



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy and Fair Work Committee

Wednesday 24 May 2023

Session 6



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ECONOMY AND FAIR WORK COMMITTEE

16th Meeting 2023, Session 6

CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

DEPUTY CONVENER

Colin Beattie (Midlothian North and Musselburgh) (SNP)

COMMITTEE MEMBERS

- *Maggie Chapman (North East Scotland) (Green)
- *Jamie Halcro Johnston (Highlands and Islands) (Con)
- *Fiona Hyslop (Linlithgow) (SNP)
- *Gordon MacDonald (Edinburgh Pentlands) (SNP)
- *Graham Simpson (Central Scotland) (Con)
- *Colin Smyth (South Scotland) (Lab)
- *Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Sue Bompfray (Consumer Scotland)
- David Eiser (Consumer Scotland)
- Sam Ghibaldan (Consumer Scotland)
- John Mason (Glasgow Shettleston) (SNP) (Committee Substitute)
- Douglas White (Consumer Scotland)
- David Wilson (Consumer Scotland)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 24 May 2023

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Claire Baker): Good morning, everyone, and welcome to the 16th meeting in 2023 of the Economy and Fair Work Committee. I have received apologies from Colin Beattie, and John Mason is attending in his place.

Our first item of business is a decision on whether to take in private items 3 and 4 today and consideration of two legislative consent memorandums at a future meeting. Do members agree to do so?

Members indicated agreement.

Consumer Scotland

The Convener: Our next item of business is an evidence session with Consumer Scotland.

Consumer Scotland was set up by the Consumer Scotland Act 2020 as the independent statutory body for consumers in Scotland, and it is accountable to Parliament. This is the committee's first opportunity to hear formally from the organisation. I welcome David Wilson, who is board chair; Sam Ghibaldan, who is chief executive; Sue Bomphray, who is director of operations, and joins us virtually; David Eiser, who is director of analysis; and Douglas White, who is director of policy and advocacy. As always, it would be helpful if members and witnesses could keep their questions and answers as concise as possible.

I invite David Wilson to make a short opening statement.

David Wilson (Consumer Scotland): Good morning, everyone. I thank the committee for the opportunity to attend and give an outline of Consumer Scotland's current activities. I am joined by the organisation's senior executive team, and I will introduce their key roles during my opening statement.

As you said, convener, Consumer Scotland was set up following unanimous agreement to pass the Consumer Scotland Act 2020. The board, which includes me, Angela Morgan, Nick Martin and James Walker, was appointed in July 2021. We took the organisation through to its initial vesting in April last year, and it is now active and up and running.

The 2020 act gives us a clear set of functions, duties and powers and provides us, as a body corporate of the Scottish Administration, with a framework to build a statutory consumer advocacy organisation that is—as you said, convener— independent of Scottish ministers and accountable to this Parliament. We have made strong progress in building the organisation, and we were very pleased to appoint Sam Ghibaldan as our first chief executive in May last year.

One important function of Consumer Scotland is our role as the statutory consumer advocate in the gas, electricity, postal and water sectors in Scotland—a role that had previously been performed by Citizens Advice Scotland. One aspect of our set-up involved a transfer of staff and responsibilities from CAS to the emerging organisation, and we were pleased that the process was delivered effectively for staff and for both organisations. We have continued our strong partnership with CAS since then and have developed a memorandum of understanding with the organisation.

I will be pleased to take questions on aspects of the set-up of Consumer Scotland, but first I will briefly set out some of our key activities over the past year and for the forthcoming year.

Last year, we published an interim strategic plan and consulted on it in some detail. We have now published our four-year “Strategic Plan 2023-2027” and our “Consumer Scotland Work Programme 2023-2024” for the coming year. Those documents set out our approach in some detail, including our activities and details of our work plan. The strategic objectives build on the key themes and expectations that were set out by Parliament, and we are conscious of, and have taken into account, the discussions on the bill at the committee stage.

The strategic plan covers three objectives. The first is our aim of promoting understanding of consumer issues in Scotland. An important design feature of the organisation concerns the need to build a broad evidence base on consumer issues through research, economic analysis and intelligence, and that work is led by David Eiser.

Secondly, we seek to encourage other organisations to focus on the needs and aspirations of consumers. That involves active engagement and collaboration with other organisations in the private and public sectors and collaboration with enforcement bodies both in Scotland and within the United Kingdom Government. That focus on policy development is led by my colleague Douglas White.

Thirdly, we seek to enable consumers’ active participation in the economy through access to unbiased and fair information and support. The legislation enables Consumer Scotland to provide advice directly to consumers, but we have chosen—at least for now—to support the existing landscape of consumer advice and advocacy in order to help those organisations to maximise their impact. Under our remit, we work to a broad definition of “consumers”, and we are active in focusing on consumers who are in vulnerable circumstances. We will be delighted to share with the committee further details of any aspect of our work.

I hope that that was a helpful overview; I am happy to take questions. My colleague Sue Bomphray, who is our director of operations and has been a central part of the development of the organisation, is online and will be able to answer questions on the finance and human resources aspects of the organisation, in particular.

The Convener: Thank you, Mr Wilson. You described the creation of Consumer Scotland within a landscape in which a number of bodies are already involved in consumer issues at both UK and Scotland level. In producing your first

annual work programme and the longer-term strategic plan, what work did you do with those bodies to identify the organisation’s priorities? Perhaps you can briefly set out the key priority for the coming year.

David Wilson: There were two aspects of consultation, in which we sought views from a wide range of organisations. The first was the consultation on our interim strategic plan, which I mentioned. We had constructive discussions with, and written comments from, a number of organisations as part of the development of the overall plan. Likewise, we consulted on the more specific annual work plan, which initially focused on the levy-funded areas—water, energy, gas and post—but which we have subsequently broadened out. It was important that, as part of the development of that work plan, we consulted and engaged with not only the companies involved but consumers and other bodies. That was a constructive level of engagement.

With regard to engagement, it is clear that if we define “consumers”, and the scope for potential consumers to face harm, broadly, the organisation’s remit becomes very broad, so rigorous prioritisation is required to make sure that we have a clear work plan. That is why we were so keen to publish and consult on our work plan in some detail.

On priorities, the cost of living has been at the heart of our work and has been a major theme in the activities of all consumer advocates over the past year, and we expect that to continue. The cost of living is the first of our core areas, but we have kept a focus on the longer-term objectives—rather than simply the immediate issues arising from the cost of living—around the transition to net zero and addressing the issues faced by consumers who find themselves in vulnerable circumstances, which is an area of particular importance to us. Those three areas—the cost of living, the transition to net zero and consumers in vulnerable circumstances—are cross-cutting issues that are at the heart of our strategic plan and our work plan for this year.

The Convener: Will somebody say a bit more about the cost of living? Do you have examples of your work that is focused on directly supporting consumers or on looking at the cost of living issues that impact on consumers?

Sam Ghibaldan (Consumer Scotland): I can do that, and then I will pass over to my colleague Douglas White to finish off.

We have already undertaken a number of aspects of work on the cost of living, in particular the crisis that developed from energy pricing. We have put in place a quarterly energy tracker that allows us to understand, in depth, the impact that

high energy prices have on consumers. We have seen a very significant impact on consumers; around two thirds of consumers say that they are having to reduce their energy consumption, and around 40 per cent say that they are struggling to heat their homes comfortably, so there are obviously some significant issues in that space.

We fed in that information through a number of forms: we had that survey, and we also pulled together the Scottish energy insights and co-ordination group in response to a demand that was identified at the First Minister's energy summit last year. That group pulled together the different advice bodies to bring a collective insight into the real-life, real-time experience of consumers. Specific common issues were identified through that process and through the energy tracker research that we fed back to Government, regulators and companies. For example, there were specific issues around consumers on prepayment meters and the experience of disabled consumers, who find that area particularly challenging. Our report on disabled consumers will come out in a couple of weeks.

We have achieved some success in that work. We engaged heavily with the Office of Gas and Electricity Markets' review of its code of practice on prepayment meters and made a number of inputs in that space. Those included the concept of taking a precautionary approach before proceeding with the involuntary fitting of prepayment meters; the inclusion of financial vulnerability in the criteria that companies have to take into account before the meters are fitted; and ensuring that once consumers have paid off any debt, they are able to move away from a prepayment meter.

We feel that Consumer Scotland has had some impact during its relatively short existence. We have also begun some work on general affordability, which is looking at how future models for the energy industry, the water industry and other essential services can be structured in a way that ensures that consumers on low incomes are able to access those services.

Douglas White (Consumer Scotland): I can add a couple of points to what Sam Ghibaldan has set out. Sam talked in some detail about our work in the energy market specifically, but we have also been looking at cost of living issues in the other statutory sectors in which we operate. In the water market, for example, we raised some issues to do with situations in which consumers are eligible for a council tax reduction but are still liable for a portion for their water charge. They may not always be aware of that, and there is therefore a risk that they will fall into debt, which can cause significant issues with regard to affordability and repaying that debt. We have raised some

concerns about that and are engaging in a process to seek improvements to outcomes for consumers in that space.

During Consumer Scotland's first months of operation, we also commissioned a significant body of research into the postal market in order to understand key issues for consumers in that market. The research included questions about how consumers experience the affordability and cost of key postal services, and we look forward to publishing the outcomes of that work in due course.

As Sam touched on, we are looking at some of those issues in a cross-market way. I emphasise that one of the privileges that we have at Consumer Scotland is our ability not just to take a deep dive through doing intrinsically valuable work in each of the markets for which we have a statutory responsibility and other individual markets in which we operate, but to look at those issues across markets and draw common patterns, learnings and lessons. We have identified the cost of living and affordability as a key area in which we want to focus some of our attention over the next year. We already have started a piece of work to look at how different markets deal with offering more affordable prices to different groups of consumers; how they address who those consumers should be; what level of discount or reduced prices are offered; and how those systems are protected for consumers through legislation, regulation or other models. It is important that we are able to draw those lessons across markets, in order to pull together overall best practice for consumers and look at how we can get good outcomes for consumers in the round.

09:45

The Convener: Before I bring in Fiona Hyslop, I make the panel aware that the committee is doing a piece of work on Royal Mail, and we will take evidence from the company at the end of June. Douglas, you said that your work on that sector will be published soon—if it were ready by then, that would be great. If you could share any information with us prior to that meeting, that would also be helpful.

Fiona Hyslop (Linlithgow) (SNP): With the convener's indulgence, I will pick up one point first with regard to energy and the cost of living. The Net Zero, Energy and Transport Committee's energy price inquiry last year identified that people were having to pay for the privilege of having prepayment meters taken away. As an organisation, has Consumer Scotland been able to have an impact on that?

Sam Ghibaldan: We raised that in discussion with Ofgem and the UK Government. The UK Government has put in place a proposal—I cannot remember whether it has been implemented—that should mean that people on prepayment meters do not pay more per unit of energy than those on credit meters or the usual meters.

Fiona Hyslop: The issue was that if someone no longer wants a prepayment meter, they have to pay to get it removed.

Sam Ghibaldan: Sorry—yes, we have taken up that issue directly. In the Ofgem code of practice review, we explicitly raised the point that it should be easy for consumers to switch from a prepayment meter, and that is now included. There are particular issues with what are called “dumb” meters—old-fashioned smart meters—that have to be physically removed. That is obviously more complicated, but, in our view, it should not be a punitive burden on the consumer. Smart meters are easier in the sense that they can be switched over remotely; they do not involve infrastructure change.

Fiona Hyslop: Other members will go into specific issues, but I will focus on the range of your work and how you do it. Are there any practical examples of collaboration with other consumer organisations in the work that you have planned? You touched on some areas, but can you tell us of any organisations? It might be helpful for us to get a sense of which organisations you work with.

David Wilson: I can give you some examples. I mentioned Citizens Advice Scotland, which is clearly an important stakeholder for us. We worked collaboratively with CAS through our set-up phase, and we expect that work to be on-going. CAS has clear strengths in local advocacy, and its network of bureaux is, in many ways, a pillar of Scottish life. We are already working with CAS, and we see it as a key part of the landscape.

In a broader Scottish context, at the Government’s invitation, we took over the convening and chairing of the consumer network for Scotland, which is a group that brings together the key advisory and advocacy organisations, such as Advice Direct Scotland, and a range of public organisations. It provides a forum and a mechanism by which to engage, share good practice and common interests and do joint work where we think that that can be of mutual benefit. Within Scotland, the consumer network for Scotland is our umbrella mechanism to engage with others, but we are open and keen to engage as broadly as possible.

I will say a bit more about engagement with the enforcement organisations. We are keen to stress our key role as an advocacy organisation, and the

fact that enforcement powers lie elsewhere. Within Scotland, we work closely with Trading Standards Scotland on local government enforcement. However, we can make an important contribution through our work with the UK-wide regulators as an interlocutor between Scottish issues and devolved matters and more wide-ranging consumer issues in the UK space. We have close discussions with, and work with, the Competition and Markets Authority, the Financial Conduct Authority and utility regulators such as Ofgem. That sense of working with the wider UK Government is a key part of what we do; perhaps I can come back to the detail of that a bit later. We are working closely with the Competition and Markets Authority as we develop our investigations function.

Fiona Hyslop: I am interested in seeing how your work develops with Trading Standards Scotland, which does invaluable but probably unsung work. Some of the advocacy issues will be important because of the broad impact on consumers. Does the consumer network for Scotland bring together areas that you might see in the devolved sector and also in the reserved sector? When are you next likely to meet with the network? What are its priorities? Are they the same as yours, or is the network steering you in a different way?

David Wilson: The network also includes UK bodies such as the CMA and the Financial Conduct Authority. It seeks to bring together organisations from across the consumer space, whether in the devolved sector or the reserved sector, in a wide range of areas. For example, our remit does not formally cover transport consumers, but Transport Focus is now joining the group to act as a conduit for wider consumer matters. As Douglas White said, one of Consumer Scotland’s key contributions is that we do not represent a sectoral interest. For example, we are not interested simply in energy consumers, water consumers or financial services consumers—rather, we try to take a view across the board, and the consumer network is a mechanism through which we can do that.

You asked whether the consumer network’s interests are different from ours. The whole point of such groups is to try to work through the issues. The Scottish energy insights and co-ordination group that we have developed in parallel with the consumer network, and which has drawn together a range of similar bodies and done some active work on the cost of living, is—while it is not a formal part of the network mechanism—a good example of collaboration across the piece. We will shortly be publishing a report on that work, which was led by Lewis Shand Smith on our behalf. It is a good example of a report that summarises the activities and interests of a wide range of groups; it

is not our report but the group's report. If there are any differences, we can resolve them, but we have to make sure that we have a concerted, single point of view where that is in the interest of consumers.

Fiona Hyslop: How do you reconcile what may be competing tensions between the delivery of net zero, which is an imperative for all the organisations that you have talked about, and the immediate impact on consumers? Has your organisation thought through how to position itself in that regard? Your drive to help with advocacy for individual consumers may work against the wider issue of trying to make sure that we can deliver on net zero.

David Wilson: That is a very good question—it is clearly the key challenge at present, during a cost of living crisis. That is where our broad definition of “consumer”, as I described it, is so important, as our interest is in both current and future consumers. We also recognise that there is no such thing as a representative or average consumer; there are different consumers in different areas, whether they are in vulnerable circumstances or have vulnerable characteristics. We see our role as further developing consumer literacy, which should include an understanding of the different pressures and challenges facing consumers, and bringing that to bear on the key topics and issues, such as energy efficiency and electric vehicles. We are doing work in a range of areas, and we try to bring to bear an intensive look at the broad balance of consumer interest rather than taking the view that there is one single consumer interest.

Graham Simpson (Central Scotland) (Con): You are called Consumer Scotland, so consumers should be at the heart of everything that you do. How many consumers have you helped in the past year?

David Wilson: We are very up front about saying that we are not a front-line consumer support organisation. We work with and support a range of bodies that are very active in engaging directly with consumers, and I am sure that you will be aware that a number of them, such as Advice Direct Scotland and Citizens Advice Scotland and its bureau network, have seen a huge increase in the need for that direct support and in the need for the support and help that they currently provide. We see our role as complementing that work indirectly rather than being a direct support and advisory service for consumers. However, we think that we can make a real difference by complementing that work through analysis, wider national advocacy and providing support and encouragement to find solutions that can help a range of consumers in a broad sense.

I cannot give a specific number for how many consumers we have successfully helped, because that is not the nature of the organisation, but we are clear that we are already making a positive impact on the broader consumer landscape by working with other organisations in a complementary way.

Graham Simpson: Do you see Consumer Scotland more as a research organisation?

David Wilson: We are proud to be a research organisation that is built on economic and social intelligence. Again, that can complement the work of front-line advice agencies. In many of the conversations that we have had with them, that has been one of the things that they have been looking for from us, so we are positive about building an evidence base through sound research.

However, it is not enough just to do strong research, although we will clearly do that. The important thing is to share and advocate the conclusions of that research to make sure that that feeds through to policy improvements and to a more consumer-orientated focus among companies and businesses that engage with consumers across Scotland.

Graham Simpson: If I had a problem with my energy provider—perhaps I was struggling to pay my bills—and I could not get it resolved with my provider, I might pop down to my local citizens advice bureau. That would be a natural thing to do. If I did that, what would happen? Would the person there say, “We can't deal with it any more”?

David Wilson: If consumers face challenges in paying their bills, their first recourse is, of course, to their provider. The first port of call should be the energy retailers, which should be providing a quality service to customers who, for whatever reason, find themselves facing challenges in paying their bills.

Graham Simpson: I get that, but if they have not—

David Wilson: Companies have a duty of care to provide that service, which is important, and we advocate to make sure that that is as strong as possible. When that does not result in a full solution, there is a range of alternatives. People can, as you rightly said, go to Citizens Advice Scotland, and there are other advisers and support available.

As set out in the report that we will publish in the next few days, we support those organisations to provide the best advice to individual consumers, particularly during the cost of living crisis. We have supported initiatives to provide additional funding that the Government has taken forward to make

sure that Citizens Advice Scotland and other bodies can provide that advice on an on-going basis.

Graham Simpson: Sorry, but I will just stop you there. I am trying to work out how the system works now. If I went down to my citizens advice bureau and said, “Will you help me?”, would it still be able to help me?

David Wilson: Yes—absolutely.

Graham Simpson: The person would not say, “We can’t help you. You must go to Consumer Scotland.”

David Wilson: Definitely not.

Graham Simpson: Right.

David Wilson: We have a clear understanding with Citizens Advice Scotland that that is not the case.

Graham Simpson: So, if I needed help and someone to represent me, Consumer Scotland would not be the body to go to.

David Wilson: Yes. We do not see ourselves as a front-line consumer support organisation. It is within our remit to ensure the provision of advice, support and information to consumers, but, because of the legislation that set us up and the fact that there is a range of organisations that are already active and working well in the field, we are not a complaints organisation or a direct consumer-facing organisation.

10:00

Graham Simpson: Okay. That has cleared that up.

Consumer Scotland gets some money from a levy that companies pay, which, I think, amounts to about £1.5 million a year. Does any of that go to citizens advice bureaux?

Sam Ghibaldan: I can give you a bit more information about that. The levy is, in total, probably more than that, because it is split into different bits. There is the consumer advocacy bit, which we receive, and there is a consumer advice element, which goes to Citizens Advice Scotland, Advice Direct Scotland and the Extra Help Unit. I will explain some of the structure of that.

Citizens Advice Scotland and Advice Direct Scotland are, in essence, the first tier. If you go there with an issue, they will try to resolve it and will engage with the company for you. If they find a particularly thorny issue or something that is particularly problematic, they will refer you to the Extra Help Unit, which is a UK-wide expert organisation that is managed in Scotland by Citizens Advice Scotland. It can engage directly with companies or whomever it needs to in order

to resolve the issue. The levy funds both that advice element and the consumer advocacy element, which is what we receive.

Graham Simpson: So—this will be my final question, convener—are those bodies getting any of that levy money?

Sam Ghibaldan: Yes.

Graham Simpson: They are. I should have mentioned Advice Direct Scotland, because it also directly helps consumers.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I want to ask about a couple of issues. The first one is about investigations. David Wilson, you mentioned that you are continuing to develop the investigation function. Can you tell us where we are with that? Have any investigations begun?

David Wilson: A key part of the legislation that set us up included a set of powers to conduct investigations into businesses, sectors or practices that have the potential to cause harm to consumers. That is a key part of our activities and a key innovation—it is a new aspect of work.

We have scoped out the nature of what would be involved in conducting an investigation. We have taken advice from the Competition and Markets Authority, which is a UK Government organisation with a major investigatory and enforcement function. It was good enough to second a member of staff from its investigation team to help us to develop a set of processes and procedures to enable us to conduct an investigation. We have now developed that and put it in place.

One of the key lessons that the Competition and Markets Authority and a number of other organisations, including Trading Standards Scotland, were keen to impress on us was that, in conducting an investigation, it is really important to be clear on remit and process. There should be a due process with a start, a middle and an end. If we are using statutory powers of investigation, we need to be clear at the start about how those powers will be taken forward. That is what we have focused on so far.

We have not commissioned or initiated an investigation yet. We intend to at least initiate a preliminary stage of investigation during this year. The first criterion that we want to assess involves identifying a particular area in which we think there is the potential or likelihood of consumer harm, there is a need for greater understanding, awareness and intelligence, and there is the potential for us to develop an investigation that can deliver a real difference and can ultimately lead to policy change or, potentially, enforcement action by other organisations once it has been completed.

In a nutshell, we have completed the preparatory stage and are looking at the next stage of commissioning and initiating an investigation. It is very important that we are clear about processes before taking early action.

Gordon MacDonald: You have not carried out any investigations yet, but you are about to consider one. What triggers an investigation? Can the number of consumer complaints to partner organisations trigger one? Is there an area that you are pencilling in for investigation later this year?

David Wilson: That is one of the issues on which we have taken advice. We would not carry out an investigation into a particular or single complaint. That is not the sort of organisation that we are, but if there was a generic set of issues—

Gordon MacDonald: I am asking whether there is a number.

David Wilson: Indeed. If it came to light that there was a business sector, a business practice or a particular set of activities that was causing harm, that would be where we would want to focus our action. We do not have a shortlist yet. We are not in that business. In many ways, the challenge is not in finding an investigation but in honing a long list into a shortlist.

I reiterate that it is vital that, in any investigation, we make sure that our initial investigation is on the right topic and that we have and follow the right process. That is why we are taking a considered approach, rather than rushing to do it too quickly and too soon.

Gordon MacDonald: You have highlighted that you are a research organisation, so you have data-gathering powers. What have you done with those since the organisation was established?

David Wilson: I will ask Sam Ghibaldan and David Eiser to say a bit more about that.

I want to make a distinction. I was very specifically talking about our investigation function under section 4 of the 2020 act. That is investigation with a capital I. The organisation is very active in doing a large number of investigations, with a small i, and research on a wide range of topics. An investigation under the powers in section 4 is a slightly different thing.

Sam Ghibaldan: In essence, the key point is ensuring that we carry out an investigation effectively and thoroughly. We will take information from a number of sources—complaints data, economic data and a range of other things—and we will use that to, in effect, boil down the shortlist. We are looking at that work at the moment.

Does David Eiser want to add anything in relation to the process that we are going through

to understand how we need to carry out such investigations? We are clear that, to be effective, our investigations need to be robust, thorough and considered.

David Eiser (Consumer Scotland): The main points have been considered. I reiterate David Wilson's point about the information. There is a distinction relating to the types of information that we can ask for as part of a formal investigation. As my colleagues have said, we are in the process of finalising our scoping work. A large part of the scoping work involved working very closely with partners, such as the CMA, to give us a sense of what our investigations function will look like in broad terms and how we will resource that. We are about to begin appointing a head of investigations to take that forward. We are in the process of finalising the scoping work that looks in much more detail at how we go from a longer list to a priority list of topics for investigation. There is then a question about what information we will seek, using our legislative powers, when we undertake an investigation. Information is one part of the story.

If the question is about information more generally and how we access it, I would say that we use a vast range of information and evidence as part of our broader research programme. That includes developing economic models so that we can assess the impact of economic trends and different tariff policies on consumers; it includes a lot of our large-scale survey work to understand the views and attitudes of consumers on issues such as net zero, as we have been talking about; and it includes data-sharing agreements with organisations such as Citizens Advice Scotland and Advice Direct Scotland so that we can get a real-time picture of the issues that consumers are bringing to those organisations. We can use that picture to inform our wider work and our prioritisation of our investigations function.

Gordon MacDonald: What is the capacity of the organisation to carry out in-depth investigations? Could it do one a year or a couple a year? What is the situation?

Sam Ghibaldan: We have taken a lot of advice on that as part of our consideration, working with the CMA. The approach that we have decided to take involves building up: we will carry out an investigation, learn from that and use that learning to understand more about the skills and the type of evidence that we are dealing with. For the first few years, we will probably do one or two a year. Obviously, we can develop and build on that as we understand more. That is part of our considered approach. What type of skills are needed? What type of people do we need? What type of data are we dealing with? Another issue will be the amount of resource that we have, because the

investigations function is just one of several functions that we have. We will be recruiting in that area in the near future.

Gordon MacDonald: The other area that I want to ask you about is the duty that you have to establish and operate a publicly available database of recalled products. I was struck by the figures in your work programme for 2023-24, which states:

“Between April 2020 and April 2021, 69 per cent of consumers in the UK experienced consumer detriment. 36 million consumers experienced at least one problem with a product ... they bought or used in that period”.

What has happened with your duty to produce a database for recalled goods?

Sam Ghibaldan: Again, that is an active workstream that we are developing; obviously, we are still growing as an organisation. The Consumer Scotland Act 2020 placed a duty on us to ensure that a recall database was available. Since the act was passed, the Office for Product Safety and Standards has been established, and that has created a UK-wide recall database. Food Standards Scotland has also created a database that covers its areas. We are working with them on establishing what the scope will be: do we try to provide more access and links to their work—we have direct links on our website—or is there scope to provide something that is, perhaps, more consumer friendly? We have also been engaging methodically with the key people behind the amendments in the first place—Electrical Safety First. Douglas White might want to say something, because he spoke at its conference, last week.

Douglas White: I was pleased to speak about some of these issues at the Electrical Safety First conference, last week, in Edinburgh. The first thing to say is that recalled products are a very important consumer issue, as you rightly highlight in the question. By way of background, one of the things that we are doing as we develop our work over our first months is to think about what kind of principles framework we will use to say, “These are consumer issues.” Obviously, evidence base is critical to informing our recommendations and approach, but what do we mean when we talk about good consumer outcomes? As you will know, there is a long-established set of international consumer principles that cover a range of issues around access, choice, information, safety, redress, representation and so on. We are looking at how we apply those. We make sure that they are applicable to our work and use them to frame a lot of the work that we do. Clearly, a recall database aligns closely with key consumer outcomes around safety and redress: how the consumer gets something fixed if it has gone wrong.

Another important piece of work that is part of the legislation relates to increasing consumer confidence. One route to increasing consumer confidence is to give the consumer certainty that, if there is a difficulty or problem with a product that they have purchased, there is a way to have it resolved, and for them to be alerted to that. That is critical from a safety point of view, but it also goes back to our discussion about cost of living. When consumers are short of money and an awful lot of things, with pressures on their budget, having confidence that, if there is a problem with a product, they can get a resolution to it, is important.

10:15

As Sam Ghibaldan said, there have been changes in the landscape of existing recall databases. Since the Consumer Scotland Act 2020 was passed and the OPSS database was launched last year, at around the same time as Consumer Scotland was set up, part of our work has been to scope that out and say, “What might we do that would be additive in this space?” It is important that we, as a public body, think about what we might do that adds value to the work of others, does not unnecessarily duplicate or waste resources and, ultimately, achieves good outcomes for consumers. Engagement with ESF as part of the conference was a good listening opportunity for us to begin to hear more from others about what we could do in this space. That will be an important conversation for us to continue over the next year as we flesh out the options.

Gordon MacDonald: As a consumer, I sat yesterday and tried to find a product recall database. I found one, from Trading Standards Scotland. It highlighted 22 items, ranging from an air fryer to a storage footstool to a battery charger; those were only three of the 22 items that were listed yesterday. The public need one point of contact. They do not want to know that there are 14 or however many databases. They want to go to one place, and it has to be consumer friendly. You mentioned other databases, but typing “product recall” into Google does not highlight the databases that you highlighted. Secondly, they are not consumer friendly at all. If you are going to add value, I suggest that you do it in those two areas, but, for consumers in Scotland, the important question is this: when will you decide your plan of action, whether that is to link to other databases or have your own database, and when will that happen?

Sam Ghibaldan: You are entirely right on the points that you raise. A key issue for consumers in this space and many other areas around the landscape is simplicity: how do you easily find and

access what you are looking for? We are working with the OPSS and others, and we will take that work on over the next year. We do not have a timetable that says, "It will be decided by X," but it is a significant priority that we are working on urgently.

The Convener: Before I bring in Maggie Chapman, I will ask a brief question about online sales. Whether we talk about product recall or investigations, is there a difference in how you approach online sales? Do they bring added complications to the system for consumers, or is it pretty straightforward?

Sam Ghibaldan: I will take that. It is an area that we need to explore. I cannot give you an answer, but it is definitely a factor. As we move towards a circular economy and people using eBay, Gumtree and all those things, one of the key bits of functionality that a recall database needs to address is how people can easily and simply check that what they are buying is not recalled. In a way, the online sales element of it should mean that people are able to check easily. If you buy from an established retailer, you would expect it to have withdrawn from sale anything that should have been recalled. If you buy on Gumtree or eBay, that is much more problematic. There is certainly something important in that space. With the reuse and recycle agenda, we expect more of that type of activity, so, for consumer accessibility, a recall database needs to be able to do that.

The Convener: That is helpful but, apart from recall, are you as an organisation looking at online sales of things and of services or—I have an issue with this—tickets for events and how consumers are treated in an online space? Is it different from the traditional way?

Sam Ghibaldan: We could look at that as an organisation. As David Wilson mentioned at the beginning, in some ways, the Consumer Scotland Act 2020 gifted us an incredibly large remit. We cover the entire public, private and third sectors and the consumer actions in that space. Obviously, we have to prioritise because we are a small organisation, and we go through a process with a work programme each year. We did it for the first time this year, and we will learn from that and develop it further next year, drawing on the types of information available. Douglas White could tell you more about the prioritisation process. Certainly, we can feed online sales into that process, and they could be part of the programme as we try to identify whether there is a particular issue or need that we should investigate. Certainly, there are known issues in that space. One that has come up recently is dynamic pricing on websites.

The Convener: Yes. I have a real issue with dynamic pricing.

Sam Ghibaldan: So do I. When I tried to buy Bruce Springsteen tickets, I was not very happy about that. Douglas, will you talk more about dynamic pricing?

The Convener: The Competition and Markets Authority has looked at dynamic pricing, which is an area where reserved and devolved areas cross over, so it is a question of what is in the capacity of Consumer Scotland to do. It is an area of ticket pricing that has moved on, and it is the mainstream ticket providers that now, in my view, exploit fans with dynamic pricing. However, that is for another day. We will move on.

Maggie Chapman (North East Scotland) (Green): Good morning, and thank you for joining us today. I want to explore the issue of vulnerable customers and consumers a bit further. Obviously, they are a statutory focus of your work, and you have clearly identified the issue as a cross-cutting theme. You have spoken a little about the challenges and issues. You said that you took a broad definition of a vulnerable consumer, and the definitions in the 2020 act refer to people who have

"fewer or less favourable options"

and are

"at ... greater risk of ... harm".

How do you define vulnerability? How do you identify the vulnerable consumer?

David Wilson: As I said earlier, that is a key part of our work. The definition that we use is very much built on the detailed and far-reaching definition in the legislation. You have already touched on it. It provides a helpful intellectual framework for thinking through the challenges of consumers in vulnerable circumstances. It includes a reference to a consumer being vulnerable through "circumstances or characteristics". That is an important distinction, and it leads you down a number of areas to look at.

We use the definition that is set out in the legislation. When it comes to putting that into practice, we like to think of it like this: we are all, potentially or in reality, consumers who, at some point or other, are likely to find ourselves dealing with a particular business practice or circumstance that makes us vulnerable. That is almost the bedrock of why we have consumer legislation or why we have organisations such as ours, the Competition and Markets Authority and others. This is neither a minority of consumers nor a fixed minority of consumers; it can be a moving picture.

That said, there is clearly a range of representative types, if I can use that phrase, of consumers who find themselves in vulnerable circumstances for much of the time. That is where

we want to develop a particular area of focus and ensure that it is systemically part of the whole organisation's activities. Whether we look at a cost of living issue or a net zero issue, the interests of the consumers involved and their circumstances must be at the heart of what we do. That is why one of the first things that the board did was to ask Angela Morgan, one of our board members, to lead a process. She put together a short-life working group of people with expertise in this area to help to develop our thinking and approach to consumers in vulnerable circumstances. That is being further developed into an expert advisory group. It will be a mechanism by which we ensure that the whole organisation and the board have access to expert advice in this area. That, in turn, will ensure that we can bring in not just expert advice but lived experience, as well as having a more immediate focus on not just what we may think is in consumers' interests but what consumers in vulnerable circumstances say is in their interests, based on their lived experience. That is the mechanism for doing that.

Before the end of next month, we will publish a scoping study that we have undertaken and a literature review of all things about consumers in vulnerable circumstances. An example of the particular work that we have taken forward is work on issues around consumers with disabilities who may find themselves in vulnerable circumstances. Douglas White can give you a bit more detail on that.

Douglas White: Thanks very much for your question. We have been looking at the organisation's structure and its whole focus, and David Wilson spoke about that. We are also looking at the particular markets that we work in and at how the nature of vulnerability that people experience plays out differently in different markets. As David mentioned, we have imminent reports on our energy market work that look at the particular experience of disabled consumers during the energy crisis, and there are proposals and recommendations on what more can be done to support that group of consumers.

We also have other work in our work programme for this year. I will give you a flavour of how some of that plays out in practice. We have a planned piece of postal services work this year to look at how to improve access to postal services for consumers who have no fixed address. That is a different type of vulnerability that people are experiencing. We also have a planned piece of work to engage on the forthcoming changes to legal regulation in Scotland. That takes a much broader definition, or has a broader understanding, of what vulnerability means, with the understanding being that many, if not all, consumers are likely to have some degree of vulnerability when they engage with legal services,

because, at the particular point in their life when they need to engage with that type of service, it is often in circumstances that may be upsetting or difficult for them. Many consumers will therefore experience a degree of vulnerability when engaging with that service. We will also think about that as we take forward the work.

Maggie Chapman: Thank you for raising the legal services issue, because that will increasingly become something that we need to consider. You talked about vulnerability by characteristic or circumstance. Often, there are intersecting or compounding factors involved. Douglas, you mentioned that different people will have different vulnerabilities depending on the market that you are looking at, hence the importance of the cross-market work that you do. How do you interpret potentially intersecting vulnerabilities? Does that lead to policy change, advice change or that kind of thing?

Douglas White: That is a good and helpful question. It is something that we will continue to build up as we develop our work as an organisation. Take, for example, the work that we are doing on energy markets, in which we have been looking at the energy crisis over the past six months. The energy tracker survey that we commission and run breaks down the demographic data by different groups of consumers and looks at the different experiences that they have had during the crisis. One thing that we have been looking to bring together is how the intersection between consumers who are disabled and consumers who are on low income plays out. We will do further analysis and work on that to understand what it looks like. In that context, there are places where characteristics and circumstances intersect. One group that we will look at in that piece of work is consumers who rely on energy in order to charge medical equipment, for whom the circumstance of high energy costs intersects with their individual circumstances. That work will tease out some points about that.

10:30

I definitely want to reiterate the point that I made earlier that, as a cross-sector consumer body, only a year on from setting up the programme, we are conscious of the fact that, as we set up these individual pieces of work, we need to have the internal systems and processes in place to draw out the learning from different markets so that we understand how those intersectionalities play out in different markets and then make points and recommendations.

The affordability work looking across markets is an example of that. We look at how different markets decide which groups of consumers might benefit from reduced costs, how that is

determined, why that might vary between markets and the reasons for that and whether there is learning that can be drawn between markets so that we address that intersectionality and take a consumer-first approach rather than a market-first approach to answering those questions.

Maggie Chapman: That is very helpful and interesting. Following the discussion that we had earlier, it is clear that there is a key role for collaboration and partnership working and the connection with the expert advisory group and drawing in lived experience from that. For example, would Advice Direct Scotland come to you and say that it is seeing an increasing number of calls, queries, complaints or questions on a specific issue? Would that allow you to track into either the expert advisory group with lived experience or your wider policy research?

David Wilson: That is very much the approach that we want to take. We want to have those collaborations that can feed information to us and vice versa. One thing that has come through from the advisory group on consumers in vulnerable circumstances and the consumer network is a strong appetite from sectoral regulators and organisations in the energy sector or in transport or financial services, which I mentioned earlier, to recognise that the consumers they are interacting with have a complex set of needs. They need to develop mechanisms to be able to interpret those needs and act on them. Increasingly, for example, the FCA is seeing financial services more broadly. Most scams relate to money in some way or other, and most challenges that other regulators face—energy bills were mentioned earlier—are, in many ways, debt or money issues that might escalate into wider financial services challenges or make people more vulnerable. I think that there is an appetite among the sectoral regulators and the sectoral interests to learn from that wider experience and, as Douglas White said, to look at things from the point of view of a consumer who is in vulnerable circumstances as opposed to from their sectoral and business point of view. That is very positive, and we can greatly assist with that.

Maggie Chapman: I could also add my pitch about tickets and the recall database that Gordon MacDonald mentioned. I have had an extraordinary number of pieces of casework about refunds of credit from energy companies, and it just seems incredibly difficult.

The Convener: To add to Maggie Chapman's point, Audit Scotland, as an organisation, consults MSPs about its work programme through the Public Audit Committee, and we are asked for our views on the work programme. I do not know whether that is something that Consumer Scotland would consider doing in the future.

Sam Ghibaldan: We would be very happy to do that. We put the work programme out for consultation in January, and I am sure that we sent that to the committee, but we would be happy to find a more formal or informal way of doing that.

The Convener: That might be helpful. MSPs have a lot of knowledge on consumers, and an approach through the committee similar to what Audit Scotland does might work.

Sam Ghibaldan: We are determined as an organisation to be evidence led. In discussions so far, we have touched on the fact that we draw a lot of data and information from advice bodies. We have MOUs in place with Citizens Advice Scotland and Advice Direct Scotland. We have close working relationships with, for example, the Financial Ombudsman Service and Home Energy Scotland, and we get data and information from those types of bodies. David Eiser may wish to say more about that. The type of case load that MSPs have will be important, as well as the economic analysis, in the consumer research that we do. We try to bring all those things together in deciding what should be in the work programme. It is a kind of triangulation.

David Eiser: I do not have anything to add, other than to say that the more sources of evidence that we have, the better. We welcome any ideas for further sources of evidence on any of these issues.

The Convener: That is great, thank you.

Sam Ghibaldan: I have another thing to mention, convener. We talked about the Extra Help Unit earlier, which is the second line of referral. Consumers cannot go directly to the Extra Help Unit; they have to be referred. I would need to check, but I am almost certain that MSPs are one of the groups who can refer cases to the Extra Help Unit.

The Convener: Thank you.

Michelle Thomson (Falkirk East) (SNP): Good morning. What do you think is the first thing that I noticed about you when you first came into the room this morning?

Sam Ghibaldan: We are all men.

Michelle Thomson: Yes, you are all men. Off the back of that, I thought that I would just check how representative the organisation is. We can see that 20 per cent of the people here today are women—Susan Bomphray is online and has not had a chance to speak yet. I looked at the board, and I see that there is 25 per cent representation by women. Then I looked at the membership of the committees and saw that the risk and audit committee, which is the most active one, is 70 per cent men. Then I searched your strategy for the terms “sex”, “gender”, “women” and so on, and

there was no mention of them. I also looked at your work plan, which has three mentions in passing. So my question is: are you completely or just mostly gender blind?

David Wilson: I would be the first to acknowledge the attendance here today and, likewise, the gender imbalance on the board. We are acutely aware of that. I will make a couple of points in response.

First, the Government will shortly, with our support and my participation, start the recruitment of a fifth board member. The legislation allows for that full complement. Certainly, one of the things that we are actively seeking and will encourage is applications from a wider and more diverse group than the current board. That is an opportunity that we want to work hard on to realise.

On the advisory groups, you are correct about the board members who are, inevitably, on the audit committee. Under Angela Morgan's leadership, we have sought to make sure that the short-life working group and, going forward, the expert advisory group bring greater diversity into the organisation. That has been a key part of our consideration of how we identify people to be part of that group. We have brought in that wider diversity of views in an active way. That will not be visible from the report, so I am not trying to say that you have picked up things wrongly.

I discussed the composition of the staff yesterday with Sue Bomphray, who is best placed to give you a more detailed answer on the structure and diversity of the organisation. It is probably best to cover that first, and then perhaps come back to the point about the strategic plan and other plans. I will pass to Sue to give an update on the organisation.

Sue Bomphray (Consumer Scotland): As David Wilson said, we know that we have some issues—as most organisations do—in encouraging the organisation to be a place that values diversity of thought and characteristics and understands the value that that brings. I am the only female on our executive team, as you have already identified. The next level down is our senior leadership team, which flips to 86 per cent female—six females and one male. More broadly, across the organisation, we are roughly 53 per cent female to 47 per cent male.

Diversity across all the underrepresented groups and protected characteristics is equally important. We have monitoring systems in place to make sure that, as an executive team and board, we understand the make-up of our staff body. We also constantly challenge ourselves to see whether we are attracting a diverse range of applicants to our roles. We use the civil service recruitment service, which manages all of our

recruitment. That is helpful. It operates in line with the civil service principles and includes lots of inclusive and accessible processes, including reasonable adjustments. We are signed up to the disability confident scheme and other things, such as the guaranteed interview scheme for veterans. We can never sit back and say, "We've done it"; we need to constantly keep our minds on it as we go through the processes.

Michelle Thomson: Thank you for that, both of you.

Susan, I will stay with you for the time being. Given that, often, women are the most vulnerable of a variety of groups—we talked about vulnerable consumers—which specific women's organisations have you consulted to get those unique insights? What specific policies have you developed to make sure that you target 51 per cent of the population effectively? Could you talk me through those questions?

Sue Bomphray: In terms of policy making and the evidence, I will defer to Douglas White and David Eiser, as they are involved in that evidence gathering. From a recruitment perspective, we have challenged ourselves to think about whether we are advertising in all of the right places for staff—

Michelle Thomson: I thought that you were director of policy, Susan. I see that your title on screen is "director of policy".

David Wilson: Sue is our director of operations. There was a bit of a mix-up with the titles.

Michelle Thomson: I apologise, Sue. That is why I was wondering why you were passing that question to David Eiser.

Sue Bomphray: Do not worry at all. From a recruitment perspective, we try to pick organisations. When we advertised for our chief executive, we went to organisations such as Goodmoves, which perhaps appeal to a different range of people than those who use an executive search agency. I will defer to Douglas and David for their expert views on the research and policy work.

David Wilson: I will ask Sam Ghibaldan to cover a bit more on the policy side, but I will complete the point about recruitment. I am not seeking to deny some of the key points that you made, but, in the development of the organisation and the build-up of selection panels for the chief executive and the forthcoming panel for the board, we have followed best practice and sought to encourage as wide a range of applicants as we could. We were acutely aware of the gender balance of the executive team when we made the appointments. We have further work to do when it comes to the board and making sure that diversity

issues are taken fully on board across the organisation, but it is something that we are acutely aware of.

Michelle Thomson: There is certainly much further to go.

Before I move on to my main area of questioning, I want to ask about your research—David Eiser may be able to come in on this. What consideration have you given thus far to how specifically your research in whatever area you are focusing on will make sure that it pulls in the unique insights of women? I take it that you are routinely disaggregating your data set by gender. I see nodding; it is heartening to know that you are doing that as a matter of routine.

I have a few questions about how your approach differs for small businesses, to which, I know, you offer a service. In some respects, the issues that are experienced by small business owners are similar to those experienced by other consumers. We have already touched on some of those today. What is more interesting is where small business owners are considered to be equal to large organisations but do not have the same power. I am thinking of issues to do with commercial contracts in financial banking, where a microbusiness is considered in law to have the same weight as NatWest. What are the similarities in the service that you offer to small businesses, and where are some of the advocacy differences?

Sam Ghibaldan: I will start and then pass to Douglas White. We have to start with the legislation, which gives us a definition of “consumers” that includes small businesses. As you know, small businesses are generally businesses with anything up to 49 employees. One of the key reasons that small businesses are included in that definition is that they often have similar behavioural characteristics to individual consumers, for exactly the reasons that you identified: they do not necessarily have the legal clout or other aspects of big businesses that would help them to engage, and their purchasing is often very similar to that of individual consumers.

10:45

In essence, small businesses are included in our approach to our work programme. Our work, for example, on the affordability of postal services and parcel surcharging will be very relevant to small businesses. Thinking about their needs and characteristics within that is part of our work programme. We will also particularly focus on small businesses in relation to the review of the energy market and electricity market arrangements. Their requirements will be part of our approach to that.

As you know, there is a levy on non-domestic activity in the water market in Scotland. The levying role is carried out by providers that are licensed by the Water Industry Commission for Scotland. There are around 150,000 non-household customers in the water industry in Scotland. We are playing an active role, along with the Water Industry Commission for Scotland, in trying to develop a code of conduct. We chair a working group, in which the various sector players are involved, on developing a code of conduct for the non-domestic market so that small and, indeed, larger businesses can get the quality of standards of service and billing that they require. We are actively working on that with the Water Industry Commission and looking to develop a market health-check process alongside the code of conduct so that the progress made by the licensed providers on the non-domestic companies can be scrutinised as we go.

Douglas White: Sam Ghibaldan has covered most of the points, but I will relate our approach back to Michelle Thomson’s question—thank you for that question.

As Sam described, and as you put it in your question, the experiences of small businesses are very similar to those of domestic consumers, therefore our work covers them. Again, as you highlighted in your question, in areas where the market operates differently for small businesses—water is a good example of that—we need to make a different intervention to look at the needs of small businesses. In many ways, our approach has to take into account the circumstances in that particular market, and we therefore have to think about what intervention we are operating and how well it serves the needs of small businesses.

At a slightly more collaborative or strategic level, we have talked a few times today about the consumer network for Scotland, which we have reconvened since Consumer Scotland was established. Members of that network include UK-wide regulators such as the Office of Communications, Ofgem, the FCA and the CMA; advice agencies such as Citizens Advice Scotland and Advice Direct Scotland; and enforcement bodies such as Trading Standards Scotland and local trading standards services. One area where we identified a gap in membership was specifically small business representation. We approached the Federation of Small Businesses and invited it to join the network. We are delighted that it has done so. In formulating that network, one of our key initial steps before having our first meeting was to have bilateral conversations with all members to ask them to share their priorities for what they want the network to achieve. We are trying to bring other key stakeholders into the conversation; that will be a key part of our strategic approach.

Michelle Thomson: I want to confirm my understanding before we move off this point. You have a consumer-first approach, and then you think about where the linkages are that bring in similar issues for small businesses. That is how small businesses are brought in, rather than it being the other way around. Have I got that right?

Sam Ghibaldan: The way that we approach it is that it is consumer first, but that consumers can be individual consumers or small businesses. We are seeking to get organisations—regulators, companies and the Government—to think of their products and services and the markets that they operate in from the outside. We want them to look at those markets from a consumer perspective and say, “Is this working? If I were a consumer, how would I interact with this? How easy would it be for me to engage with this? Does this provide the support that I would require?”.

That is a really important task for us. We think of consumers as having been on a journey for 60 years now. John F Kennedy first talked about consumer rights in the 1960s; in the 1970s, consumer protection was the zeitgeist, if you like, of consumer thinking; in the 1980s, it was about consumer choice; since then, issues such as vulnerability have come much more to the fore. The way in which the Parliament has positioned Consumer Scotland, by giving us a remit across all three sectors—public, private and third sectors—enables us to be part of a new evolution in consumer thinking from consumers playing almost a passive role in markets and services to their being active in shaping them. A key aspect of how we see our role is to go to consumers, carry out consumer research, look at the economic analysis and then say to regulators, the Government or companies, “This is how what you are doing looks, this is how consumers experience it, and this is where we think you need to change”. Small businesses must be central to that.

Michelle Thomson: My last point, convener, is to ask whether Consumer Scotland has consulted two further bodies. Have you consulted the Financial Ombudsman Service for small and medium-sized enterprises? Although it was largely considered not to have done a great job in representing SMEs against the power of the banks, it should still be consulted. The other body that it might be useful to consult is Women’s Enterprise Scotland, which has a unique data set of the challenges that women in business and women generally face.

Sam Ghibaldan: Those are helpful suggestions.

Colin Smyth (South Scotland) (Lab): Good morning to the panel. The 2020 act creates the consumer duty, which is, obviously, a duty on public bodies to have regard to the impact of their

strategic decisions on consumers. To date, ministers have not designated the public bodies, although they have consulted on the list. Will you update the committee on the development of the consumer duty and the likely timescale for its implementation and say a bit more about your role in overseeing it?

Sam Ghibaldan: I will start and then pass to Douglas White, because he has been directly involved in discussions with the Scottish Government on that.

As you said, the Government has yet to designate the bodies, but we expect that to happen in the next few months. Obviously, it is not up to me to set timescales for the Government. Our role is very much to do what is set out in the legislation, which is to issue guidance to public bodies on the way in which the consumer duty will operate.

There are considerations in that for us. We will issue the guidance. We have been through a process: somebody has scoped out how it will work. We have looked at the guidance that was developed on other, similar duties, such as the fairer Scotland duty, and at the support, advice and help that public bodies have needed to implement it. We have a context in which to develop the guidance; we will not make it up from nowhere. We are taking an evidence-based and considered approach to this. We will shortly begin to develop and write it up. As part of the process, we will engage with some of the public bodies concerned.

Douglas, do you want to add more?

Douglas White: You have covered most of the key points. Key for us is that we think about how we can effect our role most efficiently to help to enable public bodies to deploy the consumer duty in a way that will improve outcomes for consumers. As Sam Ghibaldan said, and as set out in the Consumer Scotland Act 2020, our role is to provide guidance to public bodies to help them do that.

A lot of our thinking to date has been to understand what type of guidance is likely to be most useful to public bodies when they take those decisions. As part of the detailed scoping work that we have undertaken, which Sam mentioned, we have looked at how the implementation of other related or relevant duties, such as the fairer Scotland duty, has worked in practice. I have spoken to those who were involved in that process to understand how they approached it, what lessons they learned, what they recommend and what they suggest doing differently.

As we approach the development of the guidance, one of the key things that we are thinking about is how we involve public bodies in

that process so that we are testing, as we develop the drafts, to make sure that it will work for them and be useful to them. We want to consult widely on that guidance once we have developed a draft, and we are already in discussion with the public bodies that will apply it. We then want to refine and improve that so that it is really focused on how to help to enable public bodies to achieve better outcomes for consumers. We are being really thoughtful about how we make the guidance as useful and as practical as possible for public bodies, recognising the range of other questions, challenges and pressures on their time and resources when taking strategic decisions.

Colin Smyth: Is that guidance likely to be statutory?

Sam Ghibaldan: Yes, it is set in statute. We have a statutory function to provide that guidance.

Colin Smyth: Okay. You have a statutory duty to provide that guidance, but I am wondering how enforceable the guidance will be. There is a difference there.

Sam Ghibaldan: We will issue guidance. I should say that it has to be approved by ministers. The duty is to have regard to the interests of consumers in taking strategic decisions, and we do not have an enforcement role in that space. If public bodies are not following the guidance, or if there is a view that they are not following it appropriately, they will need to justify that. It will be for Parliament, the committee, the Government and us collectively to make clear that public bodies are expected to apply that.

Colin Smyth: We could have a long debate about the term “have regard to” in Scots law. How do you, as a body, avoid this being a tick-box exercise?

David Wilson: You have identified the process that we are going through. A duty or an obligation on public bodies to complete a tick-box exercise, as you called it, is not our aspiration or ambition, and I do not think that many public bodies would welcome having to complete something like that.

There are two points to reiterate. The first is that there is no enforcement mechanism set out in the legislation—we do not have an enforcement power. By going through a process of consulting on the meaning of a consumer duty, setting out guidance on how organisations should respond to it and making sure that that is in tune with best practice across public bodies, we are aiming to use our influence so that others can act on enforcement, even in an informal sense, and encourage public organisations to make sure that they respond to it. There is an awful lot that we can do without formal enforcement powers.

Colin Smyth: Will you report on the implementation of that duty? I am not suggesting that you name and shame people who fail to implement it, but will you report on how effective it is, because, presumably, that will be one way to encourage stronger enforcement?

David Wilson: Again, the legislation does not specify that, but we would welcome a role in that regard. We are the organisation that is providing guidance to other organisations, and we want that to be a constructive role in which we help organisations to think through the issues. Likewise, we would welcome a role in monitoring and reporting on implementation activity. It is not specified in the legislation, and we have not yet been asked to do that by the Government, but were the Government to ask, we would welcome doing it.

I am keen to make a second point building on that. The consumer duty has the potential to be a really important addition to the public service landscape in Scotland. As Douglas White said, there are issues, and we need to make sure that people understand how this fits with the fairer Scotland duty and with local government’s duty of best value. How those duties interrelate is important, and I would expect the senior leadership of public bodies to want answers to such questions. That is one of the things that the guidance will cover.

11:00

Building on our discussion about the broad definition of “consumers”, whether consumers in vulnerable circumstances or small businesses, our encouraging and empowering public bodies to ensure that they are really thinking through how their services and strategic decisions impact on small businesses and a variety of consumers is a powerful discipline and enabler. If that is done right, we think that it can be a major enhancement in ensuring effective service reform in the public sector in Scotland.

Jamie Halcro Johnston (Highlands and Islands) (Con): Good morning, panel. Sam, you said that because Consumer Scotland has a large remit, you have to prioritise. Is the remit too broad?

Sam Ghibaldan: You can look at that in two ways. It is certainly a very broad remit, and we do have to prioritise, but the breadth of the remit gives us real advantages. Consumers operate in the private sector, the public sector and the third sector. They buy energy, buy water and go shopping for food, and all those things intersect. Think about energy policy, for example. There is a lot of public policy in that space that deals with energy efficiency and the development of

regulation. There are market issues around companies and regulation. Our being able to have a picture of how consumers are able to journey through that, and how all those different aspects affect consumers, is really important.

There is an overarching perspective to this, so, no, I do not think that the remit is too broad. I do think, however, that it means that we have to be very clear about how we prioritise. We have touched on consumer duty, investigations and recall. Those are, in some ways, additional to the function of consumer advocacy and advice. We are doing a lot of research and economic analysis, so how we bring all those things together is key.

Our approach is to build, develop and grow. We are not running at this really fast; we want to get it right. We are therefore taking a considered approach to the way in which we develop, through building our evidence base, which will help us prioritise. We will be able to identify the key issues that need to be investigated. There will always be an element of judgment in that, and we hope that, as our expertise develops and grows, it will help us reach decisions.

Jamie Halcro Johnston: You are talking about growth. Given the circumstances, there is demand in a wide variety of areas. How do you see that growth happening? How will you resource it, budget-wise and people-wise? Do you see that being an increasing burden on how you do things?

Sam Ghibaldan: Given the current public finance context, I would be a very brave person to say at this point that we expect to receive more funding. We have about £2.4 million in core funding this year from the Scottish Government. We also have about £1.3 million from various levies. That is sufficient for where we are at, I suppose.

We talked about the investigations function. The funding for that should enable us to carry out the baseline of investigations. If that were to grow in the future, we might need more funding or to take a decision to do less of something else. Similarly, we have some baseline resource for the consumer duty. If that grows into a very large task, and if we carry on getting into that evaluation and monitoring space as well, it might be a different situation. There are other areas to consider. For example, in the Energy Bill that is before Westminster, a heat networks levy is to be created. If we were to move into that space, that would be another area for which we would need to have additional funding.

Yes, we may grow. I do not expect massive growth, but the more we know about our role, the more we can make sure that we grow appropriately rather than for the sake of growing. Achieving best value for the public purse is clearly an important factor here.

Jamie Halcro Johnston: One of our concerns when we were considering the bill was the potential for duplication—as my colleague Graham Simpson said, there was already advice being given. Have you seen a contraction in other parts of the advice sector, where some of their responsibilities are now with you? What has been the impact on the wider sector?

Sam Ghibaldan: Lots of other bodies, some of which we have mentioned today—Advice Direct Scotland, Citizens Advice Scotland and Home Energy Scotland—provide advice and information. Following consultation on our interim strategic plan, we have taken the view that we should not try to duplicate that work and that we should not get into direct advice provision to consumers. There are other bodies that do that very effectively. We will try to work with them to ensure that consumers get the information, support and advice that they need, identify any gaps and look at where we can help the sector to collaborate in order to improve the quality of advice, for example. That is one of the outcomes of the network that we have.

Jamie Halcro Johnston: Are you confident that you have brought something new to the sector and that what you have offered in one year and, looking forward, what you will offer is new and different and would not have been there without you?

Sam Ghibaldan: Absolutely, because we are very much becoming a statutory focal point. We have the statutory authority and the reach across the sectors to bring together information and data. We have developed the new analysis, research and investigations directorate—David Eiser's unit—which looks to bring economic analysis into this space really thoroughly, probably for the first time, and to make sure that we have that expertise in-house so that we can apply it to the issues that we need to, as and when they come up. We have been doing the same with consumer research and data intelligence and analysis.

Jamie Halcro Johnston: As David Wilson said, you are not public-facing, but public awareness is important. Is there public awareness of the organisation and an understanding of your role? Do you get contact from individuals that you then have to put to other people? Gordon MacDonald talked about the multiplication of databases. Is there an understanding of what you offer and how you offer it?

Sam Ghibaldan: We are in the early days in terms of public understanding. The recall database is a very interesting point, because, depending on how we develop it, it may become a point of public contact or focus. We also support other organisations to engage with the public. For example, at the end of last year, we funded the

trading standards scams awareness campaign, which is currently out and about. There are videos and adverts to do with that. We also support and fund Citizens Advice Scotland's big energy saving network and the big energy-saving winter campaign, for example. We are in that space, but we are not on the front line. As you say, the recall aspect might be different.

John Mason (Glasgow Shettleston) (SNP): As I am a substitute member of the committee, I am perhaps less familiar with some of this than some of my colleagues. It is interesting, however, that, having listened to the questions, I am in some of the same space. The question that I was going to ask you was, if you had not existed for the past year, what would the difference be? However, I am also open to hearing from you that that is an unfair question and that I should really wait 10 years and then perhaps ask what difference you have made. Is that an unfair question?

Sam Ghibaldan: No, it is not an unfair question. One way of putting it is that it is a question that comes with a qualified response. I have been involved in various consumer roles for a while, and, often, change takes time. Five or six years ago, I was involved in some research on the way in which consumers are able to access the vulnerable consumer registers that are operated by organisations such as Scottish Water or the energy companies. They have lists of vulnerable customers whom they contact in emergencies or to whom they need to provide particular support.

The process for getting registered is complex. One of the recommendations from that research was that there should be a single point of registration across all the different utility companies so that consumers have to register as a vulnerable consumer only once. That was really well received by the different sectors and the Scottish Government at the time, but that register and website have existed only for the past couple of years. So, it can take time to achieve change.

In some of the work that we have done this year, you can see that we have begun to achieve change. Our input into the Ofgem code on prepayment meters is an example of that. We have also had early positive signs that some of the issues that we have been advocating on, such as the way in which consumers who are in debt in the water sector are being treated, will be addressed, although that is not yet finalised. We can see that we are starting to make quite a significant impact, but that will grow over time.

I hope that, in a year's time, we will be able to point to a lot more. We should be able to point to the fact that we have an investigation under way. In the next small number of months, we will publish our first significant net zero research, for example. We very much want to be in that space.

In essence, consumers are essential to the net zero transition, because so much of it now is about consumer behaviour—the way in which people interact with their energy systems, their homes, transport and food, and the choices that they make. For the net zero transition to succeed, it needs to be easy and accessible for consumers to engage in it, and they require support and information to do that. That will be a key role for us, and I hope that you will start to see it developing during the next year, along with some of the research that we will publish in that space.

John Mason: As I understand it, you are working on having a performance measurement framework that we will see in the autumn. Is that the case? Really, that will be when we can start measuring how you are doing. Is that fair?

Sam Ghibaldan: Indeed.

David Wilson: That is right. As Sam rightly said, we are confident that we are making an impact already, but there is clearly more to come. We have set out a number of those areas this morning, one of which is publication of a more detailed set of key performance indicators and measures of our impact. If you spend a bit of time thinking about this, you realise that measuring the impact of an advocacy organisation is not entirely straightforward, which is why we are taking advice.

John Mason: Citizens Advice can say, "We have saved people £21 million this year, and here is a definite figure".

David Wilson: Or "We have dealt with X phone calls", or "We have dealt with this". Those are powerful and important measures, but we probably do not have them. However, we feel that we are making an impact, and there are mechanisms for measuring that impact, which is why we are taking forward that approach.

In addition—to think through your point about asking that question in 10 years' time—the Parliament rightly set us an objective sooner than that. One bit of the legislation states that there will be a formal review of how we have performed and what our impact has been after three years. It is in the legislation that we should commission and procure an independent assessment of our performance. Partly because of that and partly because we would be doing it anyway, we want to be in a position after that three-year period—as and when an independent assessment is done—where we can evidence and document the impact that we have had. That is the horizon on which we want to build from our initial impact.

Alongside that—this is something that we have not had the chance to mention this morning—the legislation sets out that we will publish what is described as a consumer welfare report, which is almost like a state-of-the-nation report on the

experience of consumers in Scotland, what the challenges are and the evidence of whether the situation is getting better or worse. That will be very much the culmination of much of the research and evidence work that we are taking forward. It is on a similar timetable. In part, we have spent a lot of time creating the organisation and making this initial impact, but we very much have that three-year horizon of a performance report and a consumer welfare report to make sure that we are absolutely clear that we are making an impact on that timetable.

11:15

John Mason: I am a great believer in taking a long-term view of things, rather than short-term views. I have looked at your website: you have done a couple of reports on the impact of the cost of energy. That is a crowded space—so many people are commenting on the cost of living and the price of energy. Like my colleague Gordon MacDonald, I looked on Google. I looked up “prepayment meters Scotland” and, under that, I got Ofgem, Citizens Advice, MoneySuperMarket, the Enfield Poverty and Inequality Commission and *Which?* magazine, which comes in to me every month. It seems to be an incredibly crowded space. Perhaps I should say that I have a prepayment meter; it is a good thing. Prepayment meters help people budget when they are on limited incomes, which is why I started with it. I appreciate that you have been pushing for them to be dealt with more fairly so that people do not pay more, but my colleague Anne McLaughlin and so many other people are in that space. I am struggling to see what you add to that.

Sam Ghibaldan: You raise a useful and important point. I will stress a couple of things. We have funded work in the energy consumer space through the levy and have a statutory role in that regard, but it is very much a space in which we work jointly. We need an evidence base. As you have identified, there are a number of organisations such as CAS and *Which?*, and we draw evidence from all of those in developing our reports. That is one of the things that we did in the Scottish energy insights and co-ordination group: we drew evidence from all of those organisations, and we became the focal point for some of that work.

It also goes back to the point that Jamie Halcro Johnston made about duplication. It is not in the interests of consumers for us to duplicate things that have been done elsewhere to a perfectly adequate standard, and we are mindful of that when setting our work programme. We are aware of some of the issues that have been raised this morning, and we are aware of other people doing some of that work. One of the criteria in our

prioritisation framework is this: are there other people in this space? Is there something that we can usefully add or not? It is certainly one of the things that we take into consideration.

The Convener: Thank you very much. That brings us to the end of this morning’s session. I thank all the witnesses for the evidence that they have provided us with. I am sure that this has been the first of more sessions that we will have together. Thank you for your time. We now move into private session.

11:18

Meeting continued in private until 11:40.

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