

THE NATIONAL BOARD FOR CONSUMER COMPLAINTS,
A SWEDISH INNOVATION FOR THE PROTECTION
OF THE MAN IN THE STREETS

by Ulf Lundvik
Former Chief Parliamentary Ombudsman of Sweden

International Ombudsman Institute
OCCASIONAL PAPER #28

October, 1984

This publication is the property of the International Ombudsman Institute, and cannot be reproduced in any manner whatsoever without the express written consent of the Executive Director of the International Ombudsman Institute. The views expressed in Occasional Papers are those of the authors, and not necessarily those of the Board of Directors of the International Ombudsman Institute.

Table of Contents

Chapter	Page
A. INTRODUCTION	1
B. THE CREATION OF THE NATIONAL BOARD FOR CONSUMER COMPLAINTS: ITS DUTIES AND JURISDICTION	5
C. THE ORGANIZATION OF THE COMPLAINTS BOARD; THE PROCEDURE	10
D. THE DECISIONS MADE BY THE COMPLAINTS BOARD	14
E. THE COMPLAINTS BOARD'S ROLE IN THE DEVELOPMENT OF CONSUMER LAW	17

A. INTRODUCTION

In the last two decades Swedish legislation in the fields of private and procedural law has largely been concentrated upon consumer protection. The legislators' aim has been to establish as far as possible, an equilibrium between, on one hand, the producers and merchants with their often mighty resources, and, on the other hand, the private citizens, the consumers, who seldom dispose of any powers that could put them on equal footing with the former. In the early years the legislators' main interest was directed towards promoting competition between merchants with a view of keeping prices low and further upon providing information to consumers, including conducting comparative testing of goods and services. Steps in these directions were taken already in the 1950's. Later more radical measures were resorted to.

The enactment of the Marketing Practices Act, 1970, marked the beginning of a new era. The act, superseded by the Marking Act, 1975, aimed at protecting consumers against improper advertising and other misleading marketing measures. The 1975 act also included provisions which aimed at preventing the sale of products which could cause injury or were obviously unfit for their primary purpose. For the administration of the act there were established a Consumer Ombudsman, served by a staff, and a special Market Court. The latter is a judicial body - of first and last instance - where professional judges and laymen, representing business and consumer interests, sit together as judges. In 1971 an act to prohibit improper contracts terms (in standard contracts), the Contract Terms Act, was enacted likewise to be implemented by the Consumer Ombudsman and the Market Court. The Market Court has also been entrusted with trying cases under the older restrictive Trade Practices Act, 1953, replaced in 1982 by the Competition Act, a piece of anti-trust legislation implemented by an Anti-trust Ombudsman. The Market Court has the power to issue injunctions under penalty of a heavy fine. The Court is not overburdened with cases. Most conflicts are settled out of court through agreements between the Consumer (or Anti-trust) Ombudsman and the producers or merchants, often with the concurrence of their associations.

Besides the acts now mentioned, which regulate the carrying on of business in the future (viz. after the Market Court has issued an injunction or after an agreement has been reached between the parties to the same effect), there have been enacted for the protection of the consumers rules of a purely private law character, governing individual transactions. They contain mandatory contract provisions with the aim of improving the legal position of the consumer as purchaser of goods, services and credit. The principal enactment is the Consumer Sales Act, 1973, which can be looked upon as a complement to the general, wholly non-mandatory Sale of Goods Act, 1905. The Consumer Sales Act applies to contracts by which a merchant sells goods to consumers for their private use. It furnishes the consumer with certain minimum rights and remedies against a seller in breach of contract either through delayed performance or delivery of goods having a fault. The Door-to-Door Sales Act, 1971, (superseded in 1981 by a similar enactment which applies also to sales by telephone) gives the consumer a week for reconsideration whenever he has bought goods on credit elsewhere than at the seller's normal place of business. During this week the buyer may, if he so wishes, rescind the contract. A Consumer Credit Act was enacted in 1977, replacing the Installment Sales Act of 1915 to the extent that the prior act applied to consumer transactions. The purpose of the new act is to strengthen the consumer's position with regard to credit transaction of various kinds (including the use of credit cards). Further should be mentioned the Consumer Insurance Act, 1980, which applies to contracts of insurance - such as fire insurance and other insurance of property but not to life insurance and sickness insurance - which consumers enter into with insurance companies principally for private purposes. A Consumer Services Act is likely to be passed in a near future.

An amendment, enacted in 1976, to the basic Contract Act, 1915, should be mentioned in this context, although it is not limited to consumer transactions. It lays down that a contract term may be adjusted or held unenforceable if the term is unreasonable with respect to the contract's contents, the circumstances at the formation of the contract, subsequent events or other circumstances. If it cannot be reasonably demanded that the contract shall otherwise

be enforceable, the contract may be adjusted also in other respects or held unenforceable in its entirety. The provision applies regardless of the status of the parties; special reference shall, however, be given to the need of protection of those who in the role of consumer or otherwise occupy a weaker position in the contract relationship.

There is an interplay between these various enactments. For instance, a contract term which violates the Consumer Sales Act is improper by itself under the Contract Terms Act. The Consumer Sales Act also provides guidance for the Consumer Ombudsman in his negotiations with merchants, etc.

Consumer protection has also been achieved through institutions and procedural law. The Office of the Consumer Ombudsman, set up in 1970, has already been mentioned. The Ombudsman was assigned the function of monitoring marketing practices, identifying violations of the Marketing Practices Act, negotiating with violators to eliminate violations and petitioning the Market Court for injunctions against those violators who would not cooperate. Later the Consumer Ombudsman became responsible also for enforcing the Contract Terms Act. In 1972 a separate National Board for Consumer Policies was created. The Board, which commenced its operation on January 1, 1973, is the central government authority to support consumers and improve their position in the marketplace. The Board shall carry out research on consumer problems, monitor the assortment of goods and services available in the market, perform product testing, inform consumers on important issues and support municipal and regional consumer protection activities. Since 1976 the Board has formal authority to issue guidelines relating to marketing, information and product safety. They are not binding, yet carry considerable weight. In 1976 the Board was merged with the office of the Consumer Ombudsman as their duties overlapped. The Consumer Ombudsman became the Director General and the Chairman of the Board for Consumer Policies while retaining his separate identity as prosecuting authority under the Market Act and the Contract Terms Act.

Besides the National Board for Consumer Policies there are, in many municipalities, Consumer Advisors and in each county a Home Consultant who are ready to help the consumers. (The Home Consultants will however be abolished as from January 1, 1985.)

Another institution which will be considered more in depth later on in this paper is the National Board for Consumer Complaints. It handles complaints from consumers about defective goods and services and can issue recommendations for the redress of their grievances which, although not enforceable, are followed in about 85% of the cases.

Consumer related conflicts can, of course, be brought before the courts of general jurisdiction. The ordinary procedure is, however, slow and costly and consequently not many cases are tried under it. To remedy the situation, there was in 1974 enacted an Act on Legal Procedures in Actions Concerning Small Claims (henceforth referred to as the Small Claims Act). It provides for a simplified and cheap procedure - in courts of general jurisdiction - in cases where the amount at stake does not exceed a certain, index-tied figure (in 1984 SEK 10,150 - approximately \$1,270.U.S.). The Small Claims Act is also applicable, regardless of the sum at stake, if the matter has been heard by the National Board for Consumer Complaints and the party refers to the Board's recommendation and requests that the case be tried under the Small Claims Act. In later years about 4,000 consumer related disputes per annum have been heard under the Small Claims Act (compared with close to 8,000 cases per annum handled by the Complaints Board). The great majority of the court cases have been initiated by merchants. This can be explained by the fact that a merchant has no access to the Complaints Board. Often litigation has commenced under a summary debt collection procedure whereupon the case, being defended, has been transferred to be handled under the Small Claims Act. It is not usual that a case is initiated in court after it has been the subject of a recommendation from the Complaints Board. Such a recommendation does not, however, in any way involve a bar to litigation. A judgment rendered under the Small Claims Act can be appealed to a higher court if leave to appeal is granted. It can even, after further leave, be heard by the Supreme Court of Sweden. This, of course, happens only very seldom and only

when important questions of principle are at stake.

Legal Aid is available in Sweden even to other than the very poor. However, with increasing income the person must bear a large part of the costs himself. Legal Aid is, for most Swedes, supplemented by legal expense insurance which forms part of the comprehensive householders' insurance. Unlike legal aid the insurance covers both parties' expenses. The insurance is accessible to practically all Swedes who own some property. There is however an excess (self-risk), payable by the policy-holder, to be taken into account.

B. THE CREATION OF THE NATIONAL BOARD FOR CONSUMER COMPLAINTS: ITS DUTIES AND JURISDICTION

In 1959 the National Consumer Council, one of the precursors of the present National Board for Consumer Policies, initiated an investigation which showed that only very few consumers went to court with their problems when they were dissatisfied with the quality of goods or services provided to them or when they had other conflicts with a merchant. The reason for this was mainly that the man in the street was afraid that litigation would involve heavy expenditure. He was also repelled by the formalities of court proceedings. The Council was of the opinion that a board or an authority of some kind was needed, to which the public could turn to get their disputes impartially considered under a cheap and uncomplicated procedure. To some little extent this need was already met through specialized boards set up by some trade associations. These boards were of a clearly private nature. Apart from the chairman who generally was an impartial lawyer the members were all appointed by the particular association and were affiliated with it. The specialized boards therefore did not appear to be fully impartial. Further, there was no general board to which the consumer could turn when the specialized boards were not competent. In 1964 the National Consumer Council created, as an experiment, three independent, state supported complaints boards: the Footwear Complaints Board, the Furs Complaint Boards and the Laundry and Cleaning Services Complaints Board. On the basis of the favourable experiences with these boards the

National Consumer Council in 1968 established the National Board for Complaints and empowered it to resolve disputes concerning all goods and services not already covered by the three independent boards, which were retained for the time being.

In Swedish the National Board for Consumer Complaints was and still is called "allmänna reklamationsmämnden". The word "allmänna" has two meanings, quite distinct from one another, yet often confused. It can mean general but also public. There are reasons to believe that, when used to designate the board we are now discussing, the word "allmänna" originally meant general as distinct from special. As was mentioned there existed in 1968 several private and three state supported specialized boards for considering consumer complaints. Our board was supposed to take up complaints that could not be submitted to any of the three state supported boards. Thus, it was logical to see it as the general board. The status of the National Board for Consumer Complaints could in the early years be described as semi-private although state-supported. It was a matter of some considerable doubt whether it could be looked upon as a state agency, whether the Board's files were to be deemed as "official papers" (and consequently, in principle, open to the public) under the Swedish Freedom of the Press Act and whether the Board came under the jurisdiction of the Parliamentary Ombudsman. Gradually, as a result of different legislative and other measures the Board's status changed. Today it is beyond dispute that the Board is a state agency, subject to the rules on the public's access to documents and to the Parliamentary Ombudsman's jurisdiction, like any other state agency. The word "allmänna" ought therefore today be taken in the sense of public as distinct from private. Some authors, when writing in English, actually refer to it as the Public Complaints Act. For the sake of brevity it will in the following be called simply the Complaints Board.

When the National Board for Consumer Policies was established in 1972 the Complaints Board was appended to it. The three specialized, state supported boards, set up in 1964, were not abolished and the jurisdiction of the Complaints Board was correspondingly extended. The Complaints Board at that time was still considered as an experiment and its

status was provisional. In 1980, however, the Swedish Parliament assented to a bill giving the Board permanent status as an individual authority. So, on January 1, 1981, the Complaints Board was separated from the National Board for Consumer Policies and became an authority of its own, working under a government decree setting out its duties, its organization and the procedure to be followed. The new rules do not differ essentially from those - issued by the National Board for Consumer Policies - which the Complaints Board had followed previously.

The duties of the Complaints Board are therefore:

1. It tries disputes between consumers and merchants concerning goods, services or anything else of value and gives recommendations as to how these disputes should be solved;
2. On request from a court of general jurisdiction it gives opinions in cases tried under the Small Claims Act; and
3. It gives advice to the public and to municipal and regional consumer advisors on subjects within the Board's jurisdiction.

Since July 1, 1981, the Board is divided into 11 departments, each responsible for a separate field of matters coming under the Board's jurisdiction. The departments and the matters they consider are:

1. Travel: packet and coach tours, chalet accommodation agencies;
2. Motor Vehicles: new and used cars, motorcycles mopeds;
3. Domestic appliances and domestic electronics: refrigerator and freezers, washing and dishwashing machines, television and radio receivers, tape recorders etc.;
4. General Department: furniture and home requisites, photographic articles, clocks and watches, optical goods, bags, removals, domestic cleaning services etc;
5. Pleasure craft: yachts and motor boats, marine accessories etc.;
6. Textiles: clothing, domestic textiles;
7. Work on real estate: painting, flooring, electrical installations, heating, water and sanitation work;

8. Footwear: shoes, boots, slippers;
9. Laundry: dry cleaning of clothing, carpeting and domestic textiles, white laundry;
10. Furs: furs and cleaning of furs and suchlike garments;
11. Insurance: claims adjustments and of personal or property insurance policies.

As can be inferred from the enumeration of the department the Complaints Board's jurisdiction is now broad. Originally the Board had only five departments. As the Board's jurisdiction was gradually extended more departments were set up. The latest addition - operative on July 1, 1981 - was the department for work on real estate. The Board's jurisdiction is, however, still subject to a number of limitations. Some of these are expressly laid down in the governmental decree which regulates the Board's activities. Others are formulated by the Board itself, the Board being authorized by the decree to decide that certain disputes shall not be tried by the Board (for instance because the Board lacks the necessary expertise). In the following no sharp distinction will be made between these two categories nor will all of the limitations be considered.

First it should be noted that the Complaints Board can only adjudicate in disputes between a consumer and a merchant and solely on a complaint filed by a consumer. A merchant can appear only as a respondent. A consumer is understood to be a private person, who has acquired from a merchant, in the course of the latter's professional activities, goods, services or anything else of value intended mainly for his personal use and not for resale or use in business. The term merchant, on the other hand, denotes any person, physical or legal, who carries on an activity of economic nature, irrespective whether or not the activity is directed towards profit. Also national and local government bodies which carry on business activities are considered as merchants.

The Complaints Board does not review certain types of professional services, such as those provided by doctors, dentists or lawyers. Nor does the Board consider disputes concerning purchase of real property (except fixtures, such as household appliances and carpeting.). It is possible its jurisdiction will be extended in this field to include purchase of

one-family houses.

Another restriction is that the Board will not entertain disputes concerning purchase of works of art.

There is further a time-limit. The Complaints Board will not normally consider a complaint when more than six months have elapsed since the merchant notified the consumer that he declined the latter's claim.

Recently a minimum value limit has been introduced. Disputes concerning pleasure craft, furs, work on real property, insurance, motor vehicles and travelling will not be entertained if the value of the consumer's claim is below SEK 250 (about \$30.U.S.). In all other departments the value limit is SEK 100 (about \$12.U.S.) The Board, however, will take up a dispute in which the value at stake is below the limit, provided the dispute concerns questions of principle or there are other special reasons why it should be tried. This limitation was introduced in 1980 with a view of keeping the caseload down on a more reasonable level.

Another limitations of the Complaints Board's jurisdiction or rather its ability to resolve conflicts stems from the fact that the procedure is solely in writing. The parties are not allowed to attend the meetings of the Board and oral evidence is not accepted. For that reason the Board must decline to try cases where the production of oral evidence is of vital importance. Contrary to what one could suppose this limitation seems not to have any overly negative effect. According to a treatise published in 1981 only two percent of the cases filed have been dismissed for that reason. It should, however, be remembered that before a conflict is filed as a case and consumer will often have consulted the Board's secretariat or a municipal or regional consumer advisor and that these will dissuade the consumer from entering a case which in all probability the Complaints Board will find itself unable to try. It is therefore hard to say how great the impact is of the rule that oral evidence is not admissible.

The rule against the admissibility of oral evidence has, no doubt, its drawbacks but it has also clearly favourable effects. The parties incur only minimal costs for the procedure. There is no need to travel to the Board, no wages lost due to time spend before a tribunal, no

expenses to reimburse to witnesses etc. The rule makes it possible to have only one Board for the whole of Sweden, which facilitates consistency and uniformity in the decisions. This sole Board further gets a unique overview of what is going on in the market and assembles a wealth of experience on which - as will be explained later - both the Consumer Ombudsman and the legislator can draw.

C. THE ORGANIZATION OF THE COMPLAINTS BOARD; THE PROCEDURE

The Complaints Board is composed by a chairman and a vice-chairman both judges on whole-time secondment to the Board. There are further nine part-time departmental chairmen, all with experience from the judiciary. They serve normally on four or five departments each, while the chairman and the vice-chairman from time to time preside over meetings of each department by turns, thus fostering uniformity among the practices of the various departments. There are about 80 lay members of the Board, half of them representing consumers and half merchants. They are selected by the Government from various organizations such as trade unions, the consumer cooperative movement, trade or business organizations and the like. Several of the consumer representatives are selected from the staff of the National Board for Consumer Policies. The lay members are highly qualified. They are usually high-ranking officials in their particular organization. Most lay members serve in one department only. The Board has further a secretariat comprising about 40 persons.

At the meetings of the departments the quorum is a chairman and four lay members. Some departments usually sit with six lay men. There must always be an equal number of consumer and merchant representatives present. The department may engage the service of a "non-partisan" expert who is present but does not participate in the decision. The department for pleasure craft uses such an expert in most cases. Other departments do not normally invite an expert to be present. Simple cases may be tried by only a chairman and two lay members representing opposite interests. Decisions can, however, be taken only if

there is unanimity. This composition of a department is used only in emergency, when a sufficient number of lay members has not turned up. Certain simple cases can even be tried by the chairman or vice-chairman (but not by a departmental chairman) sitting alone. This is possible when the case lacks interest from the point of view of principles and one of two other conditions is met. Either it is evident that the consumer's claim must be rejected or the merchant has not entered a defence. In the former case the Board will of course rule against the consumer. In the latter case the merchant will normally lose. In 1982 about 200 cases were dealt with by the chairman or vice-chairman alone while 3,780 cases were tried by the various departments at altogether 236 meetings. On an average 48% of the cases were decided in favour of the consumer.

The secretariat has very important functions. It gives advice to consumers on how to proceed when they are dissatisfied with goods or services provided. They are told that they must commence by giving the merchant notice of their dissatisfaction, if they have not already done so, and ask him to remedy the situation. If no redress is obtained the consumer is invited to lodge a complaint with the Board on a form which is sent to him or, when more practical, to institute proceedings under the Small Claims Act. Many consumers, to whom a complaint form has been sent by the secretariat, never return it. It can be assumed that in many of these cases the merchant has remedied the problem when he learnt that the consumer has contacted the complaints Board. The consumers usually contact the secretariat by telephone. Each department has assigned an officer to answer questions by telephone for two hours every day, usually between 10 and 12. The number of telephone calls received is considerable. It has been estimated that about 42,500 calls were received in 1982 and the number seems to be increasing from year to year. About 15,000 of the calls received in 1982 concerned cases that were already pending, the rest were for information.

The secretariat is authorized to remove cases from the list if it is deemed obvious that the Board has no jurisdiction. Through the interventions of the secretariat, further, a number of cases are settled amicably. The chairman, in an interview has explained to the

author that often the mere fact that a merchant receives an official letter from the secretariat, asking for his comments on a complaint, is enough to bring him to terms. In 1982 no less than 3,455 cases were decided by the secretariat in these or other ways and never reached the departments.

The secretariat is further responsible for conveying general information to the public and to municipal and regional consumer advisors about the Board's practice and the work that it performs.

Last but not least the secretariat has to prepare the cases that are to be taken up at the meetings of the departments.

As regards the procedure in cases tried by the Complaints Board it has already been indicated that it is wholly in writing. The parties are not even allowed to attend the meetings of the departments nor is oral evidence admissible. The consumer who wants to submit a conflict to the Board's consideration is invited to complete a preprinted complaint form in which he is to state the facts as he conceives them and indicate the remedy desired. If the complaint is not rejected as being beyond the jurisdiction of the Board or for some other reason it is given to the officer in the secretariat who will be responsible for the case. He will read the document carefully and control that all relevant information has been supplied by the consumer. If information is lacking the officer will request supplementary details which the consumer must provide at the risk of having his complaint rejected. When the papers are in order copies will be sent to the respondent merchant with a request that he submit an answer within eight days. If he still does not reply, the case will be reported to the chairman or vice-chairman who may dispose of it summarily, nearly always in the favour of the consumer. If the merchant submits an answer, a copy of it will be sent to the consumer. Further replies and counterreplies may be exchanged.

The officer in charge sometimes collects information from the parties by means of telephone calls. In some of the departments it is customary to ask that the object of the controversy - e.g. a pair of shoes - be handed over to the secretariat for inspection by the

department at its meeting. The lay members possess considerable experience and expertise and can often easily find out if and why something has gone wrong. For instance in a case concerning allegedly faulty dry cleaning of a skin jacket the members can say whether the cleaning of a was faulty or whether the bad result was due to poor quality of the skin. In the latter case the cleaner is not likely to be held responsible. Objects that cannot be handed over to the secretariat for inspection can instead be inspected by an expert appointed by the department. The department can also request laboratory tests or other examinations. This is particularly customary in the department for motor vehicles. In more than 50% of the cases examination of the vehicle is considered necessary. The problem is, however, that such examinations, inspections or tests must be paid for by the consumer. The Complaints Board does not dispose of any money granted particularly for that purpose and can only in exceptional cases pay out of other funds. If the department ultimately rules in favour of the consumer, the decision will contain a recommendation to the merchant to reimburse the cost. Otherwise the consumer will not incur any expenses. No fees are levied by the Board.

If no settlement has been reached while the case was pending in the secretariat, the officer in charge will report the case at a meeting of the competent department as soon as the case is fully prepared. A memorandum setting out all relevant facts is sent to the members in advance. At the meeting the memorandum is supplemented by oral comment. The department will then discuss the case and make a decision. Decisions are taken by simple majority, except when unanimity is needed as mentioned above. The chairman has the casting vote. Most decisions are taken unanimously. The secretariat has found that dissenting opinions were expressed only in 3.5% of the cases finalized in 1983. The percentage differs significantly between the departments. The departments for footwear, laundry and furs had no dissenting opinions, while in the departments for travel and motor vehicles such opinions were expressed in 12% of the cases. In the department for insurance there was even less unanimity. Dissenting opinions were expressed in 20% of the case.

D. THE DECISIONS MADE BY THE COMPLAINTS BOARD

When the Complaints Board was established in 1968 it was laid down in the by-laws for the Board that it should deal with questions concerning the quality of goods and services provided. The Board was not supposed to examine questions of a purely legal nature such as the interpretation of the rights and obligations flowing from a contract. Questions of the latter type could not, however, be wholly disregarded. After the National Board for Consumer Policies in 1973 took over the responsibility for the Complaints Board it formulated new by-laws for the Complaints Board which, inter-alia, removed the previous limitation that disputes had to concern the product's or service's quality. Questions in law after that became more and more frequent and they play today an important role in the work performed by the Complaints Board. It can be said that the decisions of the Board today very much resemble judgments rendered by the courts. One important difference is, however, that the Board's decisions are not enforceable. A decision in favour of the consumer is, on the face of it, no more than a recommendation to the merchant to repay the purchase sum or part of it to the consumer, to repair without charge the object purchased or to settle the conflict in some other way. Yet the recommendations are highly persuasive. About 85% of the cases they are complied with. There are several reasons for this. Many big merchants - department stores or the like - have undertaken always to follow the Complaints Board's recommendations. A great many trade associations have made similar undertakings on behalf of their members, often after negotiations with the Consumer Ombudsman. Some trade associations have entered provisions to that effect in their by-laws, while other have reserved funds from which compensation will be paid out if a member of the organization were to refuse to comply with the Board's recommendation. This willingness on the part of the merchants to follow the recommendations is understandable, partly because they respect the Board's impartiality (and know that a court is likely to take the same stand if they were to litigate) and partly because the policy brings them good will.

Over the years when the Complaints Board was appended to the National Board for Consumer Policies the latter used to follow up the recommendations and see if they were followed. If a merchant had not followed a recommendation his name and address were entered upon a black list which was published twice a year in a periodical issued by the National Board for Consumer Policies. It was also sometimes published by newspapers. For a merchant to have his name thus exposed was of course very bad publicity and all serious merchants did their utmost to avoid it. Therefore, they were quick to comply with any recommendation from the Complaints Board. This system was abolished when the Complaints Board became an independent agency. It was held by some observers that it would be incompatible with the Board's impartiality to publish such a list. Moreover, neither the Complaints Board nor the National Board for Consumer Policies could afford to follow up the recommendations any longer. As a result of the increasing intake of cases there are a great many recommendations made annually. Today only random checks are made from time to time. Only in exceptional cases the non-conformance with a recommendation is denounced. The fact that a merchant does not follow a recommendation does not necessarily imply an intention to obstruct. It may be he wishes to take the case to court in order to get its ruling. Perhaps he wishes to take it the whole way up to the Supreme Court of Sweden to get a precedent. It should further be added that it is not unusual that the reason why a recommendation is not followed is that the firm which sold the goods or performed the service has gone bankrupt or otherwise ceased its operations.

There lies no appeal against a decision of the Complaints Board but, on the other hand, there is no bar preventing a dissatisfied party, whether consumer or merchant, from commencing litigation in a court of general jurisdiction after the Board has rendered its decision. The consumer may have a reason to do so even when it is not dissatisfied with the ruling of the Board. If the merchant does not comply with the recommendation made, the consumer can go to court with a view of obtaining an enforceable judgment. In court the case will be tried under the simplified procedure by the Small Claims Act regardless of the

magnitude of the amount at stake. This possibility of taking a conflict to court is, however, seldom resorted to. In the period from July 1, 1974 to December 31, 1976 the Complaints Board tried about 8,000 cases but only 162 of these were brought to court. Of the cases that were brought to court, 74 were removed from the list because a settlement was reached or the plaintiff withdrew his claim or for some other reason. Judgment by default (on the part of the merchant) was rendered in 38 cases, while in 4 cases the respondent assented to the claim. Only 46 cases were tried on the merits. In 26 of these 46 cases the court arrived at the same conclusions as the Complaints Board had done. In 20 cases the courts took a different view, mostly because new (often oral) evidence had been produced. There are no comparable statistics available from later periods. In an interview with the chairman of the Complaints Board the author asked if he was of the opinion that the Board was more concerned about the protection of the consumer than were the courts. The Chairman's answer was that there was no conscious policy of the Board in that direction.

While there lies no appeal against a decision by the Complaints Board there remains the remote possibility of having the decision reconsidered by the Board itself. Upon application from a party the chairman of the Board may decide that the case shall be reconsidered. He may, however, do so only in exceptional cases, viz. if (1) there has been a clear misjudgment or misconception on the part of the Board, which could have influenced its decision, (2) a party who failed to respond can be assumed to have a lawful excuse, (3) a party has made it probable that new circumstances exist that would have lead to a significantly different outcome of the case, or (4) the context of the Board's decision appears to be unclear on the point of importance. The number of applications for reconsideration of decisions seems to be increasing. In 1983, 112 such applications were made. Yet, only a minority was assented to.

E. THE COMPLAINTS BOARD'S ROLE IN THE DEVELOPMENT OF CONSUMER LAW

As was said earlier the Complaints Board has gradually become more and more involved with questions of law. Its decisions have brought to light new legal problems and indicated ways as how to solve them. Gradually the Board has built up what could be described as a body of case law. Important decisions taken by the Complaints Board are published, since 1981 in the Annual Report issued by the Board. All decisions are available to the Consumer Ombudsman and he makes good use of the information they contain when negotiating with trade associations about correction of their practices, the formulation of new standard contracts or matters of a similar nature. The Board's decisions have also inspired legislation. The Consumer Sales Act, 1973 was, for instance, largely a codification of the Board's practice. For example, the Act adopted the Board's practice of holding that the goods sold were defective, despite a disclaimer clause, if when used they might cause injury. The forthcoming Consumer Services Act is also essentially inspired by the decisions taken by the Complaints Board.

When the Small Claims Act was passed in 1974 the Complaints Board's role as a precedent making body was recognized. The Act authorized the court to request an opinion from the Board if it would be of value in the case. The provision was designed - as it was said - to permit the Complaint's Board's "consumer policy judgments to come through in the consumer conversies which are handled under the simplified procedure" of the Small Claims Act. The Board was thus supposed to be able to affect the decisions also in cases which it might not have been able to adjudicate originally because of its jurisdictional limits. The courts, however, have not made extensive use of this provision. They seem reluctant to ask for the Board's opinion and they do so only in a decreasing number of cases. In 1982, for instance, the Complaints Board gave opinion to courts only in 7 cases. The reason why the courts refrain from asking for the Board's opinion seems mainly to be that it usually takes several months for the Board to give an opinion. It is of some interest to note that in one of the cases, where the Board gave opinions in 1982, the request came from the Supreme Court of

Sweden. The Supreme Court, which heard the case after appeal, rendered judgment on April 12, 1984. The majority of the justices followed the Board's opinion which was in favour of the buyer of a used car that broke down shortly after the purchase.

It has been held by some observers that the Complaints Board has a more consumer-orientated policy than the courts. Whether this is really so is hard to say, particularly as so relatively few consumer cases are tried by the courts and the number of such cases heard by the higher courts and the is very little. In an interview with the Chairman of the Complaints Board the author asked, who in his opinion was leading the development of consumer law, the Complaints Board or the courts. The Chairman's answer was that he believed the Board actually was the leader. In most cases the Board was the first to be confronted with new problems that were coming up and had to take a position. It would take too long (at the very least two years) to take the case the whole way up to the Supreme Court of Sweden. A judgment rendered by the Court of first instance is not regarded as a precedent in Sweden, hardly even a judgment of a court of appeal. As an example of how the Complaints Board could be confronted with new problems that called for a quick resolution the chairman referred to a case set out in the Annual Report for 1982. A firm dealing in new cars used to advise its customers not to buy a car, paying in cash, but rather to lease it under a system involving, inter alia, the payment of a high annual interest. The interest, the firm alleged, was deductible from income under the tax legislation. In 1980 the consumer in the case referred to leased a car under this system assuming the interest would be deductible. In 1981 the National Tax Board declared it would not allow deductions for interest paid under such circumstances. If deduction was not to be allowed our consumer would have been better off buying the car cash down. So he wanted to rescind the contract. The firm refused unless he paid quite a substantial amount. The consumer then filed a complaint with the Complaints Board saying it was not fair he should pay that much. The Board made a lengthy ruling based on legal arguments and found it favour of the consumer. By that time the Supreme Administrative Court had upheld the opinion of the National Tax Board and it was

evident that many consumers, who had entered into leasing agreements under the system described, were now in dire straits. It can, therefore, be presumed that the Board's decision was greeted by many as a most valuable precedent.