



# Unit A

## The consumer protection landscape

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## Introduction

The law gives consumers rights when they buy goods, services or digital content (DigC) and requires businesses to trade fairly. Traders are often well trained in the art of selling and some products are becoming more and more complex, making life for consumers potentially quite intimidating, so to counteract this potential inequality of bargaining power consumer protection, or fair trading laws exist to try and even out the situation. The Citizens Advice service (Citizens Advice and Citizens Advice Scotland) is funded by government to play a significant role in delivering consumer protection, and works alongside many other organisations that provide a service for consumers or businesses. Consumer service advisers have important roles, letting consumers know about their rights and gathering information on behalf of local authority (LA) Trading Standards services (TSS) and other partners to enable them to seek compliance with the law.

A consumer (C) could be seen to be on a journey, as indicated by the boxes below, and the units will cover the various stages on this journey from what may be required before buying anything, right through to the possibility of taking a trader (T) to court for breaching the law and enforcing a judgment when that T does not comply with the court's decision.



Following the consumer on this journey will involve considering: how consumers and traders enter into contracts, what issues might arise when those contracts are not performed properly and how the parties could try to sort their differences out, with the ultimate solution of going to court. Table A1 indicates which units cover which of these areas and table A2 explains briefly some of the common phrases and abbreviations used throughout the units. The basis of the consumer's rights and the trader's obligations can be found in the law of the European Union (EU) and also that of United Kingdom (UK) so there is discussion of some of the more relevant principles that apply throughout the various units.

**Table A1: Unit coverage of the different consumer journey stages**

Stage of consumer journey	Relevant units
1. Pre-shop	All units - <b>A</b> (Landscape), <b>B</b> (Contract Law), <b>C</b> (Basic rights), <b>D</b> (Cancellation), <b>E</b> (Unfair practices), <b>F</b> (Credit), <b>G</b> (Holidays) and <b>H</b> (Redress)
2. Contract formed	Units <b>B</b> (Contract law), <b>F</b> (Credit) and <b>G</b> (Holidays)
3. Performance of contract	Units <b>C</b> (Basic rights), <b>D</b> (Cancellation), <b>E</b> (Unfair practices), <b>F</b> (Credit) and <b>G</b> (Holidays)
4. Issue	Units <b>C</b> (Basic rights), <b>D</b> (Cancellation), <b>E</b> (Unfair practices), <b>F</b> (Credit) and <b>G</b> (Holidays)
5. Attempt to resolve	Unit <b>H</b> (Redress) – Sections H1 and 2

6. Resolve or deadlock	Unit H (Redress) – Sections H1 and 2
7. ADR	Unit H (Redress) – Sections H2 and H3
8. Court	Unit H (Redress) – Sections H2 and H4
9. Enforcement of court judgment	Unit H (Redress) – Sections H2 and H4

Sometimes the person buying goods and services may themselves be another trader and the differences in the rights and obligations that arise in such situations will be addressed in unit J, along with other departures from the usual business to consumer (B2C) transactions, such as private sales, between two consumers and sales at public auctions, where consumers are treated differently.

The following definitions of trader and consumer are assumed throughout all units unless stated otherwise:

“Trader” means a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in T’s name or on their behalf [s2(2) CRA and r4 CCRs]. A business includes the activities of any government department or local or public authority [s2(7) CRA and r5 CCRs].

“Consumer” means an individual acting for purposes that are wholly or mainly outside the individual’s trade, business, craft or profession [s2(3) CRA and r4 CCRs]. Although, if such a person is buying second hand goods, e.g. cars, at a public auction, with the opportunity of attendance, they will not be treated as a consumer in relation to most of the rights (unit J). The burden of proof falls on a T, who wishes to argue that someone they have supplied, was not acting as a C [s2(4) CRA].

**Table A2: Common phrases and abbreviations used throughout the units**

Word/phrase	Abbreviation	Brief description
The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015	ADR Regs	Require ADR to be available for any dispute concerning contractual obligations between Cs & Ts Give Citizens Advice a central role in signposting Cs to the correct, or most appropriate, ADR scheme at the relevant time
Business to business	B2B	Transactions between 2 traders or businesses
Business to consumer	B2C	Transaction between a trader and a consumer
Private sale	C2C	Transaction between 2 consumers
Consumer	C	An individual buying products in a personal capacity for private use
The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013	CCRs	The regulations that provide C with cancellation rights and rights to information before a contract is made
The Consumer Protection from Unfair Trading Regulations 2008	CPRs	The main regulations enforced by LA TSS, which prohibit unfair commercial practices
The Consumer Rights Act 2015	CRA	The main statute that provides C with rights concerning quality and description of goods, services and DigC
Citizens Advice service		Citizens Advice and Citizens Advice Scotland
Department for Business, Innovation and Skills	BIS	The government department with responsibility for protecting consumers and promoting trade
Digital Content	DigC	One of the three main categories of product, usually referring to DigC which has been streamed or downloaded
Local Authority	LA	An administrative body in local government with responsibility for a wide range service provision on a day-to-day basis, including trading standards matters

Trading Standards Service(s)	TSS	LA service (unless contracted out) with responsibility for day-to-day enforcement of legislation regulating trader activities
Trader	T	Someone acting for the purposes of their trade, business, craft or profession, whether as a sole individual, partnership or incorporated body

The areas for discussion in this unit are:

- A1 Functions of consumer protection
- A2 Principles of law
- A3 Trading Standards Services
- A4 Consumer Protection from Unfair Trading Regulations

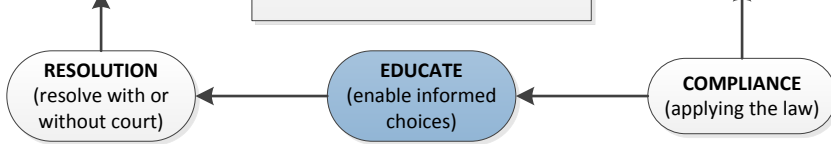
## A1 – Functions of consumer protection

### A1.1 The main functions

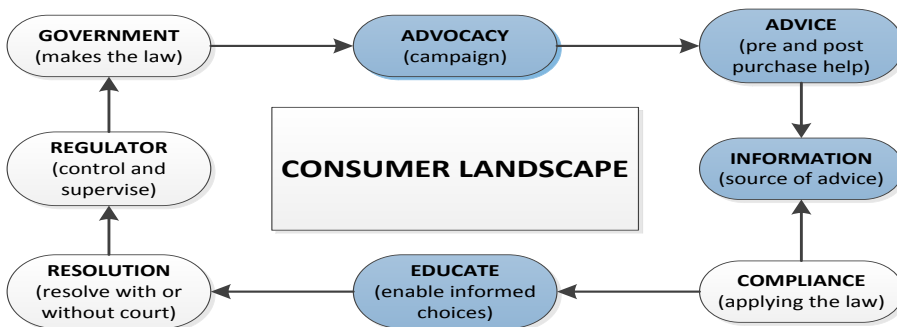
In the UK, consumer protection is the responsibility of the Department for Business, Innovation and Skills (BIS), which is the department for economic growth. BIS aims to reduce the impact of regulation and invest in skills and education to promote trade, boost innovation and help people to start and grow a business. Two organisations are funded by government to promote competition and make markets work well for Cs, businesses and the economy. This role is fulfilled by:

- ✓ the Financial Conduct Authority (FCA) for financial services, and
- ✓ the Competition and Markets Authority (CMA) for other goods and services

BIS wants it to be easy for Cs and businesses to get the information and support they need, and for Ts who break the law to be quickly and effectively dealt with. There are several functions associated with this process, as explained below and examples of the main players concerned are indicated. The more specialised bodies and organisations involved are referred to in unit H. Figure A1 provides an overview of the consumer protection landscape, with functions fulfilled by Citizens Advice shown in blue.



**Figure A1: The Consumer Protection landscape**



### A1.1.1 Information

Cs need information before they buy so that they know facts such as what they are buying, how much it will cost, what T's terms and conditions of business are (T&C), and what they can do if something goes wrong with their purchase. The amount of time spent finding out about a product or service before purchase usually depends on what is being purchased. Most people probably don't think twice about which newspaper to buy, or where to buy it, but not many would go out and buy a car without first researching what is available, how much it costs and how the transaction might be financed.

The requirement to provide certain consumer protection information originates in the form of legislation e.g. The CCRs, or accompanying guidance. Cs need to know what the law says so that they know what they can expect and businesses need to know what information they should provide.

BIS has divided the responsibility for providing consumer protection information, as follows:

- ✓ the Citizens Advice service has responsibility for providing information to Cs
- ✓ The Chartered Trading Standards Institute (CTSI) has the responsibility for providing information to businesses

### A1.1.2 Advice

Cs and businesses need to be able to access help when problems arise. Cs need to be able to find out which law applies to their problem, whether they are entitled to a remedy and how to complain to T. Advice needs to be available at convenient times and via channels that C is able to access.

BIS has divided the responsibility for providing consumer protection advice, as follows:

- ✓ the Citizens Advice service has responsibility for advising Cs
- ✓ CTSI has responsibility for advising businesses

In addition, some LA TSS may choose to provide compliance advice to Ts based in their area and the Citizens Advice consumer service provides some advice to businesses that have problems with their customers (unit J).

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### A1.1.3 Education

Consumer education helps to reduce consumer detriment and enable Cs to make informed choices. It is estimated that over £3.5 billion is lost each year in scams alongside many other Cs losing money by signing contracts or agreeing to purchases they have not fully understood. Education empowers Cs to make informed choices, how to avoid problems or get a better deal and to know where to turn to when problems do arise.

BIS has divided the responsibility for consumer protection education, as follows:

- ✓ the Citizens Advice service has responsibility for educating Cs
- ✓ CTSI has responsibility for educating businesses

CTSI runs an annual competition for 14 -17 year olds, called 'Young Consumer of the Year', to promote consumer rights and responsibilities. An alternative version, called "The Consumer Challenge Quiz" is also available in some areas of the UK.

Information, advice and education all need to be provided, taking into account the needs of different users. Some may be limited in terms of how they can access information, advice and education, e.g. through language and channel barriers; others may be limited by their working hours.

Education includes financial capability – the ability of Cs to understand financial products and services, and how to make informed, responsible decisions about how to engage with these products and services. This can include understanding how to use debit and credit cards when entering contracts, or details such as calculating the interest rate on short-term loans.

Financial Capability is an increasing element of the service that Citizens Advice provides and is now going to be integrated into the service that the Citizens Advice consumer service offers. Advisers will be expected to be able to:

- identify certain pre-defined triggers that Cs may provide evidence of when interacting with the service.
- provide Cs with information on this – either in the call or afterwards by e-mail – and both signpost and record this accurately and appropriately.

### A1.1.4 Advocacy

Consumer advocacy is when an organisation speaks publicly to represent, promote, protect and influence the interests of Cs. The Citizens Advice service is the national 'consumer advocate' or 'Consumer Champion' for all general consumer issues and those in the regulated gas, electricity and postal sectors. This means that it speaks up for and highlights issues on behalf of Cs.

A super complaint [s11(1) Enterprise Act 2002] is a complaint submitted by a designated consumer body that 'any feature, or combination of features, of a market in the UK for goods and services is or appears to be significantly harming the interests of consumers'.

Super complaints provide a fast track system for designated consumer bodies to bring matters of concern to the attention of industry regulators. Consumer bodies are awarded designated status by BIS and are indicated in table A3, along with the market features that could be investigated. Regulators are required to consider the issue raised within a fixed time (90 calendar days) and are accountable for providing a public

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response. Financial matters are reported to the FCA and other matters to the CMA. Some industry regulators have concurrent powers alongside the CMA:

- Ofcom – the communications regulator
- Ofgem – the gas and electricity regulator for England, Wales and Scotland
- Utility Regulator – the gas, electricity and water regulator for Northern Ireland
- Ofwat – the water regulator
- Office of the Rail Regulator (ORR) – the rail regulator
- Civil Aviation Authority – the aviation regulator

**Table A3: Consumer bodies able to make super complaints**

Designated consumer bodies	FCA investigate: features of a market in the UK for financial services that are or which may be significantly damaging the interests of consumers	CMA investigate: features of a market in the UK for goods and services is or appears to be significantly harming the interests of consumers
Citizens Advice	✓	✓
Federation of Small Businesses	✓	✓
General Consumer Council for Northern Ireland (GCCNI)	✓	✓
Which?	✓	✓
Campaign for Real Ale (CAMRA)		✓
Consumer Council for Water		✓

The possible outcomes of a super complaint include:

- Taking enforcement action under competition or consumer law
- Agreeing voluntary changes with the industry
- Launching a market study into the issue
- Making a market investigation reference
- Recommending action by the government, a regulatory body or other organisation
- Finding the complaint requires no action
- Finding the complaint to be unfounded

### **A1.1.5 Compliance**

Day to day enforcement of consumer protection law is the responsibility of LA TSS. Non-compliance can be dealt with using a variety of methods, including civil injunctions and criminal prosecutions (Section A3). National Trading Standards (NTS) prioritises national enforcement that crosses LA boundaries. It also administers national and regional enforcement teams in areas such as illegal money lending, scams, intelligence and eCrime. For some industry sectors there are specific regulators who have powers to seek compliance in certain ways alongside the TSS more general role. Seeking compliance is not primarily about individual consumer rights, it is concerned with ensuring that businesses comply with the law and do not breach legal provisions. The Citizens Advice service refers potential legal breaches to LA TSS and other regulators have access to the data on consumer complaints and queries. Table A4 indicates the relationship between the various organisations and functions.



**Table A4: The relationship between government, industry sectors, consumer protection functions and specific organisations**

	Goods and services	Energy	Post	Communications	Finance
<b>Government department</b>	BIS	BIS Department for Economy and Climate Change (DECC)	BIS	Department for Culture Media and Sport (DCMS)	BIS The Treasury
<b>Advocacy</b>	Citizens Advice				
<b>Advice</b>	Citizens Advice	Citizens Advice	Citizens Advice	Citizens Advice Ofcom	Citizens Advice FCA
<b>Information</b>	Citizens Advice				
<b>Enforcement</b>	TSS NTS CMA Environmental Health (see A3)	Ofgem TSS	Ofcom TSS	Ofcom TSS	FCA TSS
<b>Education</b>	Citizens Advice				
<b>ADR</b>	Various	Ombudsman Services: Energy (OS:E)	Postal Redress Service (POSTRS)	Ombudsman Services: Communications (OS:C) Communications and Internet Services Adjudication Scheme (CISAS)	Financial Ombudsman Service (FOS)
<b>Regulator</b>	CMA	Ofgem	Ofcom	Ofcom	FCA

### A1.1.6 Resolution

There are various ways in which a consumer complaint can be resolved. A resolution is a final decision made by a court, regulator or redress organisation that has powers to review facts of a case against the legal requirements and come to a conclusion whether consumer protection rights have been breached, and if so, suggest an appropriate remedy. Court will usually mean a Judge's decision in the County Court (Sherrif's Court) using the small claim track (Unit H).

Alternative dispute resolution (ADR) can offer a cheaper and quicker alternative to court for disputes where a consumer has not been able to resolve their complaint directly with the business. ADR is a collective term for the ways in which disputes can be settled, with (or without) the help of a third party. ADR schemes may be

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mandatory or voluntary and include Ombudsman schemes and mediators, and also the UK ECC, which helps Cs who have purchased goods and services in other EU countries, all of which are discussed in more detail in Unit H.

The law requires ADR to be available for any dispute concerning contractual obligations between a consumer and a business. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (ADR Regs) give Citizens Advice a central role in signposting Cs to the correct, or most appropriate, ADR scheme at the relevant time. They also require competent authorities to certify ADR schemes available for Cs who have a contractual problem with goods or services. Sector specific regulators take on the role of competent authority in their area and CTSI perform this function in non-regulated sectors. There is further discussion in Unit H.

## **A1.2 Citizens Advice**

### **A1.2.1 The Consumer Champion**

Citizens Advice is referred to as the ‘Consumer Champion’ because of the way in which consumer advice, information, education and advocacy are interlinked.

- Advice and information on consumer issues are available from the Citizens Advice consumer service, local Citizens Advice and the Citizens Advice website. This enables consumers to get pre-shopping advice, find out what their rights are if things go wrong and understand what they need to do to enforce their rights.
- Consumer education is delivered through Citizens Advice’s national campaigns and education materials available to education subscribers. These aim to get key messages to Cs without them needing to contact Citizens Advice directly.
- Citizens Advice’s advocacy helps transform consumer experiences by changing the way that companies behave, regulators act and policymakers make decisions. Examples include the FCA introducing new rules for credit brokers and caps on the costs Cs incur when their mobile phone is stolen.

### **A1.2.2 Citizens Advice consumer service**

The consumer service is a GB wide service, funded by government and delivered by Citizens Advice (England and Wales) and Citizens Advice Scotland working in partnership. Delivery of the service is outsourced to Agilisys in England and Wales and Citizens Advice Direct in Scotland.

Clients can contact the consumer service by telephone or email and for energy and post, by letter. Clients telephoning the consumer service directly get routed to a contact centre in their own country where it can be identified that their call originates from England, Scotland or Wales. Calls from mobiles or numbers that cannot be identified are distributed between each supplier. Figure A2 provides some of the contact and location details as well as a brief summary of work undertaken.

The scope of the consumer service is to:

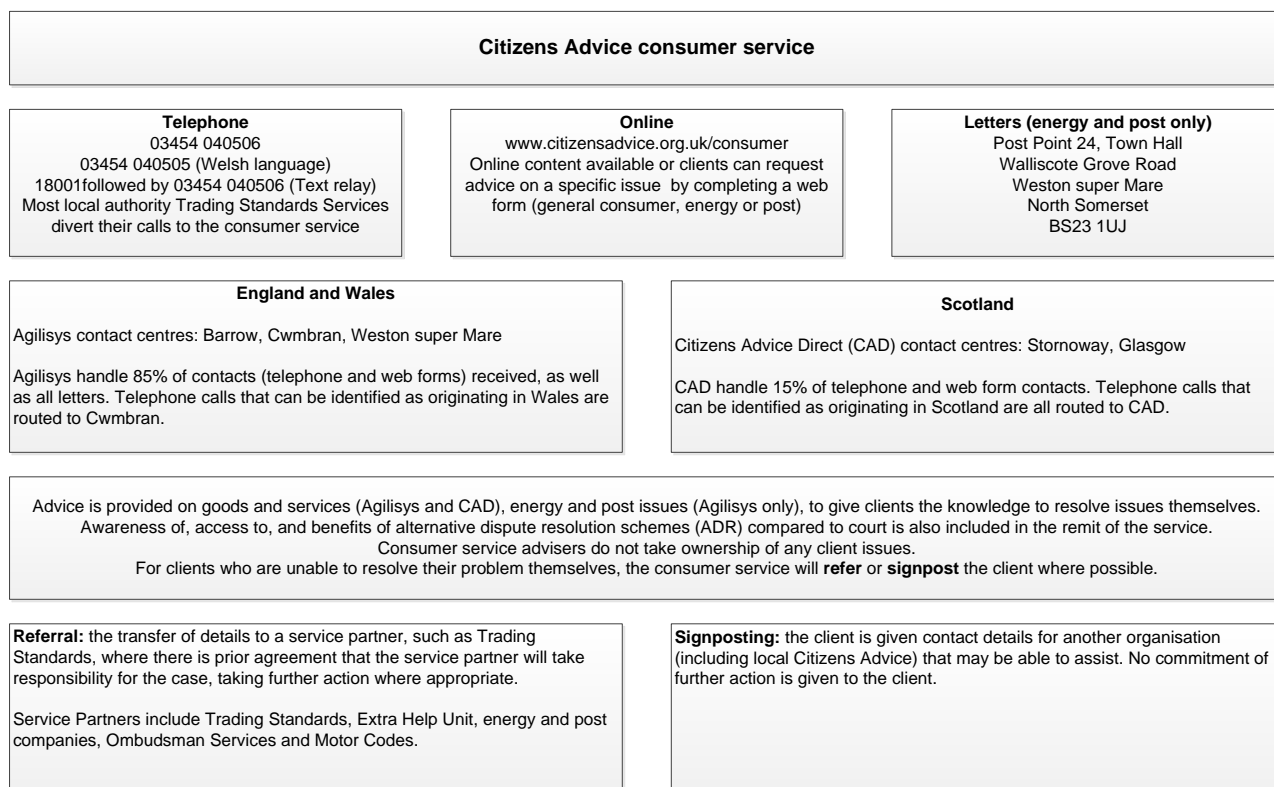
- advise and provide information on contracts for goods and services (including energy and post) before, during or after purchase, including legislation or industry regulations and practical guidance (energy means the supply of gas or electricity; issues relating to heating oil or liquid paraffin gas (LPG) are classed as general consumer issues)

- act as a channel to allow clients to report potential breaches of legislation and industry regulations, or unfair trading practices, to partners for consideration and possible enforcement activity
- make referrals to partners following operational procedures and agreed protocols for:
  - potential criminal and civil support – Trading Standards
  - problem resolution – energy and post suppliers and the Extra Help Unit
  - ADR – approved scheme as per relevant competent authority
- signpost clients to the most appropriate body for support, whether internally or externally, where the matter falls outside scope
- provide clients with appropriate information and signposts for support, whether internally or externally, where there is evidence of a need for increased financial capability.

A case record is created for each contact (telephone, email or for energy and post, letter) handled by the consumer service. Case data is shared with TSS where a potential offence is identified and when another organisation is able to assist the client resolve their problem.

The consumer service provides specialist consumer law advice which is only part of relevant advice in regulated sectors areas such as tenancy, debt and gaming. Clients contacting the consumer service on such matters will be advised of contract law principles (unit B) that apply to their issue as well as being signposted to their local Citizens Advice or a relevant sector specific organisation(s).

**Figure A2: Citizens Advice consumer service**



### A1.2.3 Local Citizens Advice offices

Local Citizens Advice offer advice from over 3,500 locations. These include high streets, community centres, doctors' surgeries, courts and prisons. Advice may be given in person or by phone. Most local Citizens Advice can arrange home visits and some provide email advice. Some are also piloting the use of text, web chat and web cams. Advice offered by local Citizens Advice covers a wide range of subjects including:

- Benefits
- debt and money
- employment
- housing
- immigration and asylum
- consumer

Local Citizens Advice may be able to offer specialist advice in some regulated areas such as debt and tenancy. A summary of the contact details is provided by figure A3.

**Figure A3: Local Citizens Advice**

Local Citizens Advice (England and Wales) / Citizens Advice Bureaux (Scotland)			
Face to Face	Telephone	Online	Web chat
<p><b>England and Wales</b> 3500 locations <a href="https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/">https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/</a></p> <p><b>Scotland</b> Over 90 bureaux and 200 outreach locations <a href="http://www.cas.org.uk/bureaux">http://www.cas.org.uk/bureaux</a></p>	<p><b>England and Wales</b> Adviceline: national phone service in Wales (3444 77 20 20) and being rolled out in England (03444 111 444). Text relay users - 03444 111 445. Local telephone services also available.</p> <p><b>Scotland</b> Citizens Advice Direct: 0808 800 9060</p>	<p><a href="http://www.citizensadvice.org.uk">www.citizensadvice.org.uk</a> Users select a 'home' country for the website which determines which law applies to the advice</p> <p>Some local Citizens Advice offer email advice.</p> <p>A national email advice pilot is in progress.</p>	<p><b>England and Wales</b> A national web chat pilot is in progress.</p> <p><b>Scotland</b> Citizens Advice Direct provide advice by web chat.</p>
<p>Local Citizens Advice/Bureaux may transfer or signpost clients to the consumer service when they do not have capacity to handle consumer problems or need support on consumer issues.</p>			

### A1.2.4 Adviceline / Citizens Advice Direct

Adviceline is the national phone service for England and Wales. As of October 2015 63% of local offices are part of this service. Citizens Advice Direct provides a national phone service in Scotland. Cs calling a national phone service will be asked questions to enable their problem(s) to be identified. The adviser will then help the client to deal with their problem, which could include:

- an appointment for specialist advice from a local office
- a signpost to another organisation who may be better equipped to deal with the problem
- providing the client with information

### A1.2.5 Citizens Advice data

Data is collected by both the consumer service and local Citizens Advice, which Citizens Advice uses to identify trends in issues Cs contact them about and provide evidence for its advocacy work.

#### A1.2.5.1 Advice Trends

Advice trends is aimed at national government departments, regional agencies; third sector organisations concerned with advice or social policy, and social policy researchers. It focuses on advice provided by local Citizens Advice with a commentary and charts, and it also summarises statistics for the consumer service and usage of the public website. There is a version for England and Wales, and another for Wales alone.

### A1.2.5.2 Snapshot

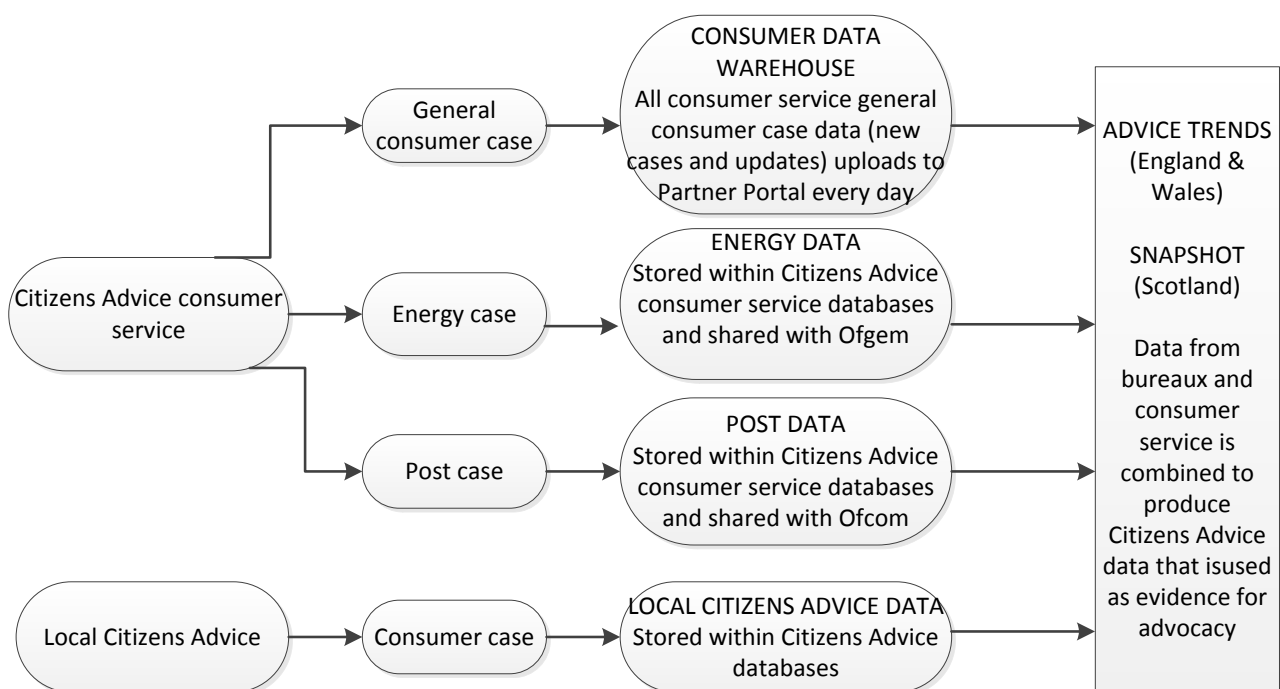
Snapshot is a quarterly briefing produced by Citizens Advice Scotland based on data collected by local Citizens Advice in Scotland and contacts handled by the consumer service that are identified as being from Scottish residents.

### A1.2.5.3 Consumer data warehouse

The consumer data warehouse stores all case information for general consumer contacts handled by the consumer service. It provides a GB wide picture of issues Cs are seeking advice on and Ts being complained about. Enforcers and regulators are able to access the intelligence data appropriate to their role and function in the consumer landscape.

Energy and post consumer data is not stored in the consumer data warehouse; it is stored within Citizens Advice databases and shared with regulators.

**Figure A4: Uses of Citizens Advice data**



Giving advice to Cs concerning what to do about their issue involves consideration of a 5 stage process:

- ✓ relationship      what is the relationship between the parties?
- ✓ rights            what rights does C have?
- ✓ wrongs          what has gone wrong with the rights?
- ✓ redress          what remedies or other redress are available?
- ✓ refer            what issues might need to be referred?

What may arise in relation to each of these 5 stages will be discussed throughout the various units.

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## Summary

- **Consumer law gives consumers rights when they buy goods, services or digital content (DigC) and requires businesses to trade fairly**, with the government funded Citizens Advice service, which plays a significant role working alongside many other organisations providing various services for consumers and businesses; consumer service advisers have important roles, letting Cs know about their rights and gathering information on behalf of LA TSS and other partners to enable them to seek compliance with the law.
- Following the **consumer on their transactional journey** will involve considering: how Cs and Ts enter into contracts, what issues might arise when those contracts are not performed properly and how the parties could try to sort their differences out, with the ultimate solution of going to court
- A “**Trader**” means a person acting for purposes relating to their trade, business, craft or profession, whether acting personally or through someone else acting in T’s name or on their behalf; a business includes the activities of any government department or local or public authority and a “**Consumer**” means an individual acting for purposes that are wholly or mainly outside their trade, business, craft or profession although, buying second hand goods at a public auction, is treated differently.
- In the UK, **consumer protection is the responsibility of BIS** and its aim is to reduce the impact of regulation and invest in skills and education to promote trade, boost innovation and help people to start and grow a business, so **it funds two organisations to promote competition and make markets work well for Cs, businesses and the economy**, namely, the **FCA** for financial services and the **CMA** for other goods and services.
- The Citizens Advice consumer service is expected to identify obvious needs **for support with financial products and services**, and inform, signpost, and record accordingly.
- In terms of providing **advice, information education and an advocacy role, responsibility for consumers is given to the Citizens Advice Service and for businesses to CTSI** with various designated consumer bodies having the power to submit a super complaint concerning any market feature that appears to be significantly harming the interests of consumers.
- Another consumer protection function is the **provision of various resolution services** enabling a final decision to be made by a **court, regulator or redress organisation** that has powers to review facts of a case against the legal requirements and come to a conclusion about whether consumer protection rights have been breached, and if so, suggest an appropriate remedy.
- A court can provide resolution, as can **various ADR schemes, which are often cheaper and quicker alternatives** where C has not been able to resolve their complaint directly with the business; these may be mandatory or voluntary and include Ombudsman schemes and mediators, and also the UK ECC, which helps Cs who have purchased goods and services in other EU countries.
- The **ADR Regulations require schemes to be available for any dispute concerning contractual obligations between a C and a T** and they give **Citizens Advice a central role in signposting Cs to the correct, or most appropriate, ADR scheme** at the relevant time; they also require competent authorities to certify ADR schemes available for Cs who have a contractual problem with goods or services with sector specific regulators taking on the role of competent authority in their area and CTSI performing this function in non-regulated sectors.
- **Day to day enforcement of consumer protection law is the responsibility of LA TSS with non-compliance being dealt with using a variety of methods**, including civil injunctions and criminal prosecutions; **NTS prioritises national enforcement that crosses LA boundaries and**

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**administers national and regional enforcement teams** in some areas, including: illegal money lending, scams, intelligence and eCrime.

- **Citizens Advice is referred to as the ‘Consumer Champion’ because of the way in which consumer advice, information, education and advocacy are interlinked** across the Citizens Advice consumer service, local Citizens Advice and the Citizens Advice website.
- **Clients can contact the consumer service by telephone, email or for energy and post, by letter.** Clients telephoning the consumer service directly get routed to a contact centre in their own country where it can be identified that their call originates from England, Scotland or Wales, with calls from mobiles or numbers that cannot be identified, being distributed between each supplier.
- The **scope of the consumer service** is to: **advise and provide information** on contracts for goods and services (including energy and post) before, during or after purchase; act as a **channel for reporting potential breaches** of legislation, industry regulations or unfair trading practices; **signpost** clients to the most appropriate support body if outside scope and **make referrals** to partners as per agreed protocols for, TSS, energy and post suppliers, the Extra Help Unit and approved ADR providers.
- **Advice offered by local Citizens Advice covers a wide range of subjects** including: benefits, housing, debt and money, employment, immigration and asylum and consumer; some may be able to offer specialist advice in certain regulated areas such as debt and tenancy.
- **Adviceline** (England and Wales) and **Citizens Advice Direct** (Scotland) provide a national phone service for clients seeking advice on non-consumer issues.
- **Data** is collected by both the **consumer service and local Citizens Advice**, which Citizens Advice used to identify trends in issues Cs contact them about and provide **evidence for its advocacy work using Advice Trends and Consumer Data Warehouse Information**, with enforcers and regulators being able to access the intelligence data appropriate to their role and function in the consumer landscape.
- **Giving advice to Cs requires consideration of a 5 stage process, covering:** the relationship between the parties, the rights C has, what has gone wrong, the remedies or redress available and whether any issues need to be referred



## A2 – Principles of law

Much of the information that Cs will need before making their purchases and advice they will require if they have a subsequent problem, has a legal basis. The law uses a certain amount of specialist terminology and an understanding of the basics is necessary before a more detailed examination of consumer protection law can be undertaken. In particular, brief consideration will be given to some of the categories and sources of law, as well as the relevance of the court structure to the cases that come before the courts and the various types of liability that affect who is responsible when things go wrong.

### A2.1 Categories of law

There are many different types of law. A clear understanding of the difference between civil and criminal law is needed to be able to identify criminal and civil elements of consumer complaints and issues appropriately. Cs will need to be advised of their rights in relation to a breach of civil law and be informed of the potential offence in relation to criminal law.

**Table A5: The differences between criminal and civil law**

	<b>Criminal law</b>	<b>Civil law</b>
<b>Purpose</b>	To control conduct which the state disapproves of by enforcing certain standards of behaviour and punishing those who do not comply	To settle disputes between individuals and to provide remedies
<b>Outcome</b>	Penalty, e.g. fine or imprisonment	Remedy, e.g. compensation, usually money for the loss or damage suffered
<b>Court procedure</b>	The prosecutor ( <b>Procurator Fiscal</b> ) prosecutes the defendant on behalf of the general public to seek a punishment or penalty	The claimant ( <b>pursuer</b> ) sues the defendant on his own behalf to seek a remedy
<b>Standard of proof</b>	Beyond all reasonable doubt	On the balance of probabilities
<b>Failure to comply</b>	Offence	Breach
<b>Enforced by</b>	Police, Trading Standards or industry regulators	Individuals
<b>Time limits</b>	<p><b>Summary offences</b> Between 6 and 12 months usually</p> <p><b>Triable either way offences</b> 1 year from discovery of the offence, or 3 years from the commission of the offence whichever is the shorter period</p> <p><b>Indictable offences</b> No time limit</p>	<p>6 years from a breach of contract (5 years)</p> <p>3 years if personal injury involved</p> <p>LA TSS, and other regulators sometimes have civil enforcement powers too</p>



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## A2.2 Sources of law

There are many general sources of law but the main two relevant for consumer protection, are legislation and judicial decisions or case law. The UK is part of the European Union (EU) which means there are four sources for consideration:

- Domestic (UK ) legislation
- Domestic case law
- EU legislation
- EU case law

### A2.2.1 Domestic legislation

The UK Parliament at Westminster has the power to make law in England and Wales (E&W). The Welsh Assembly also has some legislative power, but only in relation to matters which are devolved to it, e.g. implementing a charge for the use of carrier bags. Other matters, including consumer protection, are reserved for the Westminster Parliament to legislate on. The government will have policies in various areas which will inevitably influence its legislative programme.

Legislation is described as being a primary or secondary source:

- **Primary** – an Act of Parliament, or statute, which has to be passed by both Houses of Parliament before receiving Royal Assent. There are usually powers in the Act to allow the Minister responsible to make ‘delegated legislation’, which means the detail is delegated to the relevant government department.
- **Secondary** – the regulations and orders, also called Statutory Instruments, which are made as delegated legislation.

Most controls which deal with general consumer rights are in the form of legislation, which is subject to judicial interpretation. In contrast, the energy industry is largely controlled by a licensing system, administered and enforced by the regulator Ofgem, although it is also subject to some of the general consumer protection laws too.

In Scotland, the Scottish Parliament has powers to pass legislation in relation to matters which are devolved to it but cannot legislate on “reserved” matters. Consumer protection is currently a reserved matter.

### A2.2.2 Domestic case law

In the absence of legislation, judicial decisions can also be a source of law and these are reported as cases. The body of cases which contain these statements of law are collectively referred to as the common law (CL). Case law often arises from judges needing to interpret legislation if its meaning or extent is not clear.

Scottish Common Law has evolved from a number of sources, including Roman Law, legal principles and the writings of people such as Lord Stair, Erskine, Bell and Hume.

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### A2.2.3 European legislation

EU legislation is sometimes directly applicable, which means that it becomes valid in member states without any national implementation, whereas other examples of EU law need to be incorporated into UK law for them to have any validity. It is also possible for some EU provisions to have direct effect, which means that people may acquire individual rights under them enforceable in their own national courts.

Primary sources of EU law would be Treaties, for example, those which establish the EU institutions. The most important sources, in terms of consumer protection, are secondary legislation and Judgments of the Court of Justice of the European Union (ECJ). Secondary legislation takes the following three forms and is made by the European Council on advice from the European Parliament and European Commission:

- **Regulations** – these are often directly applicable, although the UK often implements them anyway using domestic legislation
- **Directives** – these usually set out general goals that all EU countries must achieve, although it is up to individual member states to decide how to do this
- **Decisions** – these are binding only on the individual or organisation concerned

Only Treaties and Regulations can have direct applicability, whereas Directives and Decisions can have direct effect in addition to Treaties and Regulations.

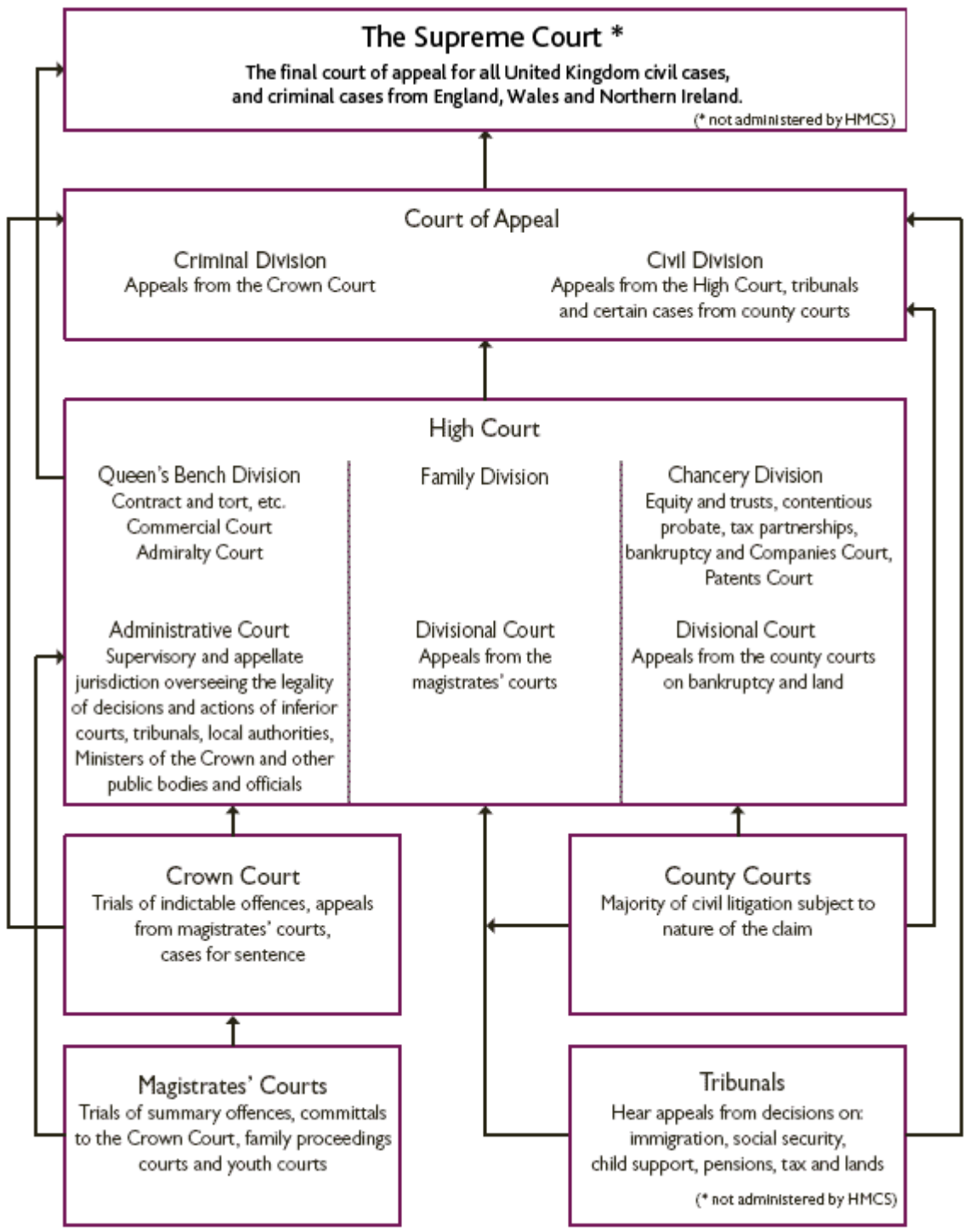
### A2.2.4 European case law

Cases decided by the European Court of Justice are concerned with the interpretation of EU law to make sure it is applied in the same way in all EU countries. The ECJ also settles legal disputes between EU governments and EU institutions. Individuals, companies or organisations can bring cases before the ECJ if they feel their rights have been infringed by an EU institution. National courts in EU countries are often required to apply ECJ interpretation of facts to cases they hear.

## A2.3 Structure of the courts and precedent

The English court system is hierarchical, which means that decisions of the higher courts will usually be binding on a court which is lower in the hierarchy (Figure A4). Her Majesty's Courts and Tribunals Service (HMCTS) is responsible for the administration of the criminal, civil and family courts and tribunals in E&W. It works with an independent judiciary to provide a fair, efficient and effective justice system. The Scottish court structure is represented in figure A5.

**Figure A4: The Court structure in E & W**



Scotland has a separate legal system from England & Wales although it does share the Supreme Court as the final appeal court in civil cases.

The criminal courts, in order of authority, are:

Justice of the Peace Courts (previously District Courts), the Sheriff Court and the High Court of Justiciary

The civil courts are:

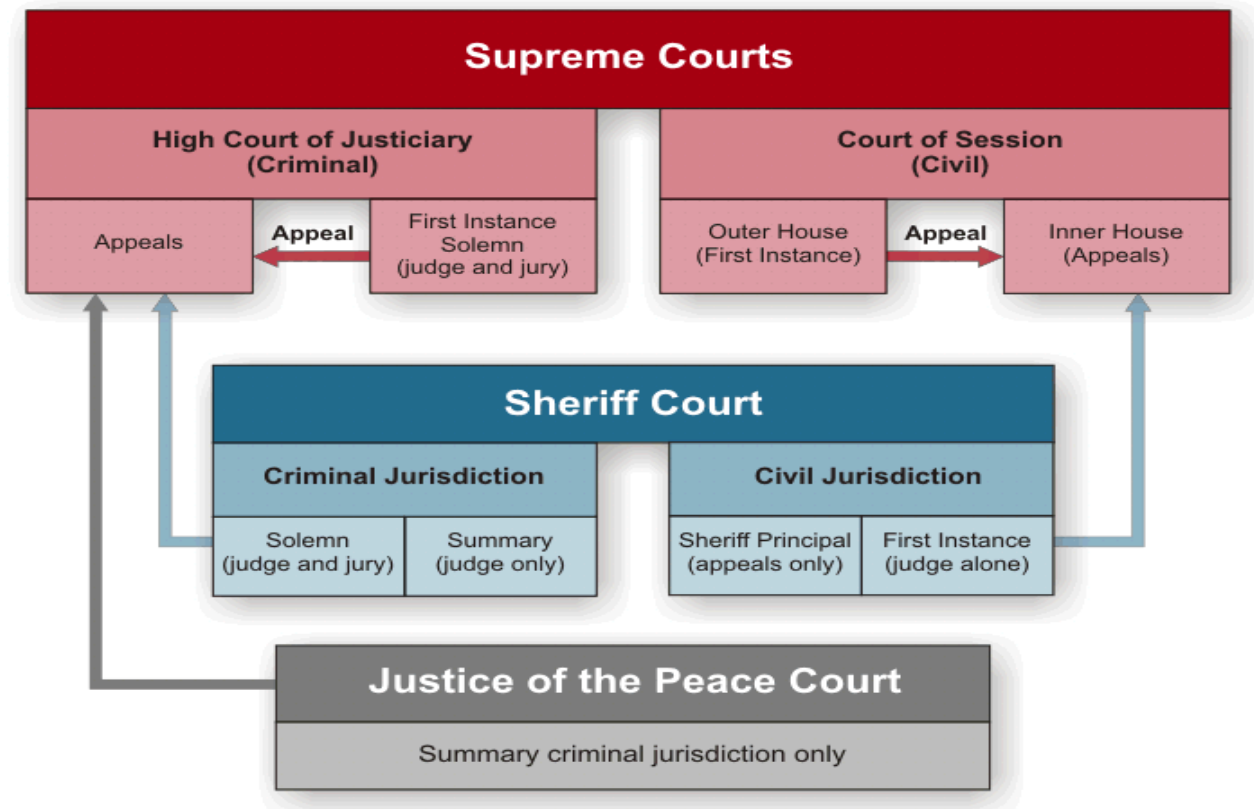
The Sheriff Court, the Court of Session and the Supreme Court

The Court of Session sits in Edinburgh and is divided into the Outer and Inner Houses. The Outer House hears cases at first instance on a wide range of civil matters, including cases based in delict (tort) and contract, commercial cases and judicial review.

The Inner House is in essence the appeal court. It is divided into the First and the Second Divisions, which are of equal authority, and is presided over by the Lord President and the Lord Justice Clerk respectively. The Divisions hear cases on appeal from the Outer House, the Sheriff Court and certain tribunal and other bodies.

Further detail can be obtained from [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk).

**Figure A5: The court structure in Scotland** (source: <http://www.scotland-judiciary.org.uk/>)



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### **A2.3.1 Doctrine of precedent**

The system of binding decisions in the UK is known as precedent. It is the principles of law used by the court to reach their decision that are binding. Other statements of law made during the case are not binding but can be persuasive in later cases. The general rule is that the higher courts, such as the Supreme Court and the Court of Appeal, bind the lower ones but High Court judicial decisions do not usually have a binding effect on each other. Decisions by Crown Court judges and magistrates decisions are never binding.

There is no formal system of precedent in the EU but the ECJ does try to maintain consistency in its judgments. It is common to cite past decisions in Court and so they have some persuasive authority at least rather than any formal standing. Certain decisions form a sort of precedent for the national courts in the member states.

Case law decided in England is persuasive rather than binding in Scotland and vice versa. Cases in these notes are mainly used for illustrative purposes and unless otherwise stated will be relevant for consumers in England, Scotland and Wales.

### **A2.3.2 Statutory interpretation**

Legislation inevitably requires some interpretation when it is before a court and there are various rules that may apply, which the judges can choose from to suit their purpose. In more recent times the Law Commission has recommended a purposive approach, which is based on considering Parliament's intention.

The style of interpretation used in the ECJ is described in various ways, but basically they all mean that, similarly, the Court tries to make its decisions based on what the aims and objective of the legislation were and what was intended. Words used to describe this approach include: teleological, far-or forward-looking and purposive.

## **A2.4 Nature of liability**

Who has the responsibility when something goes wrong is referred to as liability in legal terms. There are various phrases that are relevant to this concept.

### **A2.4.1 Strict liability**

In civil law the concept of 'strict liability' usually applies. This means that a claimant does not have to prove that the defendant knew about or intended his actions or omissions. So for an action relating to satisfactory quality under the CRA, a claimant would only have to prove that the seller sold him faulty goods, not that the seller knew they were faulty. There is one area of civil law which is not based on strict liability, namely negligence, which is fault based (unit B).

### **A2.4.2 Criminal liability**

In general criminal, law there is a presumption against strict liability and *mens rea*, a guilty mind, will have to be proved before someone is convicted of a criminal offence. This means proving that the defendant knew or intended what they were doing. However, most consumer law criminal offences are strict liability as this provides better protection for C, although defences are available.

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### **A2.4.3 Vicarious liability**

In some situations employers will find themselves responsible for the actions of their employees. This is known as vicarious liability and is found throughout civil law. Usually criminal liability is of a personal nature. However, most Trading Standards offences are committed by an employer and are offences of strict liability. For example, if falsely described or adulterated food is sold by a shop assistant, in law it is the shop owner who sells the goods even if he was absent from the shop at the time.

There are some Trading Standards offences where the law does make the employee liable e.g. certain under-age sales.

### **A2.4.4 Corporate liability**

A corporation, a limited company with Ltd or Plc after its name, is a legal entity and can incur both civil and criminal legal liabilities itself as well as its directors personally. This is called corporate liability. The corporation can be held personally liable because the acts undertaken by those who control the company, and their intentions, are deemed to be those of the company. Often the directors will only be held liable if they can be shown to have consented or connived at certain times or have been negligent.

### **A2.4.5 The relationship between the parties**

Liability in consumer protection law depends on the relationship between the consumer and the person/organisation responsible for the problem. The main ones are explained briefly below and explored further in unit B.

- Contract – based on legally binding promises
- Negligence – based on owing a duty of care to those likely to be affected by one's actions/omissions
- Product liability – based on producers being responsible for the safety of the goods they produce

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## Summary

- Two important categories of law are the **civil law** and the **criminal law**, with the former being concerned with providing **remedies for disputes between individuals** where one party suffers loss or damage through the acts or omissions of the other; the latter is concerned with state **punishment of activities and behaviour regulated by society**.
- The **main sources of law** are primary and secondary national **legislation and case law**, known as the common law, along with EU case law and secondary legislation in the form of regulations, directives and also decisions.
- The court structure in the UK is hierarchical and the **decisions of the higher courts usually bind the lower courts by a doctrine known as precedent**; there is no formal system of precedent in the EU but the ECJ does try to maintain consistency in its judgments with certain decisions forming a sort of precedent for the national courts in the member states
- Legislation inevitably requires some **interpretation** when it is before a court and there are various rules that may apply, which the judges can choose from to suit their purpose; in more recent times the Law Commission has recommended a **purposive approach**, which is based on considering Parliament's intention and this is the approach used in the EU.
- There are **various types of liability**, with the most important being: **strict** (no intention or knowledge necessary); **vicarious** (liability for someone else's actions); **corporate** (incorporated companies have their own liability) and **criminal** (usually *mens rea* is required).
- Who is liable to someone suffering loss or damage may depend on the **relationship between the parties**, with liability arising under: a **contract** (based on legally binding promises); the law of **negligence** (based on owing a duty of care to those likely to be affected by one's actions or omissions) and the law on **product liability** (based on producers and others being responsible for the products they supply in the market place).

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## A3 – Trading Standards Services

Day to day local compliance with consumer protection legislation is the responsibility of LA TSS. The Citizens Advice consumer service informs TSS whenever:

- a complaint is made about a T based in their area, or by a client who resides in their area; this is referred to as a ‘notification’
- a potential offence has taken place in their area; this is referred to as a ‘referral’.

Referral and notification information is referred to collectively as ‘intelligence’. TSS review the intelligence and decide what, if any action they may take based on the type of the offence and the priorities of their service.

### A3.1 Trading Standards work

The work of a typical LA TSS is quite broad, covering the safety, quality, quantity and fairness of most products and activities in the consumer marketplace. The categories used for referral purposes are indicated in table A6. For some areas TSS have a duty of enforcement, however, for others there is only a power to enforce. Protocols with each LA indicate whether the TSS covers the legislation or activity concerned and to what extent.

**Table A6: Referral categories for TSS work**

Category	Example	Legislation
1. Animal Feeds or agricultural products	Content and labelling of animal feeds and fertilisers	Agriculture Act 1970
2. Animal health and welfare	Dead or emaciated farm animals Breaches of movement licences Poor treatment of animals at markets	Animal Health Act 1981
3. Anonymous tip offs	Reporting TSS issues anonymously e.g. car boot sales, underage sales	Various
4. Anti social behaviour issues	Underage drinking	Antisocial Behaviour, Crime and Policing Act 2014 (not TSS)
5. Car sales from home/street	Traders posing as private sellers e.g. with 4 cars on the drive	CPRs
6. Counterfeit goods	Items with fake logos, e.g. sportswear, perfume, alcohol Pirate recordings	Trade Marks Act 1994 Copyright, Designs and Patents Act 1988 CPRs 2008
7. CPR breaches	Clocked cars Builders etc falsely claiming trade body membership or approval	CPRs 2008 Fraud Act 2006



	Fake closing down sales	
8. Doorstep crime/itinerant traders	Doorstep callers not doing work promised or charging very high prices Not providing details about cancellation rights	CPRs CCRs
9. Explosives/fireworks storage	Allegation of unsafe or suspected illegal storage of explosives	Explosives Act 1875 Fireworks Act 2003 Firework Regulations 2004
10. Fair trading (including credit)	“No Refund” notices in retail stores Misleading credit advertisements Hotel accommodation in a package holiday brochure falsely described as a short stroll from the beach Timeshare withdrawal notice not provided Unfair terms in contracts Cigarette packaging on display	CPRs Consumer Credit Act 1974 PTRs Timeshare Regs 2010 CRA '2015 Tobacco Advertising and Promotion Act 2002
11. Illegal money lending (including harassment)	Cash loans being offered, or loans without any paperwork Threats of violence if client unable to pay loan instalment	CPRs 2008 Fraud Act 2008
12. Licensing issues	Taxis, alcohol sales, entertainment	Various
13. Mock auctions/one day sales	Where bidding is rigged Items supplied are much lower quality than those shown	CPRs
14. No cold calling zones (NCCZ)	Uninvited traders calling at C's home when NCCZ sign displayed	CPRs
15. Petroleum	Contaminated fuel	Motor Fuel (Composition and Content) Regulations 1999
16. Pricing	One price on the display and a higher price at the till	CPRs
17. Property	Estate agent or letting agent queries Mis-described house in Estate agent particulars	Estate Agents Act 1979 CPRs
18. Safety (unsafe product has caused injury or damage to property or an immediate risk of injury exists)	Toys presenting a choking hazard Food being sold past its “use by” date	The Toys (Safety) Regulations 2011 Food Safety Act 1990

		General Product Safety Regulations 2005
19. Safety (unsafe products where no injury or immediate risk exists, including unroadworthy vehicles)	Selling food past its “best before” date Unlabelled furniture Unroadworthy cars	Food Safety Act 1990 Furniture & Furnishings (Fire) (Safety) Regulations in 1988 Road Traffic Act 1988
20. Scams	Unsolicited goods with payment demands Food fraud Cold call indicating won a free prize but have to phone a premium rate telephone number to claim it	CPRs
21. Street / market sellers	Ticket touting	Criminal Justice and Public Order Act 1994
22. Underage sales	Cigarettes, alcohol, sunbed use, lottery tickets, knives, airguns, fireworks, videos, petrol, aerosol spray paint, video games, crossbows	Licensing Act 2003, National Lottery Regulations 1994 Crossbows Act 1987
23. Weights and measures	Short measure beer	Weights and Measures Act 1985
24. Other	Un-hallmarked silver jewellery Overloaded vehicles on the road No cost information on an ADR scheme website No T details on C’s invoice  Letting agent not joining a Government approved redress scheme	Hallmarking Act 1973 Road Traffic Act 1988 ADR Regs Companies (Trade Disclosure) Regulations 2008 Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

## A3.2 Compliance

There are numerous ways of achieving compliance with the many laws that TSS have responsibility for. The two main formal, court actions, which could be pursued, either together or separately, are:

- a punitive criminal prosecution
- a preventative civil enforcement order

TSS sometimes use simple and conditional cautions to deal with Ts who breach the law. A simple caution is a formal notice, issued once someone has admitted an offence. A conditional caution is similar but the person must also agree to stick to certain conditions which may include paying compensation to the victim or issuing an apology for the offence.

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Generally, more preferable are the various informal advice and guidance to ensure future compliance and avoid further breaches. There are various criteria in place which the LA would have to consider before deciding on an appropriate course of action, including:

- its own enforcement policies
- what is necessary and proportionate
- the public interest

In Scotland the decision whether to prosecute or not, is taken by the independent prosecutor, the Procurator Fiscal who may also issue Warning Letters for less serious offences in accordance with the Lord Advocate's Rules.

See the website of the Crown Office and Procurator Fiscal for further information [www.crownoffice.gov.uk](http://www.crownoffice.gov.uk)

An injunction in Scotland is sometimes known as an interdict

TSS work is not always confined to local areas and there are various arrangements in place to deal with problems that occur across LA borders, either at a regional or national level. In addition TSS staff often work with professionals from other organisations to achieve the most effective compliance since business activities often spread beyond traditional TSS boundaries, e.g. police officers (fraud and counterfeit investigations) and environmental health officers (food cases). Sometimes other agencies have responsibility for enforcing legislation that appears to deal with a consumer issue, but does not fall within the remit of TSS, such as the Protection of Freedoms Act 2012, which makes it a criminal offence for someone to clamp or tow away a vehicle without lawful authority, e.g. if it is parked in a private car park, such as one belonging to a retail store, where the driver has not complied with the time restrictions [s54]. The police enforce this legislation. Signposting details can be found in unit J.

### **A3.2.1 Criminal prosecutions**

Most of the legislation that TSS have a duty to enforce, contains criminal offences, a breach of which could lead to a criminal prosecution in either a Magistrates' or the Crown Court, depending on the seriousness of it. The aim of a prosecution is to punish the defendant and there are various penalties available for the court to consider, including fines, conditional discharges, community service orders and even imprisonment for more serious offences such as clocking cars, illegal money lending and fraud. Compensation orders can also be made by a court following a criminal prosecution although, this is only likely if the matter is straightforward. Such orders are subject to a maximum award and cannot be guaranteed [Sections 130–133, Powers of Criminal Courts (Sentencing) Act 2000; s40(1), Magistrates' Courts Act 1980].

Most TSS offences are strict liability, however, if T can show that all reasonable precautions have been taken all due diligence exercised to try and prevent the offence from being committed, it is possible to escape liability using the '*due diligence defence*'. Most legislation also contains obstruction offences so if T prevents or hinders a TSS employee from doing their job properly they may be committing an additional offence.

### **A3.2.2 Civil enforcement**

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Part 8 of the Enterprise Act 2002 (EA) provides TSS, the CMA and other regulators, with another tool to seek compliance, an enforcement order, which is like an injunction. In addition, other specific pieces of legislation contain their own powers relating to enforcement orders. A civil, rather than criminal, procedure is followed to obtain one and they are a preventative measure, aimed at stopping T from participating in activities that harm the collective interests of consumers rather than just the odd one or two. There are lists of the legislation covered by the Part 8 EA procedure and it can apply to breaches of:

- European directives
- Civil laws
- Criminal legislation
- General breaches of contract
- The tort (delict) of negligence

The following three stages are normally observed when following this civil enforcement procedure:

- 1) consulting with T for a statutory period, during which potential breaches and solutions are discussed
- 2) seeking an undertaking, whereby T promises in writing to stop engaging in the activity
- 3) applying to court for an enforcement order, to prohibit T from carrying on with the practices

If T carries on with the undesirable activity once the court has made an order, T will be in contempt of court and could be sent to prison, even if the original breach was only civil not criminal. A LA may choose to seek an enforcement order from T and prosecute at the same time as the aims of the two procedures are different, being preventative and punitive respectively.

The courts, TSS, and sometimes other authorised enforcers, have powers to award redress for Cs too, alongside the civil enforcement procedure, which saves them having to pursue their own action through the civil courts. These are called enhanced consumer measures (ECMs) and they can be attached to a civil enforcement order or an undertaking under Part 8 of the EA [s79 CRA]. ECMs can include measures for compliance and consumer choice as well as redress (unit H).

Some activities allow TSS to seek civil penalties from Ts, without going through a court procedure, e.g. breaches of the secondary ticketing and letting agent fee disclosure provisions in the CRA [s93 and s87].

### **A3.2.3 Powers**

There are numerous pieces of legislation that TSS enforce, typically 80+. A breach of the law may come to light through a complaint to the consumer service; however, TSS may also carry out routine inspections on businesses in their area to check that they are complying with the law. Either way, a visit to a business or a T may involve officers using their powers to do some of the following:

- test weighing and measuring equipment e.g. scales, petrol pumps and optics
- check that goods are priced, and that the price on the label corresponds with the amount that the customer is charged at the till
- carry out vehicle history checks to establish whether second-hand cars have been clocked, i.e. had their odometers wound back to show a lower mileage than that actually travelled
- 'test purchase' items to check that the correct quantity is sold, e.g. alcohol or to check that items are not being sold to those who are underage, e.g. cigarettes or alcohol

- 
- inspect the 'use-by' date on food that is offered for sale along with records kept by the business to show that they themselves are checking the stock on a regular basis and training staff appropriately on stock rotation
  - check food labels to ensure that they comply with the legal requirements, e.g. composition of the food
  - carry out safety checks, e.g. to ensure that furniture has the appropriate safety labels and that it is fire retardant
  - investigate potential criminal breaches, e.g. alleged scams, by requiring production of business records

However, an alleged offence or potential breach of the law comes to light, TSS can investigate, using appropriate powers to enter business premises, inspect or examine items and processes, seize potential evidence and interview potential defendants under caution. Such activities need to be carried out in accordance with legal requirements or the result could be that any evidence obtained is inadmissible in court, which may in turn mean that the case is lost.

Not all TSS enforce food legislation. Environmental Health Services (EHS), another LA function, although sometimes at a different tier of government called the district council, have responsibility for the safety of food and hygiene of food premises. Since they already have this duty, they sometimes also carry out the labelling, composition and quality functions instead of the TSS. This will vary from LA to LA. EHS also have responsibility for health and safety and environmental protection as well as food.

#### **A3.2.4 Advising businesses and consumers**

CTSI has overall responsibility for business advice but individual LA TSS may also provide local businesses with advice on how to comply with legislation, particularly if they operate a trader approval scheme.

Prior to the launch of Consumer Direct service in 2004, followed by the Citizens Advice consumer service in 2012, not all Cs had local access to consumer advice. TSS are not under a duty to provide this service and many do not. Citizens Advice consumer service may refer a case to TSS for second-tier advice or where the initial query is complex, if the local TSS offers this service.

Whether or not a LA has a consumer advice service is often a political decision and may depend on available resources. Those who do offer one, differ in terms of the level of advice or assistance available. Some will offer further telephone advice only, but others will go much further and try to negotiate with T on C's behalf, and possibly attend court with them. Some will even offer a face-to-face initial advice service and will see Cs on either a 'drop-in' or appointment basis.

#### **A3.2.5 Home Authority principle and Primary Authority scheme**

To prevent national companies receiving conflicting advice from different TSS, the 'Home Authority' principle was developed. This allows LAs to concentrate on advising businesses that have the decision-making part of their organisation in their area, particularly if they are small businesses with not many outlets.

More recently the statute based Primary Authority scheme has been introduced to build on the Home Authority principle and provides for a single source of regulatory advice and guidance where a business operates across several LA borders. The scheme applies to other areas of regulation, such as Environmental Health as well as TSS. The Primary Authority must be contacted by any authority considering enforcement action and the authority may be able to block proposed enforcement if it would be inconsistent with advice previously given to the business. LAs can charge for businesses for Primary Authority services and agree specific terms of reference with each one.

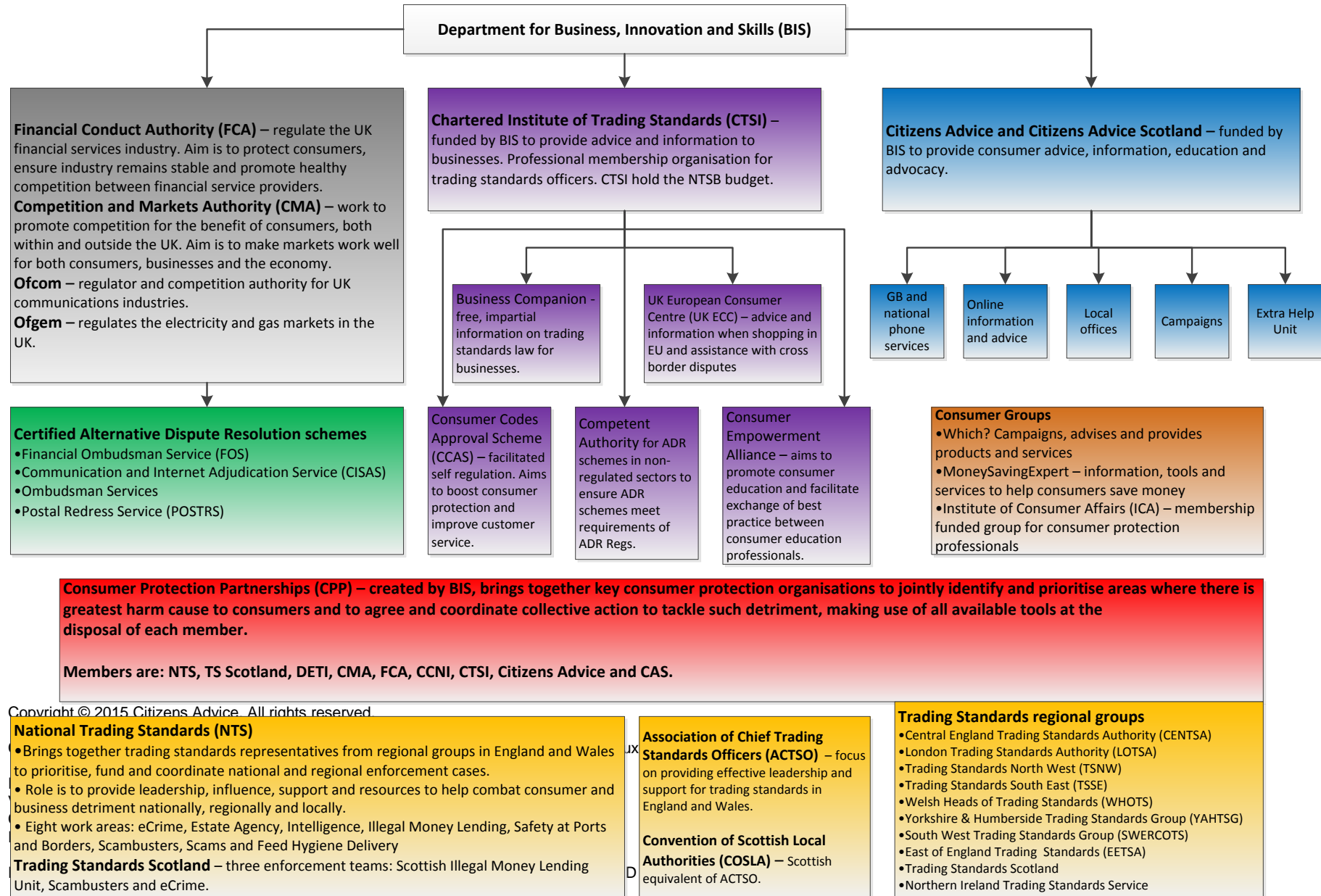
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### **A3.2.6 National and Regional roles**

Various bodies and organisations exist at both a national and a regional level to coordinate some TSS activities and even enforce some of them. Figure A6 indicates the roles of the main ones and the relationship between them. The Consumer Protection Partnership (CPP) was formed in April 2012, as part of the Government's institutional reform of the consumer landscape. The aim was to create a clear structure for the main partners, allowing them to work together to identify and prioritise areas of greatest harm caused to consumers and seek to take coordinated collective action to tackle such problem.

### **Figure A5: Roles and relationships of national and regional consumer bodies**

**Figure A5: Roles and relationships of national and regional consumer bodies**



### A3.2.6.1 National Trading Standards (NTS)

The role of NTS is to prioritise national enforcement that crosses LA boundaries. It also administers national and regional enforcement teams in areas such as those indicated in table A7, which were considered to be the most nationally significant, in that they caused the most consumer and business detriment in E&W. In addition, intellectual property, food fraud, animal health and age restricted sales were also recognised as being areas requiring more work.

**Table A7: Enforcement teams administered by NTS**

Team	Main role	Comments
Scambuster Teams	Target criminals involved with doorstep crime, counterfeiting, consumer and business fraud and other related crime. They operate across England and Wales through eight regionally based teams.	Discussed in more detail in unit D
Illegal Money Lending	Investigate and prosecute illegal money lenders. Illegal money lending (loan sharking) is a criminal offence and often sees unauthorised lenders target vulnerable people. The teams work in partnership with TSS across England and Wales and are made up of specialist investigators and victim support officers from various backgrounds including TSS, policing and debt advice.	Money lending discussed in more detail in unit F
Scams	Helps tackle mass marketing scams and disrupts the operations of perpetrators behind mail scams. It works in partnership with agencies across the country to identify and support victims of mass marketing fraud. The team provides guidance, best practice and establishes a centre of excellence to assist local authorities in supporting local victims and taking local enforcement action.	Discussed in more detail in unit D
Intelligence	Provide technical expertise to help identify and analyse national trends and emerging threats, informing tasking and prioritisation processes. Regional intelligence officers help record, develop and analyse intelligence, monitor trends, and identify key problems and threats. This enables targeted enforcement to be taken nationally, regionally and locally to effectively deal with criminals. Tackling national, regional and local priorities such as doorstep crime, mass marketing scams, e-crime, product safety, intellectual property and other trading standards issues that go beyond local authority boundaries.	Targeted questioning by advisers can help establish useful intelligence for TSS
Safety at Ports and Borders	Prevent unsafe and non-compliant non-food consumer products from entering the country through ports, airports and postal hubs.	All consumer goods placed in the market place should be safe
eCrime	Protects consumers and businesses from internet crime and online fraud. Expert forensic analysts and internet investigators can support TSS officers or can independently investigate scams of national significance.	The Owl and Copycat video clip can be viewed on the

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		website
Estate Agency Team	Protects consumers and businesses by enforcing the Estate Agents Act (1979). The team leads investigations, provides advice and guidance and builds expertise in the application and interpretation of estate agency legislation with a view to sharing this with colleagues across the enforcement community.	An enforcement toolkit has been developed to assist LA TSS enforcement staff

### A3.2.6.2 The Chartered Trading Standards Institute (CTSI)

CTSI is the chartered body for the trading standards profession and it also has a number of roles that affect consumers, including those indicated in table A8. Some of the organisations listed are discussed in more detail in unit H.

**Table A8: Consumer related roles for CTSI**

<b>Role</b>	<b>Main functions</b>
Consumer Codes Approval Scheme (CCAS)	Approve codes of practice with members who are committed to providing a fair service to their customers, including a dispute resolution service
The UK European Consumer Centre (UK ECC)	Provide free advice and support to consumers who have a problem with a T based elsewhere in the EU, Iceland or Norway
European Consumer Centre for Services (ECCS)	Provide advice on making informed choices when buying goods and services from the EU
Consumer Empowerment Alliance (CEA)	Provide a network for consumer education, advice and information throughout the UK. It is a Section of CTSI and its members represent LAs and consumer groups
Competent Authority for ADR certification in the non-regulated sector	Set the rules of membership for certified ADR schemes in the non-regulated sectors Carry out the certification process Provide BIS with a list of all certified ADR schemes
Consumer Companion	Provide information and or links to various organisations, including the Citizens Advice consumer helpline, Citizens Advice website and ActionFraud as well as the CCAS, UK ECC and ECCS
Business companion	Provide information and guidance for businesses on their obligations to consumers and general compliance with trading standards law. This is via the "Business Companion" website, which is sponsored by BIS

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## Summary

- **Day to day local compliance with consumer protection legislation is the responsibility of LA TSS** and the Citizens Advice consumer service informs TSS whenever: a complaint is made about a T based in their area, or by a client who resides in their area as a notification and if there is a potential offence, as a referral
- The **work of a typical LA TSS is quite broad, covering the safety, quality, quantity and fairness of most products and activities in the consumer marketplace with specific categories used for referral purposes**, and protocols indicating which legislation is covered by each LA and to what extent; TSS staff often work with professionals from other organisations to achieve the most effective compliance since business activities often spread beyond traditional TSS boundaries.
- There are **numerous ways for TSS to seek compliance , with the two main formal ones being a punitive criminal prosecution or a preventative civil enforcement order**, although, providing advice and guidance are often preferred and there are various criteria to consider before deciding on an appropriate course of action, including enforcement policies, what is necessary and proportionate and what would be in the public interest.
- **Most TSS legislation contains strict liability offences accompanied by a due diligence defence**, punishable in the Magistrates' or Crown Court, depending on the seriousness and there are various penalties available and usually obstruction offences; compensation orders are also a possibility in straightforward cases.
- Part 8 of the Enterprise Act 2002, and other specific legislation, provides TSS , and sometimes other regulators, with **another tool to seek compliance, an enforcement order, which is a civil preventative procedure, aimed at stopping T from participating in activities that harm the collective interests of Cs** if they breach any of the wide range of laws covered, providing appropriate procedures are followed.
- However an alleged offence or potential breach comes to light, **TSS can investigate, using appropriate powers to enter business premises, inspect or examine items and processes, seize potential evidence and interview potential defendants under caution**; such activities need to be carried out in accordance with legal requirements to avoid evidence being inadmissible.
- **EHS have responsibility for the hygiene and safety of food** and premises and sometimes also the labelling, composition and quality functions instead of TSS; this will vary from LA to LA and EHS also have responsibility for **health and safety and environmental protection** as well as food.
- **CTSI has overall responsibility for business advice but individual LA TSS may provide local Ts with compliance advice, particularly if they operate a trader approval scheme**; however, TSS are not under a duty to provide either business or consumer advice and many do not as this can be very resource intensive, affecting the nature and extent of any such services that are available.
- To prevent national companies receiving conflicting advice from different TSS, the **'Home Authority' principle** was developed, which allows LAs to concentrate on advising businesses with the decision-making part of their organisation in their area, particularly small businesses with not many outlets.
- A **statute based Primary Authority** scheme was introduced and provides for a single source of regulatory advice and guidance where a business operates across several LA borders; it applies to other areas of regulation, such as EHS, as well as TSS and LAs can charge businesses for services and agree specific terms of reference with each one.

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- **Various national and regional bodies exist to coordinate some TSS activities and even enforce some of them and the CPP was formed to create a clear structure for the main partners**, allowing them to work together to identify and prioritise areas of greatest harm caused to consumers and to seek coordinated, collective action to tackle such problems.
  - **NTS's role is to prioritise national enforcement that crosses LA boundaries, using the IOM, and administer national and regional enforcement teams** in areas considered to be the most nationally significant, because they cause the most consumer and business detriment in E&W, including: doorstep crime, scams, illegal money lending, port safety and eCrime.
  - **CTSI is the chartered body for the TS profession and it also has a number of roles that affect Cs**, including administration and or provision of the CCAS, the UK ECC, the ECCS, the CEA and the business and companion websites; it also acts as the competent authority for ADR certification in the non-regulated sector.

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## A4 Consumer Protection from Unfair Trading Regulations

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) are a major piece of legislation as far as TSS are concerned because they regulate unfair commercial practices (UCPs) by Ts in a very broad sense. The Regulations mean that Ts who engage in unfair practices that affect average consumers:

- can be prosecuted
- could be stopped from engaging in further practices using an enforcement order or undertaking
- may have to provide redress to individual consumers for some breaches using ECMs (unit E)

Activities covered include promotion as well as supply of products and the CPRs categorise UCPs as follows (summary in table A8):

- ✓ banned practices
- ✓ misleading actions
- ✓ misleading omissions
- ✓ aggressive practices
- ✓ general unfair activities

A product includes goods, services and digital content (DigC) and also rights and obligations. Except in the case of practices that are banned outright, practices are only unfair if they either, do or are likely to, cause consumers to take a different 'transactional decision' (TD) that they would not otherwise have taken.

### A4.1 Banned practices

The CPRs list 31 practices that are banned because they are automatically unfair. They are listed in Appendix A1 using the number indicated in the CPRs schedule 1. They cover activities where T:

- falsely claims accreditation
- misleads about product availability
- engages in a scam
- makes unreasonable demands on C
- misleads about the availability of after sales services
- promotes unfair prize draws and competitions
- engages in aggressive sales practices
- misleads C about the context or effect of something

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## A4.2 Misleading Actions

A commercial practice will be a misleading action if it falls within steps 1 and 2 below:

### Step 1

It contains false information so that it is untruthful, **OR**

If in any way, including in its overall presentation, deceives or is likely to deceive the average consumer, even if the information given is factually correct.

The Regulations provide a long list of factors in relation to which information may be untruthful or deceptive and they are far-reaching. They include, for example, issues relating to:

- the way that the goods are advertised
- the sales process used
- the use of price comparisons
- the extent of the trader's commitments
- the main characteristics of the goods or service, etc. **OR**

It concerns any marketing of a product which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor, **OR**

It concerns any failure by T to comply with a commitment contained in a code of conduct that T has undertaken to comply with, if:

- T indicates in a commercial practice that he is bound by that code of conduct, and
- the commitment is firm and is capable of being verified and is not aspirational

**AND**

### Step 2

It causes or is likely to cause the average consumer to take a TD that otherwise he would not have taken.

## A4.3 Misleading omissions

The CPRs require Ts to ensure that they provide Cs with sufficient accurate information to enable them to make an informed choice before taking action, therefore, T's practices may be unfair if they mislead C by omitting to provide information. There may be a misleading omission if steps 1 and 2 are met:

### Step 1

Material information is omitted or hidden from the consumer **OR**

Material information is provided in a way that is unclear, unintelligible, ambiguous or untimely **OR**

The material information fails to identify its commercial intent (unless already apparent from its context)

**AND**

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## Step 2

As a result of one of the omissions mentioned in step 1 the average C is likely to take a TD he would not have taken otherwise.

Information given by Ts should be clear and accurate. The Regulations do not provide a list of what amounts to 'material information'. This will be assessed on the basis of the facts in each particular case, looking at the information that an average C would need to make an informed TD and any EU legal obligation to provide information.

In addition, where T makes 'an invitation to purchase', certain important information should be provided. This is where T gives the price, and sufficient information about the characteristics of the product to enable C to decide to make a purchase. The Regulations provide a list of extra information which must be given to C in this situation, unless it is already apparent from the context. This includes:

- the main characteristics of the product
- the identity of T
- the geographical address of T
- the price (or how it will be calculated) and any additional charges
- payment, delivery, performance, or complaint handling arrangements where these differ from those reasonably expected
- any rights that exist for cancellation or withdrawal

## A4.4 Aggressive unfair practices

The Regulations protect Cs from being subjected to aggressive commercial practices. A commercial practice will be aggressive if it falls within steps 1 and 2 below.

### Step 1

It significantly impairs, or is likely to significantly impair the average C's freedom of choice or conduct through the use of harassment, coercion or undue influence.

The Regulations list a variety of factors that will be considered here, such as the timing, location, nature or persistence; the use of threatening or abusive language or behaviour; the exploitation of C's misfortune or circumstances; threats to take action which would be illegal etc. 'Undue influence' means where T exploits a position of power that he has over C.

**AND**

### Step 2

It causes or is likely to cause the average C to take a TD he would not have taken otherwise.

## A4.5 General unfair practices

Finally, there is a 'catch- all' category to ensure that Ts who carry out UCPs can be caught by the Regulations even if their conduct is not covered by the 31 banned practices or does not fall within the

definitions of misleading acts/ omissions or aggressive practices. Effectively this is the 'general duty not to trade unfairly'. For such an UCP to be caught by the CPRs, it must meet the criteria set out in steps 1, 2 and 3.

**Step 1**

It contravenes the requirements of professional diligence **AND**

**Step 2**

The practice materially distorts (or is likely to distort) the average C's economic behaviour **AND**

**Step 3**

Causes the average C to take a TD decision he would not otherwise have taken

Professional diligence is defined as the standard of special skill and care which a T may reasonably be expected to exercise towards Cs commensurate with honest market practices and / or the general principle of good faith in T's field of activity.

Economic behaviour means where T is using a commercial practice which appreciably impairs C's ability to make an informed choice.

**Table A8: Summary of the provisions in the CPRs**

Reference	Conduct	Effect	Further requirements
Reg 3	Contrary to the requirements of <b>professional diligence</b>	AND (likely to) appreciably impair the <b>average consumer's</b> ability to make an informed decision	<b>AND</b> (likely to) cause the <b>average consumer</b> to take a <b>transactional decision</b> they would not have taken otherwise
Reg 5	<b>False or deceptive</b> statement in relation to a specific list of key factors		<b>AND</b> (likely to) cause the <b>average consumer</b> to take a <b>transactional decision</b> they would not have taken otherwise
Reg 6	<b>Omission</b> of material information		
Reg 7	<b>Aggressive practice</b> by harassment, coercion or undue influence	<b>AND</b> (likely to) significantly impair the <b>average consumer's</b> freedom of choice or conduct	
Schedule 1	One of 31 specified <b>banned practices</b>	<b>DOES NOT APPLY</b> (No impairment/ <b>transactional decision</b> tests)	

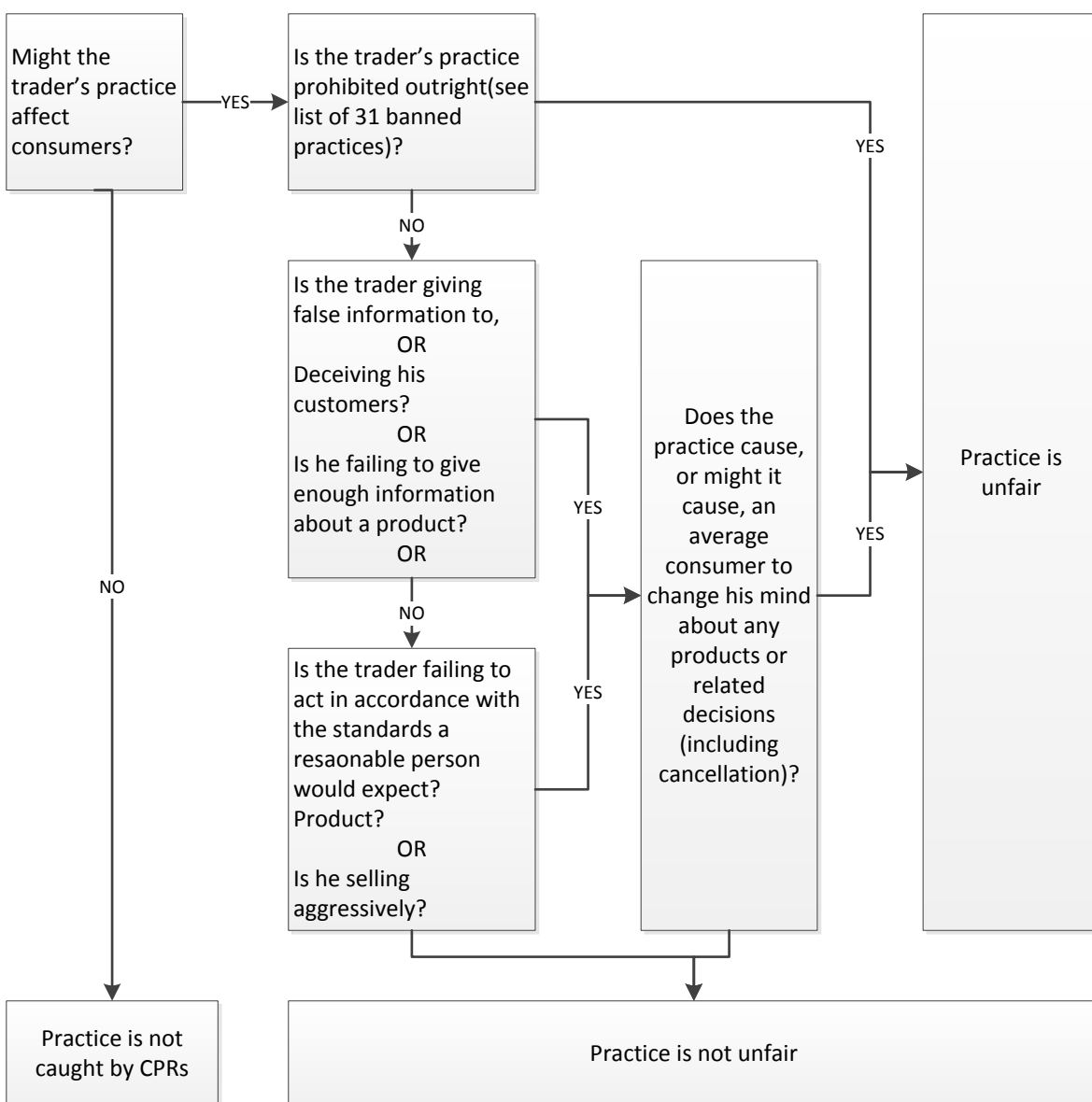


## A4.6 Dealing with unfair practices

LA TSS and sometimes other regulators, have powers under the CPRs to deal with UCPs. Most breaches will amount to criminal offences and so a prosecution could be taken. Alternatively, or in addition, civil enforcement action can also be taken; this involves various stages leading ultimately to a court order to prohibit T from carrying on with the UCP, or risk further sanctions for breaching the order, including possible imprisonment for individual Ts. Some UCPs provide C with a remedy (unit E).

The CPRs represent the most wide reaching piece of legislation that TSS enforce as they refer to unfair practices generally. TSS also enforce many other pieces of legislation, which are more specific in nature (Table A6: earlier).

**Figure A6: Indicating how the CPRs operate**



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## Summary

- The **CPRs are a major piece of legislation for TSS because they regulate UCPs by Ts in a very broad sense** and those who engage in the 5 categories of unfair practices can be prosecuted, prohibited from engaging in further practices and may have to provide redress to individual consumers for some breaches, if the activities affect average consumers.
- **Products covered by the CPRs, include goods, services and digital content (DigC) and also rights and obligations**, but except in the case of practices that are banned outright, practices are only unfair if they are likely to cause Cs to take a different '**transactional decision**' that they would not otherwise have taken.
- There are **31 banned practices listed in the CPRs as automatically unfair** and they include activities where T: falsely claims accreditation, misleads about product availability, engages in a scam, makes unreasonable demands on C, misleads about the availability of after sales services, promotes unfair prize draws and competitions, engages in aggressive sales practices or misleads C about the context or effect of something.
- An UCP is a **misleading action** if it: contains **false information**; is **likely to deceive** the average consumer concerning various listed factors; **creates confusion with a competitor's products**, trademarks, trade names or other distinguishing marks or **concerns any failure by T to comply with a code commitment** that T has promised to comply with.
- T's practices may amount to a **misleading omission** if material information: is omitted or hidden; provided in a way that is unclear, unintelligible, ambiguous or untimely, or fails to identify its commercial intent, unless this is apparent from the context.
- In addition, **if T makes 'an invitation to purchase'**, by indicating a price, and sufficient information about the product to allow C to make a purchase, **certain important information should be provided**, unless it is already apparent from the context, including the: main product characteristics; T's identity; T's geographical address; price and any additional charges; payment, delivery, performance, or complaint handling arrangements where these differ from those reasonably expected and any rights that exist for cancellation or withdrawal.
- A commercial practice can also be unfair if it is **aggressive**, which means that it **significantly impairs, or is likely to significantly impair the average C's freedom of choice or conduct through the use of harassment, coercion or undue influence** and a list of factors will be considered when determining this, including: the timing, location, nature or persistence; the use of threatening or abusive language or behaviour; the exploitation of C's misfortune or circumstances and threats to take action which would be illegal etc.
- There is a **final, general category** to ensure that Ts who carry out UCPs can be caught by the CPRs even if their conduct is not covered by the 31 banned practices, misleading acts, misleading omissions or aggressive practices; it is in effect a 'general duty not to trade unfairly' and **covers activities that contravene the requirements of professional diligence and materially distort the average C's economic behaviour**.

## Appendix A1: CPRs Banned Practices

<b>Banned Practice</b>	
<b>Giving false details about endorsements/accreditations</b>	
<b>1</b>	<b>Providing false information about credentials</b> Claiming to be a signatory to a code of conduct when the trader is not
<b>2</b>	<b>Faking it</b> Displaying a trust mark, quality mark or equivalent without having the necessary authorisation
<b>3</b>	<b>Saying your code of conduct has endorsement when it doesn't</b> Claiming that a code of conduct has an endorsement from a public or other body which it does not have
<b>4</b>	<b>Saying that you have endorsement when this is untrue or failing to stick to the terms of it</b> Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation
<b>Certain practices involving giving wrong or misleading information about the availability of products and services or the context in which they are sold, or about their effect</b>	
<b>5</b>	<b>Bait advertising</b> Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising)
<b>6</b>	<b>Giving a false impression to reel in the customer</b> Making an invitation to purchase products at a specified price and then- (a) refusing to show the advertised item to consumers, (b) refusing to take orders for it or deliver it within a reasonable time, or (c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch)
<b>7</b>	<b>Falsely claiming an offer is only open for a limited time</b> Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice
<b>8</b>	<b>Giving after-sales services in a different language</b> Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to the transaction in a language which is not an official language of the EEA (European Economic Area) State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction
<b>9</b>	<b>Not a legal sale</b> Stating or otherwise creating the impression that a product can be sold legally when it cannot
<b>10</b>	<b>Trader's offer suggests he gives rights to consumers, as a special deal, that they are entitled to in law anyway</b> Presenting rights given to consumers in law as a distinctive feature of the trader's offer
<b>Certain types of adverts, promotions and marketing</b>	
<b>11</b>	<b>'Hidden' advertising</b> Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)
<b>12</b>	<b>Schemes to scare</b> Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product

<b>13</b>	<b>False impression about manufacturer</b> Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that same manufacturer when it is not
<b>14</b>	<b>Pyramid sale scheme</b> Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products
<b>15</b>	<b>False claims that a business is closing down</b> Claiming that a trader is about to cease trading or move premises when he is not
<b>16</b>	<b>Claims that you stand a better chance of winning</b> Claiming that products are able to facilitate winning in games of chance
<b>17</b>	<b>Miracle cures</b> Falsely claiming that a product is able to cure illnesses, dysfunction or malformations
<b>18</b>	<b>False claims about market advantage</b> Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions
<b>19</b>	<b>Prizes given are not as promised or are not given at all</b> Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent
<b>20</b>	<b>Charging for free gifts</b> Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for the delivery of the item
<b>21</b>	<b>Trying to trick the consumer into thinking that they have already placed an order</b> Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the market product when he has not
<b>22</b>	<b>Trader pretending to be a private seller</b> Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer
<b>23</b>	<b>Misleading people about the availability of after-sales services</b> Creating the false impression that after-sales service in relation to a product is available in an EEA State other than the one in which the product is sold
<b>24</b>	<b>Stopping consumers from leaving until they have brought something</b> Creating the impression that the consumer cannot leave the premises until a contract is formed
<b>25</b>	<b>Badgering consumers in their own home</b> Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation
<b>26</b>	<b>Trader pestering the consumer by telephoning</b> Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation
<b>27</b>	<b>Trying to prevent consumers claiming on their insurance policy</b> Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights
<b>28</b>	<b>Advertising to encourage children to buy or seek products</b> Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them
<b>29</b>	<b>Charging for goods (and other expenses) when the consumer did not place an order - inertia selling</b>

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	Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer (inertia selling)
<b>30</b>	<b>Emotional blackmail</b> Explicitly informing the consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy
<b>31</b>	<b>Prize scams</b> Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:- <b>a)</b> there is no prize or other equivalent benefit, or <b>b)</b> taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost