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Submitted to Reforming Competition and Consumer Policy
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About you

What is your name?

Name:
[redacted]

What is your email address?

Email:
[redacted]@kent.gov.uk

What is your organisation?

Organisation:
Kent County Council (ADR Scheme)

Are you happy for your response to be published?

Yes, but without identifying information

Would you like to be contacted when the consultation response is published?

Yes

Consumer Rights

30 Do you agree with the description of a subscription contract set out in Figure 8 of this consultation? How could this description be improved?

Not Answered

Please expand on your answer here.:

31 How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?

Please respond here.:

32 Would it make it easier or harder for traders to comply with the pre-contract requirements? And why?

Not Answered

Please expand on your answer here.:

33 How would expressly requiring giving consumers to be given, in all circumstances, the choice upfront to take a subscription contract without autorenewal or rollover impact traders?

Please respond here.:

34 Should the reminder requirement apply where (a) the contract will auto-renew or roll-over, at the end of the minimum commitment period, onto a new fixed term only, or (b) the contract will auto-renew or roll-over at the end of the minimum commitment period?

Not Answered

Please expand on your answer here.:

35 How would the reminder requirement impact traders?

Please respond here.:

36 Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (a) provide consumers with a reminder that a “full or higher price” ongoing contract is about to begin or (b) obtain the consumer’s explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?

Not Answered

Please expand on your answer here.:

37 What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?

Please respond here.:

38 What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?

Please respond here.:

39 Do you agree that the process to enter a subscription contract can be quicker and more straightforward than the process to cancel the contract (in particular after any initial 14 day withdrawal period, where appropriate, has passed)?

Not Answered

Please expand on your answer here.:

40 Would the easy exiting proposal, to provide a mechanism for consumers that is straightforward, cost-effective, and timely, be appropriate and proportionate to address the problem described?

Not Answered

Please expand on your answer here.:

41 Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?

Not Answered

Please expand on your answer here.:

42 Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

Not Answered

Please expand on your answer here.:

43 What impact would the reforms mentioned in Q42 have on (a) small and micro businesses, both offline and online (b) large online businesses and (c) consumers?

Please respond here.:

44 What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?

Please respond here.:

45 Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

Not Answered

Please expand on your answer here.:

46 Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

Not Answered

Please expand on your answer here.:

47 Do you think government or regulators should do more to address (a) 'drip pricing' and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?

Not Answered

Please expand on your answer here.:

48 Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?

Not Answered

Please expand on your answer here.:

49 Are there perverse incentives or unintended consequences from our existing consumer law?

Not Answered

Please expand on your answer here.:

50 Are there any redundant or unnecessarily burdensome requirements to provide information or other reporting requirements, which burden businesses disproportionately compared to the benefits they bring to consumers?

Not Answered

Please expand on your answer here.:

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?

Not Answered

Please expand on your answer here.:

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

Please respond here.:

53 How common is the practice of using terms and conditions to delay the formation of a sales contract?

Please respond here.:

54 Does the practice of using terms and conditions to delay the formation of a sales contract cause, or have the potential to cause, detriment to consumers? If so, what is the nature of the detriment or likely detriment?

Not Answered

Please expand on your answer here.:

Consumer Law Enforcement

55 Do you agree with government’s proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

Not Answered

Please expand on your answer here.:

56 What would be the benefits and drawbacks of the CMA retaining the same or similar enforcement scope under an administrative model as it has under the court-based, civil enforcement process under Part 8 of the EA 02?

Please respond here.:

57 What processes and procedures should the CMA follow in its administrative decision-making to ensure fair and proportionate administrative decisions?

Please respond here.:

58 What scope and powers of judicial scrutiny should apply in relation to decisions by the CMA in consumer enforcement investigations under an administrative model?

Please respond here.:

59 Should appeals of administrative CMA decisions be heard by a generalist court or a specialised tribunal? What would be the main benefits of your preferred option?

Not Answered

Please expand on your answer here.:

60 Should sector regulators' civil consumer enforcement powers under Part 8 of the EA 02 be reformed to allow for enforcement through an administrative model? What specific deficiencies do you expect this to address?

Not Answered

Please expand on your answer here.:

61 Would the proposed fines for non-compliance with information gathering powers incentivise compliance? What would be the main benefits, costs, and drawbacks from having an option to impose monetary penalties for non-compliance with information gathering powers?

Not Answered

Please expand on your answer here.:

62 What enforcement powers (or combination of powers) should be available where there is a breach of a consumer protection undertaking to best incentivise compliance?

Please respond here.:

63 Should there be a formal process for agreeing undertakings that include an admission of liability by the trader for consumer protection enforcement?

Not Answered

Please expand on your answer here.:

64 What enforcement powers should be available if there is a breach of consumer protection undertakings that contain an admission of liability by the trader, to best incentivise compliance?

Please respond here.:

65 What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

Please respond here.:

Public awareness of ADR and its benefits is, I believe, low.

An awareness campaign, including engagement with organisations who support the vulnerable, would have benefit.

Making use of ADR mandatory (at least as suggested in this consultation) would also improve access for some vulnerable consumers.

66 How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

Please respond here.:

Government could provide clear guidance as to reasonable timescales.

Place the onus on parties not meeting timescales to justify why specific to each case (so not a general "covid" type excuse).

Where ADR is mandatory, allow the approved scheme to set and enforce reasonable timescales following consultation with the parties. (This aspect is a frequent frustration expressed by consumers who use the ADR scheme I run where a business drags its feet).

67 What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

Please respond here.:

To bring about the consumer and business benefits which ADR can, ADR schemes need to operate, and be seen to operate, to appropriate standards and levels of service delivery. These standards can, and perhaps should, be more than the legal bare minimum as they are now.

Owning and managing the standards, and auditing against them, is a vital role for a competent authority. Owning the standards would allow a more agile and flexible scope for keeping them up to date.

68 What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

Please respond here.:

Allow businesses to instigate an ADR process to resolve a dispute with a consumer. Many businesses would welcome the opportunity to do this to help bring a matter to an appropriate conclusion. It would also support some more vulnerable consumers who would be willing to use this route but have less confidence in instigating processes and would welcome the business undertaking this role. As now, it would be necessary for both parties to agree.

Prohibit the posting of a review of a business until an ADR process to resolve a dispute linked to that review is complete. Online reviews can be "weaponized" by consumers to attempt to pressure business to reach a resolution that is not appropriate or reasonable. Businesses that are confident in their use of ADR will bring about improved consumer protection however this must not be abused by businesses who may be tempted to string things along to prevent a bad review. This needs to be linked to the suggestion at Q66 to allow the ADR scheme to set reasonable timescales.

69 Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

Yes

Please expand on your answer here.:

Also "Yes" to the "per case" basis.

Moving to a mandatory position will, to some extent, change the dynamics of ADR in these sectors from a position of mutual cooperation where both parties want to seek resolution to, potentially, a more adversarial relationship. To some extent this already exists where trade associations etc. require participation as a condition of membership. I do not think this is detrimental, indeed some parties who have been required to participate in our ADR scheme have come to realise that it was a good idea anyway!

I can see the logic in making these two sectors the subject of this. I have been a Trading Standards practitioner for over 37 years and these sectors are well known as being ones where there has always been the potential for high levels of consumer detriment. That said, there are other sectors which can present high levels of detriment and, in some cases, these can be only for a short or limited period of time. Is there any intention to have some flexibility in the requirement for mandatory participation to add other sectors (and remove them too if appropriate)?

In terms of the "per case" basis, my view is that this provides flexibility for business to use whichever type of scheme suits them best (presuming that a subscription basis would be acceptable too?). It also means that businesses who work hard to provide a good customer experience are not subsidising those who work less hard in this space. The prospect of a cost for a case of ADR may also act as an incentive to sort out issues but it may also be a business cost which businesses are willing to accept to bring a drawn out matter to a close.

Knowing that there is a mandatory structure in place to help resolve issues should enhance both business and consumer confidence. The key aspect of that is the "knowing" bit. Generally people know about courts, very few know about ADR at the point they are looking at entering into a contract. Considerable work would be needed to raise consumer awareness of this.

70 How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

Please respond here.:

The approved ADR scheme that I run already has both of these elements. Our lower limit is set at £100, which is probably too low. It is there purely because it is not financially viable for businesses to pay the costs of ADR for claims less than this. We have never rejected a case on the basis of this lower limit and have never been asked to vary it.

When we first established out scheme we conducted an experiment with a Trading Standards approved trader scheme to see if the inclusion of a nominal fee had any impact on consumers' willingness to participate. Our findings were that it had no impact and, indeed, there was a suggestion that people thought more carefully about how they participated because they had a (small) investment in the process. Businesses also told us that they valued this aspect as they thought it would deter people making purely frivolous claims because they had nothing to lose. In the cars and home improvements sectors the sums involved can be quite high and, therefore, the nominal fee is very low in comparison.

We collect our nominal fee in advance and make it plain that it is non-refundable. The fee is a maximum of £35.

There is recognised thinking that people who pay for something tend to value it more than people who get it for free.

71 How can government best encourage businesses to comply with these changes?

Please respond here.:

There are many aspects to encouraging compliance.

At the outset, compliance will be encouraged if the requirement is well drafted, plain and easy to understand. The more complex the requirement, the more difficult it is to comply with. This might be a significant issue in terms of, for example, defining what "home improvement" means.

The home improvement and cars sectors have high numbers of business participants. Many of them are SMEs and, of those, many are single person businesses. Many of the businesses operating in these sectors are wholly legitimate and will seek to comply because it is the right thing to do, but a notable proportion are less scrupulous. It is important, to provide the consumer confidence this measure is designed to achieve and to have a level playing field for business, that the consequences of non-compliance outweigh the benefits. Many businesses take a commercial decision about compliance and may actively choose to not comply if the costs or burdens of compliance outweigh the benefits.

There are, potentially, several ways to encourage compliance in the "consequence" space, and a suite of measures will be likely to bring about the best

results. These measures might, for example, include:

1) Implying by law into every contract between a business and a consumer for these goods and services, a term that both parties will use an approved ADR scheme for the resolution of disputes (in a similar way that requirements for care and skill are implied into contracts for services now by the Consumer Rights Act).

2) Implying by law into every contract a term to the effect that business failure to use an approved ADR scheme to resolve a dispute in a consumer contract renders that contract unenforceable against the consumer.

This will only be of help in circumstances where the consumer has not already paid in full for the contract. It is common, in my experience, that consumers have paid in full before they discover the issue causing the dispute so this would have limited benefit but would help to demonstrate the status of ADR in disputes.

3) Add to schedule 1 of the Consumer Protection from Unfair Trading Regulations 2008 a practice of not engaging with an approved ADR scheme to settle a dispute with a consumer.

This would open the possibility of enforcement via Trading Standards services in a way which is already familiar to both those services and to business, limiting the need for additional training and development. This route would not limit that enforcement to the criminal process but would also open the possibility of enforcement via the Enterprise Act with the use of undertakings and enforcement orders if appropriate.

My view is that any requirement that lacks this opportunity for public sector enforcement will be seriously diminished. Of course, proper resources would need to be in place for this enforcement to be carried out.

Any system which leaves its enforcement to consumers alone will, in my view, be seriously weakened and stands the very real potential of being enforced only by those with the means and wherewithal to do so, leaving vulnerable consumers at greater disadvantage than ever. I give, as a possible example of this, the tenant deposit requirements under the Housing Act 2004.

Business compliance will also be encouraged if it is known and accepted that those proving approved ADR schemes operate to appropriate standards and are competent.

72 To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?

Please respond here.:

73 What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?

Please respond here.:

74 How can national enforcement agencies NTS and TSS best work alongside local enforcement to tackle the largest national cases of criminal breaches of consumer law?

Please respond here.:

75 Does the business guidance currently provided by advisory bodies and public enforcers meet the needs of businesses? What improvements could be made to increase awareness of consumer protection law and facilitate business compliance?

Not Answered

Please expand on your answer here.: