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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]@nockolds.co.uk

What is your organisation?

Organisation:
Nockolds Solicitors - Approved ADR body - OCCS and VCMS

Are you happy for your response to be published?

Yes

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.:

Nockolds Resolution are an ADR Approved Body, (CTSI Competent Authority) and we provide complaint mediation as the Optical Consumer Complaint Service and the Veterinary Client Mediation Service. Both services are funded by the regulators in those sectors (General Optical Council and Royal College of Veterinary Surgeons). The services provide direct access schemes for consumers interacting with practices in those sectors, which is free at the point of access. ADR is not mandatory in either sector. Healthcare related disputes are currently exempt under the ADR Regulations, however the GOC and the sector have seen the wider and individual benefit of an effective mediation service being in place.
As providers of ADR in 2 sectors - optics and veterinary medicine, we have a strategic focus on improving accessibility and effectiveness of mediation in complaint resolution where the complainant has a vulnerability. In our experience, access is the main barrier as the mediation process can be adjusted and adapted to enable the consumer to participate, engage and gain benefit. Key areas are:
1) ensuring vulnerable consumers can determine when a consumer complaint should be raised. This is the initial step in accessibility and earlier escalation may be beneficial where the dispute with the practice is becoming entrenched possibly linked to how a business is responding to the dispute or the complainant and vise versa,
2) providing accessible guidance on how to complain - via trusted advice sources and some early de-escalation input which may support local resolution, and
3) where they can access the proportionate escalation pathway to resolve their dispute in addition to seeking advocacy support.

We would be happy to provide further details on our work to improve accessibility and the delivery of effective ADR for vulnerable consumers. In particular, we can share further details of our work with the General Optical Council, contracting authority for the Optical Consumer Complaint Service, and the impact of the OCCS within the Fitness to Practise regulatory and complaint framework in optics.

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.:

In many consumer disputes, the issues within the complaint can be investigated and addressed at tier 1 within the 4 week timescale proposed. We have seen the pandemic impacting on timescales in complaint responses but these are unique circumstances. A tighter timeframe would encourage businesses to improve or invest in first tier complaint handling. That said, and as explained below, in more complex disputes, consumers may prefer or benefit from a reasonable and proportionate timeframe to respond. A balance may be achieved by requiring business to communicate with consumers and to ensure they are kept informed on timescales.

It is also important to note that business have to be aware of this obligation, so a wider awareness raising initiative would also be required to support the reforms being consulted on at this time.

Proportionality is key when balancing timeliness and adequate timescales for investigation. It is not possible to give a single, defined timescale. In some disputes, earlier involvement of a mediation based ADR approach may be beneficial and aid resolution. It is however important that ADR providers do not

become complaint handlers for businesses - the opportunity to resolve locally and directly must be given by the consumer and also utilised by the business.

Timescales must consider the following:

1) complexity of the issues involved;
2) financial value to the consumer;
3) impact/detriment to the consumer - e.g impacts on health or ability to work;
4) relevance of repair/replacement and whether remedial action has to or can only be offered or provided within a set timescale.

Timeliness is important for both parties, but a consumer is also likely to benefit from an effective and comprehensive investigation, compared to a quick but incomplete or ill considered response. The key is in setting reasonable timeframes, adhering to those time frames and ensuring the consumer is aware and accepts the timeframe proposed. For many consumers, they will be more frustrated by a failure to respond or communicate when expected, than a comprehensive response which has taken slightly longer.

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.:

The 'competent authority' requires sufficient resources to ensure the approval, assessment and auditing processes are robust and comprehensive. In addition, they need resources to then:
a) ensure consumers are aware of the 'approval' status and what this means for the parties to a dispute;
b) monitor performance of approved bodies effectively.

ADR providers obtain or seek 'approved' status where this is required by the Regulations or where they 'opt-in' in order to provide reassurance/confirmation of their independence and effectiveness. As the number increases, further resources will be needed. It will also be key to ensure high standards of service, performance, effectiveness and integrity to retain consumer, business and wider public confidence in ADR. For those 'opting' to obtain approval status, confidence is key or they will step away from the accreditation.

We would not advocate any form of escalation or appeal role offered by the Competent Authority, as ADR methods vary and this is not the intended role of the Competent Authority.

As the only ADR approved body which is also regulated by the Solicitors' Regulation Authority, we consider the maintaining and promotion of the highest standards of service, ethics and performance in ADR bodies is fundamentally important. Independence, professionalism and effectiveness enhance the reputation of ADR. In a society where 'taking this to court' is recognised as THE way to enforce rights and resolve a dispute, ADR providers and government have a way to go to improve awareness of ADR and a greater understanding of the remit, role and benefits of non-judicial resolution processes. For many consumers, they do not consider the civil courts as a route open to them. For many disputes, a court process (whether small claims or above) is disproportionate and too protracted to be effective. In order to promote ADR and to embed these methods within society's psyche, ADR bodies must be accountable and deliver resolution with integrity, professionalism and in a highly ethical and effective manner.

We would also support 'upstreaming' being considered as part of an ADR body's performance assessment. We would be more than happy to share further details and examples of how complaint insight gathered through mediation, drives improving standards of practice, business behaviour, customer service and also customer engagement. We can also share input from the General Optical Council on the positive impact of such approaches in terms of business behaviour, conduct and consumer engagement achieved by an effective ADR scheme. In regulated sectors, this is particularly important as consumers may seek to utilise fitness to practise frameworks which are not intended to remedy concerns (and are focused on future practise) and professionals appear to experience disproportionate distress when involved in a fitness to practise investigation which is closed with no further action.

The role of the Competent Authority should be to maintain standards and promote confidence in the wider benefits of ADR.

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

Please respond here.:

Initial areas for consideration are:

1) improve understanding and awareness of ADR - not as a pre-issue step but as a more effective and proportionate option for many consumer related disputes. It is vital that we enable a greater understanding of how ADR works and why it is so important. The legal system establishes consumer rights through legislation and common law. It produces a binary 'win/lose' outcome. Many consumer disputes involve circumstances where both parties are partly right and partly wrong. This can arise through miscommunication or assumptions. Mediation as a form of ADR can address issues at an early stage, and allow positions (which may be based on erroneous understanding or application of the law, appreciation of the facts or expectations misaligned with legal rights - on the part of the consumer, business or both) to be revisited and adjusted at an earlier stage.
2) link approved body directory under competent authority to a recognised government resource such as .gov.uk. There has been suggestion of a single point of entry for ADR. This is possible under the present CTSI Approved Body list but consumers would not have awareness of this. Online searches for ADR allow many consumers to identify the relevant or a relevant ADR provider for the sector involved. There are disadvantages to a single point of entry, particularly where there are multiple providers within one sector.
3) encourage ADR providers to showcase the continuous improvement and consumer protection element of ADR. In summary this means the positive impact of qualitative and quantitative insight gathered through collaborative ADR processes to improve standards and performance within businesses
4) closer links to the justice system, positioning ADR as a pre-issue requirement. Consumer may fear that a business will 'not take their dispute' seriously unless court proceedings are issued. For some consumers, they may threaten to 'see you in court' but at the same time are fearful of the process (due to

the cost, worry about their ability to represent themselves and navigate the process). They may then turn to social media, online reviews or remaining dissatisfied/aggrieved but with an unresolved issue. This undermines not only the existence of consumer rights but also the enforcement. By placing ADR as dispute resolution alongside court action, the perception may be negated.
5) in some sectors, regulated business will either 'opt in' or be required to engage with ADR, and any unregulated business will not. Consumer awareness at present means that consumers do not factor dispute resolution into the decision making process. This may be partly human nature as we do not envisage disputes will arise. Requiring all businesses operating within a sector to engage with ADR irrespective of regulated status would have an impact. We do have to consider that those businesses who opt to regulate (where this is optional), may choose to do so as part of a commitment to consumer protection and to distinguish themselves from non-regulated. The consequential impact of any decision to make ADR mandatory in any sector with regulated and unregulated businesses should be considered carefully.
We would be keen to share our experience and concepts in direct stakeholder interaction as part of this consultation.

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?

Maybe

Please expand on your answer here.:

The benefits of greater use of ADR in the motor and home improvements sector will depend on the definitions of the consumer activity within each sector. In terms of the commercial and financial models, there are range of innovative ways to fund ADR and we would be happy to share both applied and proposed concepts in a direct discussion, informed by our experience.

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.:

While this question refers specifically to consumer disputes in the motor vehicle and home improvements sectors, the concepts of fees and thresholds may need to be considered on a wider, cross sector basis. This can also inform proposals in these 2 sectors. Many disputes in these two sectors may be purely financial and a threshold may ensure ADR schemes are commercially viable. We must however be careful in how we define a value lower limit or threshold. The impact and importance of an issue is not defined solely by the financial value of the dispute. Emotional, lifestyle, health and social impacts are subjective. It is also likely that a financially secure and articulate consumer will be more able to enforce their consumer rights. They may also have support in doing so - such as insurance cover (legal expenses insurance etc). For consumers who are less financially stable and less able to assert their rights, there is a greater need for access to an ADR scheme to help proportionately and swiftly resolve and conclude their dispute.

It is also important to consider the wider benefits of ADR. As the Optical Consumer Complaints Service and the Veterinary Client Mediation Service, we collate and analyse disputes, resolutions and behaviours producing quality and informative insight. This is used by businesses to inform consumer strategy and importantly to improve standards of service and customer care. It is also used by stakeholders and regulators to identify and seek to resolve widespread or emerging issues. The capture, analysis and sharing of this insight not only informs but can also facilitates cross sector collaboration. It is beneficial for this insight to incorporate the widest range of disputes, including those of a lower financial value but potentially highly relevant and important commercial, social, personal and behavioural factors.

Our data reveals that in the sectors we operate, over 56% of the resolutions achieved within the complaint mediation process are non-financial. A financial resolution is not always the desired or appropriate outcome. If access to ADR were based purely on value, then it may miss the opportunity to resolve disputes which can become protracted, aggressive and highly damaging to both consumers and also the businesses involved (through social media activity, physical presence/action taken which can reach criminal levels and either loss of confidence in a sector or in achieving a resolution, prompting a consumer to 'walk away' through fatigue.

That said, there is a logic to the proposition that consumers may value or engage more constructively in a process which requires a nominal fee to be paid. The challenge is to ensure the fee creates this positive impact, rather than precluding vulnerable or less financially stable consumers.

There is also the cost of obtaining and processing a fee, which can be an industry in itself.

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

Please respond here.:

There must be a balance between encouragement/engagement and enforcement. One approach would be to require businesses to identify an ADR process or provider and signpost to this provider as part of their complaint process or terms & conditions. A consequence of failing to do so, would preclude the business from relying on and enforcing the contract. This does not however sit comfortably with a mediation approach. This process should be voluntarily entered into by both parties, and there may be occasions where engagement is not beneficial for both parties. Mediation provides the forum for a creative and diverse resolutions which can address the financial and non-financial aspects. Increasingly we see that disputes do not sit in one category - financial or breach of a legal obligation. They are multifaceted. It is therefore important that any ADR regulations maintain and support the diverse range of ADR methods available.

Our interactions from sectors were ADR is voluntary, and opt-in/out on a dispute by dispute basis, the key elements to engagement are:
1) establishing independence and ensuring the ADR scheme is seen as independent
2) a good understanding of the remit and approaches used within the ADR scheme
3) demonstrating and highlighting both the direct and indirect commercial benefits of ADR - proportionality, consumer confidence and engagement and

time/resource efficient resolution
4) establishing channels for insight sharing to facilitate improvements and changes in behaviour within businesses which in turn support staff retention, consumer loyalty and consumer confidence.

We would be happy to expand further on this point.

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.: