

Drivers of compliance and non-compliance with consumer law

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A report by Ipsos MORI commissioned by the Office of Fair Trading

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1 EXECUTIVE SUMMARY

- 1.1 The Office of Fair Trading (OFT) commissioned Ipsos MORI to conduct a research study to investigate what motivates firms to comply or not with consumer protection legislation.
- 1.2 Forty-four in-depth interviews were conducted with traders across a number of business sectors. The interpretation of the evidence obtained by Ipsos MORI and any views expressed on all issues are those of Ipsos MORI and not the OFT.
- 1.3 This report is structured around the following three main sections:
- drivers of compliance
 - drivers of non-compliance
 - helping businesses comply.
- 1.4 It should be noted that usually there are a variety of drivers (attitudes or characteristics) affecting businesses and what drives compliance or non-compliance is complex. The drivers that we have identified are not a definitive list and are not based on a legal assessment of the interviewees' levels of compliance with consumer protection law. Self-reported non-compliance by interviewees was very low with no reports of on-going non-compliance and so beyond that no conclusions or assumptions can be made about the respondents' levels of compliance with consumer protection law.

Drivers of compliance

- 1.5 On the basis of our interview evidence, it is Ipsos MORI's view that three main drivers of compliance with consumer protection law emerge:
- consumer pressure
 - relationship with or pressure from external organisations

- traders' understanding of consumer protection obligations and risks.

1.6 The drivers are listed in descending order of relative priority, though this should be taken as indicative as the study is not a quantitative one among a representative sample. In addition, due to the nature of this research, care needs to be taken in making assumptions about traders generally.

Consumer pressure

1.7 Consumer pressure comes from two primary sources.

- The traders' own desire to satisfy the needs of customers and maintain a good reputation.
- Consumers' awareness of their rights and traders' obligations towards them.

1.8 For the majority of respondents, compliance with the law is assumed to be part of being a customer-focused business. Failure to comply, and to be the recipient of enforcement action, has the potential to damage their reputation. This is a major concern for many traders as it risks alienating current and potential customers.

1.9 Reputational risk is a concern for both large and small businesses interviewed. The former feel they are vulnerable to media attention, while many of the latter are operating in localised markets where word of mouth is a key driver of new business.

1.10 Although many respondents say that consumers' own understanding of their rights is poor, the majority see customers becoming more demanding. Traders have to respond to this, though many say they seek to avoid any argument and try to avoid any recourse to consumer law. Most will try to resolve any disputes before the consumer refers to their legal rights or tries to enforce them in court. Media activity is widely seen as the driver of changing attitudes among customers.

Relationship with or pressure from external organisations

- 1.11 We found a number of relationships with third-parties are important in supporting compliance with consumer protection law:
- membership of trade associations or other collective bodies
 - local authority Trading Standards Services
 - external lawyers
 - competitors.
- 1.12 Membership of trade associations or professional bodies is seen to provide accurate, up-to-date and sector-specific information and support (such as standard terms and conditions) to traders on their obligations. They appear to offer to smaller businesses some of the advantages available to larger businesses – such as access to expert legal advice and helplines - that they could not otherwise afford. Trade associations are also seen as a way of pushing rogue or illegal traders out of a sector by allowing members to distinguish themselves from other businesses.
- 1.13 A relationship with local authority Trading Standards Services (TSS) is generally regarded in a positive light where it exists. TSS are able to offer authoritative advice (though some concerns do exist for a minority in this area), impartial adjudication and (for larger businesses with networks of outlets) a coordinated way of dealing with multiple TSS contacts.
- 1.14 Larger businesses interviewed in particular make use of external legal advice. Although these larger businesses are more likely to have their own in-house specialists and resources they are also more likely to seek the advice of external legal specialists. This is perceived as a high quality and reliable resource of expert opinion.
- 1.15 In some sectors, companies appear to monitor the behaviour of competitors and initiate complaints or action against each other. In some

specialised / niche markets, a poor reputation can spread rapidly and damage the standing of a business across the whole sector.

Understanding of consumer law obligations and risks

- 1.16 The research suggests that a good understanding of consumer protection law is a driver of compliance. Respondents who exhibit a better understanding are those in larger companies, particularly those who are in specialised roles, or who have attended relevant training courses.
- 1.17 Larger businesses are also able to build processes for addressing consumer protection law issues in their organisation, for example through training, guidance and escalation procedures. These processes do exist in smaller businesses but tend to be less formal.
- 1.18 About half the sample indicates that compliance with consumer protection law is a priority, either ahead of or on a par with other legal or regulatory obligations. Prioritisation appears to be associated with role specialisation, customer focus, and a desire to minimise the risks of non-compliance.
- 1.19 The deterrent effect of enforcement action can be a significant driver of compliance. However, the impact of this driver may be minimal where there is limited awareness of the consequences of breaching consumer protection legislation. Negative experiences, for example dealing with the Small Claims Court, appear to have a particularly strong impact.

Drivers of non-compliance

- 1.20 From our interviews, three major drivers of non-compliant behaviour can be inferred:
- limited understanding of consumer protection law
 - limited deterrent effect from consumer protection law and its enforcement
 - economic and market pressures.

Limited understanding of the detail of consumer protection law

- 1.21 One of the key findings in this study is the widespread poor understanding of the detail of consumer protection law. Although a number of pieces of legislation - such as the Sale of Goods Act 1979 - and various principles - such as fair trading, and cooling off periods - are quoted, a number of respondents have limited detailed knowledge. Larger businesses and those in specialised roles generally appear to be the better informed.
- 1.22 Where there was an absence of detailed knowledge, many argue they follow the principles of consumer protection law rather than the letter of it (sometimes expressed as following the 'spirit of the law'). Alternatively it is thought that a focus on customer service and common sense is sufficient.
- 1.23 Some traders attribute their limited understanding to changes in consumer protection law. More generally we found a marked lack of information, or poor quality information, being relied upon by some traders to maintain their knowledge. Particularly for those who are not members of a trade association or who do not have a relationship with TSS, the Internet is their first point of call. These traders appear to rely on search engines (such as Google) to track down relevant information. Only two of the respondents mentioned Business Link (where a lot of information relevant to consumer protection law can be found).
- 1.24 Among several smaller businesses, the lack of a relationship with TSS may also hold back their knowledge of consumer protection law. They do not want to approach the organisation because they fear that it will have negative consequences. Among the larger national businesses the concern is more about contradictory advice from different TSS offices.
- 1.25 Limited understanding of the detail of consumer protection law is also apparent within some large organisations once we move away from those in specialised roles. In these instances there are more developed

processes and structures to manage consumer protection issues. However these can occasionally break down, either due to structural failures or human error (such as failure to follow procedures), leading to instances of non-compliance.

Limited deterrent effect from consumer protection law and its enforcement

- 1.26 The deterrent effect from consumer protection law and its enforcement via enforcement bodies such as TSS is not widely felt.
- 1.27 We found little evidence that traders have detailed knowledge about the penalties for breaches of consumer protection law. These are generally assumed to be fines but there is not much understanding as to how big these fines can be or in what circumstances they can be imposed. Similarly there is little awareness of the enforcement activity taken by TSS or the OFT.
- 1.28 The consequences of this lack of knowledge is a perception among several that action is not likely and companies will not be penalised heavily. This is reinforced by perceptions of patchy or variable enforcement.
- 1.29 There is little outright disagreement with consumer protection law, though a fairly common view is that it is biased against companies and (unfairly) in favour of consumers.
- 1.30 Around half the respondents place consumer protection law as a higher priority than other legal obligations. Those who do not express such a view generally have not had consumer protection issues affect them or seem to think that their positive focus on customer service makes the obligations less relevant to them. Alternatively, in certain markets because of their characteristics professional standards are felt to have a higher priority. Generally though it is tax and health and safety legislation that are seen as more pressing and the consequences of breaches are more severe.

Economic and market pressures

- 1.31 Finally two additional factors increase the pressures on respondents to behave in ways that might lead to non-compliance. These are:
- relationships with suppliers
 - economic pressures.
- 1.32 Even relatively large retailers interviewed can feel intense pressure from suppliers, especially where these are global businesses many times larger than the retailers. Many businesses feel squeezed in this situation between a consumer to whom they have legal obligations and their supplier.
- 1.33 Some respondents report that pressures on revenues and margins resulting from the current economic situation have changed the ways that some businesses behave. A few participants report examples such as changes to returns policies or advertising, which, whilst cannot be taken as evidence of noncompliance, may suggest that there is a greater risk for breaches of aspects of consumer law in the current market.

Helping business comply

- 1.34 Almost all express some needs for additional support or help. There are clear messages about the nature of the information needed, and the channels through which it could be delivered. There are also some significant communications issues that need to be addressed.
- 1.35 Traders are looking for information and support that is:
- authoritative and timely – it provides them with definitive up-to-date answers that they can rely upon
 - relevant and easy to understand – it is tailored to their needs so easy to absorb and implement.

- 1.36 Official bodies such as the OFT and TSS appear to have an important role to play, especially in providing guidance and raising awareness of what information is available to businesses, and where. Trade associations are highly respected for their ability to produce material relevant to the needs of particular industries.
- 1.37 Our research suggests that no one channel will meet the needs of all traders. It is apparent that some still find hardcopy sources easier to use (or material that is distributed via email).
- 1.38 However, online sources are widely used currently. Our evidence suggests that a broad range of sites, even among 'official' bodies (such as the OFT, TSS) are accessed and that this is potential source of confusion.
- 1.39 Personal contact with an expert advisor via telephone or visits would be valuable according to a large proportion of the traders we spoke with, as it would enable traders to review and clarify problems. Currently this is obtained from sources ranging from TSS and trade associations through to 'free' advice from consumer focused organisations, and this can vary widely in quality, and in some cases interpretation.
- 1.40 Finally, certification (for example of terms and conditions) and training courses would also be appreciated by a minority of the traders we spoke with. The former would provide something of value to business in terms of bolstering their reputation while training courses are seen as very valuable in terms of driving up level of knowledge among traders (though many of the smaller traders say they would struggle to find the time for this).

Barriers to communications

- 1.41 Three significant barriers are apparent:
- fear of enforcement agencies
 - profile and role of TSS and the OFT
 - volume of regulation.

- 1.42 A relationship with TSS would be valuable for many businesses. However, there is a need to overcome concerns about dealing with an enforcement body among some.
- 1.43 There is widespread confusion over the role of TSS and the OFT. Indeed some have low awareness of either body (very low in the case of the OFT). Improved awareness of TSS and the OFT should help the effectiveness of communications to traders and improve the flow of information to them.
- 1.44 Finally, the volume of regulation is perceived by businesses to be significant, and any communications about consumer protection law will need to stand out from other legal and regulatory materials that require traders' attention.

2 INTRODUCTION

Background and objectives

Background

- 2.1 The Office of Fair Trading (OFT) is the UK's national enforcement body for competition and certain consumer protection legislation. The mission of the OFT is to make markets work well for consumers and it aims to achieve this through a range of tools and interventions from providing education and information to businesses and consumers to, where appropriate, enforcing consumer and competition law.
- 2.2 The OFT has a number of enforcement duties and a range of enforcement tools derived from a wide range of consumer protection laws and helping businesses to comply with these laws is a fundamental part of the OFT's mission.
- 2.3 The OFT commissioned Ipsos MORI to conduct a research study to investigate what motivates firms to comply or not with consumer protection legislation.

Objectives

- 2.4 The key objectives of this study are:
- to examine what motivates firms and individuals in businesses to comply with consumer legislation enforced by the OFT
 - to better understand the circumstances and incentives that may lead firms not to comply
 - to investigate the general level of understanding about compliance.

Context

The regulatory landscape

- 2.5 The range of regulatory duties which firms have to comply with can be quite vast and varied, ranging from trading standards to health and safety, employment, environmental, waste and planning.

- 2.6 This may understandably be seen as a burden for firms, costing them time and money – but a recent study among Small and Medium Enterprises (SMEs) in England and Wales (*The Anderson Review of Government Guidance on Regulation*¹) found that the majority of businesses (58 per cent) treat complying with regulation as a crucial or very important business responsibility. This figure increases among larger SMEs, reaching 95 per cent among businesses with 50-249 employees.
- 2.7 Nearly all (91 per cent) describe themselves as being responsive to regulatory requirements, including 50 per cent (rising to 79 per cent of businesses with 50-249 employees) who say they are always proactive in ensuring compliance.
- 2.8 The same study also found that:
- Health and safety is seen to be the most time-consuming regulatory area for three in 10 businesses. In comparison, one in 10 view trading standards regulations as the most time-intensive area.
 - Health and safety is also seen as being the most costly regulatory area by a third (33 per cent) of businesses. In contrast, only five per cent cite trading standards regulations as being the most costly for their business.

Research into levels of detriment and complaints

- 2.9 Research published by the OFT in 2008² estimated the overall value of revealed consumer detriment in the UK economy over the preceding 12 months to be £6.6 billion. (Consumer detriment was defined as the financial loss suffered by consumers as a result of unsatisfactory

¹ The research study was prepared for Department for Business, Enterprise and Regulatory Reform, July 2008.

² See *Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services* - Report OFT 992
www.offt.gov.uk/shared_offt/reports/consumer_protection/oft992.pdf

purchases of goods and services.) The research estimated that consumers experienced 26.5 million problems with unsatisfactory goods and services, and that 34 per cent of the problems were unresolved. Consumer Direct (the OFT funded advice service) logged 850,000 consumer complaints cases in 2009.³ These results are not conclusive evidence of high levels of business non-compliance with consumer protection law. However, it seems to us to be a reasonable assumption that in a number of individual transactions (even if small in proportion of the overall number of business to consumer transactions) there has been some element of non-compliance.

OFT enforced consumer protection law

Legislation covered by this study

2.10 To ensure the study remained suitably centred on a core of the OFT activities we focused on the motivations for compliance with the following specific areas of consumer protection legislation amongst businesses.

- Advertising and product/service descriptions are truthful and provide sufficient information.
- Contract terms and the obligations they involve are understandable and not unfair.
- Consumers can expect goods to be as described, of satisfactory quality and fit for purpose, and services to be provided with reasonable skill and care and proper remedies when things go wrong.
- Consumers are offered suitable protections when booking and taking package holidays.
- Consumers can expect lenders to operate fairly within the framework of the consumer credit regime.

³ www.consumerdirect.gov.uk/news/press_releases/national/2010/2009top10

- Consumers buying at a distance (for example over the internet) are given the appropriate information, cancellation rights and so on.

2.11 These areas correlate closely with certain pieces of consumer protection legislation enforced by the OFT⁴. These are:

- Misleading acts or omissions relating to unfair commercial practices under the Consumer Protection from Unfair Trading Regulations 2008.
- The Unfair Terms in Consumer Contracts Regulations 1999.
- The Sale of Goods Act 1979; and the Supply of Goods and Services Act 1982.
- The Package Travel, Package Holidays and Package Tour Regulations 1992.
- The Consumer Credit Act 1974.
- The Consumer Protection (Distance Selling) Regulations 2000.

2.12 Below we briefly discuss these pieces of legislation and their implications for businesses.

Misleading acts or omissions under the Consumer Protection from Unfair Trading Regulations 2008

2.13 The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) came into force in May 2008 and implemented the Unfair Commercial Practices Directive into UK law⁵. The CPRs replaced a number of existing pieces of UK legislation including the Control of Misleading Advertisement Regulations 1988.

⁴ The following is intended only to be a brief summary of the relevant law. You should seek legal advice if you need more detailed information regarding any of the pieces of legislation listed.

⁵ See www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf for more information.

2.14 Among other things, the CPRs prohibit misleading actions and misleading omissions. A misleading action occurs when a practice misleads through the information it contains, or its deceptive presentation, and causes or is likely to cause the average consumer to take a different decision. Practices may also mislead by failing to give consumers the information they need to make an informed choice (in relation to a product). This occurs when practices:

- omit or hide material information, or provide it in an unclear, unintelligible, ambiguous or untimely manner
- the average consumer takes, or is likely to take, a different decision as a result.

The Unfair Terms in Consumer Contracts Regulations 1999

2.15 The Unfair Terms in Consumer Contract Regulations 1999 (UTCCRs) apply to terms which have not been individually negotiated in contract concluded between a consumer and a trader. An unfair term is one which, contrary to the requirements of good faith, causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. Generally, there is an exemption for terms which define the main subject matter of the contract or the price payable for the goods or service supplied.

2.16 In contracts to which they apply, the UTCCRs additionally impose an obligation on businesses to express any written contract terms in plain and intelligible language.

The Sale of Goods Act 1979

2.17 The Sale of Goods Act 1979 sets out the law governing contracts for the sale of goods and governs a wide range of matters relating to contract formation and terms implied into contracts.

2.18 Implied terms relate to:

- goods will correspond with description if sold by description or quality of sample if sold by sample
- the goods will be reasonably fit for purpose

- the goods will be of satisfactory quality.

2.19 The Act provides a number of remedies for consumers where goods do not meet one of the implied terms including full or partial refund, repair or replacement depending on the circumstances.

The Supply of Goods and Services Act 1982

2.20 The Supply of Goods and Services Act 1982 creates provision for terms to be implied into contracts for the supply of a service, for example the installation of a fixed kitchen. These implied terms are that the service:

- will be carried out with reasonable skill and care
- where no time for the work has been agreed, will be provided within a reasonable time
- where no price has been agreed, or where no method for determining price has been agreed, will be charged at a reasonable cost
- the Act also applies to contracts for work and materials where in addition to the transfer of goods, significant services are supplied too. For example, contracts to repair a house. The conditions in respect of goods transferred under such contracts broadly correspond with those set out in the Sale of Goods Act 1979.

The Package Travel, Package Holidays and Package Tour Regulations 1992

2.21 The Package Travel, Package Holidays and Package Tour Regulations 1992 (PTRs) regulate the sale and performance of packages sold or offered for sale in the UK. They set out what information must be given to the consumer before the contract is concluded and information that must be given to the consumer in good time before the start of the journey. They also cover the information and manner in which information is to be given in brochures, and the circumstances in which particulars given in the brochure are binding. The PTRs prevent descriptive matter relating to packages from being misleading and make requirements as to the form and content of the contract.

The Consumer Credit Act 1974

- 2.22 The Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006) regulates the full scope of consumer credit activities.
- 2.23 The Act or regulations made under it lays down rules covering:
- the form and content of agreements
 - credit advertising
 - the method of calculating the Annual Percentage Rate (APR) of the Total Charge for Credit
 - the procedures to be adopted in the event of default, termination, or early settlement
 - the unfair relationships test.
- 2.24 The Act also requires that most businesses that offer goods or services on credit, or lend money to consumers be licensed by the OFT. Appeals against the OFT licensing decisions should be made to the First tier Tribunal (Consumer Credit). The tribunal is administered by the Tribunals Service.

The Consumer Protection (Distance Selling) Regulations 2000

- 2.25 The Consumer Protection (Distance Selling) Regulations 2000, commonly referred to as the Distance Selling Regulations (DSRs) give additional rights to consumers in the area of home shopping. Under the regulations consumers have additional rights, including the right to clear information and a seven day cooling off period. The regulations provide that consumers who receive unsolicited goods have no obligations to pay for them.

Methodology

Approach

- 2.26 A qualitative methodology was seen as the best approach to meet the objectives of this study. Qualitative research is an interactive process which not only uncovers what people think but the drivers behind this. In

this sense, it is the ideal methodology for exploring the issues which underpin business mindsets and behaviours about the topic of consumer compliance.

- 2.27 Specifically, for this study, an in-depth interview approach was used. In total 44 in-depth interviews were completed, comprising four pilot interviews and forty main stage interviews. This approach allowed the interviewer the opportunity to build a good rapport with the interviewee and ultimately to get more out of the interview than would have been possible using a structured questionnaire. Building trust was also crucial, considering that this study centred on a subject matter that some participants were likely to be wary of.

Sampling and recruitment

- 2.28 The in-depth interviews were completed with businesses that were willing and able to take part in this study.
- 2.29 All recruitment was carried out by telephone.
- 2.30 Face to face interviews were encouraged where possible. Eleven interviews were carried out by telephone. As a thank you for taking part in the study, each participant was paid £50.00 as a cash sum.
- 2.31 Pilot interviews were carried out in late October and early November 2009, main stage interviews were completed in November and December 2009.

Rationale for choice of sectors

- 2.32 Interviews were carried out with businesses operating in the following sectors: assistive products, domestic appliances and personal computers, floor coverings and furniture, home improvements and double glazing, and tour operators. The factors used for selecting sectors included levels of complaints, the degree of online purchasing, the existence of trade associations and codes of conduct and the extent of previous intervention activity. Data have been sourced from the OFT annual reports and Internet searches. Where a published data source

could not be found, for example data on frequency and value of purchases, we have applied our own judgement.

Respondent profile- screener questions

2.33 In the table below, the completed interviews are broken down by method (face to face or telephone) and company size. The table allows you to see the profile of participant businesses we spoke to.

TABLE 2.1 – RESPONDENT PROFILE

Interviews	Large	SME	Totals
Total	10	34	44
Face to face/ Telephone			
Face to face	8	25	33
Telephone	2	9	11

2.34 A geographic spread of interviews was also sought across a number of urban and rural/semi-rural areas.

Quotation convention

2.35 All the quotes shown within this report have been sourced from the original transcripts of the interviews conducted for this study. Quotations are shown within speech marks and, where dialogue has been removed, a '...' is used to indicate this. The sourcing for each individual quote gives the size of business (SME/ Large).

3 DRIVERS OF COMPLIANCE

- 3.1 The chapter examines the drivers of good compliance behaviour that have emerged in this research. By drivers we mean attitudes or characteristics that promote or enable traders to comply with their obligations under consumer protection law.
- 3.2 Identifying what drives compliance with consumer protection law is not clear-cut, and a variety of complex issues are described. A variety of drivers for good compliance emerge, which can be grouped together under the following three headings:
- consumer pressure
 - relationship with or pressure from external organisations
 - traders' understanding of consumer protection obligations and risks.
- 3.3 These drivers are listed in order of frequency, that is, consumer driven compliance was mentioned by more traders than understanding of consumer protection law. However, due to the nature of this research, which is qualitative and based on a limited number of interviews, care should be taken in making assumptions about the population of traders as a whole.

Consumer pressure

- 3.4 Attracting and keeping customers is the main business driver of almost all of the traders that we spoke with. As such customer satisfaction and reputation are a central concern. A large proportion of businesses feel complying with some aspects of consumer protection law would be integral to serving their customers well, maintaining a good reputation and ensuring that they continue to trade successfully.

Good customer service and reputation

- 3.5 The majority of the businesses we spoke with place great emphasis on the importance of customer service as part of their offer to customers.

This perception of how they deliver value to customers is sometimes contrasted with their views of competitors who are said to offer a price-centred strategy that places less emphasis on high standards of customer service. This is particularly the case for those markets where the Internet has supported the growth of many 'low price' businesses.

'I think there's some very good retailers, and I think there's some not so good retailers, and the not so good retailers just go out after price.' SME.

- 3.6 Businesses associate complying with consumer protection law with good customer service, bolstering their reputation and increasing the likelihood of repeat customers.

'I think the benefit should be customer satisfaction. ... From our point of view, we are retailers, and if our customer's not satisfied with us, they're not going to do the business with us, simple as that.' SME.

'Well it's, in theory, it should give you perhaps happier customers and a better reputation and maybe more return business.' SME.

'Consumer law really is, [...] on [a] parallel with customer satisfaction. Our aim is to satisfy customers. ...So to an extent [...] consumer law is probably not that important because we're not trading right on the edge.' SME.

- 3.7 For the majority who believe that they make such an offer to the market, behaving in accordance with consumer protection law is seen as an integral part of this customer service-focused approach. Conversely being non-compliant is associated with offering poor customer service, with all the consequences that would have for their business.

'Because the customers are our bread and butter, if you like, we need to be knowing that we're delivering the right service for them. If we're not doing something right then we need to change that.'
Large business.

'Obviously if we're not compliant and we get pulled up on it, we can get a lot of trouble but long before that happened, it is about customer service isn't it?' SME.

- 3.8 A large proportion of the traders we spoke with feel that what is set out in consumer protection law is good practice in terms of customer service.

'For me personally because I see it from a customer point of view, I think it's [consumer law] really good and I wish more companies would do it.' Large business.

- 3.9 This does not mean that they necessarily focus heavily on consumer protection law issues. On the contrary, a minority of those who argue that they focus on customer service appear to regard consumer protection law as something that is really there to address the shortcomings of others.

- 3.10 Most of those who discussed the importance of good customer service also make an explicit link between good service and a positive reputation. The importance of reputation in winning new business is strongly felt by small, localised traders or those operating in niche markets.

'Round this particular area, word of mouth, and we do stand by our reputation here. We've got a good reputation, and our customer base ... they would ... hopefully would recommend me to their friends.'
SME.

- 3.11 As well as being a source of new business, a good reputation is also seen as important in retaining the loyalty of existing customers. Several of those we spoke with emphasise the long-standing nature of their business and the importance of repeat business, implying that they would not trade their good name for quick, short term gain.

'We're not the type of company that wants to sell you something and never sell you something again, we're not after the philosophy

of there's one born every minute, a customer is, hopefully we want to keep for a long time.' SME.

- 3.12 A good reputation can also differentiate the business from less reputable organisations. Across several sectors, traders made reference to the existence of 'cowboys' against whom it is valuable to establish the credibility of their own business.

'Obviously, it stops us from being thought of as cowboys, it makes people feel morally pure on an individual basis, that they are doing the right thing.' SME.

Adverse media publicity acts as a deterrent to non-compliance

- 3.13 The risk of bad publicity and consequent reputation damage is a major incentive for some to comply. Bad publicity could either be through word of mouth or on a larger scale through the media.

'Reputation. I think we're seen as a company that looks after the customer. You can't please all the people all the time and there will be people that love us and people that absolutely hate us. And unfortunately if you have one bad experience, you are always going to remember the bad experience not the good experience.' Large business.

'Well, in our particular business, it's a bad reputation. Being non-compliant where others are compliant. It's we just wouldn't be competitive and we just, we'd have such a poor reputation, it would damage our business.' SME.

- 3.14 Each instance of poor customer service could lead to negative comment to other potential customers. A few businesses, because of their size and profile, also feel that they are more exposed to adverse media comment, which has the potential to damage their brand.

Consumer awareness of legal rights

- 3.15 Consumers' awareness of their legal rights is also a widely remarked on issue. Businesses of all sizes believe consumers have become more

aware of their rights as consumers and businesses' obligations towards them. The source of this is generally believed to be the media.

'It's a bit of a knee jerk reaction now, unfortunately the TVs got a lot to answer for... People just think that they have the absolute right to do what they like.' SME.

- 3.16 One respondent with a large UK retail presence reports, from anecdotal evidence, that UK consumers are more demanding, in terms of their legal rights, than consumers in either the US or continental Europe.

'The UK consumers are very, very price conscious and very, very rights conscious.... and the [European country] don't return things with the same alacrity as the British do.' Large business

- 3.17 There is also a widespread perception that consumers are often incorrect in their understanding, and this can create unnecessary demands on their time.

'They're also much more aware of their rights ... although very few of them are aware of actually what the correct rights are.' Large business.

'I find that generally the public believe that they have the full force of the law on their side, and therefore they try – shall I say misuse, it may be a bit of a strong word, but you will get the occasional person thinks the law – tries to lay down the law when something goes wrong. I find it aggravating to say the least, but I always double check to make sure that we've done the right thing.' SME.

'And then of course there are issues over customers returning products that they've actually broken themselves and that they feel that the law in some way protects them in that instance. Not that many, but a significant amount, a few thousand a year anyway.' Large business.

- 3.18 The implications for larger and smaller businesses appear to be different. Larger organisations interviewed have usually invested in the infrastructure to help them handle volumes of complaints and attend to

issues. Smaller businesses appear more likely to give way, irrespective of whether they feel the consumer is right or not. Many say that they do everything they can to avoid arguing with customers, whether to preserve the customer relationship or avoid the costs and inconvenience of a legal case. In that sense, it could be inferred that consumer pressure would seem to promote good behaviour from smaller businesses, though it does lead to resentment of a perceived bias against businesses in consumer protection law.

- 3.19 In contrast, where there is specific legislation relating to their sector, several of those who we spoke with stated that they would like consumers to be more informed of the relevant legislation. The perception amongst these businesses is that consumers are not aware of the protection that compliance with the law gives them. There is a feeling that if consumers are not aware of the lengths that the businesses have to go to in order to comply with the law, then their efforts are in vain.

'A lot of our clients are unfamiliar with what the consumer protection is, what it's offering and what it's giving them.' SME.

Relationship with or pressure from external organisations

- 3.20 The traders who we spoke with turn to various external organisations for help and support, ranging from trade associations to external lawyers. These organisations can be used as sources of advice. Others, such as local authority Trading Standards Services and other enforcement bodies, put pressure upon the traders to comply with various regulations and codes of practice.

Membership of trade association or professional body

- 3.21 As was noted in Chapter 2 [see 2.31], all the sectors chosen are known to have trade associations. Certainly among those participants who are members of trade associations or other collective bodies, feedback is overwhelmingly positive about the support they give to businesses. This is particularly the case for smaller businesses without the resources or internal expertise to devote to consumer protection law issues.

- 3.22 The benefits of trade associations and other bodies are said by respondents to be:
- providers of accurate, sector-specific information on their obligations
 - regular updates on changes
 - a way of removing 'cowboys' from the sector.

3.23 Those traders who belong to a trade association often turn to these bodies as a first point of call for information on compliance. Trade associations are seen as providing information that is more specifically tailored to the traders' sector. They also send traders information regarding changes in laws and regulations on a regular basis. The majority of traders, especially smaller organisations receive this information as part of a bigger package as they pay a subscription to the association and are often audited by the association at set intervals.

'If I want to find out we go to the [name of trade association removed].It's online. ... And they have information sheets that you can get for different things, but they all say we get a free legal advice thing with them so we can get on to that if we need to.'
SME.

'... there's a lot of regulation, and I think that's one of the reasons we're a member of [name of trade association removed] is because they guide us a lot on that. They have a very effective approach to what consumer rights are and how they're applied, so when we do have an issue, we will often contact [name of trade association removed] and say, look, this is the situation, obviously we want to resolve it, but advise us. And they will.'
SME.

3.24 A few traders also mentioned that they based their terms and conditions in their contracts on template ones that their trade associations provided. Contract terms are seen as quite a complicated area of consumer protection law for many and using terms and conditions provided by trade associations gives traders confidence that they are correct and compliant.

'We're pretty good like that because we, because we're an [name of trade association removed] member, we sign up to their standard terms of conditions, so all our terms and conditions are based on their model example.' SME.

3.25 One trader mentioned that they bought their hire purchase contracts from an external firm to ensure that they are correct and compliant.

'In order to comply we just buy the paperwork in for the sake of a couple hundred pounds.' SME.

3.26 Keeping up-to-date with changes in the law is a challenge for businesses, especially smaller ones, and trade associations help by 'pushing' this information out to their members.

'[name of trade association removed] sent us through an employment law PDI, and then if there's any changes or amendments to that then they come through, and the same with consumer law.' SME.

3.27 Finally, trade associations are seen as a way to remove 'cowboys' from a sector.

'Well, the [name of trade association removed] regulations [standards] really are a very good idea because they've got rid of a lot of cowboys in the business.' SME.

3.28 A handful of traders mentioned that they belong to a buying group that can also provide them with information regarding compliance issues. Subscription to these groups tends to include free legal advice and cover. Again, this is more applicable to the smaller companies that we interviewed.

'We pay an annual subscription to a group, [name of group removed], and ..., part of our subscription gives us free legal cover if somebody wanted to take an action against us, and free legal advice ... and the consumer law advice from them, as part of their services to ourselves.' SME.

3.29 The third set of collective bodies that appear to be relevant here are professional bodies. This is likely to be most notable in those sectors where there is the concept of a 'profession'

'Well I suppose I'm relying on our professional bodies to be aware of consumer law ... They issue the standards they give us.' SME.

Relationship with Trading Standards Services

- 3.30 The majority of the large businesses interviewed, and a smaller proportion of SMEs, have relationships with local authority Trading Standards Services (TSS). Contact is either on an ongoing or fairly frequent basis, or on a one-off or infrequent basis, with the latter typically being in response to a one-off query or instance of non-compliance. TSS are the primary enforcement bodies in a practical sense for participants in this research, whereas contact with other similar types of bodies such as the OFT and Advertising Standards Authority (ASA) is much less common.
- 3.31 Where contact is frequent or ongoing, perceptions of the relationship tend to be very positive, even where this involves addressing issues of non-compliance. These relationships often focus on a specific individual contact within TSS and are highly valued by the traders. Once traders have initiated such a relationship they tend to utilise it relatively frequently and consult their TSS contact on a variety of compliance related issues.
- 3.32 The main benefits of a relationship with TSS appear to be:
- authoritative advice
 - impartial adjudication
 - (for large businesses) a coordinated approach to dealing with TSS.
- 3.33 TSS can be a source of authoritative information (though it is important to note that this is not always the case, see 4.54) and can help mediate disputes with customers.

'Yes, we have a contact at Trading Standards who we know and, yeah, he's a great general, he's quite happy to advise us and he's on nobody's side, completely impartial. And when he's said that we've

been silly he tells us and when he tells us the customer is asking for too much again he's honest.' SME.

'Usually it's going to be if a customer has queried something, and I'll ring up Trading Standards and say, well, this is the situation, have we done something wrong? Or when I was looking at some [names specific product] and I wanted to find out what the laws appertained to what I need to show on the [mentions packaging] and that, I started with Trading Standards.' Large business.

- 3.34 Where the relationship is close and involves a large organisation, TSS can act as a valuable way of coordinating communications and channelling compliance issues to head office. They can also act as an adjudicator in cases, offering an opinion on matters of dispute.

'We have monthly meetings with Trading Standards which we get updates on what their thinking is with regard to us They're pretty good and pretty healthy.' Large business.

'We have a very good relationship with ... The Home Authority Trading Standards. A guy called [name withheld], who I probably email and speak to on a daily basis. ... I want him to look at something for us or he's asking, he's had a complaint from another department and he asks us for things.' Large business.

Use of external lawyers

- 3.35 The extent that external lawyers are used varies depending on the size of the business. Some organisations - particularly large business - will make considerable use of their lawyers to make sure they are compliant. This is usually in addition to their own in-house specialists. Use by smaller businesses is less frequently mentioned, though perhaps not surprising given the perceived expense of using law firms. However, one SME in particular mentioned using an external lawyer to check over all of their documents.

'We'd always go to our external lawyers [if we had a problem].'
Large business.

'We'd go to our solicitors who are, they've got a variety of different departments. They're always our first port of call.' SME.

- 3.36 The perception is that lawyers have specialist knowledge in the field of consumer protection law and those that use them therefore see them as a valuable source of authoritative, reliable information and advice.

'We do [use legal firms] for very specific things and if we had some kind of Trading Standards issue that, you know, I couldn't make head nor tail of then we would use a solicitor, yes because we've got people that we use for sort of major company deals or things and they are solicitors.' Large business.

'We took our terms and conditions and we sent them to a company, who deal with employment law, etc, etc, and we sent it to our lawyers, and they all said that they were happy with it.' SME.

Competitor monitoring of industry standards

- 3.37 A number of participants report instances of competitor lapses in compliance standards. This primarily involves advertising, presumably because it is visible, and mainly involves larger businesses. This is most likely because of the scale of resources being spent on advertising and the importance of advertising in driving new business.

'You tend to get to know your opposition in these various other companies. I just send them emails sometimes saying, oh [...] take that down, and then generally [...] it's down.' Large business.

- 3.38 Some of the respondents who are operating in niche markets report that word of poor behaviour can spread quickly, damaging reputations.

'...in this business you live or die by your reputation and it's a very small community and everybody talks to one another.' SME.

Traders' understanding of consumer protection obligations and risks

- 3.39 Factors that contribute to trader's understanding of consumer protection law include how much resource can be dedicated to compliance, if

consumer protection law is seen as a priority and how much of a deterrent they see the penalties for non-compliance to be.

A good understanding of consumer protection law

- 3.40 A number of participants in this research appear to exhibit better understanding of consumer protection law than others. Some of the indicators of better understanding of consumer protection law are similar to, or mirror the general drivers of compliance. For example, those working in larger companies and those in specialised roles are likely to have a better understanding of consumer protection law. Those who have been on relevant courses (either related to consumer protection law or aspects of consumer care) have very positive views of their impact.

'If I hadn't gone on a course on the 2006 Consumer Credit Act there's no way I could have worked it out for myself.' Large business.

- 3.41 A good understanding enables them to protect themselves. In a few cases traders referred to instances where customers had made demands on them that they believe they were not entitled to under consumer protection law. Due to their perception of their level of understanding of and compliance with the law the businesses were able to stand their ground.

'In terms of consumers, when new laws come out consumers will always think they know what it means, and they will challenge us, and quite often we are at loggerheads with them, because our understanding is perhaps a little bit more knowledgeable than theirs.' Large business.

- 3.42 A significant number of traders say that they would go beyond their legal obligations, in order to keep their customers happy. Time periods are a good example where a number believe that they are more flexible than they need to be.

'Generally and always we err on the side of the customer unless the abuse is blatant....' Large business.

'We constantly aim to exceed our legal obligations. We see that as the bare minimum. We're not terribly worried about meeting them, if you see what I mean, because we are, we would expect to behave better than they demand.' SME.

- 3.43 However, traders' understanding of consumer protection law is not always correct. In a few instances traders mentioned cases where they believed they had gone beyond the law when in fact they did not fully understand the detail of the law.

'... because the law protects the consumer and says that they have 28 days, to say oh it's not the right thing, doesn't mean that if the customer bought it 30 days ago I'd turn round and say no.' SME.

- 3.44 Awareness of specific pieces of legislation was more widespread amongst larger firms, with the majority demonstrating at least some knowledge of certain Acts. The Sales of Goods Act 1979 was mentioned most frequently by those who we spoke with, The Consumer Protection (Distance Selling) Regulations 2000 were also mentioned quite frequently and so were the Package Travel, Package Holiday and Package Tour Regulations (1992).

'On the Sale and Supply of Goods Act, I know that a lot of our stuff, it's been, the processes have been looked at in the past to make sure they're OK.' Large business.

'This again is distance selling, they're having the right to return a product, quote, they just don't like it, within seven days. I think that's quite good for the consumer, not ideal for us however we appreciate the point of that.' SME.

'Yeah, I think I know a fair amount [about consumer law] [...] basically all the requirements of the 1992 Package Travel Regulations' SME

Larger businesses generally devote more resources to compliance

- 3.45 We have already noted that size appears to be an important factor in determining traders' knowledge of consumer protection law issues. Larger businesses are able to devote more resources to dealing with consumer protection law issues. They are also able to deploy more specialised resources.
- 3.46 Not surprisingly, in larger businesses we were often speaking with people in 'expert' roles (such as legal or consumer affairs specialists). Businesses also believe that this level of expertise enables them to respond better to customer issues by utilising a more detailed application of the law.
- 3.47 Larger organisations, especially those in retail sectors have substantial teams of people and a variety of mechanisms to address consumer protection law issues. These include specialist teams for dealing with consumer issues, training for front-line staff, guidance and escalation procedures. These resources enable the business to provide a higher level of support and advice to colleagues, for example those in front line customer service roles. The expectation of front line staff appears to be that they will have a basic understanding of consumer protection law, but not to handle disputes.
- 'From time to time, will have a big meeting where ... we'll brief them on compliance issues, and for that we might well get in our Home Authority Trading Standards to come and speak as part of it, we may get a lawyer in.' Large business.
- 'The [...] managers all have a training pack that they have to go through. And part of it is about Trading Standards and what to expect.' Large business.
- 3.48 In the majority of cases for the larger organisations that we spoke with 'everyday' or simple complaints or customer service issues are dealt with at a local level. Only if cases cannot be satisfactorily resolved are they escalated to a higher, more national level.

3.49 Escalation procedures are not the sole preserve of large retail businesses, however; they tend to be much less formal elsewhere.

'There's [...] further salesmen, they're all very experienced salesmen, so they are aware of the consumer law. The specifics probably, if they were questioned on the spot they probably wouldn't know as much as I do, but normally anything that is contentious is kicked upstairs to me anyway, so I would probably end up dealing with it.'
SME.

'[If they receive conflicting advice] Probably then run it past our own people, what is the gut feeling'. Large business.

3.50 Compliance procedures, at least in some form, exist amongst most of the larger companies we spoke with. What exactly these procedures entail, however, varies by company. A few mention inspections of branches to ensure that they are following the instructions being passed down from head office. One also mentions updating branches on a weekly basis with all of the information they think they need;

'Every week they get a memo that says this is the information that should be visible to customers ... as long as they follow that they will be compliant, because we've sent those instructions.' Large business.

3.51 In a few cases, mostly amongst larger firms, training programmes are mentioned as a way to ensure that they are compliant.

Prioritising consumer protection law because of job role or ethos

3.52 The traders who participated in this research appear to fall into two groups: those who see consumer protection law as a priority, either ahead of or on a par with other legal obligations on their business; and those who place it as a lesser priority or not a priority at all. The latter group will be considered under the drivers of non-compliance (see Chapter 4).

3.53 Around half of those that we talked to see consumer protection law as a priority, or put consumer protection law on a par with other legal obligations. Nearly all of the large businesses that participated would consider consumer protection law at least as important as their other legal obligations.

3.54 A number of reasons emerge for prioritising consumer protection law. One unsurprising reason is because of job role. The majority of respondents in large organisations have roles that specifically require them to address consumer protection law, such as legal or consumer affairs positions. Almost by definition, they see this as an important subject, though when pressed would recognise that others may identify a different set of priorities:

'Personally, because I suppose I deal with it, but you ask the finance manager and he'd probably disagree. But because I deal with it all day, I consider it's more important.' Large business.

3.55 One respondent – from a large business - made the point that issues of consumer protection law have the potential to affect many thousands of people, whereas some other matters, such as tax requirements, are more 'internal', affecting the company itself, but not its customers. However, this is in contrast to many smaller businesses, who see the penalties for infringing tax laws as having the potential to close a business down, whereas consumer protection law will not. The deterrent effect of penalties is discussed in more detail in Chapter 4.

3.56 With a slightly different emphasis several see compliant behaviour as being positive for the company, through its potential to protect the trader as well as the customer:

'...at the end of the day it's there to protect you when there's a problem, and it's irrelevant until there is a problem, and then you're thankful you've got it.' SME.

'The benefits are probably complying with the law would mean that it's, you've got your backup and the client's got their backup, so I think if you're complying with the law then, if they want to take things further then you've complied then you can't really get, they can't really take it any further.' Large business.

- 3.57 For a small number of organisations, particularly smaller ones, there is an attitude that they simply do not want to be non-compliant. They wish to trade fairly and ethically, which is incorporated into their business values and culture. This view does not raise consumer protection law to a higher 'status' than other obligations, but emphasises that they would not be comfortable 'opting out' of compliance, simply because it is less important to them.

'We abide by the laws as much as possible, any rules and regulations, we know of, we will abide by them.' SME.

Deterrent effect of enforcement action

- 3.58 A significant number of traders do see the potential negative consequences of breaking consumer protection law as a reason to comply with the law. We will explore in Chapter 4 the widespread lack of knowledge about the potential consequences of non-compliance. For now, it is important to note that most participants, even those who are apparently among the better informed on the subject of consumer protection law (that is, those in specialised roles in larger businesses) seem to have lower levels of awareness on the specific consequences of breaching consumer protection law.

- 3.59 At a general level, being caught is perceived as a major risk of non-compliance and acts as an incentive to comply. Several feel that eventually they would be found out and would have to face the consequences.

'I mean you might think 'Should I take the risk or not?' But then you think, is it worth it in the end if you're going to get found out and you're going to be set a fine or something, you know, in the end you think 'Oh was it worth it or not?'. ' SME.

- 3.60 An assumption that the consequences will be considerable appears to be a strong motivation for a few. More generally, compliance means not having to deal with enforcement bodies, with the inconvenience that would entail.

'You would get fined and you could be, our directors could be sent to jail. I mean it just doesn't bear thinking about does it? I mean, we would lose our reputation, we would lose our customers. It just doesn't bear thinking about.' Large business

'Well actually to be compliant it means to say you've got a much easier life both with customers and with some sort of department like the OFT, or the Trading Standards, and we want both.' SME.

- 3.61 A small number of traders who have had experience of the Small Claims Court have had mixed experiences of it. Where the outcome has been against the traders, there are perceptions that the Courts have a poor understanding of consumer protection law and are biased in favour of the complainant. This can encourage traders to avoid anything that might lead to litigation.

'I do know where we have got an issue in most cases it's just not worthwhile even arguing it, you might as well just forget it and give in to the customer because the time involved in, compared to the amount of money involved and the way the courts in most cases go, you're just on a hiding to nothing.' SME.

4 DRIVERS OF NON-COMPLIANCE

4.1 The chapter examines the drivers of non-compliant behaviour that have emerged in this research. By drivers we mean attitudes or characteristics that may promote or enable traders to not comply with their obligations under consumer protection law. In a number of instances, participants hypothesise about the factors that may enable or allow businesses other than their own to fail to comply with the law. A number of these drivers, though not all, are also the opposite of the drivers of good compliance behaviour described in the previous chapter.

4.2 From this research a number of drivers emerge:

- limited understanding of the detail of consumer protection law
- limited deterrent effect from consumer protection law and its enforcement
- wider business pressures.

4.3 Again, these drivers are listed approximately in the order of importance to the traders that we spoke with.

Limited understanding of the detail of consumer protection law

4.4 Probably the main driver that has emerged in this research of non-compliance with consumer protection law is a lack of understanding of what the detailed requirements actually are. In several cases businesses say that they are fully compliant and have a good understanding of the law. However, in this chapter we will see how many, particularly smaller traders, fall back on what they believe to be the general principles of consumer protection law. Whilst this may suggest that they agree with the concept of fair treatment of customers, it may also indicate a lack of understanding of the detail of the consumer protection law.

A poor understanding of the detail of consumer protection law

4.5 Perhaps the most striking finding in this research is the poor level of knowledge of the detail of consumer protection law across a wide range of businesses. In the previous chapter we reported evidence that larger companies and those with specialised personnel appear to have a greater depth of knowledge.

4.6 Most of the smaller businesses that we spoke with do profess at least some awareness of consumer protection law, though a few are happy to admit this is limited and lacking in specific details.

'I've not seen the legislation, so I wouldn't know where we stood on it.' SME

'Yeah, I would say our knowledge of consumer law could be written down on a very small stamp. We would know the general stuff that would be in the public domain but in terms of the nitty gritty and the actual individual finer points very few of us would ever know it.' SME.

'I think they [the directors] haven't really been aware of consumer legislation and their approach is really [...] what they think is fair as opposed to what the legislation says.' SME.

4.7 Even though several participants were able to recall specific pieces of legislation (for example) or use terminology that sounds appropriate to the subject, this is often expressed in ways that may not suggest deep knowledge.

'It's the Sales of Goods Act it's the, yeah, predominately Sales of Goods Act really. We do HP, so there's some financial responsibilities in terms of the pre-contract, and other things that we have to do, which we have to be aware of.' SME.

'I think proper descriptions, fair trading in respect of the price and goods, and offering discounts and so forth. We take goods in part exchange, so we estimate, we give discounts according to what we might have taken part exchange, so fairness in our dealings is how I consider it to be.' SME.

4.8 In the absence of detailed knowledge, many fall back on what they believe to be the general principles of consumer protection law. In developing this point, a small number of traders suggest that they comply with the 'spirit of the law'. More widely among SMEs, a focus on customer service and a 'common sense' approach to business appear to be seen as more appropriate to their circumstances.

'Our understanding is basically you've got to be clear and fair. You've got to let consumers know, you know, you've not got to have put them in an unfair position because you've got more bargaining power because you're a large company'. Large business.

'We're left to use our common sense effectively. I don't know who in the company would know what we had to comply with' SME.

4.9 It is our view that this approach, whilst not implying that they are breaking the law, may suggest that generally in these circumstances actual compliance with more technical aspects of the law might be queried, that is, in the absence of detailed knowledge of their actual obligations.

Online sales

4.10 Around a third of the traders we spoke with trade on the internet. The majority of these claim to have a good understanding of The Consumer Protection (Distance Selling) Regulations 2000 (commonly referred to as the DSRs).

4.11 Of those who claim to have a good understanding of the DSRs cooling off periods are the most frequently referred to aspect of the regulations.

'I'm quite familiar with the online rules because I've just been researching them...Distance Selling Regulations.' SME.

'I'm aware of the cooling off period, and all those other things that you get when you start doing distant selling.' SME.

'Nowadays the main element really is, I suppose, is the cancellation rights that you have to do' SME.

4.12 It should be noted though that this apparent high level of understanding contrasts with a recent Which? Report⁶ which suggests that many companies are not complying with the regulations and are not fully aware of them. One large business reported definite steps to review its website confident that its website meets the requirements of the DSR.

'Now Distance Selling Regulations are OK for us, our website is compliant. I've had it looked over by our external lawyers.' Large business.

4.13 Those who do trade online voiced some criticisms of the DSRs. These included regulations being open to interpretation and biased towards the customer. In particular a point that is mentioned by several traders is the cost to the business of cancellations within the seven day cooling off period. However, these criticisms can sometimes be based on an incorrect understanding of the regulations.

'Distance Selling Regulations, despite the fact they look fairly clear, they are open, as an awful lot of law is, to a certain amount of interpretation, with regard to cancellation fees and restocking fees and that sort of thing. So we're compliant and err on the side of generosity.' Large business.

'Distant selling,... we think that's really unfair, if the customer ordered that from us and it's £5 to send out, and £5 to get back, I've no query in sending them the cost of, they should send the product back at their cost, so we bear one of the costs each.' SME.

'I find it really very one sided ... it doesn't look into the fact that a customer can make a mistake so the onus is brought down totally on to the retailer which I find rather very strange, very difficult.' SME.

⁶ See www.which.co.uk/news/2009/12/which-success-as-online-shops-amend-return-rules-192947 and <http://news.bbc.co.uk/1/hi/business/8421714.stm>

Changes to consumer protection law

- 4.14 A few traders suggest that changes to consumer protection law (or the rate of change) can cause difficulties, especially for SMEs with limited resources.

'The law on credit is changing all the time, I get stuff through, and it's very difficult, as a small independent retailer, to keep up with it. The big guys have got departments based on it, and their business is, their business is designed round the credit part of it.' SME.

Lack of information / poor quality information

- 4.15 The poor level of understanding of detailed obligations generally under consumer protection law may not be that surprising given the information sources used by some to either source or maintain knowledge. For those who either are not members of a trade association or who do not have a relationship with TSS, the Internet is often cited as the first or primary source of information by many traders.

- 4.16 How effective this approach is in meeting their needs is questionable, though it might be inferred that it depends on their existing level of knowledge, and the sources of information that they retrieve.

'I would go to the [name removed] Law Library if I needed extra stuff. But there's quite a lot on the internet really. The government's quite good. The Office of Fair Trading is quite good. There's all these kind of Directgov and various things and they've got quite a lot of information you can get hold of.' Large business.

- 4.17 For those without a foundation of knowledge, the approach can be simply one of using search engines - Google is quoted by a number of participants - to track down information, rather than going to specific web-sites.

'I wouldn't know. I'd start off with the, I'd start Googling complaints with the Sale of Goods Act or something, and try and work my way through there, through that.' SME.

'Probably, when you say advice we look on the internet at the, we've recently looked on the internet at the Sale of Goods Act.' SME.

- 4.18 As traders report to be directed to official sites such as Business Link, Department of Business, Innovation and Skills (BIS) and the OFT by 'Googling' certain acts we do not think this factor is a particularly strong driver of non-compliance. However, it does create a negative environment in which traders approach the issue.

Lack of resources to deal with consumer protection law issues

- 4.19 For most of the smaller businesses we spoke with, the onus generally seems to fall on the directors to deal with regulatory requirements. Meeting these requirements is often seen as a significant part of their role and a drain on their resources. It can be particularly acute with smaller businesses that have relatively limited resources to begin with.

'I don't know how a lot of small businesses actually manage to run and comply because it takes up an awful lot of my time trying to work out what we should and shouldn't be doing.' SME.

Lack of contact/relationship with enforcement bodies

- 4.20 Around two-thirds the traders that we interviewed have never had a visit from, or contact with, TSS (or, perhaps less surprisingly, the OFT). In these cases the interviewees tend to view TSS and the OFT in a less positive light than those who have had contact. Three issues appear to be of concern: access, response, and consequences.
- 4.21 Among many there is a perception that enforcement bodies are difficult to get in touch with and, even when you do, it can be tricky to get a definitive answer out of them. This can be source of considerable frustration to them, and it is particularly problematic for businesses with multiple, geographically spread outlets.

'You call the department, [respondent repeats this phrase five times for emphasis] and not one of them know what the other one's about. None of them know what you're supposed to do.' Large, business.

'The biggest issue for us is the inconsistent way in which the law is enforced, so we've got [large number] or so Trading Standards offices, all with their own interpretation, all dealing with businesses in a slightly different way, and with no clear guidelines as to what the law actually means.' Large business.

- 4.22 Several respondents – generally those with little or no contact with TSS or other enforcement bodies - are often worried about getting in touch with them as they fear they will be 'opening a can of worms' and may be inspected if they request information or advice. This approach is in stark contrast to those who reported positive experiences from contact with TSS.⁷

'Most small businesses would very rarely call any government institutions for advice because advice usually means a compliance issue and if you ask for advice ... they'd be out [...] like a ton of bricks trying to find why you haven't complied with it.' SME.

Organisational process failure

- 4.23 As we have seen elsewhere, larger businesses are generally better prepared to deal with issues of compliance, through the use of specialised staff and defined processes. Having members of staff who can specifically dedicate their time to compliance issues, and who can enforce compliance policies within the organisation allow the businesses to reduce the risk of non-compliant behaviour and deal with any problems more efficiently. However, internal organisation may occasionally be a barrier to compliance; processes can breakdown (which is of course a risk with all human processes and structures) and this, at worse, may lead to instances of non-compliance (for example attributable to human error).

- 4.24 A few retailers mentioned that training for staff, especially at the lower levels, could be better, whereas most of the smaller organisations that

⁷ See 3.32

we spoke with do not have any formal training for their staff. This could lead to non-compliance as all staff members are not fully aware of their responsibilities and the processes that should be followed.

'The duty managers for each store ... and the store managers all have a training pack that they have to go through. But for me it's not in depth enough. So I have actually just come up with projects to run in 2010 to try and get more people trained correctly on customer legislation and stuff like that.' Large business.

'I think our [...] staff ought to be more informed. Now obviously a lot of them can inform themselves but it is one area where I think we could do better.' Large business.

- 4.25 A couple of traders also mentioned instances where staff had not followed the correct procedures, although they had received training, which had resulted in non-compliance. In both of these instances staff members appeared to be trying to use their initiative, however they may have not been fully aware of how their actions relate to consumer protection law.

'...we've had a couple of instances where stores haven't followed the instructions we've given. ...that should have been picked up by the regional sales manager.' Large business.

'It may have just been a lack of communication; it could have been as I said an over zealous [member of staff] thinking they were doing the right thing.' Large business.

Limited deterrent effect of consumer protection law and its enforcement

- 4.26 Many of the traders that we spoke with suggested that the penalties for non-compliance with consumer protection law, if they know what they are, are not a very big deterrent, especially compared to the penalties for non-compliance with other business regulations. There are several factors that appear to affect whether traders see enforcement as a deterrent; these include how much information they possess and the quality of this information, whether they agree with the laws and their attitude to regulation.

Lack of deterrent effect from enforcement

4.27 As we have seen, there is widespread lack of knowledge about the obligations (or rather the detail of these obligations) on businesses under consumer protection law. This is also reflected in a lack of knowledge in the area of enforcement, particularly:

- the consequences of breaches of consumer protection law
- awareness of the enforcement activities
- perceived effectiveness of enforcement agencies.

4.28 The result of perceptions in these three areas suggests that low awareness allows some traders to see consumer protection law as less urgent or important than other obligations.

Consequences of breaches of consumer protection law

4.29 The OFT has a number of enforcement duties and a range of enforcement powers derived from consumer protection legislation. Very generally, these allow the OFT to:

- bring criminal prosecutions in respect of unfair commercial practices (on conviction on indictment, the penalties are a fine or imprisonment not exceeding two years or both)
- seek court injunctions against traders
- refuse and revoke consumer credit licences, and impose requirements and financial penalties on licensees of up to £50,000 where a requirement is not complied with
- warn and ban estate agents.

4.30 In its enforcement work the OFT is committed to acting proportionately to achieve effective outcomes. For example, under the Enterprise Act 2002 the OFT and certain other bodies including TSS can apply to the courts for an injunction ordering businesses to comply with the law in future. It may also accept undertakings from those involved in lieu of

action. Also, the Consumer Protection from Unfair Trading Regulations 2008 provide the OFT and TSS with a choice of enforcement route for dealing with breaches of the prohibitions set out in the Regulations – either criminal prosecution or civil action (using the injunctive powers provided by Part 8 of the Enterprise Act 2002). This enables enforcers to take the most proportionate and effective action on a case-by case basis.

- 4.31 There is considerable confusion amongst traders regarding exactly what the consequences of a breach would be. The widely perceived penalty for breaches of consumer protection law is fines, although there is not much understanding as to how big these fines can be or in what circumstances they can be imposed.

'I don't really know what the consequences would be actually, so I'm not sure. [...] Well, I expect that something would happen, I don't think you'd just get away with it.' SME.

'Do you know I don't even know. I suppose fines. They don't threaten you with, you know, if you don't comply this will happen, do they?' SME.

'I would imagine fines or possibly even, I don't know, it might be a criminal offence.' SME.

Awareness of the enforcement activities

- 4.32 There is only very little awareness of enforcement action being taken by the OFT or TSS. Most traders can not give any examples of enforcement action being taken in their sector or geographical area. A small number of the traders say that they have heard of enforcement action through, for example, trade magazines that they receive, but there is still a low level of specific awareness.

'I get like a trade magazine, so you see people getting closed down for selling things as new when they're actually like returns or second hand or that type of thing but nobody that I actually know.' SME.

Perceived effectiveness of enforcement activities

- 4.33 This lack of awareness of the consequences of breaches and enforcement action impacts on some traders' views of the likelihood of enforcement action being taken, either against themselves or others. Several feel that action is not likely and that companies who are breaking consumer protection law will not be highly penalised.

'I would say it's not as much because you can go to jail for tax things, you can't for civil sentences.' SME.

- 4.34 Enforcement bodies are perceived by some to not be very proactive in seeking out companies that are non-compliant. There is a belief among some firms that enforcement bodies target larger businesses more than SMEs as they are more visible. This is more likely to be the case for smaller businesses.

'I don't know of any cases where the OFT have gone for the smaller man, they'll always go for the bigger boys' SME.

- 4.35 However, a few SMEs feel that enforcement bodies are more likely to target smaller firms. They feel that the larger firms can afford to enter into legal battles with enforcement organisation and have dedicated legal departments that can get them out of trouble; in contrast, SMEs are easier targets.

'I think basically the OFT are very frightened of tackling any of the big companies like,... it's very easy for the OFT to pick on smaller companies and put the frighteners on them, but again I assume that they don't have the resource to take the really big players to court.' SME.

- 4.36 Perceptions of inconsistent or lack of enforcement against other traders are a particular bugbear, and seem likely to reinforce perceptions that serious consequences arising from breaches are unlikely.

'I don't know, the problem you've got is you've got some very, very big companies, multi million pound companies involved, and they do

flout the law in terms of the way that they advertise, and the way that they report the products that they sell are of a value that they're not. So there's no way they'd ever be prosecuted for that.' SME.

Disagreement with consumer protection law

- 4.37 Outright disagreement with or rejection of consumer protection law is rarely voiced by participants. Many see it as a good thing, at least in an abstract sense.

'You have to have consumer law, the consumer has to be protected, he's the individual, we're a company, he needs protecting where he needs to be protected.' SME.

- 4.38 Fairly common among businesses of all sizes though is a generalised perception that the consumer protection law is 'biased' in favour of the consumer and against the trader. Again, this may suggest an environment for some traders that is not conducive to compliance.

'...there's a lot more laws now and obligations that you have to customers and things. I think it's gone a bit too far in the customer's favour.' SME.

'...if we do something wrong, consumer law protects the consumer. If they do something wrong, there's nobody for us to argue with.' SME.

- 4.39 The DSRs are one area where there seems to be disagreement with consumer protection law. This is discussed in more detail under online sales (pages 34-35)

Consumer protection law not seen as a priority

- 4.40 Around half the businesses who participated in the research did not place consumer protection law at the top of their list of legal pressures. A number of reasons emerge for this.

- Problems involving consumer protection law have not affected them.
- A belief that good customer service makes consumer protection law irrelevant.

- Other obligations are seen as more urgent or important and the consequences of breaches more severe.
- Dealing with consumer protection law issues is not a core part of their job.
- Consumer protection law is subsidiary to professional standards or obligations.
- A significant part of their business is with other businesses rather than consumers.

Problems involving consumer protection law have not affected them

4.41 For most, consumer protection law is not something which has caused them a problem. If it does not cause a problem, they do not prioritise it.

'Health and safety would definitely rank above consumer law, however, I'm sure the second we get tribunals, or law cases against us, it would go higher up the chain.' SME.

'I suppose it's very important but I don't know that we do anything to break that law, so I don't think it's something that we think about.' SME.

A belief that good customer service makes consumer protection law irrelevant

4.42 More generally, almost all the traders we spoke with argue that customer service is their primary motivation. Provided their customers are happy, then consumer protection law is seen as a non-issue. Our research suggests this can operate both in favour of and against the customer.

'Occasionally customers quote the Sale of Goods Act, and what their rights are, but it never really comes to that, because our policy is to look after customers, and do a lot more for them than

the bare minimum, which are their legal rights, so it never really comes down to that.' SME.

- 4.43 For many, compliance is not viewed as a necessary part of good customer service. Indeed, reference to consumer protection law would be seen as suggesting that something has gone wrong with customer service. It is striking how many traders in our research are confident in their ability, through long experience of customer service, to resolve problems without resort to discussions of the legal position of either party.

'We, at the end of the day, we want to build a relationship with our clients and we just want to be fair and reasonable about the whole thing. It's not in our interest to get into a bun fight with our customers.' SME.

'We don't go as far as needing consumer law. If we've done something wrong, we put it right, not once has any issue got close to involving Trading Standards or going down that road at all to be honest. We aim to look after customers 100 per cent, so we've never got near to talk about consumer law.' SME.

- 4.44 In our view, a belief that good customer service makes the detail of consumer protection law irrelevant could potentially lead to either over-compliance or non-compliance.

Other obligations are seen as more urgent or important and the consequences of breaches more severe

- 4.45 Where consumer protection law is less of a priority, two areas stand out as being more important: health and safety, and taxation. Consumer protection law appears to be seen by around half as less urgent or important than these issues. For example, meeting tax obligation means filing specific things by specific times:

'They're a physical thing [Tax and PAYE] that you, you punch the clock for every month, you have to do, or every three months with the VAT and things like that. Consumer law tends to rear its head if you have a dispute, so... it's not in my conscious as much as the other things.' SME.

- 4.46 Health and safety can also be a challenging issue, particularly for those involved with products that can fail in a dangerous way, or where it involves fitting or moving substantial objects:

'There are certain things I will do, and certain things I won't do, I won't carry an [mentions specific heavy product] up a fire escape set of steps because it'll be against health and safety, and it's going to put you, your property, my delivery guys, the unit, at risk, so I'm not going to do it.' SME.

- 4.47 In contrast to the perceived vagueness of consumer protection law requirements, the 'tax man' in particular is seen by a few to have more draconian powers.

'I know that the tax man, or whoever else, can effectively close the business down with punitive financial penalties. I assume that the OFT aren't in the same practice, or they'd take more notice of them.' SME.

- 4.48 Awareness of the implications of breaches of consumer protection law is low in general (see 4.33 earlier in this chapter for further discussion). Where this is the case it seems to us reasonable to assume that some businesses may potentially pay less attention to requirements of consumer protection law:

'It's not something that I think the directors can actually see that they would get punished if they didn't follow those legal obligations, ... if they haven't complied with consumer law, there hasn't really been any come back from that.' SME.

Consumer protection law is subsidiary to professional standards or obligations

- 4.49 In some sectors, trade or professional standards appear to be seen as having a higher priority than consumer protection laws.

'Our primary concern is compliance with the code of practice, if new legislation arises and doesn't affect the code of practice in any way then generally speaking our staff are not informed about it, except

possibly customer service staff here. I don't think that's actually a very good position, to be perfectly honest.' Large business.

- 4.50 A few of the participants in this research seem to see the standards of their professional bodies as being more all encompassing than consumer protection law.

Negative attitude to regulation overall

- 4.51 Attitudes to consumer protection law can also be seen in the context of attitudes to regulation more generally. There has been much media comment on the perceived regulatory burden in recent years, while it has been a stated objective of Government policy for a number of years to reduce the regulatory demands on businesses. These sentiments about a 'burden' are widely reflected by the traders we spoke with.

- 4.52 A number of issues are of concern. First is the range and volume of regulatory requirements to which they are subject. Without necessarily being specific about these, many smaller businesses report a generalised sense of 'bureaucracy' being placed on traders:

'Well the biggest concern is...all the paperwork and things, the time you waste doing things half of which aren't necessary. They're slowly putting more and more on small businesses.' SME.

- 4.53 We have noted earlier in this chapter the perceived rate at which regulations or obligations change. This is also the perception on a more general level and this is a source of confusion to traders. In particular they are concerned about how they can keep updated on the changes.

'You don't get enough information from the government about the laws and things. There's a lot going on at the moment with knives and glue and things. ...But there's not enough information comes from government departments.' SME.

- 4.54 Finally there is the perceived complexity of the requirements. This creates a sense of legal obligations as a source of anxiety where even supposed experts are unsure.

'It's very difficult sometimes, because some of the rules are a bit obscure.' SME.

Wider business pressures

- 4.55 The third main driver of non-compliance centres around wider business pressures. Factors such as relationships with suppliers and the current economic climate can all have an effect.

Relationship with suppliers

- 4.56 Traders report that relationships with manufacturers can be challenging. A number of traders feel that they are squeezed between suppliers and consumers. Whilst many accept the commercial realities of dealing with manufacturers as just part of normal business life, they see their obligations to consumers as contributing to an imbalanced relationship.

'...we're in a situation where the consumer can cancel on us at any time and we haven't got a leg to stand on. Our suppliers won't take it back, or if they do take it back they want to make a substantial charge.... So we're piggy in the middle and we get stuffed with it when it goes wrong.' SME.

- 4.57 This issue appears to be particularly pertinent in markets where the manufacturers are very significant, global businesses. These organisations are able to use their resources to push back on retailers who are trying to return and replace products. Even significant retailers report this problem.

'They're also extremely difficult when it comes to returns and an awful lot of our legal thought is invested in trying to equalise the relative generosity of our returns policy.' Large business.

- 4.58 One retailer who we spoke with talked about the difficulties of returning faulty products, even for a relatively large company. In some cases the manufacturer will allege that there must have been problems with storage or transportation of the product.

- 4.59 It is our view that this additional pressure perceived by some of the respondents could make it harder for businesses facing similar pressures to comply with consumer protection law, especially in terms of returns.

Business pressures

4.60 The economic pressure to return a profit may also affect traders' approaches to consumer protection law obligations. Whilst we did not find direct evidence to suggest that traders are more likely to avoid compliance in a difficult economic climate there are instances of behaviour being changed in ways that suggest a move towards an environment where breaches of aspects of consumer protection law could be more likely.

'We used to [have a no quibble policy on returns] but with the economy the way it's been, we've had to become stricter.' Large business.

'Comparative advertising is an issue for us, obviously as the market tightens, more and more of us are indulging in aggressive, comparative advertising.' Large business.

5 HELPING BUSINESSES COMPLY

- 5.1 In this chapter we will explore the support that traders have said would be valuable in helping them meet their obligations under the OFT enforced consumer protection law and the factors that should encourage take up of information and support provided to them. We will also consider some of the barriers to the take-up of assistance offered by enforcement bodies such as the OFT and TSS.
- 5.2 A key finding of this research is a strong indication that poor understanding of consumer protection law is widespread, particularly, though not exclusively, among smaller businesses. It is our view, based on this research, that a good understanding of consumer protection law obligations is important in driving good compliance behaviour; based on the inference that poor understanding may promote poor compliance. Furthermore, our research also suggests that poor understanding is at least in part due to traders' lack of knowledge or ability to source accurate, up-to-date information. There are comprehensive sources of information regarding consumer protection law, especially on the internet, such as Business Link⁸ and ERWIN (Everything Regulation, Whenever It's Needed)⁹ but the awareness of these sources appears to be low among participants in this study.
- 5.3 There are broadly two factors that need to be considered in communicating to traders their obligations under consumer protection law:
- the nature of the information provided
 - the channels through which it is made available.

⁸ www.businesslink.gov.uk

⁹ www.everythingregulation.org.uk

The nature of the information provided

5.4 Traders expressed a number of requirements with regard to information about consumer protection law. In summary these are that it needs to be:

- authoritative, so can be relied upon by traders
- relevant, so meets their specific needs
- timely and up-to-date
- easily understandable.

5.5 A key factor behind these requirements is that many smaller businesses do not have the time, resources or personal expertise to decipher complex requirements. They are looking for help to make this process as straightforward and undemanding as possible.

Authoritative

5.6 Some traders are not just uncertain as to what their actual obligations are to consumers. They also suggest that consumer protection law is ambiguous or open to interpretation and that this makes compliance difficult.

'...I think the more concise and clear a message you can put across whenever it helps understanding then fine... But there's always a grey area, isn't there? It's that line and unfortunately these types of things, ...you need to be a solicitor to understand exactly what they're trying to actually say.' Large business.

'Because there's no one single piece of [it], it doesn't come, like for example from the Board of Trade, [...]or local, you can have one council in one area and the Trading Standards department take a completely different view to another area. So there's no single answer, and then the trade bodies themselves may have a completely different line on it.' Large business.

5.7 Authoritative statements would be welcome. We consider it should help in convincing people of the importance of the obligations, reassure them

that the information can be relied upon and remove a reason for minimising efforts at compliance.

- 5.8 Members of trade associations often seem to have a high level of trust in the material or advice provided by these bodies.

'So in terms of getting it right, I think, providing [name of trade association removed] doesn't get it wrong, and I'm sure they don't, then we're probably going to be on the ball with them.' SME.

'[Name of trade association removed] for us is, oh it's fantastic, it really is good. Because they've heard it before and because they've had that question before, generally they can answer you pretty well straight away, and on a level which we can all understand and apply in our own industry.' SME.

- 5.9 Official bodies such as the OFT or TSS are also assumed to be an actual or potential source of an authoritative perspective on consumer protection law. It should be important therefore that the OFT and/or TSS is highly visible and easy to access (we return to this point later in this chapter under barriers, (pages 57-60).

'I think I'd probably trust it more if it came from Trading Standards or the OFT than from a Trading Association because if its just a Trading Association, a sort of a local group or something you don't know what its background is, you don't know whether its got any particular agenda. So I would feel more confident if it came from one of the sort of official bodies as it were.' Large business.

- 5.10 This does mean that apparently contradictory messages from official bodies can be particularly disconcerting. It seems likely to reinforce the idea that consumer protection law is somehow not definitive or is open to interpretation and that this makes compliance a somewhat arbitrary process.

'We have material that comes from the [official body's name removed], we have material that comes from the [official body's name removed], and from the Department of Trade and Industry, or

whatever they call themselves this week. I suppose there's the Department of Regulatory Affairs is it as well? So as I say, there's all sorts of them. And then of course you've got the local Trading Standards officers who can take a completely different view to our government friends.' Large business.

Relevant

- 5.11 We have noted (pages 16-18) that membership of a trade association is an important driver of good compliance behaviour. One of the benefits of the membership is that the information provided is tailored to the industry sector concerned. This addresses one of the key challenges for traders, which is that they have limited time and need information to be as specific to them as possible.

'The OFT and the Trading Standards, I'm sure they just apply general consumer law. But [name of trade association removed] I think is specific to us and to our business.' SME.

- 5.12 A suggestion made by a few traders would be for TSS or the OFT to work closely with appropriate trade associations to ensure that guidance is best tailored to the needs of specific businesses.

'I suppose because we're so aligned with [name of trade association removed], it's not so much of an issue, because they're kind of doing that, making sure that we're compliant. So maybe OFT and the Trading Standards talking to [name of trade association removed] and [name of trade association removed] talking to us is enough.' SME.

- 5.13 Another suggestion is that traders should be made more aware of the consequences of non-compliance in a way that is relevant to them, possibly by referring to enforcement activities in their sector. This would also help to make compliance with consumer protection law seem more important.

Timely

- 5.14 A specific factor that may contribute to poor understanding of consumer protection law is the perceived rate of change in regulation (both

generally and in few instances specifically referenced to consumer protection law). Staying in touch with these can be a challenge and one that many would appreciate help with.

- 5.15 Different opinions are expressed about the frequency or timings of any updates. On the one hand some would like a regular review, while others would seem to prefer to be informed on an 'as and when' basis.

'If there's any updates to the law, when things change it would be nice to know about it.' SME.

'I'd love it if for example every year I got a little booklet that said this is the basic sort of consumer law, here are some places on the internet you can find more detail. These are the basic things we're interested in. This is where you get more information about that. These are recent changes to the law which you should be aware of, that kind of thing.' Large business.

'I wouldn't mind getting more [information], it's just a matter of time really. I know that, as I said right at the beginning, if I have an issue, I would go and ask specifics about that issue, I wouldn't necessarily want to have, permanently updated on the whole consumer law, that really would tie me up too long, and prevent me doing all the other things.' SME.

- 5.16 One trader specifically notes that the Trade Descriptions Act 1968 had been replaced and does not feel that this is sufficiently clearly understood.

'The traditional consumer laws have been revoked, for instance the Trades Descriptions Act no longer exists. What they've brought into its place, although it appears to be a like for like replacement, it's not, and there are some significant differences, and trying to keep abreast of not only what the new laws will say, but also how they'll be interpreted, is where I think the difficulties come.' Large business.

Easily understandable

5.17 As we have seen, many traders lack knowledge in the area of consumer protection law. This is particularly the case with smaller businesses, which do not have the size to justify recruiting 'experts' such as lawyers or consumer affairs personnel. For many smaller organisations, the responsibility for addressing consumer protection law lies with a director or senior member of staff, where it is often part of a wider range of responsibilities, including running a profitable business.

5.18 For such individuals a key requirement is that the information is easy to absorb and understand. Material that is time-consuming to read and perceived as hard to understand risks being ignored.

'Make the rules and regulations and the way they state things, plain language, plain English language, rather than Double Dutch. Because you know how sometimes they write something and you can't fully understand it unless you've read it about 10 times? It would be really helpful if you read it through once and you understood it.' SME.

'I think perhaps sometimes if they just tell you things in plain English. It tends to be that whenever there's any new thing comes out that you have to comply with, this 25 page thing about it, that you really don't understand what it's about.' SME.

5.19 Instead many traders look for material that is easy to digest:

'They should maybe have a simple web based checklist or something that you could go through and make sure that you were [compliant].'
SME.

5.20 Perhaps not surprisingly given that the requirements in this area are based on a mixture of legislation and regulations, complex 'legalistic' language is likely to be off-putting. For some this is also related to the question of length.

'When the law's made they should, someone should send lots of information to people so they fully understand it and in simple English as well.' SME.

The channels through which information is made available

- 5.21 A wide range of opinions are expressed on the best way of communicating information about consumer protection law obligations to traders. A central message though is that no one channel will meet the needs of everyone.
- 5.22 Another key theme from this part of the research would seem to be that a mixture of 'push' and 'pull' communications is needed, that is, information that is pushed out to traders by authoritative bodies (for example in the way that the OFT and some trade associations do currently), and information that is available for traders to pull down themselves when it is needed.
- 5.23 A range of channels are identified as potentially useful:
- hardcopy
 - online
 - personal contact (via telephone or visits)
 - certification
 - training courses.

Hardcopy / email

- 5.24 A number of traders expressed a preference for leaflets or other short, hardcopy, sources. These could be used as 'introductory' material, providing summaries of key points and guides to further information.

'If there were little fliers, leaflets, what have you, that they sent out to retail workers, or shops, that said, your customers are entitled to this, if this happens, this, this, this, etc, OK, perhaps it's the company's responsibility to be providing me with that information, but if you're asking what they could do to help then, I would read it, if the information was there.' SME.

'Sometimes we get flyers come in from the local Trading Standards in [name of borough]. They're quite good.' SME.

- 5.25 However, there is a danger that such material would join the volume of other direct mail and not achieve visibility.

'The last thing we need is more [...] junk mail, so I'd hate to say leaflets on it, we get enough of that as it is.' SME.

'Information websites would be the easiest way because with emails it's, well they're useless, there's so much stuff going around.' SME.

- 5.26 In a few cases interviewees were shown examples of relevant documentation produced by the OFT. Only one of these traders was familiar with the documentation, which suggests, perhaps not surprisingly given the large number of businesses in the UK, that information is not getting through to all businesses using the current channels.

'I have seen that one, but only because I went on a course on it. I haven't seen that one. It's strange that I haven't seen specifically most of these.' Large business.

- 5.27 Finally, some would like to receive this information by email rather than through the post. However, as with direct mail, some feel that this would not be noticed given the volume of email already facing many businesses.

'Well, email's fine, to and from us, and that's, that's easy, and we always read our emails. I wouldn't bother about post and fax and things, because it's just not as easy, it's a bit more expensive. The cheaper the better.' SME.

Online

- 5.28 The Internet is the most widely mentioned means of accessing information. We have already noted that those who are less informed about consumer protection law tend to rely on search engines (specifically Google) to track down information. In some cases this is because they have not looked for it before.

'I don't know, I haven't actually had to look. For employment you've got ACAS, you can go, look up and put in a question and get an answer. We haven't actually had to look, but I suppose if there is a website like that that would answer your simple questions, it would be nice to know about it.' SME.

5.29 This does suggest to us though that it is important to ensure that widely used search engines such as Google are identifying key search terms and leading traders to authoritative sites as directly as possible.

5.30 Where people mentioned specific sites these tended to be of official bodies. Examples mentioned include: TSS, OFT, the Department for Business, Innovation and Skills (or its predecessors), and the Better Regulation Executive.

'Yes, when the consumer protection regulations came in, I used the internet to get information and I think it was the DTI website I think I probably accessed more rather than the OFT website.' Large business.

'I'd probably try the BRE or whatever are they, the one for business and whatever it is, what used to be the DTI, I'd probably go to their website or Business Link or something, and find out.' SME.

'We have contacted the [name of official body removed] on a couple of things where it's particularly pertinent to them, and they, they certainly know the run ins for certain areas, so we would talk to them about certain areas, yeah, no question, we would talk to them, yeah.' SME.

5.31 Given the range of official bodies that appear to have relevant material, coordination between official organisations would appear to us to be valuable in reducing confusion. It would also be valuable to have an awareness campaign highlighting where businesses can go for this information.

'There should be more centralised information online, which I think should be made available to everybody, so as opposed to just the

consumer, or just the retailer, or just the supplier, they should be available to everybody.' SME.

Personal contact (via telephone or visit)

- 5.32 Some traders say they would welcome a helpline or other personal contact. A number of factors appear to drive the desire for personal contact. One is to get definitive advice from an expert who can explore the nuances of a situation. Other factors appear to be a more general preference for personal contacts rather and, implicitly, a desire for a quick solution to a problem.

'Just best to speak to somebody and see where the land lies is always best for us because a lot of obviously what we do is on the phone To be able to pick up the phone and actually talk to somebody, get concrete advice and say what's right and what's wrong is already the form that we would prefer.' SME.

'It's only personal contact that gets it with anybody. Everybody talks nowadays about doing everything on the computer. It actually doesn't work, because people, I have, I have 15, maybe 13, 15 emails that will come in. Out of that, 5per cent might be useful to me, and the rest of it, I'm deleting.' SME.

- 5.33 Some have tried consumer organisations, though this does not appear to have been a successful route. It is suggested that this may be because these are not aimed at businesses.

'It would be nice to have somebody that you can ring just to find where we are legally.' SME.

'I think we could do with a little bit more support, a bit more guidance, a bit more definitive action. Because any time that we've used the consumer help line blah, blah, blah they've always in my experience seemed to side with whoever was on the phone. They won't say no or yes that's right, no that's wrong, just a little bit more decisive action.' SME.

- 5.34 We have already seen that a relationship with TSS appears to be a strong driver of good compliance behaviour. Where this exists traders

would look to the TSS contact as a source of support should problems arise. A visit would reassure some that they are doing the right thing.

Certification

- 5.35 Also welcome would be the ability to have their documentation (such as terms and conditions) or websites reviewed by bodies such as TSS and the OFT. A small number would like to have some form of certification from a body such as the OFT.

'As a business I cannot have our code of practice as a business approved by the OFT. I would love to have that, some kind of endorsement that says look, we are a reputable business, and we've got Trading Standards monitoring what we're doing, the OFT have looked at our terms and conditions and said, we're happy with them, that would be something that would commercially give me some payback for what I have to spend in order to be compliant.' Large business.

'I think, like I say, this sandwich shop we're sat outside of, has an obligation to do a health and safety or a food hygiene course for its staff, and I don't see why as a business there shouldn't be some sort of annual certification to say the proprietor or the general manager or the senior person at this office has done this particular Office of Fair Trading course.' SME.

Training courses

- 5.36 A small number of respondents believe that consumer protection law training should be used more widely. Only very few say they have attended training courses, but where they had they speak very highly of them.

'You know everybody should go on a Trading Standards course. We did it; myself and my line manager went to London and did it. It didn't cost a huge amount and I think you get a lot of businesses that start off knowing nothing at all about consumer law, at all. And

Trading Standards have to pick up the pieces and customers are certainly having the raw deal out there.' Large business.

'No, and I would go back to [name of trade association removed] and say, could you run, because they do run training sessions on compliance issues. ... I suppose actually it would be nice if the [name of trade association removed] ... might like to run an OFT compliance training day, and that would be great, I very much enjoyed the [name of official body removed] one.' SME.

Barriers to communications

5.37 This study has also identified a number of important potential barriers to effectively communicating with traders on their consumer protection law obligations. These are:

- fear of enforcement agencies
- profile and role of TSS and the OFT
- the volume of regulation affecting businesses.

Fear of enforcement agencies

5.38 As we have seen, those who have a relationship with TSS find this to be a positive experience delivering real value to their business. However, where the relationship does not exist there can be genuine concern about having any contact at all with an 'enforcement' organisation. As with other similar bodies, such as HMRC, there is a concern that attracting attention will lead to 'investigation':

'OFT and Trading Standards are the sort of things you hear about in sentences where people are getting done for things so I tend to associate them with I really hope I don't have to deal with them, that kind of thing.' Large business.

5.39 Such a perception can actively discourage people from contacting TSS or the OFT for advice. This closes off an important driver of good compliance behaviour. It suggests that there would be real benefits for compliance with consumer protection law in TSS conducting visits more widely or facilitating other means of establishing face-to-face or personal relationships.

Profile and role of TSS and the OFT

- 5.40 A number of traders do not appear to have any contact with TSS, an even larger number have no understanding of the OFT and its role in relation to the enforcement of consumer protection law. Given that a lack of awareness of enforcement may be a potential driver of non-compliance, it may be valuable to raise the profile of the OFT and TSS in this area in the eyes of traders.

'We're a small business, and I feel small businesses are left very much to their own devices. I don't even know who my local Fair Trading Officer is. He's never called on us.' SME.

'I don't think anybody knows about the OFT at all, being perfectly honest with you. If a consumer ever talks to me about anything, they'll mention Trading Standards, never had the OFT used in anger. I've had Advertising Standards, I've had Data Protection Office, I've had Which? Magazine, I've had BBC, I've had The Daily Telegraph, I've never had anyone mention once the OFT.' Large business.

'I've never seen a government Office of Fair Trading, or Trading Standards, advert for a website or anything else.' SME.

- 5.41 There is a clearly widespread confusion about the exact roles of TSS and the OFT. Indeed, it seems to us likely that some traders use the terms interchangeably, not making any clear distinction between the two.

'The one thing I'm never, I've never been clear about the connection between OFT and Trading Standards departments, because usually if we have a visit then it would be from a Trading Standards Officer.' Large business.

- 5.42 This confusion appears to exist for consumers also, according to one trader.

'Well, there seems to be a disjoint between the OFT and Trading Standards. In the consumers' minds they are one and the same. A lot of customers, when they're writing to me, say I've been in

contact with the OFT, and I know they've only been in contact with Consumer Direct, or with Trading Standards.' Large business.

Volume of regulation

- 5.43 Finally, as was noted in the introduction to this report, consumer protection law is only one of a range of legal and regulatory obligations that fall on businesses. We have seen that some of these can have greater priority in the minds of some respondents. This perceived volume can lead traders to avoid the subject or seek to minimise their involvement with it.

'The rules, it's all, there's too many of them. It's too complicated. ... We've a lot of stuff to keep up with in my job, not just retail law but actually commercial law and all sorts of other rules and regulations, health and safety cost and in general trying to keep up with the amount of rubbish the government produces is very, very difficult.'
SME.

- 5.44 We have already noted that the volume of regulation can be a driver of non-compliance. In thinking about how to communicate with businesses, especially smaller ones, we think it will be a challenge to ensure that consumer protection law material stands out, especially amongst other business laws that are perceived to be more important

6 CONCLUSIONS

- 6.1 This research found no 'self-reported' examples of deliberate on-going non-compliance. We were told about a few instances that were described as examples of past non-compliance. Most of these were attributed to error (for example failure to follow due processes) or ignorance of obligations (see paragraph 4.25).
- 6.2 We believe the research has clearly identified a set of factors that may promote compliance and ones that may play a role in promoting non-compliance. It has also identified the support that traders said would be valuable in helping them meet their consumer protection law obligations. Taken together, we believe these suggest a number of areas in which enforcement agencies such as the OFT and TSS could help support traders in meeting their consumer protection law obligations.

Key findings

- 6.3 In summary, we consider the key findings from this research to be:
- widespread acceptance of the validity of consumer protection
 - widespread low levels of awareness of the detail of consumer protection law and the enforcement action taken in relation to it
 - importance of consumer pressure as a factor in driving compliance with consumer protection law
 - considerable value attached to relationships with TSS and trade associations.
- 6.4 Few of the traders we spoke with dispute the importance of protecting consumers. The majority understand and agree that consumers have rights and businesses have obligations towards their customers. This is despite a general perception that consumer protection law is 'biased' against businesses, as well as specific perceptions of unfairness in areas such as DSRs or Small Claims Courts.
- 6.5 We consider that a key finding of this research is the widespread knowledge gap in the detail of consumer protection law. It seems to us

that it can be assumed that relying on adherence to the perceived 'spirit' of the law may leave scope for technical non-compliance where the details of the relevant legislation and regulations are complex. This is only an assumption, it is not based on actual evidence of non-compliance among the respondents nor can any conclusions be drawn or inferred about the respondents' actual levels of compliance.

- 6.6 In our view, the findings show that pressure from customers - including the need to deliver good service and maintain a high quality reputation - and pressure from external organisations - for example TSS - are key to pushing consumer protection law as a priority within a business.
- 6.7 Many report that consumers are aware of having rights and raise these with businesses, for example, in cases where they are unhappy with the service they have received. In addition, almost all the businesses we spoke with wish to have a good reputation and positive relationship with customers.
- 6.8 However, some currently fail to make an explicit link between customer service and compliance with consumer protection law. In some cases it appears to be assumed that consumer protection law is there to address those who are more careless of customer service.
- 6.9 Overall, in our view, a lack of understanding of the detail of consumer protection law and low levels of understanding of the consequences of breaches may be major drivers of non-compliance for some businesses. The result may lead to a situation where compliance with consumer protection law is seen by some as less urgent or important than, say, compliance with tax or health and safety obligations. However this knowledge gap needs to be placed in the context of a widespread perception that a good reputation is essential to successful ongoing trading.
- 6.10 Two relationships appear to be particularly important in promoting good compliance behaviour: the first is with TSS, and the second is with a trade association (or similar body such as a buying group or professional association).
- 6.11 Personal contact with TSS is seen positively by many of the respondents. Most of the larger businesses that we interviewed already appear to have a positive relationship with TSS – usually with an

individual named contact. The situation is more variable among smaller businesses. Again, those who do have an existing relationship or who have experienced a visit are, on the whole, positive. However, many have no relationship and often fear approaching TSS (or any other enforcement agency). Their concern about a negative experience contrasts sharply with the positive reports heard elsewhere.

- 6.12 Relationships with trade associations are very different from those with TSS. Trade bodies allow small traders access to some of the resources that larger businesses are able to call on, for example specialised internal or external legal expertise, helplines, and training for front-line staff. They are also able to tailor information to industry specific issues, reducing the burden on time-pressured business people. Regular audits by some trade associations appear to be appreciated by those who experience them. Perhaps most important they provide regular updates on changes to traders' obligations.

Steps to help traders meet their obligations

- 6.13 We believe that a number of implications following from these key findings. These can be grouped as follows:
- key messages to traders
 - improving communications to traders
 - raising consumer awareness.

Key messages to traders

- 6.14 We suggest that there are two core messages that would be helpful in raising the relevance and importance of consumer protection law in the minds of traders. First, as most businesses wish to have a good reputation and a positive relationship with customers, establishing a clear link between meeting consumer protection law obligations and good customer service would be valuable.
- 6.15 Second, raising awareness of the consequences of breaching consumer protection law should establish the importance of meeting obligations in

the minds of traders. Businesses need to be aware that failure to do so would damage reputations as well as tying up considerable resource through litigation or investigation (a particular challenge for smaller businesses).

Improving communications to traders

- 6.16 Having raised the importance of consumer protection law in the minds of traders, what steps could be taken to help them meet their obligations? First, we consider that improving the nature, signposting and availability of information sources would be valuable in providing authoritative basic information on traders' obligations. We have seen that many traders are relying on the Internet and appear to find themselves visiting a variety of different sites (for example TSS, OFT, BIS, Better Regulation Executive). We also heard of people phoning organisations such as Consumer Direct.
- 6.17 This array of sources appears to create uncertainty around consumer protection law and seems to be contributing to the perception that consumer protection law is somehow imprecise or lacking clarity. It is our view that greater profile for one central source of information, or at least a gateway to other sources of information, should help address the need for an 'authoritative' source.
- 6.18 Just as importantly, we suggest a well-known first point of contact should improve the flow of information to traders, particularly those who are not members of trade associations. Business Link is currently positioned by government as a 'one-stop-shop' for business information, though it was only mentioned by a handful of respondents to our research. This suggests that its role as a source of information on consumer protection law should be more strongly promoted.
- 6.19 Second, our research suggests to us that there would be value in the OFT and TSS continuing to work closely with trade associations and other appropriate bodies. Such initiatives are undertaken in some areas already, and would appear to combine the 'authority' of official enforcement bodies with the specific sector reach and support mechanisms of trade associations. This work should be particularly valuable in support improved compliance among small businesses.

6.20 Third, it is our view that TSS in particular have an important role in changing behaviour at a local level. Individual contact is appreciated by businesses of all sizes, but it is smaller businesses that appear to have the greater nervousness in this respect. We consider that continued work to project a customer-friendly image to local businesses should encourage more smaller businesses to turn to TSS for advice and support.

Raising consumer awareness

6.21 Finally, we have seen that consumer pressure is an important driver of behaviour among traders. Whatever the true level of consumer understanding of their rights under consumer protection law, campaigns to increase consumer awareness seem to us to appear to be working, in that businesses are reporting that consumers are becoming more demanding. In our view continuing to promote an understanding of consumer protection legislation should, over time, promote more compliant behaviour by businesses.