

“REVIEW OF CONSUMER PROTECTION IN JERSEY” REPORT: RESPONSE

**Presented to the States on 3rd September 2002
by the Industries Committee**



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Response to “Review of Consumer Protection in Jersey” by Mark Boleat

1. In May 2001 the Industries Committee commissioned Mark Boleat, an acknowledged expert in Consumer Affairs, to survey and comment on the current consumer protection and consumer representation arrangements in Jersey and to make appropriate recommendations. Mr. Boleat's report was published in July 2001 and comments were invited on it by the end of September. The Industries Committee has now considered both the recommendations and the comments, and this report sets out its strategy for introducing new and more effective arrangements to protect consumers, working within the three principles proposed, namely: providing a tailor-made Jersey solution, building on existing arrangements, without undue burden on reputable businesses.
2. The Committee has accepted the key issues contained in Mark Boleat's report and intends to consider them all in respect of its consumer protection strategy. These issues can be summarized as follows -
 - Consumer protection is greatly enhanced by a competitive market place. The Committee has already taken strong action by introducing legislation to create the Jersey Competition Regulatory Authority and to introduce other legislation to enable the appropriate climate to be established.
 - There is an imbalance of power between consumers and traders. The key remedy for this is good consumer representation driving good information.
 - Jersey consumers are afforded some protection without any legislation because of the trading relationship with the U.K.
 - Any solutions should not impose additional burdens on reputable businesses.
 - Better redress mechanisms are needed. Action has already been seen in this area with the introduction of a pilot scheme for small claims which is now an option under procedures in the Petty Debts Court.
 - Legislation is inadequate or non-existent in important areas.
3. The Boleat report concluded that there was a need for legislation to -
 - imply terms into contracts to clarify consumer rights, often referred to in the U.K. as the Sale of Goods Act “statutory rights”. Such legislation could also include rights in relation to services and misleading statements;
 - regulate distance-selling (mail order, telephone sales and e-commerce) in accordance with accepted international standards;
 - impose a general duty on traders in respect of product safety.

The report emphasized that legislation should not attempt to go beyond the requirements of U.K. law as to try to do so could lead to unnecessary difficulties or burdens being placed on traders.
4. The Committee accepts, in principle, the need for these three pieces of legislation. However, there are resource constraints on preparing and operating new legislation and the following paragraphs set out the Committee's priorities.
5. The quality of responses to the Boleat Report from consultees was extremely high, although relatively low in number, and the opinions were valued greatly. The Industries Committee has held further consultation meetings with interested parties and the overall consensus of opinion is that, first and foremost, Jersey needs Sale of Goods and Services legislation which provides clarity of contractual rights similar to the “statutory rights” enjoyed by consumers in the U.K. and indeed the rest of the European Union.
6. The Committee would prefer to begin implementing its strategy by issuing a consultation paper on the general principles which may be introduced in Sale of Goods and Services legislation. However, there are two important reasons why this should be delayed, possibly until 2003. Firstly, the Jersey Law Commission is in the process of carrying out a full review of Jersey contract law and advice received indicates that the results of that review will be published shortly. The Committee will want to take into consideration the views of the Law Commission in developing its consumer protection strategy in relation to Sale of Goods and Services legislation. Secondly, the U.K. are in the process of drafting amendments to the Sale of Goods Act 1979 which have been required by the

introduction in 1999 of an E.C. Directive on Certain Aspects of The Sale of Consumer Goods and Associated Guarantees. The aim of this Directive is to harmonize consumer contract and guarantee rights throughout the European Union and the changes it makes will impact greatly on both consumers and traders. The Committee, after detailed consultation with various representative bodies, is minded to issue its own consultation paper on Sale of Goods and Services legislation. However, it decided that it would be inappropriate to issue any consultation paper on this matter until the Law Commission publishes its report and indeed the Directive has been fully incorporated into U.K. law. By doing this, the Committee feels more confident that its strategy will eventually result in Jersey consumers enjoying the same "statutory rights" as consumers do throughout the European Union.

7. The second piece of legislation that Committee wishes to introduce is a provision to regulate distance-selling. The need for legislation on distance-selling is not to protect Jersey consumers (in effect they are already protected by the application of an E.C. Directive) but rather to protect Jersey's reputation while at the same time protecting consumers elsewhere. At present there is a risk that businesses could seek to operate inappropriate mail order or internet selling from Jersey precisely because there is no legislation, thereby damaging the reputation of the Island. Mark Boleat's recommendation was to incorporate into Jersey law the provisions of the European Union Distance Selling Directive 1997 using the U.K. Consumer Protection Distance Selling Regulations 2000 as a model. Drafting this legislation should not be too onerous as there is already an effective model in place in the form of the U.K. Regulations. The Committee plans to issue a consultation paper on the need for the legislation as soon as possible. It is hoped that legislation can be introduced into the States sometime during 2003.
8. The third piece of legislation will be a consumer safety law, imposing a general requirement that goods supplied to consumers shall be safe. The members of the European Union have all had such legislation for many years. It has been established that Jersey has already been used in the past as a dumping ground for goods that can no longer be sold legally in the European Union. This is unacceptable. The proposed law will be modelled on U.K. legislation as far as possible. Draft legislation was prepared some years ago when Public Services Committee had responsibility for consumer protection but for various reasons this has never been presented to the States. However, work will still be needed to check the legislation against European Union and U.K. legislation, to ensure consistency as far as possible, to make certain it does not impose undue burdens on business and that it is consistent with other Jersey legislation. Implementation of the legislation should require no additional manpower, although the whole resource issue within the Department for Economic and Commercial Development will need to be tackled in due course. The Committee intends to publish a consultation paper on the need for legislation by the end of the year. If there is support for this aspect of the strategy, then there will be a further consultation exercise on the draft legislation, which it is hoped could be put before the States in the not too distant future.
9. Mark Boleat also concluded that the quality of consultation and therefore policy-making in Jersey is poor. This comment was not confined to the Industries Committee. The Committee agrees with the conclusion and has already moved in this direction with the proposed new competition law. The forthcoming consultation exercise on sale of goods legislation, distance-selling and consumer safety will also be a model that will be used for subsequent proposals for legislation and other key issues. It is worth noting that this action follows closely the procedures as recommended in the machinery of government reforms for the introduction of, and consultation on policy ('green' and 'white' papers) and on draft legislation as outlined in 4.3 of the Policy and Resources implementation plan (27th November 2001). The process must explicitly ensure that the consumer interest is taken into account, as hitherto it has not been given sufficient weight. Broadly speaking, the new mechanism comprises -
 - (a) At an early stage, a consultation paper will be issued dealing with broad principles. This will be short, written in plain English and avoiding jargon, and asking questions on which views are particularly sought. Normally, two months will be allowed for responses and those responding on behalf of particular interest groups will be asked to make clear the membership of those groups.
 - (b) The Committee will consider the responses and will publish a response to the responses either as a stand-alone document or in the form of a policy paper or a further consultation paper.
 - (c) Where new legislation is being introduced, a draft of the legislation will be published for consultation.
10. The Boleat report made a number of other specific recommendations. These are set out below together with the Committee's response to them -

When decisions have been made on legislation, the Chamber of Commerce and the Industries Committee should review the need for voluntary codes of practice and the Chamber of Commerce should be asked to consider introducing a comprehensive conciliation and arbitration scheme for Island businesses on a voluntary basis. Action will be taken on these recommendations when consultation exercises have been

undertaken on the proposed legislation.

Jersey Telecom should put in place arrangements to ensure that where a logo or a trade association name is used in an advertisement then information is available about the association. Jersey Telecom has already implemented this recommendation.

The Petty Debts Court should consider how its documents could be made more user-friendly to consumers who wish to take action against traders and the CAB service should give greater help to people wishing to take action against traders. The Magistrates Court Greffe has consulted Mr. Boleat about the current procedures. A pilot small claims procedure has been set up at the Petty Debts Court and the Committee will consult with the Jersey Legal Information Board on the progress of the new facility.

The States should institute a review of the way it consults when it is formulating policy, and States departments and agencies should have in place effective mechanisms for obtaining the views of consumers. This is not a matter for the Industries Committee alone, but it has accepted these recommendations in respect of its own activities and is following the new consultation best practices as laid down in the proposed machinery of government changes.

The Industries Committee should continue to be responsible for consumer protection strategy. There is a case for a specialist sub-committee of the Committee. The main recommendation is accepted but at this stage the Committee sees no need for a specialist sub-committee. This might change when the new structure of the States (reference P.70/2002) comes into operation, and it will be for the successor Committee to consider if a sub-committee is desirable under transitional arrangements.

Executive responsibility for consumer protection should rest with the Consumer Protection Division of the Department of Economic and Commercial Development. Consumer Protection encompasses many organisations acting in the best interests of the public. The Trading Standards Service is one such organisation within the Industries Committee with statutory functions which will remain, at least for the short term, in its established form. This may evolve as the Industries Committee is succeeded by the Economic Development Committee.

Responsibility for dealing with consumer complaints should revert from the Citizens' Advice Bureau (CAB) back to the Trading Standards Service. This recommendation is accepted. Consumer complaints had been transferred to the CAB as a way to tap into its reputation and independence and also to overcome a States' constraint on manpower for the Trading Standards Service and for the Department for Economic and Commercial Development as a whole. Action was taken immediately last summer to modify the Service Level Agreement with CAB by improving the communication links between CAB and Trading Standards. The Committee will continue to review the Service Level Agreement and it hopes to establish even better links by the introduction of specialised computer software for easier access to information. Meanwhile, the Committee welcomes the reliable service being provided by the CAB in a cost effective way.

The States should make provision for an independent, well-resourced Consumer Council with a brief to ensure that there is effective consumer input into all areas of decision taking. The Committee has held discussions with the Consumer Council and now that 2003 cash limits have been decided, further discussions will be held with the Consumer Council to agree funding arrangements for that year. Further, the Industries Committee is committed to working collaboratively towards the evolutionary development of an effective consumer advocacy body.

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