

**Consumer
Scotland**

Luchd-Cleachdaidh Alba

Investigations Prioritisation Criteria

For consultation

January 2024

About Consumer Scotland

Consumer Scotland was established in April 2022 as the statutory, independent body for consumers in Scotland. We advocate on behalf of consumers and represent consumer interests. We are a Non-Ministerial Office, accountable to the Scottish Parliament.

Our Purpose. To improve outcomes for current and future consumers.

Our Ambition. That every consumer can participate in a fair and sustainable economy, confident their needs and aspirations will be met.

Our Strategic Objectives:

- To enhance understanding and awareness of consumer issues by strengthening the evidence base.
- To serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors.
- To enable the active participation of consumers in a fairer economy by improving access to information and support.

Our Partnership Approach. To collaborate with other organisations with interests and expertise in consumer issues.

We use data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, sustainability and redress.

About our Investigations Function

The powers and functions of Consumer Scotland are mainly set out under the [Consumer Scotland Act 2020](#) (the Act). The Act empowers Consumer Scotland to undertake investigations into sectors or practices that we consider cause (or may cause) harms to consumers, or otherwise for the purpose of fulfilling our general function.

The enforcement of consumer law is reserved; however, Consumer Scotland's investigations function has a broad remit to reduce harms and increase confidence among consumers in Scotland through advocacy and advice outcomes. In delivering these, we will work closely with key policy makers, sector organisations and stakeholders.

Powers and collaboration

In exercising our functions, including investigations, we will be as transparent as possible in our decision-making and have regard to organisations or persons that have the same or similar functions to Consumer Scotland. We will also consider the desirability of working in collaboration with others where appropriate.

In certain cases, we may decide it is necessary to use our legal powers to request information from specified organisations or persons. When we do, we will be very clear about the parameters and type(s) of information we require, the purpose and legal basis for the request, and the format and timescales by which it should be provided. Requests for information will be assessed in advance with a view to minimising the costs and/or detriment to those who are subject to them.

The timelines for our investigations and the approach we take to implementing them will vary depending on the sector or practices under consideration (as well as the breadth and complexities of the matters to be resolved). We will always act responsibly and proportionately according to the issues and will work as expeditiously as possible to resolve matters and conclude our findings.

When we conclude investigations, the Act requires Consumer Scotland to prepare and publish a report that sets out our findings and recommendations. A copy of any final investigation report must also be sent to Scottish Ministers. We anticipate that recommendations arising from our investigations may include - making changes to existing policy or regulation, referring matters to other regulators or enforcement bodies, or perhaps to take no further action.

Within this framework Consumer Scotland is limited by finite resources, and where we have discretion to act, we must necessarily assess information and make investigation decisions based on a set of criteria that seeks to maximise our impact in line with our remit, available resources, and strategic significance.

Accordingly, in line with our Draft Work Programme Consultation for 2024 -2025, we are seeking stakeholder views on the draft investigations prioritisation criteria that will underpin our decisions about when and what to investigate.

These draft investigations prioritisation principles are set out below under the following areas –

- **Consumer Impact**
- **Strategic Alignment**
- **Partnerships and Collaboration**
- **Outcomes and Risks**
- **Resources and Capacity**

Applying the criteria

The criteria are illustrative of our broad framework for investigations and are not exhaustive. Each investigation choice will be subject to balanced considerations within the framework set out by these principles, assessed on a case-by-case basis alongside our overall Work Programme and resources.

We will develop our internal processes to evaluate and assess investigation topics according to each of their merits. However, depending on the investigation issue under consideration, we may add weight to certain criteria in our decision-making process. (For example, not progressing an investigation where others are clearly better placed to act - or responding to immediately investigate issues causing sudden and significant consumer detriment).

Consumer Scotland has developed a robust internal process for our investigations function that will ensure our senior executive team and Board have oversight of the choices, decision-making and progress of investigations at the right stages. *(The processes and governance for our investigations do not form part of this consultation).*

The Investigations Prioritisation Criteria

1. Consumer impact

Is there sufficient intelligence or evidence of a specific sector or practice which we consider causes (or may cause) significant harm to consumers that warrants an investigation? Alternatively, is there the potential to deliver benefits to current and future consumers through an investigation?

Things we may consider:

- On initial assessment, are there credible sources with intelligence or evidence of alleged harms (or potential harms) within the sector or caused by the practice?
- Where and how strong are the intelligence or evidence sources showing these harms exist?
- How significant, widespread, and frequent is the level of harms incurred by consumers in the sector or by the practice?

- What types of consumers are affected by the alleged practice? (*Does it impact on consumers in vulnerable circumstances or small businesses for example?*)
- Reflecting our general function, might an investigation examine and open opportunities for consumers that are not adequately being realised?

2. Strategic Alignment

Were Consumer Scotland to launch an investigation into this sector or practice, would such action fit within our powers and wider strategic priorities and objectives?

Things we may consider:

- Would an investigation have the potential to secure positive consumer outcomes across our current strategic priorities of –
 - Affordability.
 - Climate change mitigation and adaptation.
 - Consumers in vulnerable circumstances.
- Overall, would the sector or practice be within our specific remit to investigate and not better tackled by another organisation?

3. Partnerships and Collaboration

If we were to investigate, have we had sufficient regard to other organisations in the landscape that have similar functions and who may be considering action or have an interest in the sector or the specific practice?

Things we may consider:

- Are there opportunities to collaborate through a joint investigation (without overlap or duplication) or other scope for partnership working to leverage better outcomes for consumers?
- Do the relevant landscape players also suggest this is a good issue for Consumer Scotland to investigate? (*Assessed through direct stakeholder engagement and through discussion at relevant fora such as the Consumer Network, the Energy Consumers Network, and the Advisory Committee on Consumers in Vulnerable Circumstances*).

4. Outcomes and Risks

Could a Consumer Scotland investigation into this practice or sector remove or mitigate the harms, or potentially bring benefits to consumers? In what ways?

Things we may consider:

- Is there an opportunity through investigation outcomes to have a significantly positive impact and bring about beneficial change for consumers?
- Do we clearly understand the scope of the sector or the practices under investigation, and the potential for an investigation to mitigate the harms or capitalise on opportunities?

- Should we investigate, is there an acceptable balance between the achievable benefits to consumers and the level of risk brought about by our actions? (*In terms of unclear conclusions, legal challenges, lack of follow-on outcomes*).

5. Resources and Capacity

For any proposal under consideration, do we have a sufficiently clear assessment that we have the resources and capacity required to act effectively for the life of the investigation and the deliverable outcomes?

Things we may consider:

- Upon initial assessment, is there a clear path and reasonably foreseeable timescales for delivery within the capacity and resources we have available? Might these change as the investigation develops?
- What other areas and functions of Consumer Scotland’s work might this impact in terms of resources and the opportunity cost of other work benefitting consumers?
- Have we considered the resources available through partnership working to enhance the investigation’s capacity, or any limitation on such resources that might impact negatively on the outcomes?
- Do we already have the relevant stakeholder relationships necessary to progress the investigation and successfully advocate for change or do we need to devote resource to developing these?

How to Respond

Consumer Scotland would be grateful to hear your views on the draft Investigations Prioritisation Criteria by the 16 February 2024.

Take part in our [Investigations Prioritisation Criteria Consultation Survey](#).