

## SUBMISSION FROM CONSUMER FOCUS SCOTLAND

1. Consumer Focus Scotland started work on 1 October 2008. Consumer Focus Scotland was formed through the merger of three organisations – the Scottish Consumer Council, energywatch Scotland, and Postwatch Scotland.

2. We work to secure a fair deal for consumers in both private markets and public services, by promoting fairer markets, greater value for money, and improved customer service. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or shoppers in a supermarket.

3. We have a commitment to work on behalf of vulnerable consumers, particularly in the energy and post sectors, and a duty to work on issues of sustainable development.

4. The Scottish Consumer Council (SCC), one of Consumer Focus Scotland's predecessor bodies, had a longstanding interest in ensuring that consumers who become involved in disputes have access to appropriate and affordable means of resolving them, and we continue to work towards this aim. We are particularly interested in the potential benefits to consumers of alternative dispute resolution, including mediation and arbitration. While most people agree that the courts are an important way for people to enforce their rights, on the whole those involved in disputes are more interested in finding a resolution to their problem or obtaining compensation for harm or loss than enforcing their legal rights.<sup>1</sup> We also know that people would generally prefer to avoid becoming involved in legal and court processes.

5. They are apprehensive about involvement with lawyers and also the potential costs, formality, delay and trauma they associate with legal processes.<sup>2</sup>

6. While our main focus to date has been on the benefits of mediation, we believe that the increased availability of a variety of alternative methods of dispute resolution, including arbitration, would be an important step towards achieving better access to justice for consumers in Scotland.

7. We welcome the Arbitration (Scotland) Bill, which will clarify and codify the law of Scotland in this area, bringing it into line with that in England and Wales, encouraging Scottish businesses to have their disputes arbitrated in

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<sup>1</sup> *Paths to Justice Scotland: what people in Scotland do and think about going to law*, Hazel Genn and Alan Paterson, Oxford University Press, 2001

<sup>2</sup> See Note 1

Scotland rather than in other jurisdictions, and reducing the costs involved. We do not, however, intend to respond in detail to the provisions contained within the Bill, as the Bill's main focus is on dealing with commercial disputes, rather than those involving consumers.

8. We understand that the Bill does not expressly encompass consumer arbitration schemes because consumer protection is reserved to the UK parliament. Such schemes have an important contribution to make to the civil justice system in Scotland, however, and we are keen to see existing consumer arbitration schemes used by Scottish consumers more than at present. The Chartered Institute of Arbitrators, through its Independent Dispute Resolution Services, provides a wide range of arbitration and adjudication services for business to consumer (including small business) disputes, which cover the whole of the UK. These are largely sector-specific, such as the ABTA scheme for package holidays, the Motor Industry Code of Practice and Repair scheme and the scheme governing disputes between surveyors and their clients.

9. While it may not always be the best option - it may be less flexible than mediation in terms of the outcomes it can achieve, for example, and some schemes can be relatively expensive – arbitration can offer an accessible, quick and low cost means of dispute resolution to consumers in appropriate cases.

10. It is important that any scheme aimed at consumers is as straightforward, quick and low cost as possible. We welcome the Bill's recognition that such principles are also important in commercial litigation. Most of the existing consumer schemes are provided free of charge or at low cost to the consumer. These schemes are mainly used by people in England and Wales at present. It is thought that consumer awareness of these schemes is generally low in Scotland, and the Chartered Institute of Arbitrators is looking at ways of raising awareness in Scotland, which we support. In our response to the Scottish Government consultation, we suggested that the Scottish Government should consider how consumers in Scotland might be encouraged to use consumer arbitration schemes to resolve their disputes, and we would be happy to be involved in any discussions on this. It is critical, however, that current protections, such as those contained in sections 89 to 91 of the Arbitration Act 1996 and the Unfair Terms in Consumer Contract Regulations 1999 protecting consumers against low-value consumer arbitration clauses, be maintained.

11. While the main focus of the Bill is on commercial disputes, we very much welcome it as an important step towards a culture within which the courts are

viewed as a last resort, as recommended by the SCC's Civil Justice Advisory Group chaired by Lord Coulsfield in its 2006 report.<sup>3</sup>

I hope that these comments are helpful.

Martyn Evans  
Director  
14 May 2009

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<sup>3</sup> *The Civil Justice System in Scotland – a case for review?: the final report of the Civil Justice Advisory Group*, published by the Scottish Consumer Council, November 2005.