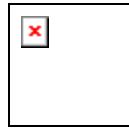


**CONSUMER PROTECTION STRATEGY**

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**Presented to the States on 8th May 2001  
by the Industries Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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2001

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## Report

1. As States members will be aware, one of the Industries Committee's remits is to seek to develop a consumer protection framework appropriate for the Island. The Committee has been considering for some time how best to take this dossier forward. The main focus so far has been on the creation of the Jersey Competition Regulatory Authority (JCRA), planning the development of the new licensing regime for the postal and telecommunications sectors with progressive liberalisation of the latter clearly in view (as already agreed by the States) and the first elements of debate about generic competition policy.
2. The Committee has now commissioned Mr. Mark Boleat to undertake a short study on consumer protection strategy in order to create a baseline for policy development. Mr. Boleat will, no doubt, be well known to several States members; he was lately Director-General of the Association of British Insurers and in a similar position before that at the Building Societies Association. He is a member of the United Kingdom National Consumer Council, a government-funded 'watchdog'. He is an acknowledged expert, in particular, on issues to do with consumer representation and has written recently on the importance of this function being truly independent of government.
3. The terms of reference given to Mr. Boleat are annexed to this report. In essence, the Committee is seeking a frank assessment of the current position in the Island, the extent to which 'problems' exist for consumers and current representational arrangements may not be satisfactory, and appropriate recommendations for the way forward. Proposals for action will clearly need to have regard to the special characteristics of the Island's economy and the limited resources available to the States; there is no-one expert in the consumer protection field better placed than Mr. Boleat to appreciate such Jersey-specific factors. Mr. Boleat will be consulting widely during his work, with the help and support of the Island's Trading Standards Service and the Committee is confident of positive outcomes flowing from this work later this year.
4. Careful stock is being taken of the role of the Trading Standards Service, to ensure that its limited resources are most effectively utilised to protect and promote consumers' interests within what is currently a less than wholly satisfactory legal framework. Mr. Trevor Le Roux has now moved up to be Chief Trading Standards Officer, with Mrs. Alison Youngs as his deputy; Mr. Eric Bastiman has moved to a new post in the Human Resources Department after many years' distinguished services as chief and, before that, as deputy. A decision was taken last year to place the consumer advisory function in the Citizen's Advice Bureau (CAB) so that it could be given the attention it deserves as one of the several advisory specialisms within the CAB, thus enabling the Trading Standards Service to focus on its core activities of monitoring and enforcement work. The Committee was very keen to establish a partnership with the CAB on this work and was gratified to see from the CAB's recently-published Annual Report for 2000 how successful from its own perspective the Bureau judges this move to have been. The Committee attaches considerable importance to close and harmonious relations between the Trading Standards Service and the CAB and is confident that the partnership now established will grow stronger to mutual advantage.
5. As regards competition policy, as the States have already been advised, after a comprehensive search exercise the Committee has secured an excellent person to serve as Chairman of the JCRA: Dr. Patrick McNutt, formerly Chairman of the Irish Competition Authority. The Committee has recommended him to the States for appointment. Discussions are also in hand regarding the appointment of the JCRA's first Executive Director, and the Committee expects soon to be able to identify a third, non-executive member of the Authority. At the same time, a Competition Policy Adviser is being recruited for the Department for Economic and Commercial Development. Once these key posts are filled it will be possible to move ahead in a concrete manner on the remit the Committee was given last autumn as part of the anti-inflation strategy to develop a generic competition policy for the Island. Work on this will proceed in parallel with the preparations for the new independent regulatory regime for telecommunications and postal services, draft Laws on which will be ready to be lodged shortly. The JCRA will have an important part to play in this process of policy development.
6. This work, and particularly the discussion on consumer protection leading to the decision to appoint Mr. Boleat has served to focus the Committee's attention on the role and functions of the Jersey Consumer Council, which is supported by taxpayers' funds under the control of the Committee at a cost of about £25,000 per annum. The Committee's view, which it believes is widely shared in the community, is that a strong independent consumer 'voice' is an essential element of any effective consumer protection strategy and it has formed the initial judgement as part of its current policy development that in order to seek to achieve this the Consumer Council's role should be enhanced through being redefined within a framework of greater independence. The Committee has been struck by the emphasis that has already been placed on the importance of an independent, properly resourced consumer 'voice' in its first contacts with Dr. McNutt and Mr. Boleat, leading to the recognition that an enhanced Council will

be an important adjunct to all the regulatory work of the JCRA in support of consumers' interests. Mr. Boleat has been specifically asked to advise on this matter, to which he brings a wealth of experience.

7. The Consumer Council as presently constituted has been in existence now for six years under the leadership of Deputy Breckon. His second three-year term of office comes to an end this month. The Industries Committee wishes to place on record its appreciation of the work Deputy Breckon has done and sought to do in his capacity as Chairman to promote and advance consumers' interests in Jersey. But the Committee judges that given the review now in train, it would be opportune shortly to make a new appointment to the chairmanship, of an independent person who should not be a member of the States, with a view to implementing new arrangements for strengthening the role of the Council in the light of Mr. Boleat's review and the establishment of the JCRA. In the meantime, the Committee has asked the Council to nominate one of its members whom the Committee would appoint as acting chairman.
8. In the whole field of consumer protection and competition, there has been a relatively low base in Jersey over many years, and the Committee is realising that it will take a little time for it, and other key partners and stakeholders, to get to understand all the dynamics of the issues and how best practice can be incorporated into the Jersey marketplace in a proportionate and manageable manner. No country, big or small, has found it easy to ensure that markets work well for consumers, even with long-established fair trading regimes. The issues are complex and the learning curve is steep, but advancement up it is steady. The Committee is therefore keen to record that while much still remains to be done, progress on these key dossiers is beginning to be made, in line with States decisions and objectives. The next step on the consumer protection side will be to receive Mr. Boleat's study, at latest by the summer break, which will enable the Committee to develop proposals on the Consumer Council for States approval as outlined in this report together with other policy initiatives towards beginning to create an effective but proportionate consumer protection framework for the Island. Work will also continue on all aspects of competition policy development, with the impetus that the setting up of the JCRA will now provide.
9. The Committee now invites States members, and all other interested parties, to submit any views and comments to Mr. Boleat in order to inform his study. These can most readily be sent to him via Trading Standards, 9-13 Central Market, St. Helier, JE2 4WL, Tel: 727286 Fax: 766475 Email: tradingstandards@gov.je. The Commi looks forward to learning that a wide range of useful comments will have been received from all sides of the debate.

**STATES OF JERSEY INDUSTRIES COMMITTEE****REVIEW OF CONSUMER PROTECTION STRATEGY****Terms of Reference**

1. The Industries Committee has consumer protection as a key part of its remit and is now keen to develop appropriate consumer protection strategies for Jersey. This is important -
  - (a) intrinsically; although Jersey's market is relatively small it is as diverse as those of some larger countries and consumer problems and issues certainly do arise. There is a relative lack of legal protection for consumers in Jersey compared with, for example, consumers in European Union countries;
  - (b) because it is a necessary complement to work now in hand on developing competition policy and independent regulation of the Island's utilities in the interests of customers; and
  - (c) in order to ensure that, to the extent relevant, Jersey does not lose, or fail to gain, international competitive advantage, in for example, sectors involving distance selling or e-commerce. Particularly relevant here is the fact that the Treaty on European Union envisages, indeed requires, a high level of protection as the base for appropriate single market measures in the field, *inter alia*, of consumer protection.
2. The Committee is nevertheless mindful that the starting-point for consumer protection strategy in Jersey is relatively low, that the subject is potentially very large, and that it is not apparent that there are necessarily major 'problems' to be solved, especially through legislation. Many firms in Jersey operate to United Kingdom standards and in line with United Kingdom, and thus European Union, requirements. The Island nature of Jersey also makes it more difficult for rogue traders to operate. So a proportionate and realistic approach is essential, that has regard to such factors and also to the Island's limited resources.
3. This said, there are clearly consumer protection issues to address in the Island, along with issues to do with effective consumer representation and consumer information. There is evidence in Jersey of a lack of competition in a number of consumer markets and there are probably considerable information asymmetries as well as public sector interventions that have been well-intentioned but may well not have turned out to be in consumers' best interests. The advent of the Jersey Competition Regulatory Authority and the active development of competition policy is likely to heighten realisation of any current shortcomings in law and practice, as is any process of enhancing consumer representation.
4. With these general considerations in mind, the Committee seeks a report that -
  - (i) surveys briefly and comments upon the current consumer protection and consumer representation regime and arrangements in Jersey and compares and contrasts this in general terms with best practice as represented by aspects of the current and emerging position elsewhere, notably in the United Kingdom and European Union;
  - (ii) forms judgements about the nature and extent of consumer protection issues and 'problems' in Jersey in relation to the local market while having regard to the wider context (taking a wide definition of 'consumer protection' as appropriate). This should include at least indicative thoughts on optimum organisational arrangements for joined-up approaches to consumer protection generally within the Jersey public service;
  - (iii) assesses the possible range of approaches and options in practice available to Jersey over, say, the next five years, taking account of the views of key stakeholders in the Island and what it is practicable for Jersey to aim for or aspire towards having regard to the special characteristics of its economy, its limited governmental resources and the importance of securing and maintaining the Island's international competitive advantage;
  - (iv) comments on specific issues and their relevance or otherwise to Jersey, for example including (but not limited to) -
    - \* codes of practice and self-regulation as alternatives to statutory protection arrangements;

- \* redress mechanisms including 'small claims' and alternative dispute resolution (including in respect of electronic commerce);
  - \* the lessons for Jersey from the gradual breakdown of 'vertical' regulatory arrangements in the United Kingdom and the emergence and promotion of 'horizontal' arrangements with regard to consumer protection in its widest sense;
  - \* appropriate strategies to enable (or not to hinder) Jersey's international services business in the context in particular of the development of e-commerce, including action on such matters as unfair contract terms;
  - \* how best to seek to ensure effective consumer representation and the best possible consumer information commensurate with available resources;
  - \* optimum organisational arrangements for given consumer protection models;
- (v) and makes appropriate recommendations, including presenting options and signalling the need for further work as appropriate.

26th April 2001