

Advisory Committee on Packaging

Recommendations to Defra for a Future Packaging Waste Producer Responsibility System

December 2018

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1. Background

- a. The Advisory Committee on Packaging is made up of 12 public and private sector representatives and an independent chairman (Appendix 4).
- b. Meeting formally on a quarterly basis with representatives of government departments, Devolved Administrations, regulatory authorities and WRAP, the Committee considers issues that are relevant to the smooth running of the Producer Responsibility (Packaging Waste) Obligations to provide advice to Defra on relevant issues.
- c. Specific issues are often dealt with through Task Forces that are run by the ACP but may include additional external expertise.
- d. Following the publication of the amended EU Circular Economy Package (CEP) in November 2016 and the clear expectation of revised Extended Producer Responsibility Regulations, the Committee as a whole worked on the development of an optimisation list that it recommended should be part of a future producer responsibility system for packaging. Whilst keeping an eye to the CEP, this also focussed on how the existing system might be changed and improved regardless of the final CEP requirements. A paper was published in December 2017 with the following recommendations¹:
 - Future targets should be optimised for the best environmental outcome.
 - The system needed to fund an effective long-term consumer awareness programme.
 - The system should enable modulated fees to be applied to take account of environmental impact.
 - UK reprocessing needed to be encouraged to reduce dependence on uncertain export markets.
 - It was also recommended that the system needed:
 - More effective enforcement
 - Mandatory accreditation of reprocessors and exporters
 - De-minimis review to apply fairer cost distribution
- e. The overall conclusion was of a need to move away from a pure market-based system to one with a greater degree of central strategic management.
- f. The finalising of the CEP requirements together with statements from the UK Government that future packaging recycling targets should be more ambitious than the minimum required by the CEP provided a clear signal that the current system had to change. The Committee was therefore requested by Defra to consider options for a reformed system that would meet the key criteria of:
 - Delivering on challenging recycling targets.
 - Apply full net cost recovery for household and household-like commercial packaging waste back to producers.
- g. Defra indicated that the ACP should consider a range of options without any constraint other than those required by the CEP.
- h. The ACP assisted WRAP and INCPEN to deliver stakeholders workshops in the Spring of 2018 seeking sector views on PRN system reform. These culminated in a letter to the Secretary of State with a range of recommendations that included those above and in particular, supported the need for a centralised body to provide strategic oversight and management.

¹ Advisory Committee on Packaging Future Regulations Paper – <https://npwd.environment-agency.gov.uk/Public/GenericContent.aspx?CategoryId=595F40C2-76C4-49E3-8FC8-396CCDB77A9E>

2. Interpretation

- a. A key constraint has been the uncertainty over interpretation of CEP terms that determine specific requirements:
 - i. 'Full net cost recovery' (FNCR). Defra has indicated that FNCR should effectively enable the organisation (the waste producer including local authorities responsible for municipal waste) responsible for the disposal of qualifying waste to recover the costs of collection, transport, recycling and potentially, residual disposal netted off by any commodity value in the disposal chain.
 - ii. With regards to application, Defra has indicated that FNCR should be applied to 'household' and 'household-like C&I' packaging waste. Therefore, any waste where the collection responsibility lies with local authorities AND any waste from businesses that is similar to household packaging waste but may be collected by commercial operators. This would mainly be expected to be primary packaging eg glass bottles, cartons, pots tubs and trays, cereal boxes, beverage cans, sandwich wrappers etc. Defra does not expect FNCR to be applied to other C&I packaging waste such as transit packaging but this will be subject to consultation.
 - iii. There is also uncertainty as to whether packaging producers will be required to pay for the costs related to all of the qualifying packaging waste or just the amount needed to meet targets. At this stage, it is assumed to be all.
 - iv. It is also unclear how the requirement for 'optimised' costs should be applied. At this stage, it is assumed that the payment system will be linked to performance – e.g. collection efficiency, yield – and collection conditions – e.g. demographics, geography – through an allocation matrix.

3. Key criteria

- a. The ACP considered a range of criteria that the options needed to take into account:
 - i. Accountability and enforcement for delivering ambitious targets
 - ii. The need to set modulated fees for more and less easily recyclable packaging
 - iii. Consumer awareness and communications to raise participation
 - iv. Increased transparency of producer funding and FNCR money flows
 - v. Choice for producers but a more predictable cost base
 - vi. Inclusion of 'household like' C&I waste
 - vii. Drive quality and consistency of collection of target packaging waste
 - viii. Free rider capture and increasing the coverage of the regulations to currently exempt producers
 - ix. In addition, it was considered that regardless of the options, a central body was required to deliver certain key strategic objectives

4. Options overview

- a. Through a process of facilitated debate, four options were initially derived that were considered could deliver on the key objectives. Further discussion with Defra narrowed these down to three, these are described illustrated in Appendix 1, 2 and 3 with the responsibilities summarised as follows:

	Overview	Compliance schemes	Central body	Key option issues
Option 1 Managed market system	<ul style="list-style-type: none"> • Compliance schemes manage producers and FNCR payments • Central body provides strategic oversight and delivers coordinated national communications campaign 	<ul style="list-style-type: none"> • Managing and registering member data • Collecting member modulated fees • Validating FNCR claims • Funding those entitled to FNC recovery through modulated fees • Procuring recycling evidence • Meeting recycling targets • Reporting performance 	<ul style="list-style-type: none"> • Setting modulated fees • Determining FNC claim criteria • Compliance Scheme oversight • Consumer awareness 	<ul style="list-style-type: none"> • Ability of competing schemes to work with Local Authorities to deliver equitable funding, collection growth and material quality
Option 2 Centrally managed system	<ul style="list-style-type: none"> • Single central body responsible for all requirements 		<ul style="list-style-type: none"> • Setting modulated fees • Managing and registering member data • Collecting funds • Distributing funds • Meeting targets • Consumer awareness • Reporting performance 	<ul style="list-style-type: none"> • Concern over monopoly organisation costs and bureaucracy • Lack of choice of service provider for producers
Option 3 Hybrid	<ul style="list-style-type: none"> • A central body would manage full net cost recovery compliance for household and household like packaging • Compliance schemes would handle compliance for C&I • Separate targets would be set for each 	<ul style="list-style-type: none"> • Managing and registering member C&I data • Procuring C&I recycling evidence • Meeting C&I recycling targets 	<ul style="list-style-type: none"> • Setting modulated fees for HH and HH-like C&I • Managing and registering member data for HH and HH-like C&I • Collecting funds • Distributing funds • Meeting HH and HH-like C&I targets • Consumer awareness • Reporting performance 	<ul style="list-style-type: none"> • Differentiating between HH and C&I data and recycling • Preventing evidence fraud • Double overheads

5. Non-household like commercial and industrial packaging waste

- a. Whilst non-household like C&I packaging will sit outside the cost recovery system, it will be a crucial element of meeting the UK packaging recycling targets
- b. Recycling data for this category will therefore need to be captured and used as evidence in the UK's reporting of overall recycling performance.
- c. The ACP considered that managing the contribution of C&I packaging recycling to the overall recycling targets could be carried out relatively simply in option 2 by the central body obtaining data from reprocessors and exporters split between C&I and

household/household-like packaging. However, there were concerns that judicious use of evidence management could enable targets to be met by some organisations through the much lower cost C&I route without the responsibilities and costs of FNCR. Care needs to be taken to manage these concerns if this option is chosen and could be mitigated by use of separate targets and careful enforcement and monitoring of recycling processes.

- d. It is therefore proposed that option 1 would benefit from separate targets being applied to household/household-like packaging waste and C&I packaging waste.
- e. It was also considered that as FNCR was not required for C&I, it could be managed under a separate funding method to household/household-like packaging waste..
- f. A hybrid system was therefore proposed as Option 3 where C&I waste evidence would be procured from reprocessors and exporters through a similar system to the current PRN process. However, the ACP recommends that a cost capping mechanism be made available in the regulations to prevent excessive cost volatility of the type experienced under the current PRN system. An example of this is the WEEE Compliance Fee

6. Payment systems

- a. Household packaging waste – The ACP believes that FNCR payments for household waste should be based on claims made by Local Authorities (or their agents) in relation to collected packaging waste supported by evidence of recycling. Factors affecting the quality and proportion of waste collected should be taken into account to ensure that Councils are encouraged to increase quality and recycling rates whilst not penalising those that are in more challenging environments e.g. proportion of high rise dwellings or remoteness from processing sites. Whilst it is recognised that linking collected waste directly to waste entering the recycling facility will often be challenging, it is considered reasonable for payment to be paid on receipt of balanced evidence for recyclable obligated material from an accredited reprocessor or exporter.
- b. Household-like packaging waste– This waste will be collected from a wide range of businesses and public sector sites by a large number of collectors and taken to a large number of first points of disposal, be they transfer stations, sorting facilities or even reprocessors. To establish a robust mechanism for cost claims and guarantee a rebate to the waste producers would be a challenge requiring a significant improvement to duty of care and permitting legislation. The ACP's initial view is that this type of waste packaging would need to have special measures applied that provided the opportunity for cost recovery but only if the claimant used an authorised collection network. Under the WEEE Directive, producers of electronic waste are entitled to a free collection, but the UK regulations have applied this through the requirement for Schemes to provide free disposal points. This type of reactive cost recovery may be an alternative.
- c. Non-household like C&I – Defra has advised to assume there will be no full cost recovery requirement for conventional C&I transit type packaging waste and a such a payment system will therefore not be required. However, with some household-like C&I and C&I being difficult to distinguish, definitions will have to be carefully drawn up to reflect clear material/format differences to minimise these problems and effective management and enforcement will be crucial to avoid evidence and payment abuse.

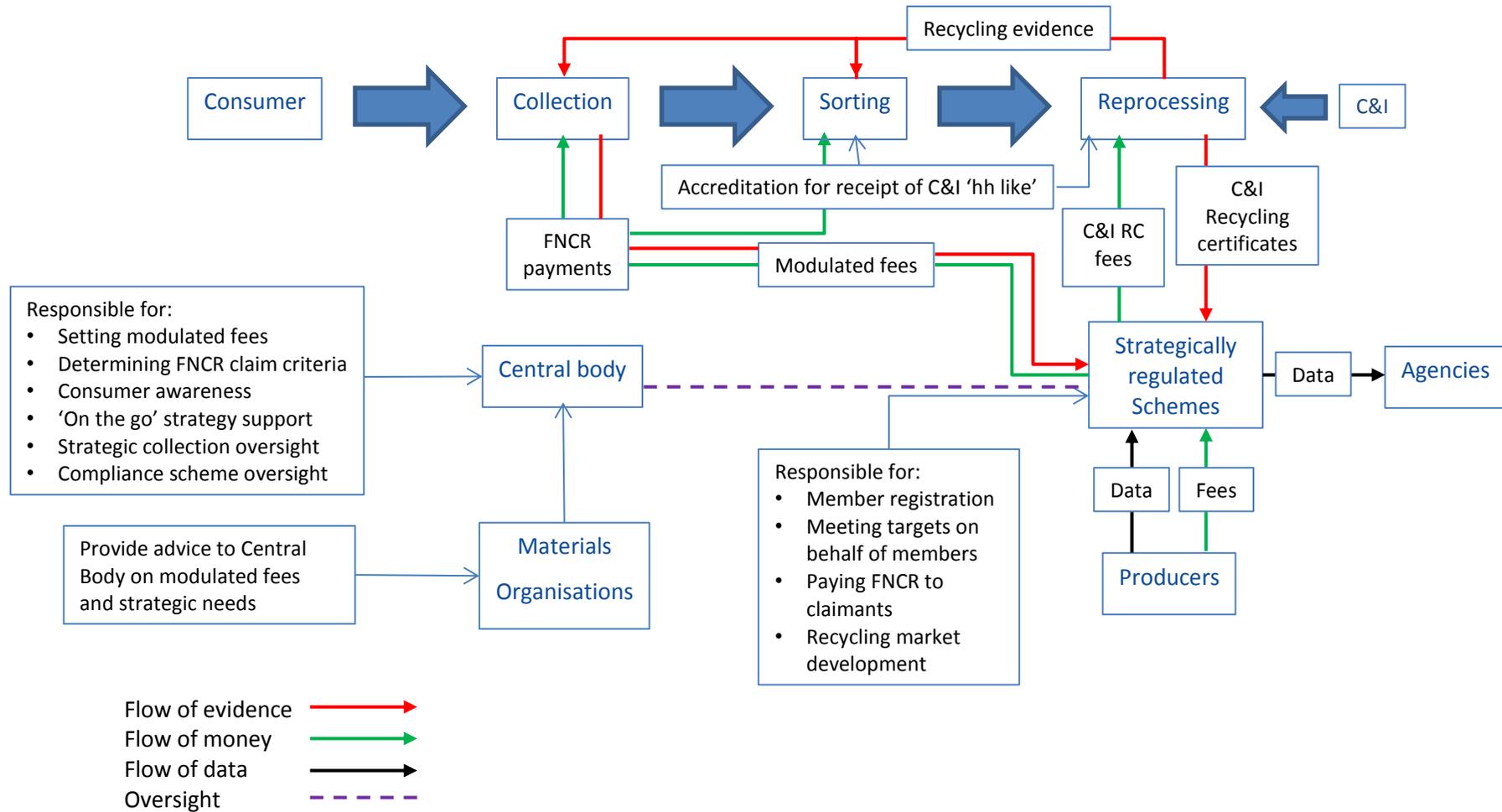
7. Key issues

- a. The calculation for Full Net Cost Recovery in itself will be extremely complex requiring a consistent, national range of factors to determine funding entitlements. Variations in collection costs and efficiency between local authorities, their disposal chains, material values etc. will be further complicated by the losses through the system that could see significant differences between collected weights and recycling yield. Traceability of material will therefore, for any of the options, be critical, but especially for option 2 where there would be separate compliance schemes responsible for the evidence used to meet producer's obligations and the evidence used to calculate FNCR payments.
- b. The proposals for household like C&I in particular, will demand additional levels of accreditation and the potential inclusion of large tracts of the commercial waste collection sector. It is considered that current waste tracking systems and the accreditation of waste carriers would need significant enhancement to minimise the opportunities for system abuse.
- c. The move by most local authorities in England to some form of comingled recycling collections has seen a steady degradation of collection quality but has increased participation and collection tonnages. The adopted system will need to ensure that there is both accountability and the necessary powers for producer oversight to ensure that their fees are delivering value for money and effective outcomes.
- d. For C&I waste, the expectation is that because there is no FNCR requirement, there will be a need for commercial arrangements for evidence under Options 1 and 3. ACP members felt strongly that any evidence issued under such commercial arrangements – similar to the current PRN system - should have a capping mechanism available to avoid excessive price escalation. The WEEE Compliance Fee provides such an example that has proven to be effective.
- e. Effective oversight will be an essential requirement for the new system. With producer fees likely to increase by a factor of 5-10, with a significantly more complex evidence process than the current PRN and with a FNCR system potentially requiring payment to a wide range of operators, we believe that consideration will need to be given to a fundamental change in national monitoring and enforcement. This will either require a significant increase in the capability and quantity of Agency resources or the formation of an independent monitoring regime managing all data and payments with the Agencies providing a purely regulatory role.
- f. Additional issues for consideration regardless of system
 - i. *Shared activity* – the ACP is split on whether to retain or change the shared responsibility. One view was that shared responsibility helps ensure that the whole supply chain remains accountable for improved packaging design and recyclability. The opposing view was that single point responsibility - preferably the pack/filler, importer, brand owner – would hugely simplify data.
 - ii. *De-minimis* – the general consensus is that the de-minimis threshold should move towards being significantly reduced or removed although this could be on a phased basis. There is a view that reducing the de-minimis could help close the non-obligated tonnage gap i.e. unreported packaging, but that there would also need to be other regulatory change to capture tonnage that should be obligated. The key

purpose of reducing the de-minimis would therefore be to share the cost burden more equitably with small businesses. This could be done by requiring them to pay a fixed fee similar to that required under the WEEE and batteries producer responsibility schemes. The fees raised could contribute towards the activities of the central body. To avoid an excessive burden on regulators, it is suggested that HMRC should include tick box notices in tax returns for businesses to state that they are compliant with all producer responsibility regimes.

- iii. *Online sales* – the existing system allows online sales by small sellers through major sales sites to fall through the accountability gap. It is recommended that sites selling products should be responsible for the packaging regardless of whether they fulfil the sale themselves.
- iv. *Internal supply* – the existing system exempts packaging used by companies for internal movement from obligations regardless of the fact that it still ends up as waste in the UK. This anomaly should be removed.
- v. *Accounting year* – the existing system obligates companies only when they have had a full year of audited accounts. This is leading to large packaging producers falling out of the system for one or two years when they are divested from Groups with significant impacts on the amount of reported packaging. As with WEEE, producers should be obligated as soon as they reach the threshold regardless of whether they have audited accounts.
- vi. *Group registration* – Unlike WEEE and batteries where individual companies are obligated, the current packaging system allows group registrations. This causes traceability issues and complicates free-rider searches. The ACP recommends that the group registration option is removed.
- vii. *Accreditation* – currently, reprocessor and exporter accreditation is optional leading to significant recycling activity not being recorded towards targets. The ACP believes that reprocessor/exporter accreditation should be mandatory, but also recommends a tightening of export controls to ensure that all waste exports are reported, as currently Article 18 exports are only recorded if exported by an accredited exporter except in Scotland and Northern Ireland. Under recommendations for the capture of household-like packaging waste, there would also be a requirement for accreditation of all sorting facilities that receive this type of waste and would be required to pass FNCR onto customers.
- viii. *Individual compliance* – there were mixed views on removing the current individual compliance option with concerns that retaining the option could undermine strategic objectives.
- ix. *'On the go' packaging waste* – reducing the impact of 'on the go' packaging is recognised as a key outcome for a new EPR system. It is therefore expected that the Central Body in both options would have a role in developing an 'on the go' strategy.
- x. *Split UK/export targets* – the Committee agreed that for plastic, there was a case for a minimum UK reprocessing target as part of the overall target to encourage investment in UK capacity.

Appendix 1 – Option 1 – Controlled Market system



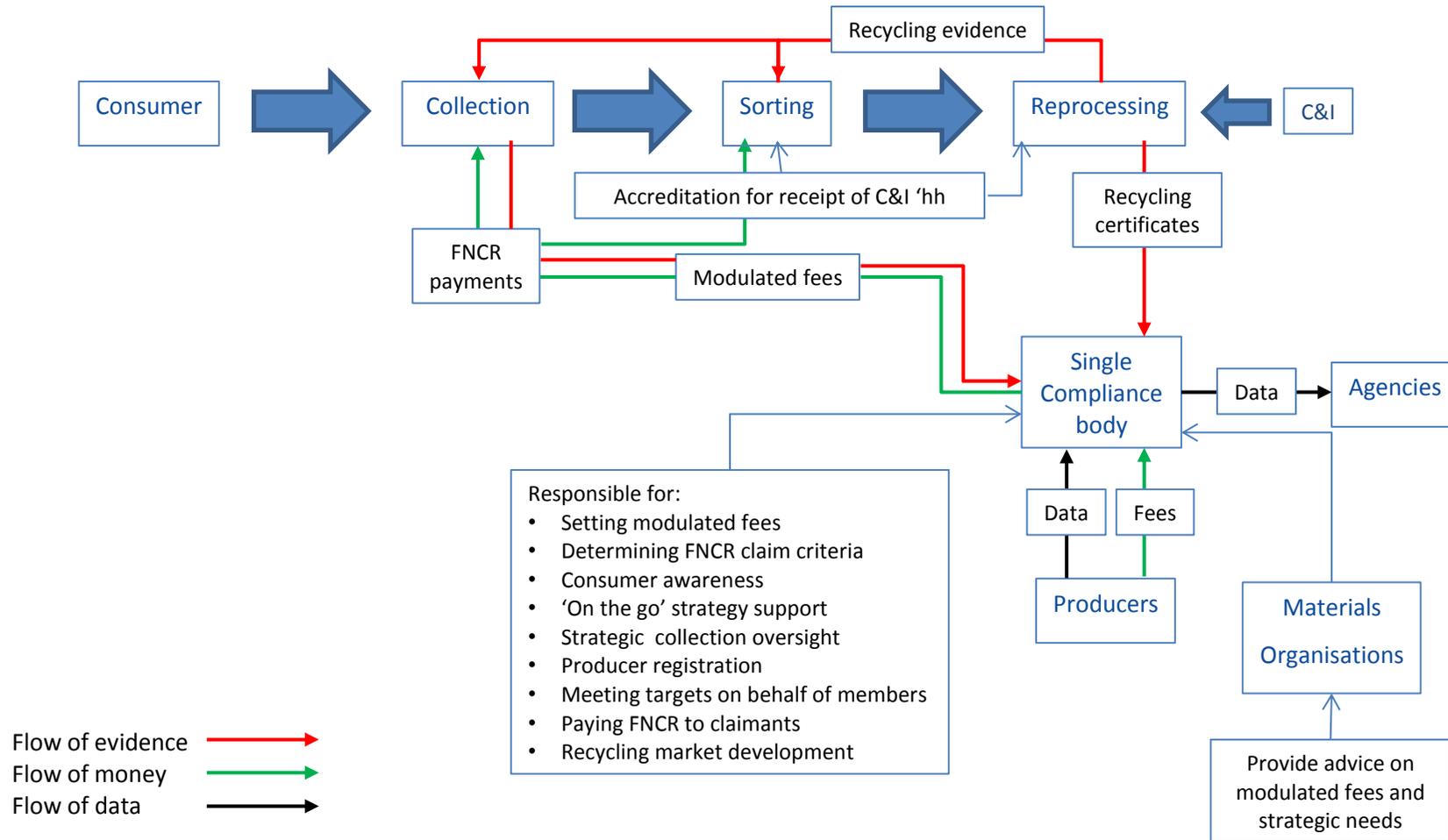
Explanation

- a. The Central Body would be a small organisation that would primarily have responsibility for setting the modulated fees and implementing a consumer awareness programme. It would be funded through a proportion of the modulated fee. In addition it would be responsible for strategic and operational oversight of schemes and funded to carry this out through scheme registration fees.
- b. The responsibility for delivery of fee-raising, FNCR payments and meeting targets would sit with compliance schemes.
- c. The ACP believe that resources and expertise required for the operational interaction with Local Authorities would not be feasible for small compliance schemes or direct registration and therefore recommend a fee and approval structure that would be likely to reduce the number of schemes and remove the individual compliance option.
- d. Payments would be made to those eligible for FNCR (for example through an “Accredited collector” status or similar, as in WEEE) through a system of claims and acceptability criteria, but this would all be managed by the schemes.
- e. For household packaging waste, Local Authorities would claim payments from their partner compliance scheme based on supporting evidence from sorting facilities and reprocessors/exporters. These payments would be subject to factors relating to recycling rates, growth, quality, demographics etc.
- f. For ‘household like’ C&I, compliance schemes would make payments to accredited sorting facilities that received material from commercial collectors including Local Authorities collecting such waste.
- g. C&I packaging waste would not be eligible for FNCR funding and would benefit only from the additional value created by the procurement of evidence of recycling – referred to as Recycling Certificates in the diagram - by schemes.
- h. Under this system, producers would therefore potentially be subject to two packaging-related fees in addition to registration and scheme fees:
 - The ‘Placed on the Market’ modulated fee
 - The cost of recycling certificates.
- i. Relationships between schemes and Local Authorities would be on a competitive basis with schemes seeking to optimise their costs through collection efficiencies and economies of scale. However, it is acknowledged that this would require some form of allocation oversight, similar to that in place for the WEEE scheme, to ensure that schemes did not abuse competitive advantage and also a system to ensure that remote or more costly local authorities were not excluded.
- j. Schemes would meet targets though evidence associated with their FNCR collections and C&I reprocessor/exporter evidence.

Option 1 - Pros and Cons

Pros	Cons
<ul style="list-style-type: none"> • Provide compliance service provider choice to producers 	<ul style="list-style-type: none"> • Delivers modulated fee but more complex than option 2
<ul style="list-style-type: none"> • Can deal with C&I 	<ul style="list-style-type: none"> • Cost transparency likely to be less than option 2
<ul style="list-style-type: none"> • Single consumer awareness body and coordinated campaign 	<ul style="list-style-type: none"> • Could lead to less emphasis on collection quality and more on cost as schemes compete for members
<ul style="list-style-type: none"> • Drives collection efficiencies and consistency 	<ul style="list-style-type: none"> • More complex contracting arrangements than option 2
<ul style="list-style-type: none"> • Operational cost competition likely to reduce long term costs to producers 	
<ul style="list-style-type: none"> • Single point of target accountability 	
<ul style="list-style-type: none"> • Improved free-rider control 	

Appendix 2 – Option 2 – Centrally Managed system



Explanation

- a. A single central compliance body would take responsibility for all aspects of delivery.
- b. Producers would pay registration and modulated fees to the Compliance Body.
- c. Accountable to Government, this would require additional resource to take account of the need for managing all producer data and charges as well as all FNCR payments and evidence procurement.

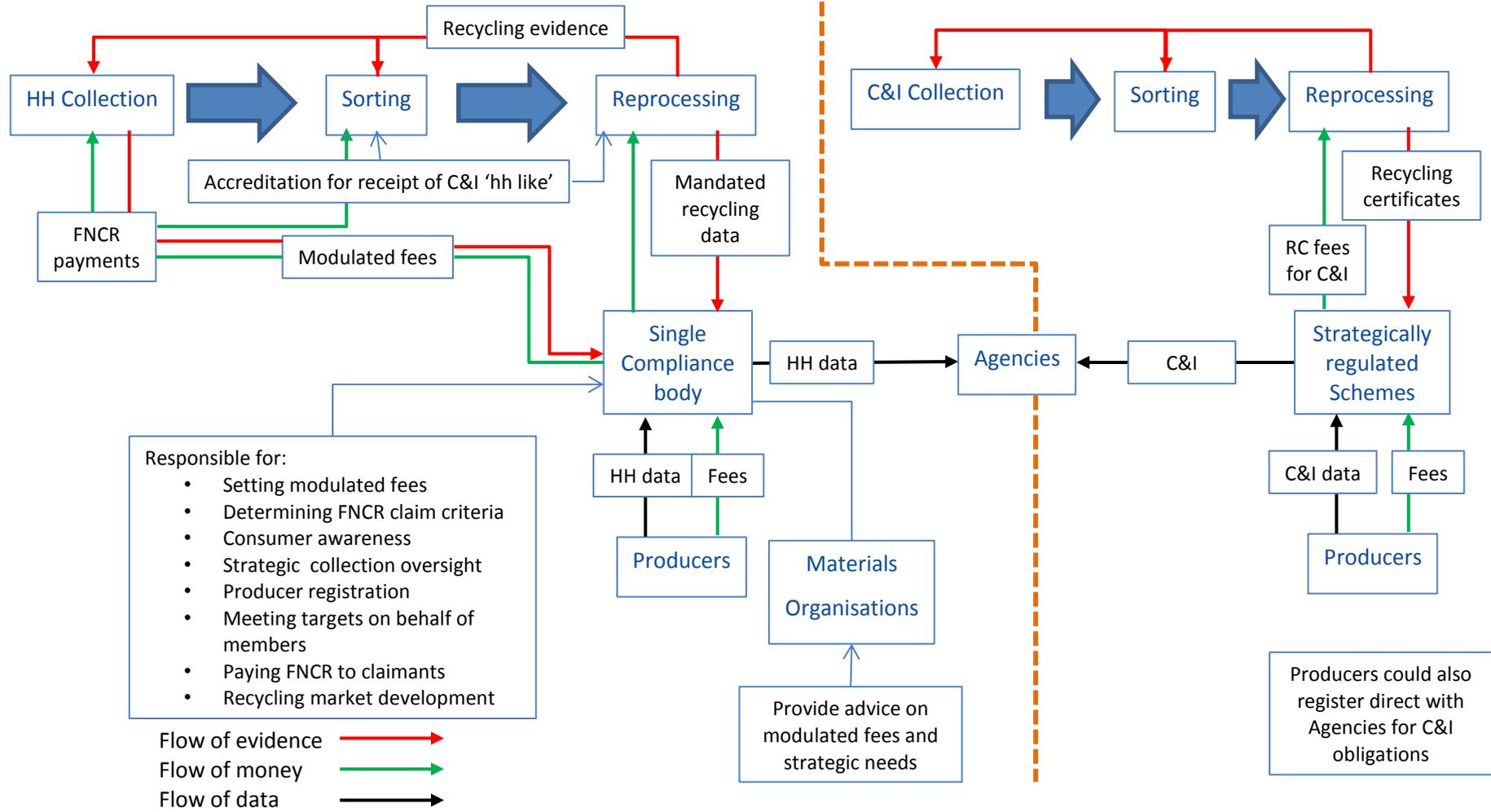
Option 2 Pros and Cons

Pros	Cons
<ul style="list-style-type: none">• Single point accountability	<ul style="list-style-type: none">• No choice for producers
<ul style="list-style-type: none">• Most transparent option assuming central body reporting	<ul style="list-style-type: none">• Potentially higher costs for new central body compared to current administrative costs
<ul style="list-style-type: none">• Can adopt complete flexibility in strategic investment	<ul style="list-style-type: none">• Potential for escalation of costs due to lack of competition
<ul style="list-style-type: none">• Can drive collection efficiencies and quality more effectively	<ul style="list-style-type: none">• Most significant change to current system requiring completely new regulatory regime
<ul style="list-style-type: none">• Opportunities for more coordinated free-rider capture	<ul style="list-style-type: none">• Transition costs and potential for disruption during the transition period
<ul style="list-style-type: none">• Completely level playing field for producers	<ul style="list-style-type: none">• C&I packaging system likely to remain separate and require separate reporting
<ul style="list-style-type: none">• Reduces monitoring burden on Agencies	

Appendix 3 – Option 3 – Hybrid – centrally controlled household/household-like and market based C&I option

Household and household-like

Non-household C&I



Explanation

- a. There would be separate targets for household/household-like C&I and non-household C&I.
- b. Producers would be required to register separately for C&I waste with a compliance scheme or direct and would submit data and receive obligations as currently.
- c. As with the current PRN system, C&I packaging recycling evidence would be obtained from reprocessors and exporters on a commercial basis.
- d. A capping mechanism – such as the WEEE Compliance Fee – could be applied to prevent unreasonable price escalation for C&I evidence.

Option 3 Pros and Cons

Pros	Cons
<ul style="list-style-type: none">• Retains choice for producers	<ul style="list-style-type: none">• Potential for confusion over 'grey area' C&I
<ul style="list-style-type: none">• Continues use of existing mechanisms	<ul style="list-style-type: none">• Would require double registration for most producers
<ul style="list-style-type: none">• Enables central body to focus on FNCR system	<ul style="list-style-type: none">• Maintains significant monitoring and enforcement burden on Agencies
<ul style="list-style-type: none">• Can continue to encourage greater C&I recycling	
<ul style="list-style-type: none">• Retains level playing field for modulated fee producers	

Appendix 4 – ACP members

- Phil Conran – 360 Environmental - Chairman
- Rick Hindley – Alupro (trade body aluminium)
- Simon Weston - CPI (trade body paper)
- Adrian Hawkes – Valpak (compliance scheme)
- Simon Stringer – NiPak/ScotPak (compliance scheme)
- Garvin Freeman – Tata (reprocessor steel)
- Andrew Bird – Newcastle-under-Lyme Borough Council (local authority)
- Roger Walton – Dover District Council (local authority)
- Alison Bramfitt – Nestlé (packer filler)
- Mike Baxter – RPC bpi (reprocessor plastic)
- Stuart Hayward-Higham - Suez (waste management)
- Kevin Vyse - M&S (retailer)
- Matthew Demmon – MKD32 (exporter glass)