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Dear Jamie

Call for Evidence on the Collaborative Economy

Thank you for the opportunity to respond to this call for evidence from the Expert Panel. SCOTSS is always ready to support and work with Scottish Government colleagues on consumer issues, and we have been delighted to contribute to recent initiatives such as the Working Group on Consumer and Competition Policy, the Nuisance Calls Commission, and the Call for Evidence on the Consumer Taskforce.

Our members in Scottish local authority trading standards services are at the true frontline in protecting consumers and supporting business.

On the specific questions listed

1. **What are the key opportunities that you see for the collaborative economy in Scotland?**
 - a. Making the most efficient use of resources must be a key benefit, particularly where those resources are restricted and for some unaffordable, such as car ownership. And equally for the small business where niche services are unaffordable to provide in-house, there is an opportunity to share with other enterprises at a more viable cost, e.g. Deliveroo.
 - b. There may also be opportunities to fill spare capacity in existing businesses, for example in the tourism sector, improving sustainability while potentially bringing down prices for consumers.
 - c. We feel there may also be start-up opportunities for new entrants to a market, starting as a small income supplement for private individuals and grow into a viable business so helping general economic vitality.

2. What are the key challenges that you see arising for the collaborative economy in Scotland?

- a. 'Regulation' needs to be fair and equitable, and needs to be accepted as creating a 'level playing field' in a sector rather than what some might mistakenly see as 'red-tape'. In a fair and competitive marketplace, established business must not be put at a disadvantage against quick-footed competitors who are perhaps less troubled with regulation or scrutiny, although that is not to discourage disruptive or innovate technologies. Uber is an example; they have been challenged globally after established taxi businesses felt their business model wasn't playing by the same rules, which should apply equitably to every market participant. www.theguardian.com/technology/2017/may/11/uber-cabs-taxis-us-app-ecj
- b. Transparency or the lack of it is also a key challenge. Legitimate businesses should never be afraid of disclosing their identity to clients or regulators. Some online marketplace operators have taken measures to obscure the identity of sellers and to encourage in-house dispute resolution. Whilst some of these dispute resolution measures are effective, a monopoly of the process has the effect of restricting the rights of consumers to take their own choice of legal remedy. We should dissuade collaborative economy operators from establishing identification firewalls that prevent proper legal scrutiny. There is a risk that a lack of transparency might lead to illicit operators using a platform's disclosure rules to disguise their identity, and problems for consumers and enforcers can arise when dealing with remote, very powerful platforms that enable the collaborative economy, for example Facebook.
- c. We also feel that well-meaning but inexperienced small operators, ignorant of their legal obligations to buyers, do require additional guidance from regulators, and a particular focus to ensure that they realise what compliance costs might be. It may even be that the upstream suppliers do not fully understand the roles their 'employees' play or the distinctions. For example an 'Importers Project' our members ran in 2016 on safety issues, highlighted many individuals who did not really understand their role as a distributor/importer within the supply chain, or indeed even fully understand the controls applicable to goods which they supplied; they assumed that someone else (for example in China) did all that for them and the CE mark meant everything is fine.
- d. In fact, in terms of product safety, the supply of products alongside services seems to be not a huge step away for this (for example handymen, plumbers, kitchen installers etc). People may end up in the distribution chain without fully realising it.

3. Are contributors (consumers, providers and businesses) to the collaborative economy suitably protected by existing legislation?

- a. The collaborative economy has thus far been dominated by US corporations who have exported their systems into the UK and Europe. Many of these US-based corporations have created legal structures which can sometimes restrain the ability of Scottish or any EU law enforcement body to protect indigenous consumers. In the 'consumer protection' environment we believe that the legislative protections are mostly in place, however Government needs to ensure that provisions are sufficiently flexible that can future proof regulations. This is particularly important when multinational enablers are based outside the UK or have subsidiaries in another EU member state, and it will be crucial to ensure that 'Brexit' provisions do not reduce the current protections afforded to consumers.
- b. We are mindful that most regulations have not been drafted with the collaborative economy in mind, so if as expected it continues to grow in size and importance there may need to be some amendments to explicitly deal with it.

4. Do you think that the collaborative economy is suitably regulated whilst still allowing competition and innovation to flourish?

- a. SCOTSS has seen cases that highlight some of the difficulties, for example in terminology as there is the possibility for descriptions such as 'local/trusted' etc. to become misleading. Task Rabbit claims 'Safe and reliable help in your neighbourhood'. We already have issues around 'local' plumbers that are in fact subcontracted via a call centre and aren't local at all.
- b. We have also seen issues with some crowdfunding activities, which involved potential breach of contract or investment fraud. Consumers do not always understand the role they play when investing/contracting and some crowdfunders appear to be treating the amounts deposited like free money. There is a significant risk of large scale and ongoing fraud or consumer protection offences here. The problem is we may not find out until years afterwards.
- c. It is therefore very important that publicity and awareness raising (through CAS, Business Gateway, etc.) are really up to speed with the legal implications when people start entering markets and are geared up to advise appropriately. A standard information pack that could be made available detailing sectoral advice would be very useful, perhaps included along with HMRC in their 'importers' advice materials.

5. What do you think are the barriers which are constraining growth of the collaborative economy in Scotland?

- a. Barriers include a lack of confidence in the ability of enablers to police their platforms so as to avoid fraud or serious contractual issues. www.theguardian.com/money/2016/jun/04/travellers-fake-airbnb-scam
- b. Consumer protection regulators are in a unique position to gather intelligence that can help disrupt and sometimes prevent unfair or dishonest activities on collaborative economy e-platforms. Officers are always willing to work with enablers to 'take-down' fraudulent offers; however some prominent enablers have shown little interest and sometimes put in place communication obstacles for enforcers by failing to make available rapid reporting routes to advise enablers of unlawful activities. There is a sense that many enablers are reluctant to take responsibility for unlawful activities by their clients. The law in the EU and the UK already recognises that in certain circumstances electronic agents are not necessarily responsible for unlawful activity on their platform. For instance, Regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002 accepts that 'Hosts' cannot be liable for illegal data if they don't know about the particular incident, however, once they are made aware of that issue they must take appropriate action to remove the information.
- c. Recital (46) of the relevant EU Directive makes clear: "In order to benefit from a limitation of liability, the provider of an information society service, consisting of the storage of information, upon obtaining actual knowledge or awareness of illegal activities has to act expeditiously to remove or to disable access to the information concerned ...". Information Society Service enablers are obliged under the 2002 Regulations to publish easily available, directly and permanently accessible contact information including an email address to allow relevant enforcement authorities to it possible to contact the service rapidly and communicate with them in a direct and effective manner.
- d. If enablers were to follow these principles and to accept that they should take action once made aware of unlawful activity by a relevant enforcement officer, then many of the unfair commercial practices could be deterred in the first place.
- e. A prominent tourism industry review site has a less than perfect track record when it comes to dealing with unfair and sometimes bogus reviews, which in many cases has caused a significant negative impact on legitimate traders. The review site has displayed an unwillingness to 'sort things out' when notified by an injured party. This uncooperative attitude should be discouraged and if this is repeated by other collaborative economy enablers it could act as a barrier for some businesses to join certain systems.

- f. While a significant proportion of the population probably views the collaborative economy as no different from traditional retail options and would not hesitate to use it, a further significant proportion is likely to view it as risky and is much less likely to buy through it. This section of the population needs reassurances that the collaborative economy providers are reliable and regulated and that there are mechanisms to resolve disputes effectively.

6. What role do you think government should play?

- a. Experience has shown that some online marketplace enablers locate their headquarters in EU jurisdictions where the law enforcement infrastructure is perhaps less equipped (or willing) to take on large multinational corporations. This can cause compliance roadblocks which are difficult to resolve. UK regulators should be able to formally raise concerns with UK & Scottish government representatives who in turn can encourage relevant foreign governmental representatives to resolve compliance issues affecting UK citizens.

7. Do you have any general comments about the collaborative economy?

- a. An observation more about the make-up of the Expert Panel. It appears the panel is made up of mainly business or interest groups. SCOTSS believes that including enforcement representatives would add a useful balance.

I hope this is helpful, and if you wish to discuss further or meet in relation to these or any other matters, please do not hesitate to contact me. Please feel free to publish our response on the Scottish Government website.

Yours faithfully

Peter Adamson
Chairman SCOTSS

The Society of Chief Officers of Trading Standards in Scotland, SCOTSS, is the professional body representing the lead officers for Scottish local authority trading standards services.