the Department of Economic and Commercial Development and equip it with the necessary resources. This division could be called the “Office of Fair Trading” if it is so wished.

11.9 The second option would be the least satisfactory. If there were to be an independent agency it would make sense to use the JCRA so as to be able to share some resources and operate economically. The first option is credible. However, the JCRA has been clearly constructed as a competition agency and to tack on consumer protection now is rather too late. The final option looks the most satisfactory, at least in the short term. It would require no additional legislation to create a new body or to

expand the powers of the JCRA, it would build on the current structure and it would retain the involvement of the States in an area where States members should have something to contribute.

11.10 The division would probably need a staff of between eight and ten people including a director, two or three trading standards officers, perhaps two consumer advisers and administrative support. The director would have responsibility for developing policy and identifying issues which need to be addressed.

11.11 There may be a case for turning the division into a semi-independent agency in the longer term. There may also be a case for transferring the environmental health service and the inspection functions of Tourism to the division. However, such structural issues should not be allowed to detract from the short-term priority of getting an effective consumer protection function up and running.

11.12 It has already been recommended that the Industries Committee should consider the appointment of a sub-committee to have responsibility for consumer protection. This would not be a sort of board for the division but rather an advisory committee on the one hand and a link with the Industries Committee on the other.

### **Enforcement**

11.13 Enforcement of legislation properly rests with the Trading Standards Service. This is currently the position in Jersey. However, the current position is not satisfactory, as the Trading Standards Service does not have the legislation to enable it to undertake its functions effectively. It has to negotiate rather than being able to use its powers where necessary. In practice most trading standards departments work with businesses and attempt to persuade, but having the ability to fall back on the law is essential if the really difficult traders are to be kept in check.

11.14 The Trading Standards Service is very small, just two qualified people. There is a question as to whether this is adequate particularly if the proposed legislation is implemented. The departments in the Isle of Man and Guernsey are much stronger. Depending on what legislation is introduced there may be a need to strengthen resources in due course.

11.15 The Trading Standards Service should be part of the agency or division responsible for consumer protection.

### **Citizens Advice Bureau**

11.16 The Jersey Citizens Advice Bureau is funded by the States to the extent of £130,000 a year. By all accounts the Bureau does an excellent job. It is well resourced compared with many bureaux in the United Kingdom. It is run efficiently and is well respected by business organisations and States departments.

11.17 The CAB has an important role in informing the debate on consumer protection issues. For this reason it should carefully monitor the problems that it deals with and make regular reports, preferably published, which can be used by the Trading Standards Service, the Industries Committee and other relevant organisations.

## **Consumer advice**

11.18 In 2000, responsibility for consumer advice was transferred from the Trading Standards Service to the Citizens Advice Bureau. The arrangement has worked reasonably well thanks to the competence and efficiency of the CAB. However, the arrangement was introduced for the wrong reason (that is, to save a post even without saving any money as a consequence of the States restriction on the staff numbers under the auspices of the Industries Committee). The arrangement is fundamentally misconceived.

11.19 Where people have a complaint that a trader has not complied with the law then they expect an official body to investigate. They do not expect that body to devolve this function to the private sector advice service, even one funded by the Government. It is quite probable that the less reputable traders will take less notice of a CAB officer than they would of a trading standards officer. In addition, through this transfer of responsibilities the Trading Standards Service has lost some of the natural market intelligence that it had and which is generally regarded as being essential. The Service has an excellent database of traders recording complaints made against them and contact that trading standards officers have had with them. Information is no longer being added to this database. This problem will be accentuated if Jersey attempts to deal more effectively with consumer problems; complaints about traders are a primary source of information and must be fed into the policymaking process.

11.20 The CAB is also less able to liaise with trading standards departments in the UK than can trading standards officers. The home authority principle, through which complaints about a company are dealt with by a single trading standards department, is confined to trading standards and cannot embrace a CAB.

11.21 It is recommended that responsibility for consumer advice reverts to the Trading Standards Service. The role also needs to be enhanced to cover consumer education. There are a number of issues (such as buying a secondhand car) that are best addressed through making available information to consumers in a readily accessible form. Both the CAB and the Trading Standards Service produce a number of helpful leaflets but there is scope for a much more comprehensive information service. For example, a leaflet on buying secondhand cars could be produced in conjunction with the Jersey Motor Trades Federation and made available through garages as well as the CAB and Trading Standards Service.

## **Representation**

11.22 If the recommendations in this report are adopted the existing Jersey Consumer Council becomes superfluous, its functions being assumed by the agency charged with implementing consumer policy, the Industries Committee and perhaps a sub-committee of that committee. However, there is a need for there to be an effective consumer advocacy body.

11.23 There are two basic options for the future. The first is to establish an independent consumer council on the lines of those existing in the UK. It would have the following characteristics –

- It should be independent of government, regulators and business.



- It should comprise around ten members with the appointment process being completely open, the positions being advertised. The objective would be to secure a good balance of expertise and experience. No-one should be appointed as a representative of a particular interest group. To prevent the council becoming too associated with individuals there should be a maximum term of office of five years. With the possible exception of the Chairman the members should be unpaid.
- The council should be specifically charged with developing an effective mechanism for consumer input into the decision taking process in Jersey as well as commenting on government and other proposals and putting forward its own views on issues of concern where necessary.
- It should become a source of expertise on consumer involvement and representation.
- The licences issued by the Jersey Competition Regulatory Authority in respect of postal and telecommunications business should specifically require licensees to consult the council on their proposals. The council should be invited to make its own proposals where appropriate.
- The council will need to be adequately resourced. The position of chairman would require at least one day a week. Modest administrative support would be needed. The council should also have sufficient resources to undertake its own research, either market research or commissioning outside experts on appropriate matters. The council could not operate effectively with a budget of under £100,000. Some of its funding could come from the businesses regulated by the JCRA – on a par with what happens in the UK.

11.24 The second model would be to institutionalise consumer input into decision taking, which is roughly what has been done in the Isle of Man. Either an Office of Fair Trading or a sub-committee of the Industries Committee would be constituted to include people representing the consumer interest and would be specifically charged with seeking to ensure that the consumer interest is properly taken into account. This model might be more economical although it is unsatisfactory because either of these bodies would have conflicting responsibilities. For example, it could lead to one States department publicly commenting on the proposals of another – or even on the proposals of the department itself.

11.25 Either model would be very different in nature from the Jersey Consumer Council which has a limited budget, most of the members of which are appointed as representatives of particular organisations and which has concentrated its work on producing a newsletter for consumers rather than influencing the decision taking process. The Council is analysed in more detail in Appendix 7.

11.26 In deciding which of the two options to go for the States will have to weigh the importance it gives to consumer representation generally. The “cheap” – but workable - option is to institutionalise the consumer interest. However, if it is wished to have a meaningful consumer input throughout the States and its agencies then an independent well-resourced consumer council is essential. This is the preferred option.

**A note on resources**

11.27 Currently, implementing consumer policy in Jersey is very cheap – because there is very limited consumer protection. The recommendations in this paper would all cost money. The preferred institutional options would probably require the employment of perhaps four to six additional staff and a total additional annual cost in the region of £300,000. To put this in context the cost of the ombudsman scheme being established by the Jersey Financial Services Commission will be little short of this and States support to the CAB service costs over £130,000 a year.

## Chapter 12

### Agenda for action

12.1 This chapter briefly sets out how the issue of consumer protection should be taken forward.

12.2 The first step is for this report to be published and for interested parties to be invited to comment on the proposals. In the light of those comments the Industries Committee and others will have a number of decisions to take.

12.3 The first three key decisions are for the Industries Committee –

- Whether to go ahead with the proposed legislation covering consumer safety, the sale of goods and services and distance selling. The drafting of the legislation is largely done and when a decision in principle has been taken draft bills should be published for consultation.
- What institutional structure to adopt – the preferred option is to establish consumer protection as a division of the Department of Economic and Commercial Development.
- Whether to create an independent consumer council.

12.4 There are three more minor decisions to be taken that should be taken as soon as possible –

- Whether the consumer advice function should return to the Trading Standards Service from the Citizens Advice Bureau as is strongly recommended – a matter for the Industries Committee.
- Whether the Petty Debts Court procedure can be made more user friendly for consumers taking action against traders – a matter for the Magistrate Court's Greffe.
- Whether the Yellow Pages should have information about trade associations and other organisations, membership and logos of which are used to differentiate businesses – a matter for Jersey Telecoms.

12.5 When decisions have been taken on legislation and institutions then they need to be implemented; ideally this should happen in the first half of next year.

Discussion should then begin on industry codes of practice and alternative dispute resolution procedures with the lead being taken by the Jersey Chamber of Commerce.

12.6 A number of specific consumer protection issues have been identified in this report. The Industries Committee, or where relevant other committees, should consider undertaking or commissioning detailed studies with a view to action being taken through a code of practice agreed with the relevant sector or powers being used under the proposed sales of goods and services law. The major issues are –

- Consumer protection in respect of all forms of building work, but particularly the position of buyers of new houses and those commissioning major building work such as extensions or new kitchens. This should be regarded as a priority with the study initiated as soon as possible.

- Consumer protection in respect of secondhand car sales, car servicing and repairs. This should draw on recent work done in the UK.
- Consumer credit.
- The position of early leavers in occupational pension schemes.

12.7 There are other areas where sectoral studies will be needed in due course. They include funerals, estate agency and travel.

12.8 Finally, there are issues for the States as a whole – how States departments and agencies consult generally and how the consumer interest is represented in particular.

# Appendix 1

## Summary of recommendations

1. A law should be implemented imposing a general duty on traders to ensure that the goods they sell are safe.
2. A supply of goods and services law should be implemented providing basic protection to consumers.
3. The proposed law on supply of goods and services should incorporate the provisions of the European Directive on Distance Selling so as to ensure that Jersey maintains its international reputation.
4. When decisions have been made on legislation the Chamber of Commerce and the Industries Committee should review the need for voluntary codes of practice.
5. Jersey Telecoms should put in place arrangements to ensure that where a logo or trade association name is used in an advertisement then information is available about the association.
6. The Petty Debts Court should consider how its documentation could be made more user-friendly to consumers who wish to take action against traders.
7. The CAB service should give greater help to people wishing to take action against traders.
8. When a decision has been taken on legislation the Chamber of Commerce should be asked to consider introducing a comprehensive conciliation and arbitration scheme for Island businesses on a voluntary basis.
9. The States should institute a review of the way it consults when it is formulating policy.
10. States' departments and agencies should have in place effective mechanisms for obtaining the views of consumers.
11. The Industries Committee should continue to be responsible for consumer protection strategy. There is a case for a specialist sub-committee of the Committee.
12. Executive responsibility for consumer protection should rest with a consumer protection division of the Department for Economic and Commercial Development.
13. Responsibility for dealing with consumer complaints should revert from the CAB to the Trading Standards Service.
14. The States should make provision for an independent, well-resourced consumer council with a brief to ensure that there is effective consumer input into all areas of decision taking.

## Appendix 2

### Terms of reference

1. The Industries Committee has consumer protection as a key part of its remit and is now keen to develop appropriate consumer protection strategies for Jersey. This is important:
  - (a) intrinsically, although Jersey's market is relatively small it is as diverse as those of some larger countries and consumer problems and issues certainly do arise. There is a relative lack of legal protection for consumers in Jersey compared with, for example, consumers in EU countries;
  - (b) because it is a necessary complement to work now in hand on developing competition policy and independent regulation of the Island's utilities in the interests of customers; and
  - (c) in order to ensure that, to the extent relevant, Jersey does not lose, or fail to gain, international competitive advantage, in for example, sectors involving distance selling or e-commerce. Particularly relevant here is the fact that the Treaty on European Union envisages, indeed requires, a high level of protection as the base for appropriate single market measures in the field, inter alia, of consumer protection.
2. The Committee is nevertheless mindful that the starting-point for consumer protection strategy in Jersey is relatively low, that the subject is potentially very large, and that it is not apparent that there are necessarily major 'problems' to be solved, especially through legislation. Many firms in Jersey operate to UK standards and in line with UK, and thus EU, requirements. The Island nature of Jersey also makes it more difficult for rogue traders to operate. So a proportionate and realistic approach is essential, that has regard to such factors and also to the Island's limited resources.
3. This said, there are clearly consumer protection issues to address in the Island, along with issues to do with effective consumer representation and consumer information. There is evidence in Jersey of a lack of competition in a number of consumer markets and there are probably considerable information asymmetries as well as public sector interventions that have been well-intentioned but may well not have turned out to be in consumers' best interests. The advent of the Jersey Competition Regulatory Authority and the active development of competition policy is likely to heighten realisation of any current shortcomings in law and practice, as is any process of enhancing consumer representation.
4. With these general considerations in mind, the Committee seeks a report that:
  - (i) surveys briefly and comments upon the current consumer protection and consumer representation regime and arrangements in Jersey and compares and contrasts this in general terms with best practice as represented by aspects of the current and emerging position elsewhere, notably in the UK and EU;

(ii) forms judgements about the nature and extent of consumer protection issues and ‘problems’ in Jersey in relation to the local market while having regard to the wider context (taking a wide definition of ‘consumer protection’ as appropriate). This should include at least indicative thoughts on optimum organisational arrangements for joined-up approaches to consumer protection generally within the Jersey public service;

(iii) assesses the possible range of approaches and options in practice available to Jersey over, say, the next five years, taking account of the views of key stakeholders in the Island and what it is practicable for Jersey to aim for or aspire towards having regard to the special characteristics of its economy, its limited governmental resources and the importance of securing and maintaining the Island’s international competitive advantage;

(iv) comments on specific issues and their relevance or otherwise to Jersey, for example including (but not limited to):

codes of practice and self-regulation as alternatives to statutory protection arrangements

redress mechanisms including ‘small claims’ and alternative dispute resolution (including in respect of electronic commerce)

the lessons for Jersey from the gradual breakdown of ‘vertical’ regulatory arrangements in the UK and the emergence and promotion of ‘horizontal’ arrangements with regard to consumer protection in its widest sense

appropriate strategies to enable (or not to hinder) Jersey’s international services business in the context in particular of the development of e-commerce, including action on such matters as unfair contract terms

how best to seek to ensure effective consumer representation and the best possible consumer information commensurate with available resources

optimum organisational arrangements for given consumer protection models

(v) and makes appropriate recommendations, including presenting options and signalling the need for further work as appropriate.

## **Appendix 3**

### **Methodology**

The project involved a mixture of desk research and meetings with relevant people.

The desk research comprised studying all relevant documents in Jersey, including existing legislation, proposed legislation, reports of relevant organisations and other relevant documents. It also involved studying legislation and other documents from the UK, Guernsey and the Isle of Man.

The major part of the research was through meetings with a wide range of people. The consultant was willing to meet anyone who had a view to express. Meetings were held with the following –

#### **States members**

Senator Ann Bailhache  
Senator Chris Lakeman  
Senator Corrie Stein  
Deputy Jerry Dorey  
Deputy Maurice Dubras  
Deputy Gerald Voisin

#### **States officials**

John Mills, Chief Executive, Policy and Resources Committee  
Trevor Le Roux, Chief Trading Standards Officer  
Alison Youngs, Deputy Chief Trading Standards Officer  
Dr Patrick McNutt, Chairman, Jersey Competition Regulatory Authority  
Ian Le Marquand, Magistrate  
Yannick Fillieul, Jersey Telecoms  
John Pinel, Chief Executive, Jersey Post  
Bob Jones, Jersey Post  
Richard Pratt, Director General, Jersey Financial Services Commission  
Tony Bruce, Chief Environmental Health Officer  
Graham Jennings, Chief Executive, Health and Social Services  
Eric Le Ruez, Chief Executive Officer, Housing Department  
Bevan Anthony, Executive Director, Jersey Transport Authority  
Elizabeth Jeffreys, Chief Executive Officer, Jersey Tourism  
Wayne Gallichan, Manager, Regulation of Undertakings and Development, Department of Economic and Commercial Development.

#### **Business**

Lydia Cook, Jersey Business Venture  
Peter Stirrup, Jersey Electrical Contractors Association  
Peter Tabb, Jersey Motor Trades Federation  
Graham Pitman, Jersey Small Business Federation  
Tony Nightingale, Jersey Small Business Federation  
Tim Dunningham, Flying Brands plc



John Henwood, Institute of Directors  
Claire Le Monnier, Jersey Chamber of Commerce  
Julie Littlemore, Marketing Bureau  
Jacqueline Flath, Jersey Hospitality Association  
Martin Bralsford, Le Riche/Jersey Chamber of Commerce.  
Bob Hassell, Hassell Blampied Associates  
Peter Drew, Channel Islands Travel Service  
Phil James, Jersey Builders and Allied Traders Employers' Federation  
Steve Jacobs, Jersey Association of Heating and Plumbing Engineers  
Alan Mclean, Jersey Estate Agents Association

### **Consumer Groups**

The consultant attended a full meeting of the Jersey Consumer Council. In addition he had a separate meeting with Alan Breckon (Chairman) and Rosanne Thomas (a member of the Council).

Francis Le Gresley and Angela de Jesus, Jersey CAB  
Enid Quenault, Standing Conference of Women's Organisations

### **Other territories**

Nigel Lewis, Board of Industry, Guernsey  
Deputy Rhoderick Matthews, Chairman, Guernsey Consumer Group  
Deputy Roy Bisson, Former Chairman, Guernsey Consumer Group (and Chairman of the National Federation of Consumer Groups)  
Bryan Guilbert, Chief Trading Standards Officer, States of Guernsey  
Ken Kinrade, Chief Trading Standards Officer, Isle of Man

**Note:** The meetings with Wayne Gallichan, Steve Jacobs and Ken Kinrade were held by telephone.

## Appendix 4

### UK legislation and institutions

1. This summary of UK legislation extracted from the website of the Department of Trade and Industry and other sources where appropriate.

#### **Consumer Protection Act 1987**

2. This Act, together with the General Product Safety Regulations 1994, requires that products supplied to customers must be safe.

#### **Sale of Goods Act 1979**

3. This Act implies certain terms into contracts for the sale of goods. Goods must be as described, of satisfactory quality and fit for any purpose for which such goods would normally be supplied or that the consumer makes known to the seller. Goods are of satisfactory quality if they reach the standard that a reasonable person would regard as satisfactory, taking into account the price and any description. Aspects of quality include fitness for purpose, freedom from minor defects, appearance and finish, durability and safety. It is the seller, not the manufacturer, who is responsible under the Act. If goods are not of satisfactory quality the buyer is entitled, if he acts within a reasonable time, to reject the goods and get his money back. A material question in whether a reasonable time has elapsed is whether a buyer has had a reasonable opportunity to examine the goods. Even if he has lost his right to reject, the buyer would still be entitled to damages. Ultimately it would be for the courts to decide whether or not a breach of contract had occurred and the redress to which a consumer might be entitled.

#### **Supply of Goods and Services Act 1982**

4. This Act implies into contracts for the supply of a service the terms that the service will be carried out with reasonable care and skill, within a reasonable time and, where no price has been agreed, for a reasonable charge. These terms apply unless they have been excluded and there are strict limits on the circumstances in which an exclusion or variation will be effective. Any material used must be of satisfactory quality. The law treats the failure to meet these obligations as a breach of contract and the consumer is entitled to seek redress.

#### **Unfair Contract Terms Act 1977**

5. Under the Unfair Contract Terms Act 1977, a person cannot exclude or restrict his liability for death or personal injury resulting from negligence. He can exclude or restrict liability for other loss or damage resulting from negligence only if the exclusion clause satisfies the test of reasonableness. In the case of sales and hiring to consumers, a trader cannot opt out of his obligations to sell or hire goods that are of satisfactory quality. In other cases a trader dealing with a consumer or on his own written standard terms of business cannot exclude or restrict his liability for breach of contract or allow himself to provide an inadequate service unless he can show that the clause satisfies the test of reasonableness. Nor can a trader require a consumer to indemnify him against any loss he may incur through negligence or breach of contract unless he can show that the clause satisfies the same test. Whether a term is or is not

unreasonable is for the court to decide. If a term were to be challenged, it would be for the party seeking to impose the term to demonstrate to the court that it was reasonable. The 1977 Act is drawn in this way so that commercial parties remain free to conclude contracts between themselves on such terms as they wish. It would be an infringement of their freedom if the law were to prevent them agreeing a contract term about quality that both parties were prepared to accept.

### **Unfair Terms in Consumer Contract regulations 1999**

6. The Unfair Terms in Consumer Contracts Regulations 1999 came into force on 1 October 1999. They repeal and replace the 1994 Regulations of the same title with modifications to remove any uncertainty that the scope of the Regulations is different from that of the EC Directive (93/13/EEC) that they implement. They provide that a term that has not been individually negotiated in a consumer contract is unfair (and hence non-binding on the consumer) if contrary to the requirement of good faith, it causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer.

7. The Regulations maintain the obligation of the Director General of Fair Trading (contained in the 1994 Regulations) to consider any complaint made to him about the fairness of any contract term drawn up for general use. He may seek assurances and, if necessary, injunctions against those using terms that he considers to be unfair.

8. The Regulations provide for the first time that a qualifying body named in Schedule 1 (statutory regulators, trading standards departments and Consumers Association) may also apply for an injunction to prevent the continued use of an unfair contract term. When regulations have been made to implement the Injunctions Directive (98/27/EC) applications will be sought from other consumer bodies that meet objective criteria and wish to be named in the Regulations. The Commission has published a report on the implementation of the underlying EC Directive. It does not contain any formal proposals to amend the Directive. However, Chapter 3 raises a number of questions on suggestions for improving the existing regime on which the Commission is launching a wide-ranging public consultation.

9. The DTI has published a consultation paper inviting comments on the questions raised in the Report and others that flow from these.

### **Misleading advertising**

10. Advertising in the UK is mainly controlled through codes of practice. In the case of advertisements in the non-broadcast media, the Advertising Standards Authority oversees and acts to ensure compliance with the British Codes of Advertising and Sales Promotion. The Codes are the body of rules the advertising industry draws up and agrees to abide by. In essence, they require advertisements to be legal, decent, honest and truthful and that they be prepared with a sense of responsibility to consumers and society at large.

11. The Control of Misleading Advertisements Regulations 1988 - I 1988/915 (as amended by the Control of Misleading Advertisements (Amendment) Regulations 2000 - SI 2000/914), implement EU Directives 84/450/EEC and 97/55/EC on

misleading and comparative advertisements. They provide the legislative back-up to the self-regulatory system in respect of advertisements which mislead or which do not comply with the conditions under which comparisons are permitted in advertisements. The Regulations require the Director General of Fair Trading (DGFT) to investigate complaints. They empower him to seek an injunction from the courts against publication of an advertisement, if necessary. More usually, however, he would initially seek assurances from an advertiser to modify or not repeat an offending advertisement. Before investigating, the DGFT can require that other means of dealing with a complaint, such as the ASA system mentioned above, have been fully explored. Action by the DGFT therefore usually results only from a referral from the Advertising Standards Authority where the self-regulatory system has not had the required impact.

12. Advertising in the broadcast media is subject to codes of practice formulated and enforced by the Independent Television Commission and the Radio Authority. Government policy in respect of this sector rests with the Department of Culture, Media and Sport.

### **Price indications**

13. The Price Marking Order 1999 sets out pricing requirements for products that are for sale by traders to consumers. The aim of the Order is to provide price transparency for consumers.

14. The Price Marking (Food and Drink on Premises) Order 1979 regulates price displays in pubs, restaurants and other outlets where food and drink is provided as part of a service. The Department is reviewing the Order and a consultation on it took place in 2000.

15. In addition, there is price transparency legislation covering the information that must be provided when reselling theatre and other tickets, in bureaux de change, and where costs differ according to the method of payment.

### **Misleading prices**

16. Part III of the Consumer Protection Act 1987 makes it an offence for a person to give false or misleading price indications to consumers by any means. Under the legislation, DTI issues a code of practice for traders that provides guidance on how to avoid giving misleading price indications.

### **Property misdescriptions**

17. The Property Misdescriptions Act 1991 makes it an offence for an estate agent or property developer to make false or misleading statements, in the course of their business, about any of 33 property related matters listed in the Property Misdescriptions (Specified Matters) Order 1992. The list includes, for example: location or address; aspect, view, outlook or environment; accommodation, measurements and sizes; and physical or structural characteristics. The Act is enforced by local authorities' Trading Standards Officers.

### **Trade Descriptions Act 1968**

18. The Trade Descriptions Act 1968 makes it an offence for a trader to apply, by any means, false or misleading statements to goods, or to knowingly or recklessly make such statements to services. In addition, there is secondary legislation relating to or requiring the provision of specific information. These requirements include: labelling the components of footwear and of textile products; and descriptions of crystal glass. This legislation carries criminal penalties and is enforced by local authorities trading standards officers. It should be noted that labelling and the provision of information on food and drink is the responsibility of the Department of the Environment, Farming and Rural Affairs.

### **Weights and measures**

19. Transactions in goods by weight or measure and the measuring instruments used in those transactions are in most cases regulated by the Weights and Measures Act 1985 and its secondary legislation. The DTI is responsible for those provisions that are aimed at either (i) protecting the consumer against being sold shortweight; and (ii) providing consumers with information about the weight or volume of goods before they commit themselves to a purchase. DTI's National Weights and Measures Laboratory is responsible for the provisions of the Act relating to measuring equipment and definitions of units of measurement.

### **Distance selling**

20. The Consumer Protection (Distance Selling) Regulations 2000 (SI 2000 No. 2334) implement Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts (known as the Distance Selling Directive).

From October 31 2000 the Regulations give new protection to consumers who shop by phone, mail order, via the internet, or digital TV-

- The right to receive clear information about goods and services before deciding to buy. The information required includes the seller's name, the price including all taxes, delivery cost, arrangements for payment and the right to cancel the contract.
- Confirmation of this information in writing
- A cooling off period of seven working days in which the consumer can withdraw from the contract
- Protection from credit card fraud.

### **Doorstep selling**

21. The Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987 provide consumers with a 7 day cooling off period when they agree to buy goods or services worth more than £35 from a trader during an unsolicited visit to their home. Proposals to provide consumers with more protection from unscrupulous doorstep sellers were made in a consultation paper "Proposals to amend the consumer protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987" which was published on 10 June 1998. Amending Regulations came into force on 31 December 1998.

### **E-commerce**

22. DTI believes that many consumer concerns can be met by effective e-commerce codes. A number are already becoming established. Typically, a trader who meets a code is able to display a 'hallmark' indicating that he or she follows best

practices. The Government announced in the Consumer White paper that it was working with business and consumer organisations to develop core principles that all good online codes should include. TrustUK - a private sector body - has now opened for business. It will accredit codes of conduct for e-commerce that meet minimum standards and offers consumers good protection. On-line businesses which subscribe to TrustUK approved codes will display an 'e-hallmark' indicating that consumers can shop with confidence.

23. In Europe the EU Commission has proposed an e-commerce directive. The Government is seeking to ensure that it provides a clear legal framework to aid consumer confidence. Similar discussions are taking place in wider international fora, such as the OECD.

### **Sale and repair of motor vehicles**

24. The sale and repair of motor vehicles is governed by general consumer legislation such as the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982. Local authority trading standards officers also enforce relevant criminal legislation such as the Trade Descriptions Act 1968, which applies amongst other things to clocking, and vehicle safety legislation.

### **Unsolicited goods and services**

25. Under the Unsolicited Goods and Services Act 1971 (as amended) it is an offence to demand payment for goods known to be unsolicited, in other words, they were sent to a person without any prior request made by them or on their behalf. Someone who receives goods in these circumstances may retain them as an unconditional gift, and does not have to pay for or return any unwanted goods. Anyone who receives a demand for

### **Package travel**

26. If a package holiday organiser fails to fulfil his contract satisfactorily, he is liable for any consequent damage or loss.

27. The criminal provisions of the 1992 Package Travel Regulations are enforced by local authority trading standards officers. Examples are: misleading advertising, or misdescription of, or failure to provide, key information in a contract.

### **Consumer councils**

28. The DTI is responsible for the funding of, and appointments to, a number of consumer bodies established to protect and promote the interests of consumers. These include: the National Consumer Council (including the Scottish and Welsh Consumer Councils); the Gas Consumers' Council; the Post Office Users' National Council and the Post Office Users' Councils for Scotland, Wales and Northern Ireland; the Telecommunications Advisory Committees for England, Scotland, Wales and Northern Ireland.

### **Citizens advice bureaux**

29. The DTI is responsible for the funding and support of the National Association of Citizens Advice Bureaux (NACAB) and Citizens Advice Scotland (CAS) which

provide the central support services and information systems to all citizens advice bureaux in England, Wales and Scotland.

### **Trading standards departments**

30. The DTI has a particular interest in the consumer protection functions of local authority trading standards departments, including performance indicators and training and qualification of trading standards officers. It is responsible for the collation of information submitted by local authorities in accordance with section 70 of the Weights and Measures Act 1985, which requires all local authority trading standard departments in Great Britain to submit an annual report on their weights and measures activities to the DTI.

### **Codes of practice**

31. Codes of practice can play an important part in protecting consumers' rights and in offering a higher level of consumer protection and service than the basics set down in law. In the Consumer White Paper the Government states its intention to create a climate where consumers' natural choice is to seek out a business that meets the terms of a good code or has its own reputation for equal or higher standards. This will enable customers to know whether a code is a good one; before they find out the hard way when something goes wrong. The Government proposes to provide core principles for effective codes of practice, designed wherever possible to prevent problems happening in the first place and to enable the OFT to approve codes which are effective in protecting consumer interests.

The outline core principles for codes are –

- consumers should see truthful adverts
- clear, helpful and adequate pre-contractual information
- clear, fair contracts
- staff who know about and meet the terms of the code as well as their legal responsibilities
- an effective complaints handling system run by the business
- if problems cannot be resolved in-house, an effective and low cost redress mechanism
- publicity about the code from the business and the sponsors, including a report on the operation of the code.

33. To help consumers find the codes, and thus the businesses they can more readily trust, the Government proposes, subject to further consultation, to change the law to give the OFT a power to give a seal of approval to codes that put the core principles into effect.

## Appendix 5

### Guernsey and the Isle of Man

1. It is always useful for any organization to compare its situation with that in comparable organizations. For the purposes of this study the two most comparable organizations are Guernsey and the Isle of Man. Like Jersey they are small islands (populations of 60,000 and 75,000 compared with Jersey's 85,000) and have very strong trading and tourist links with the UK. Jersey and Guernsey also have strong links with each other, some businesses covering both islands and UK businesses sometimes running their Channel Island operations as a single business.

#### Guernsey

2. The framework for consumer protection in Guernsey is broadly similar to that in Jersey. There is virtually no legislation. Political responsibility for consumer protection rests with the States Board of Industry. Trading standards is one of seven departments under the Board. There are three qualified trading standards officers, a technical officer, who deals with weights and measures, and a consumer advisory officer undertaking the function which in Jersey has been outsourced to the CAB. In its work the trading standards department tends to use UK legislation as a good practice guide. The department is fully plugged into the UK trading standards network.

3. There is no official consumer council. However, there is entirely private Guernsey Consumer Group which was founded in 1995. The Group regards all Guernsey residents as members unless they opt out. Its meetings and elections are open to everyone. Subsequently three members of the Group have been elected to the States. The Group concentrates on a small number of issues and, through its members, undertakes research. It has published the results of research exercises into Sunday trading, dental charges, top-up health insurance and convenience shops.

4. The Guernsey Chamber of Commerce has operated a Fair Traders scheme. However, unlike its Jersey counterpart, the scheme gave little protection over and above that afforded by the law. It has, in effect, been quietly dropped by the Chamber.

5. Consumer problems identified by the Trading Standards Department include –

- Mail order businesses run from the Island.
- Car sales and repairs. There is a code of practice, operated by the Guernsey Motor Traders Association, which, like its Jersey equivalent, broadly mirrors the main UK code. However, garages that are not members of the association, including the Jersey-based Five Oaks Group, undertake a significant proportion of the business.
- Building work. There are no codes of practice.
- Consumer credit.

6. More widely the decision-taking process in Guernsey has little place for consultation – with consumer groups or anyone else.



7. Guernsey has accepted the need to bring its legislation up-to-date. The position was reviewed in 1995. There was concern that Guernsey was being used as a base by organizations whose trading practices could be damaging to the Island's reputation. It was agreed that there was a need for a limited form of fair trading legislation with a presumption, largely for practice reasons, that the UK model should be followed. Progress has been slow. In January 2000 the Board of Industry set out proposals in a policy letter. The proposals have been accepted in principle and legislation will be brought forward in due course.

8. It is intended to tackle the issue in two phases. The first phase will deal with civil matters in four areas –

- The Sale and Supply of Goods and Services, broadly following the provisions of the UK Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Sale and Supply of Goods Act 1994.
- Unfair Contract Terms, broadly following the provisions of the UK Unfair Contract terms Act 1997 and the Unfair Terms in Consumer Contracts regulations 1994.
- Disposal of Uncollected Goods, broadly following the provisions of the UK Torts (Interference with Goods) Act 1977.
- Misrepresentation, broadly following the provisions of the UK Misrepresentation Act 1967.

It is intended that the legislation will be drafted so as to cover e-commerce.

9. The second phase will deal with unsafe goods, misleading descriptions and clear price indications.

10. It is also relevant to note what is happening in respect of the utilities. A Utilities Regulator has been established that will deal initially with the postal service, telecoms and electricity. There will be a requirement in the licences for these services to have mechanisms to consult consumers. Three options are being considered –

- A requirement on individual operators to set up consumer groups.
- The regulator setting up a single consumer body, probably the least likely option.
- Using any more general-purpose consumer bodies.

## **The Isle of Man**

11. The Isle of Man has a far more developed consumer protection framework than either Jersey or Guernsey. Responsibility rests with an Office of Fair Trading, which is constituted as a Board of the Tynwald, the Island's Parliament. The Office has responsibility for both competition policy and consumer protection.

12. The major UK legislation has been copied in the Isle of Man. The Consumer Protection (Trade Descriptions) Act 1970 and the Consumer Protection Act 1991 govern misleading advertisements and prices. The Office of Fair Trading has also approved a code of practice for traders, which gives guidance on good practice for price descriptions. Under the Fair Trading Act 1996 the Office can require individuals who are found to be regularly breaching consumer protection legislation to give an undertaking that they will refrain from such activity. Specific legislation

governs time-share schemes and new legislation is about to be implemented in respect of the unsolicited calls aspect of cowboy builders.

13. Other legislation includes the Misrepresentation and Unfair Contract Terms Act 1980, the Non-Resident Traders Act 1983, the Price Marking Act 1976, the Supply of Goods and Services Act 1985, the Supply of Goods and Services Act 1996 and the Unsolicited Goods and Services (Isle of Man) Act 1974.

14. The Office of Fair Trading has 14 full time equivalent posts. Its board comprises a member of the Tynwald as chairman, two other members of the Tynwald and two non-Tynwald members representing consumers. Revenue expenditure in 2001 is budgeted at £437,000. However, it should be noted that its remit includes establishing an ombudsman for the financial services industry.

15. The Office has an ambitious programme for 2000/01 which includes –

- The development of e-commerce codes of practice in tandem with international standards.
- A review of the code of practice on price indications.
- A review and updating of unsolicited goods legislation.
- The introduction of regulation to ensure interest rates are calculated and advertised on the same basis as throughout the UK.
- A new bill to cover, among other things, pyramid selling, distance selling and fair contract terms and doorstep trading.

16. The Office can conduct price investigations following which the cabinet has the power to fix prices. The Office can also conduct investigations into government departments and agencies.

17. The Isle of Man does not have a consumer council. One was established in 1972, which was chaired by a politician, with representatives from tourism, industry, agriculture and consumer organisations. It was revamped in 1981 and became the Board of Consumer Affairs, which was a statutory body, made up of three politicians and two consumer representatives. The Trading Standards Department was incorporated into the structure of the board. In December 1998 it was decided that the title no longer reflected the variety of work undertaken and particularly following the introduction of the Fair Trading Act 1996 (which deals with anti-competitive practices and price investigations). It was felt that the Office of Fair Trading was a more appropriate title.

18. There is recognition that the views of the consumer have not been fully represented by the Office. In the coming year it will be developing a “consumer consultative forum”. This will begin by using existing organisations such as the Joint Women’s Council, Citizens Advice Service and Joint Charities Federation.

19. There is a Citizens Advice Service, which operates with minimal support, in much the same way as CABx in the UK.

## Appendix 6

### The UK model on consultation

1. Over the last few years a great deal of work has been done in the United Kingdom on consultation. This culminated with the publication, in November 2000, of a code of practice on consultation exercises.
2. The criteria in the code apply to all UK national public consultations on the basis of a document in electronic or printed form and are regarded as relevant to other sorts of consultation. The Code states that they should generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.
3. All UK government departments and agencies that conduct any public consultation must have the arrangements in place to operate the code. These include designating a consultation coordinator to oversee the organisation's consultation activities. UK non-departmental public bodies are encouraged to follow the code.
4. A web-based central register of current public written consultation exercises will be introduced shortly, with links to comprehensive consultation pages on each department's website. In due course the site will offer users the option of being notified by e-mail of consultations in particular areas. There will also, later, be a register of forthcoming consultations, helping organisations to prepare to respond.
5. The consultation criteria are required to be reproduced in consultation documents, with an explanation of any departure and confirmation that they have otherwise been followed. The criteria are –
  - Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
  - It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
  - A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
  - Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals
  - Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

- Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
- Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.

6. It has to be said that a previous code of practice, published by the Cabinet Office, had little effect and it remains to be seen whether the new code will be implemented in spirit as well as in letter. The early indications are that for the most part it is. Consultation documents are far better written and clearly set out. The areas that are open for consultation and areas where firm decisions have already been taken are better identified.

7. The UK has also put in place arrangements to ensure consumer input.

8. The Cabinet Office has published *Introductory Guide – how to consult your users* which sets out the full range of options for consultation, including user comment and complaints, mystery shopping, open meetings, using representative groups, face to face interviews, focus groups, user panels, citizens panels and quantitative surveys.

9. The precise approach to be adopted would depend on the circumstances of the individual case and also experience gained over time.

10. There is recognition in the UK that properly constituted and resourced consumer bodies can play a major part in the policy making process. At national level, the National Consumer Council has a £3 million budget and is specifically charged with representing the views of consumers. It is not a high profile organisation but largely concentrates its work inside the government machine, both by commenting on specific policy proposals and also by promoting mechanisms to ensure that consumers are involved in the decision taking process.

11. In many sectors there are now specific consumer bodies. Examples are –

- The Financial Services Consumer Panel, which deals with matters that come within the province of the Financial Supervisory Authority.
- Energy Watch, a consumer body that replaces a number of different consumer bodies for the gas and electricity industry. This also has responsibility for dealing with complaints.
- Postwatch, which has responsibility for all issues of consumer representation and handling of complaints about the Post Office.
- Advisory committees for telecommunications. There are six covering the countries of the UK, the disabled and elderly and small businesses.
- A number of different transport users committees.

12. The National Consumer Council has published guidelines for consumer councils. It says that to inspire confidence they must be –

- Independent of the industry, the regulator and government in their choice of work and in the views they express.

- Effective, with their work being well informed and based on sound, high quality research.
- Representative of domestic consumers.
- Transparent and accountable.
- In touch with consumers.
- Geographically representative.

13. To meet these aspirations the NCC says that councils need clear powers and duties, access to information, the right to challenge regulators' decisions, openness, adequate resources, research capacity, open appointments and links with other consumer bodies.

## Appendix 7

### The Jersey Consumer Council

1. In talking with people about the project, the consultant found that no subject aroused more controversy than the Jersey Consumer Council. This was exemplified by a quite separate dispute about the chairmanship of the Consumer Council that merited a full debate in the States and extensive media publicity.
2. It is therefore helpful to consider the position of the Jersey Consumer Council in detail.

#### Origins

3. The Jersey Consumer Council arose out of discussions about a new fair trading law in the early 1990s. The Policy and Resources Committee lodged a report in February 1994 on the appointment of a Jersey Consumer Council but this was not adopted by the States. Concern was expressed that the proposed Council would not have statutory powers, and the composition and role of the Council as proposed was questioned by many members.
4. Following a consultation process, the Policy and Resources Committee came back with a new proposal that was lodged on 14 March 1995. This was accepted by the States. The key points of the recommendation were –
  - The Council would be chaired by a member of the States, appointed by the States, and would have eight other members appointed by the Policy and Resources Committee. Six of those members would represent particular organisations (three business organisations, the TGWU, the Standing Conference of Women’s Organisations and the CAB) and two would be members of the public not representing any particular organisation.
  - The functions of the Council were defined as: “to seek information, investigate, highlight and publicise anomalies and irregularities in consumer affairs and to encourage good trading practice by local business, with the assistance of the Trading Standards Department and other States’ Departments as appropriate; to seek to promote –
    - (a) good trading practices;
    - (b) the ability to exercise individual rights;
    - (c) value for money;
    - (d) adequate compensation.”
5. The Office of the Chief Adviser would provide research support and secretarial services for the Council and expenses would be met by the States.
6. The Policy and Resources Committee had intended to propose the new fair trading law to be considered alongside the proposal for the Jersey Consumer Council. In the event the fair trading law ran into difficulties so only the Consumer Council went ahead.

### **The Consumer Council's responsibilities**

7. The brief for the Consumer Council is illogical. Its composition and functions are nothing like those of any consumer council in the UK. Rather, it was set up with the constitution and functions of either a regulatory body or at least of an advisory committee to the States. Herein lies the current controversy. The Consumer Council has always had an anomalous position in that its constitution and remit are illogical. This is not the fault either of the Council or of the Industries Committee.

8. The Council has been asked to look at matters that properly fall within the province of the States itself, the CAB service and the Trading Standards Service. The Council was asked to promote a number of matters such as "good trading practices" but was given neither the resources nor the powers that would enable it to do so.

9. Initially the Council was strongly supported by the States with the Chief Advisor attending its meetings. The level of support has tended to wane over the last few years. The Council clearly feels aggrieved at its transfer to the Industries Committee and relations between the Committee and the Council are poor.

### **The current role of the Council**

10. This report has identified a major need for a consumer advocacy role in Jersey. The Consumer Council has not attempted to play this role. Interviews with both businesses and States' departments and agencies indicated that either input from the Consumer Council was nil or, where there was input, it was not considered constructive. By contrast, there were very complimentary comments about input from the CAB service and also other interest groups including churches and the Standing Conference of Women's Organisations.

11. Most of the energy of the Consumer Council is expended on producing a regular newsletter. This has a tabloid style with some "shock horror" headlines and it has been criticised by a number of other organisations on the grounds that what it has printed has not been accurate and was printed without consultation. The newsletter also seems to have promoted a number of particular commercial providers of goods and services.

12. The Council has had the same Chairman (and some of the same members) since its inception and is closely associated with the Chairman who is widely recognised as having achieved a great deal. However, some feel that the Council is now too closely associated with the Chairman, inevitable after six years in office.

13. The Consumer Council has very strong supporters among some States members and some other interest groups, showing a strong polarisation of views.

### **How the Consumer Council fits into the proposed new regime**

14. This report has identified a need for legislation that would be enforced by the Trading Standards Service, for a policy role of identifying and dealing with consumer problems, which should rest in the Department of Economic and Commercial Development, and for a competition policy role that will rest with the JCRA. As currently constituted the Jersey Consumer Council has no role in this new structure.

15. What is essential is that the consumer voice is adequately represented by an independent council whose members are not appointed by the States still less by business interests or trades unions.

16. There are basically three options –

- Reconstitute the Jersey Consumer Council with a new constitution and functions on the basis set out in paragraph 11.23 – the best “clean sheet of paper” option.
- Given that the Council raises so much passion, leave it as it is but go ahead with establishing a consumer body charged with the advocacy role. The existing Council would then be a sort of state funded Consumers’ Association.
- Take the existing constitution to its logical conclusion and use the Consumer Council and its existing members as the nucleus for a sub-committee of the Industries Committee charged with looking after consumer protection.



## The Author

Mark Boleat was born and educated in Jersey. Since moving to the UK he has maintained strong links with the Island. He was commissioned by the Housing Committee to prepare a report on housing policy in 1991 and in 1996 he chaired a States Working Party on population policy.

He holds a BA degree in Economics and an MA in Contemporary European Studies. He is also a fellow of the Chartered Institute of Bankers.

He spent 25 years working for major national, European and international trade associations. He joined the Building Societies Association in 1974, holding a number of positions before being appointed Director General in 1986. He also became Director General of the Council of Mortgage Lenders when that organisation was created in 1989. He held both positions until 1993. Between 1986 and 1989 he also held the positions of Managing Director of the European Community Mortgage Federation and Secretary General of the International Housing Finance Union. In 1993 Mark Boleat joined the Association of British Insurers, the largest British trade association, to become its first Director General. He left the ABI in June 1999 to set up the consultancy business Boleat Consulting, which covers trade association structures and strategies, relations between government and business and consumer policy.

Mark Boleat is also a non-executive director of Scottish Mutual Assurance plc and Abbey National Life plc (the life insurance subsidiaries of Abbey National plc), the Comino Group plc (the Stock Exchange listed computer services company) and Countryside Properties plc (the Stock Exchange listed housebuilder). He is Chairman of Open Door Finance Ltd (a start up company), and a member of the National Consumer Council, the Management Board of the National Security Inspectorate and the Gibraltar Financial Services Commission. Among other positions that Mark Boleat has held is Chairman of Circle 33 Housing Trust, Chairman of Tennant Housing Trust and board member of the Housing Corporation.

Mark Boleat has pioneered work in Britain on trade association strategy and management. He organised benchmarking exercises, with the support of the DTI, between associations. He founded the Trade Association Forum in 1997 and became Chairman of the Forum's Consultative Committee when responsibility for the Forum moved to the CBI in 1998.

Mark Boleat's publications include *The Building Society Industry*, *The Mortgage Market*, *National Housing Finance Systems: A Comparative Study*, *Trade Associations - The American Experience*, *Trade Association Strategy and Management*, *Models of Trade Association Co-operation*, *Wanted - A Consumer Protection Policy* and *Codes of Practice that Bite*. He was also the founder editor of the journal *Housing Finance International*.