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Consumer Guard®
PIONEERING PROTECTION

CHIMERA INSURANCE AGENCY

Department for Business, Energy & Industrial Strategy
1 Victoria Street
London
SW1H OET

1st October 2021

Dear Sirs

Response: Reforming Competition and Consumer Policy

As a brief introduction I have been involved in the Consumer Protection arena for over 30 years since the original OFT (now CMA) report into Cowboy Builders, in late 80's, from both an insurance aspect and performance of contract (which includes ADR). I've provided some input and support to various consumer protection initiatives over the years including the:

- Law Commission - Consumer Prepayments on Consumer Insolvency
- BEIS (DTI) - On the formation of Trustmark
- BEIS (DECC) - Green Deal Protection Mechanisms

I also operated the largest retail consumer protection insurance for prepayments covering a significant number of firms including:

- B&Q Plc
- Homebase Ltd
- Magnet Limited

I've also held and hold positions within the ADR and trade sector:

- Non – Executive Director 2014-21 (The Furniture & Home Improvement Ombudsman and Rail Ombudsman)

- Advisory Board Member – 2016 – To date The British Institute of Kitchen, Bedroom & Bathroom Installation (BiKBBI)

- Treasurer – 2017 – To date The Worshipful Company of Furniture Makers' incorporating the industry charity, education and excellence initiatives

No doubt there will be some invaluable input from the various parties consulted but would simply respond with regard to ADR (for the purposes of this consultation to include Ombudsman) and the prepayment protection mentioned all too briefly.

ADR (Ombudsman)

ADR or Ombudsman are not a panacea to the level of consumer dissatisfaction in various sectors including, but not limited to, home improvements, motor and furniture. As the BiKBBI also contends the solution is to provide a platform to minimise the level of complaints in the first instance before having to rely on ADR which should be a solution as a last resort. An excellent effort has been made by Trustmark to raise standards, to mitigate any consumer detriment, which should not be disregarded and Competent Persons Schemes (with the support of Building Regulations) have played an important role in enforcing minimum standards but the Trading Standards Codes (as with the OFT) needs a revisit. These organisations should be and are capable of evolving to meet the challenge of consumer detriment in the first instance and should not be forgotten.

In the event that the leap is made to make ADR mandatory I would urge BEIS to review the governance and regulatory environment that these organisations operate under which vary to a considerable degree. Trading Standards and The Ombudsman Association, in my view, lack resources to operate to 'regulate' these bodies and it would seem to be appropriate, given their role in the judicial process, that the Ministry Of Justice should provide oversight of these sectors but failing that sufficient resources, in particular expertise, is provided to these organisations otherwise you are 'building on sand'.

Strengthening prepayment protections for consumers

I've attached my response to the Law Commission in respect of the consultation that preceded this one. Firstly, I would note that there isn't much scope for comment and lack of detail as to the proposed mechanisms allowed to provide this protection. I would just caution you on what the protection mechanisms are which for example could simply provide a Legal Expenses Policy or mechanism (which doesn't cover deposits or insolvency but disputes about contracts) as opposed to properly formed insurance, or trusts, that fully cover the consumer against this loss and there are innovations being developed within Blockchain technology to further improve these protections within the insurance arena.

As with ADR insurance or trusts are not a panacea of the losses suffered by consumers when firms become insolvent as the 'horse has bolted'. Since the formation of Trustmark in 2005 and other protections, such as ATOL, the coverage has improved immeasurably and in respect of the former credit should be given to BEIS. However, I would urge BEIS to take advice from the CMA as to the efficacy or indeed legality of a trader taking funds before performance of contract in the first instance. It has become commonplace so that traders often take these payments without realising the legal responsibilities they have and I would contend unless they have some form of protection mechanism in place that they should not be taking these funds in advance at all. I would add as an example that Dell would reserve the funds against a card for a purchase that is then deducted from the purchasers account on satisfactory delivery. Traders should not be borrowing funds from consumers in advance of contract.

Further, since the time of writing my response to the Law Commission, I have been in contact with the CMA about Open Banking. The context being that the protection mechanisms mentioned do not cover perhaps the most important consumer protection mechanism that there is in the prepayment sector which is the Consumer Credit Act notably s75 which the CMA would contend is not impacted. However, I would contend, that the expansion of Open Banking, and for example opaque arrangements such as PayPal, may detrimentally impact the ability of consumer to claim under this section, which is already confused, and firms operating under this framework, as far as I am aware, do not provide chargeback protection as the major banks do here. I cannot emphasis enough the importance of ensuring that s75 and chargeback continues to benefit consumers under whatever framework they operate and discussions about prepayment protection must include dialogue with these financial stakeholders.

Directly in response to the consultation questions:

51. Do you agree that these powers should be used to protect those using "savings" clubs that are not currently within scope of financial protection laws and regulators?

Yes

Please expand on your answer here.

The Law Commission Consultation and parliamentary briefing provide plenty of evidence which I would not add to. However, I would point out that industry provided solutions which may be convenient do not always act in the consumer's interest and any development in this area should either be under the watchful eye of the CMA or BEIS.

52. What other sectors might new powers regarding prepayment protections be usefully applied to?

Please respond here.

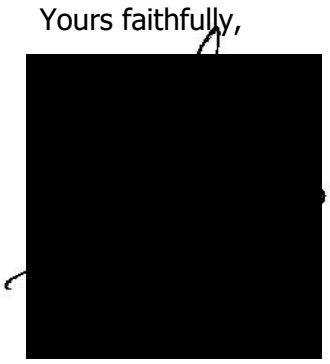
They key is to draft up the legislation that is capable of being applied to other sectors in the hope that, with increased CMA pressure, that certain problematic sectors may have a short opportunity to put their house in order with the threat that legislation can be quickly implemented to provide a solution.

As I have mentioned traders should not be borrowing from consumers in advance of performance of contract in the first instance. Historically we have seen consumer detriment in the:

- Home Improvement Sector
- Furniture
- Savings – to include pre-paid vouchers
- Weddings and Tickets ('hospitality')
- Travel – those contracts that fall outside ATOL and ABTA protection

Hopefully, my brief response provides some interesting points to consider. I would be pleased to discuss in more detail my experiences in this sector and provide further input into any outcomes should you wish to avail yourselves of this.

Yours faithfully,



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CHIMERA INSURANCE AGENCY

[redacted]
Law Commission
1st Floor, Tower,
Post Point 1.53,
52 Queen Anne's Gate
London SW1H 9AG

17th September 2015

Dear [redacted]

Re: Consultation - Consumer Prepayments on retailer insolvency

Please find the consultation response and the attachments detailed below. I would request that the attachments listed below and the contents of this letter remain confidential whilst I understand and appreciate you cannot give categorical assurances in this respect.

I would refer you to my email sent to [redacted] on 25th February 2015 which may provide more detail.

(1) Cost of insurance and who bears this;

The retailer or contractor bears the full cost of the insurance alone. There are no plans to charge the consumer any premium as the costs of administration would rise given the high volume and low average values. If this was to happen careful consideration would need to be given to its impact. It's important to note that each consumer protected receives a individual policy where they are named as the beneficiary and have direct recourse to the various regulatory protections in place.

The costs vary according to solvency and other risk factors but generally whilst advance payment bonds can cost between 1-7% of the bond value these are for commercial risks which do not take account of the protection mechanisms available to consumers and are in any event geared to b2b businesses. Whereas these policies are specifically tailored to account for a number of factors that mitigate the risk in relation to retail customers. Therefore, as a % of contract currently to a maximum value of £50,000 a 100% prepayment held for between 50 and 120 days results in premiums of between 0.20-0.50% of contract, depending on these risk metrics but this does also depend on balance sheet strength which if unsatisfactory could increase premium levels.

It's difficult to assess what the premiums would be for the broader market as this at its core depends on the risk metrics and the total sum on risk retained by the relevant retailers. An example would be the increase in aggregate liability for a retailer that performed their contract within a week as opposed to the one that took months. Further, it would only be fair to note at this stage that these premiums are based on financially solid companies and companies with a marginal solvency rating may be

subjected to protection mechanisms, such as ring fenced funds, to enable them to be insured which may result in additional costs.

(2) Extent of insurance coverage and any limitations or exclusions which may apply;

Please find attached various insurance policies and key facts being used. I'd noted the comment in relation to the development stage this particular sector is currently at, which will develop as volumes increase and other underwriters become involved in this market.

(3) Claims procedure for consumers including documentation to be supplied;

Please find claims form attached. With the larger retailers on supply only insurances you will note that the claims process is assisted by a proof of debt form, which supplements the claims procedure, to enable high volumes of claims to be handled. There is a more intensive process in relation to insurance protecting supplies where there is a services element as there will be work that is partially completed leaving the beneficiary at some disadvantage in need of a timely solution.

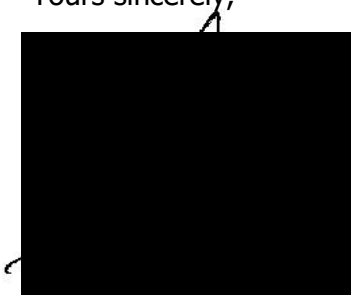
(4) Interaction between insurance and section 75 claims (for example, whether consumers must first pursue a section 75 claim where available before making a claim under the insurance policy).

In the normal course of events all insurers in this sector, the significant one being home improvements such as glazing, building but also travel, exclude claims where the consumer is already protected by legislation or by other means. This is not exclusive to these sectors and the resultant effect is to reduce the level of claims and hence premium.

In the event of an insolvency event and the claims handler was subsequently informed that the claimant was protected under s75. That claimant would be referred onto the credit grantor subject to the Act, to seek recourse and should be given guidance about the availability of this protection. They should also be advised that should this prove not to be the case they have recourse through the insurance. There are instances in which s75 would not be applicable, inter alia, such as joint card holders, if there is no linked transaction, payment made through an online service where a third party is involved, and this would be referred back to the insurer to process their claim.

Should there be any further information requested or if I can assist in any way in relation to progressing this consultation please don't hesitate to let me know.

Yours sincerely,



Attachments :

000	-	Home Delivery Prepayment Key Facts
001	-	Supply & Fit Key Facts
002	-	Home Delivery Prepayment policy
003	-	Supply & Fit policy
004	-	Supply & Fit Extension
005	-	Claims form example
006	-	IRIS PR – Survey prepayment insurance
007	-	YouGov survery voucher protection

Law Commission
Reforming the law

Consumer prepayments on retailer insolvency

Response form

This optional response form is provided for consultees' convenience in responding to the Consultation Paper.

In some cases, we make proposals and ask questions, while in others we only ask questions. This form is structured in the same way.

We are happy to receive simple yes/no answers but more detailed comments would also be helpful. You do not have to respond to every question or proposal. Answers are not limited in length (the box should expand, if necessary, as you type).

We invite responses by **17 September 2015**.

Please send your completed form:

- by email to: prepayments@lawcommission.gsi.gov.uk or
- by post to: [redacted], Law Commission, 1st Floor, Tower, Post Point 1.53, 52 Queen Anne's Gate, London SW1H 9AG.

If you send your comments by post, it would be helpful if, wherever possible, you could also send them electronically (for example, by email to the above address, in any commonly used format).

Freedom of information statement

We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Commission.

The Commission will process your personal data in accordance with the Data Protection Act 1998.

Your details

Name	[redacted]
Organisation	Chimera Insurance Agency
Type of response	Response on behalf of the above-named organisation
Email address	[redacted]@chimerainsurance.co.uk
Postal address	29th Floor One Canada Square Canary Wharf London E14 5DY
Telephone number	Office : [redacted]

If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. As explained above, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Only in respect of the attachments and covering letter. The contents are commercially sensitive.

Chapter 8: Assessment

Q1 Do consultees agree that the protection given to some types of consumer prepayments on retailer insolvency should be reformed?

Yes No Other

Protecting prepayments had already been recommended for reform by Consumer Focus in 2009 after an extensive investigation. Since this time there have been a swathe of cuts to consumer protection bodies and we may find the impact of this will lead to an increase in the level of company failures in the retail sector if the levels of scrutiny and accountability are not maintained.

Various consumer surveys also reinforce the importance of reform :

Iris PR (2009) - "There is no doubt that UK adults would like to see retailers provide free prepayment protection insurance for all purchases over £250. The average score using a scale of 10 would very much like to see it implemented, down to 1 there is no need, was a very high 8.1"

YouGov (2013) – "Following the collapse of several high street chains, YouGov research reveals that 86% of Britons believe that gift cards should be regulated to protect consumers against failing retailers".

Q2 In this paper, we identify two particular sectors where consumers risk losses on retailer insolvency: gift vouchers and deposits in the furniture and home improvement sectors. Are there other sectors in which consumer prepayments are particularly problematic in the event of retailer insolvency?

All consumer prepayments should be protected.

In the context of the Consumer Focus 2009 report into prepayments (Page 13), furniture combined with fitted kitchens or bathrooms accounted for 27% of all purchases and 16% of all failed purchases so it would appear to be appropriate to concentrate efforts in these sectors. However, account should be taken of existing protection mechanisms such as Trustmark, competent persons schemes and the development of the TSI Codes by The Furniture Ombudsman to gauge impact.

If there were other sectors to be considered this would be to 'close the gap' in protection in relation to the travel industry, the ticketing industry and consideration of prepayments in respect of overseas properties where the volume may be low but the impact catastrophic on many pensioners and savers.

Chapter 9: Chargeback

Proposal 1 **Insolvency practitioners should give information to consumer creditors about chargeback claims and make available on the retailer's website a confirmation that the company is in administration or liquidation.**

Q3a Do consultees agree with this proposal?

Yes No Other

This should be extended to all forms of protection available to retail customers in respect of the insolvent company. Too many consumers regrettably are not aware of their rights and consider any efforts to recoup their lost funds challenging.

It would be relevant to note at this point that this wouldn't necessarily disadvantage trade creditors, even though the impact on the smaller firms can be devastating, as they have the availability of trade credit insurance and make their own commercial decision.

Whereby the insolvency practioner should have a higher level of duty of care to retail customers to detail their potential rights of recourse and point to relevant consumer protection bodies that can provide advice such as the CAB, Trading Standards and Which?. Whether this be through any retention of title claims, protection under the consumer credit act, insurance provider details – if relevant, as well as possible chargeback entitlements and any other rights that may exist.

Proposal 2 **All card issuers should give consumers a brief explanation of how to raise a chargeback. This should include:**

(1) Contact details (including a phone number and website address);

(2) Details of situations in which consumers may raise a chargeback, including when a retailer enters administration, and what documentation needs to be provided to the bank;

(3) A statement that consumers who think they have met with an unreasonable refusal may complain to the Financial Ombudsman Service.

Q3b Do consultees agree with this proposal?

Yes No Other

It would also make sense to include an additional section on potential rights under the Consumer Credit Act. This is potentially important given the sharp rise and continued growth of third party payment providers that provide a payment solution for retailers but are not, or do not appear to be, subject to the protection mechanisms enshrined within the Consumer Credit Act or chargeback.

Proposal 3 **Card schemes such as Visa and MasterCard should provide a publicly available authoritative guide on how chargeback works.**

Q3c Do consultees agree with this proposal?

Yes No Other

Once again extend to rights under the Consumer Credit Act and to include all payment service providers that take retail payments.

Q4 Do you have any comments on how Proposals 1 to 3 should be implemented?

In respect of the entities that provide these protection mechanisms this should already be regulated, voluntary or not, through the existing regulatory framework in particular the high standards contained within "Treating Customers Fairly" (TCF). Thus dialogue with the Financial Conduct Authority, Prudential Regulation Authority and Financial Ombudsman by a relevant consumer protection body, or the Law Commission during this process, could be initiated to ensure TCF.

For those third party payment service providers that take card payments there should be clarity and transparency. If their payments do not have the availability of protection under the Consumer Credit Act or chargebacks schemes this could be disclosed.

In relation to the information and processes involved in insolvency situations dialogue with the Joint Insolvency Committee (JIS) could be undertaken to create a specific Statement of Insolvency Practice (SIP) to implement the various measures agreed.

Q5 Our provisional view is that chargeback should not be required by legislation. We seek views for and against legislating for new legal duties to be imposed on card issuers to refund payments in circumstances currently covered by chargeback.

The offer of charge back offers no certainty to consumers and causes confusion both to them and banking personnel. Ideally, it should be applicable to all debit card transactions, to a minimum set of standards and at the very least to published criteria. However, given competitive pressures this may not all be easily achieved.

Therefore, applying existing standards in relation to TCF should be applied in the absence of legislative action. Provided these measures are implemented there should be no need for any new legislation but a marker should be put down to be reviewed at a later stage.

Chapter 10: Possible Means of Protection

Q6 Would trusts designed to protect some rather than all prepayments (either where funds could be drawn-down, or where only some prepayments were put into trust), be an acceptable compromise in situations where ring-fencing all prepayments is not practical or affordable for the business?

Yes No Other

It could be confusing to protect some payments and not others.

This could provide a solution if used in conjunction with an insurance product protecting prepayments. Whereby the necessary and regulatory rigor in introducing a trust based structure within an insurance solution would provide a mechanism to ensure its effectiveness.

Q7 Would it be useful to develop a series of standard trust deeds which businesses could use to protect consumer prepayments?

Yes No Other

If drawn up with a representative body such as the Association of British Insurers and British Bankers Association this could be useful as an option to support an insurance solution.

Q8 Do consultees have any experience of prepayment insurance? If so, we would be interested to learn more about:

(1) Cost of insurance and who bears this;

(2) Extent of insurance coverage and any limitations or exclusions which may apply;

(3) Claims procedure for consumers including documentation to be supplied;

(4) Interaction between insurance and section 75 claims (for example, whether consumers must first pursue a section 75 claim where available before making a claim under the insurance policy).

If applicable, we would also be grateful for sample policy documents.

We arrange prepayment insurance for a number of large retailers within this sector and have attached information in relation to the questions raised.

Q9 What can be done to overcome barriers to consumer prepayment insurance?

Clearly there is an assumption founded on information provided, that there are barriers. It may be useful to adopt a neutral approach to consider the positives and negatives, in relation to the provision of insurance, engaging directly with authorised insurance and banking entities for a representative view.

There is already a sizeable market in business to business insurance products both with credit insurance and surety products that could provide capacity in the retail sector. Irrespective of this over the past decade there have been substantial developments in the home improvement retail market through Trustmark who have raised standards and set solid criteria for the protection of consumers through insurance. Competent persons schemes have also introduced protection for consumers in various sectors and there is the impending introduction of The Furniture Ombudsman TSI Code that contains prepayment insurance. Thus there is an existing market available, there is claims experience and capacity will move into the sector if there is a need.

Q10 Is there merit in developing a new statutory "consumer charge" to be registered at Companies House, which businesses could use on a voluntary basis to give priority to some specified classes of consumer claims?

Yes No <u>Other</u>

This depends on the solutions that arise from this consultation. It would be a good message to firms to show that they have measures in place to protect their customers and correctly written it could possibly provide some comfort to insurers. However, the message to consumers should be clear and concise. If there are a plethora of protection mechanisms with differing regulatory requirements confusion could ensue.

Chapter 11: A need for regulation?

Proposal 4 **Rather than introducing mandatory prepayment protection for all gift vouchers, retailers should be encouraged to take more voluntary steps to protect consumers.**

Q11 Do consultees agree?

Yes No Other

Given the regrettable failures in the industry there has been a need to introduce new measures to protect consumers and one could also take the view, from the YouGov survey, potential customers would welcome this. However, any additional costs, for those that do consider this of value, in such a competitive market is likely a deciding factor against. Therefore, whilst sectors should always be given the opportunity to develop these protection mechanisms in the absence of any developments a level playing field would be created by either regulating or protecting these prepayments through mandatory measures.

Proposal 5 **Providers of vouchers should state in the terms and conditions of the voucher whether or not the value of the voucher is subject to any protection in the event of insolvency.**

Q12 Do consultees agree? Could this be introduced voluntarily, or would it require regulation?

Yes No Other

This regulatory infrastructure should be implemented. There would be a challenge as to what protection mechanisms are in place unless drawn up to minimum standards. The costs of drawing up the regulations would be minimal as would the cost impact for those impacted whilst delivering an important message to potential customers. For those that have or do decide on these protection mechanisms, it would provide a distinguishing factor to encourage potential customers to buy from them.

Proposal 6 **It should be unlawful to market a scheme in a way which suggests that it can be used as a savings vehicle without putting some form of protection in place to protect the funds.**

Q13 Do consultees agree?

We welcome additional comments on this proposal. In particular:

(1) Is our definition correctly targeted?

(2) What additional costs would our proposal impose?

Yes No Other

Proposal 7 **Legislation should provide the Government with reserve powers to regulate high-risk voucher intermediaries which hold significant funds over a long period and which may use those funds for other purposes without providing consumers with alternative protection.**

Q14 Do consultees agree?

Yes No Other

This has the potential to unfairly prejudice and distort segments of the voucher market where high risk is not a matter of quantum of funds held, which admittedly would have a higher impact, but the risk of failure is about a mix of value and factual judgements to be made. This could ironically lead to the insolvency which this Commission is looking to mitigate if a previously unregulated firm found itself falling into the higher risk category.

Q15 What would the risks and potential costs be for any voucher intermediary (whether "high-risk" or not) if they were required to introduce protection mechanisms such as trusts, insurance or bonding?

It would be wildly inaccurate to assess the likely premium assuming that the bare minimum of FCA, PRA, FSCS and FOS regulatory aspects were in place without having an understanding of the risk. Underwriters would initially view the risk on a case by case basis taking into account the particular circumstances of the voucher provider to reward, through a lower premium, those mechanisms and infrastructures in place to mitigate the risk as well as factors affecting solvency. On top of which they would work with these providers to determine the most cost effective and regulatory compliant structure to implement any solution. Provided to minimum standards, competitive pressures between underwriters, subjected to regulatory requirements and most importantly TCF, would ensure that voucher holders were not only protected but within an emulous environment.

Q16 Do consultees agree that sector-specific regulation is not a suitable means of protecting consumer prepayments in the furniture and home improvement sectors?

Yes No Other

There are already protection mechanisms in place through competent persons schemes, voluntary schemes such as Trustmark amongst others and new initiatives through TSI Codes, such as The Furniture Ombudsman, who not only raise standards but also have prepayment insurance as mandatory. These should be given the opportunity to develop and deliver value to the respective firms that sign up to these standards and consumers that are the core beneficiaries.

However, sector specific regulation in consultation with these various organisations and insurers, that would enforce minimum standards, could potentially utilise the existing infrastructure leading to a wide reaching and impactful change to protect prepayments.

Chapter 12: Limited preferential status for consumers

Proposal 8 **A limited category of consumer claims should be given preferential status, to rank behind employees but in front of floating charge holders. The preferential status would apply where the consumer provided a significant sum of new money to the business in the run-up to the insolvency, using a payment method which did not offer a chargeback remedy.**

Q17 Do consultees agree with the policy behind this proposal?

Yes No Other

This would be of value to consumers but may have a disproportionate detrimental impact on new investment and trade creditors and so would need to be considered very carefully.

There is limited protection in the Prescribed Part for unsecured creditors, within the insolvency process, and whilst the objective would be beneficial, prima facie the complexity, uncertainty in application and probable reduction in new investment outweighs this. On the flipside it would be an interesting point to consider as this would involve financiers, who would be impacted by the lessening of their charge, to take a new approach in respect of the risk to consumers and it's arguable that during the process of lending they are best positioned to firstly determine the financial capacity of the firm to meet its obligations and secondly given the size and scale of financing, as stated within the Consumer Focus report into prepayments, this would be a "drop in the ocean". But could challenge the financiers investing in or supporting innovative businesses, where the risk is unknown, and where financially challenged companies, that do survive the process, have more obstacles to overcome.

Q18 Do consultees agree that the preferential status should apply to money paid within a set period before the date of entering administration/liquidation? We seek views on whether that set period should be three months.

Yes No Other

Time from order to completion will vary and there will be a number outside of this time period that are at most risk with failed or incomplete contracts.

Q19 Do consultees agree that preferential status should be limited to claims where the consumer has paid more than a certain amount, either in a single transaction or in a series of linked transactions? We seek views on whether that amount should be £100.

Yes No Other

If this option is developed it would make sense to limit refunds above a certain limit, set at £100 does not seem unreasonable, if the preferential status is to be followed, as the administrative costs of the insolvency practitioner in delivering this would lessen the funds available for distribution.

Q20 We seek views on the impact of this proposal generally. We are also interested in the following issues:

(1) Are retailers able to keep records of prepayments of (say) £100 or more made by cash or cheque, so as to present a running total of such sums to their floating charge holders?

(2) Would floating charge holders be able to monitor these sums?

(3) Do many businesses rely on these prepayments to a significant degree?

Q21 We are interested in hearing about examples of businesses:

(1) which rely on these prepayments but do not have secured creditors; and/or

(2) which successfully traded their way out of financial difficulties by relying on consumer deposits by cash or cheque.

Chapter 13: Transfer of ownership

Proposal 9 **For specific goods, which are identified at the time of the contract, ownership should be transferred at the time the contract is made. This should apply even if the retailer has agreed to alter the goods in some way before the consumer takes possession.**

Proposal 10 **For unascertained or future goods, which are not identified at the time of the contract, ownership should be transferred when goods are identified for fulfilment of the contract.**

Q22 Do consultees agree with these proposals? In particular:

(1) Would they assist administrators in determining whether to fulfil consumer orders?

(2) What impact would they have on other creditors?

Yes No Other

This potentially would have a beneficial impact on consumers but would need to be considered in the light of the impact on the trade creditors that made those supplies. Not only in respect of retention of title claims, where they have not been paid, or no allocation is made against a specific order but also in respect of the trade credit insurance they may have in place. Where ROT clauses potentially mitigates the risk and could lead to a rise in premiums against those firms who have been prudent, are not at fault and many will not be in a position to negotiate terms with the larger retailers.

Q23 Should these rules be mandatory, so that they apply by law to all contracts?

Alternatively, should the parties be able to agree alternative provisions?

Mandatory Parties can agree alternative provisions Other

If these rules were to be brought in it should be mandatory to a common set of standards or the impact will vary and be uncertain.

Q24 Are there any arguments for ownership of goods to be transferred immediately to consumers upon conclusion of the contract?

It would of course provide more protection to consumers but would have to be considered in the light of the impact on trade creditors.