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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]

What is your organisation?

Organisation:
(None)

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?

No

Please expand on your answer here.:

The separation between the judiciary and the executive should be maintained in a democracy.

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.:

No response

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

Please respond here.:

By definition, administrative decision-making in relation to enforcement will not be focussed on the public interest but will be affected by other issues, e.g. budget provision, and there will always be a perception, not necessarily justified, that inappropriate influences might be brought to bear on these processes.

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.:

See previous answer. It is unlikely that ordinary citizens who are complainants in consumer protection cases will be satisfied or be able to refer decisions to judicial scrutiny when no action is taken on the basis of affordability.

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.:

The above options of "Yes", "No", and "Maybe" make no sense in the context of question 59, which is an "Either/or" question. Was this survey ever checked for errors such as this?

What about criminal conduct? See later responses about the failure by BEIS to enforce criminal offences.

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?

No

Please expand on your answer here.:

See previous answer to question 55.

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?

No

Please expand on your answer here.:

In relation to existing (non-)compliance, the failure to enforce consumer protection legislation because of budget cuts and austerity has significantly undermined the Government's credibility in this respect.

The idea that administrative enforcement will bolster compliance is unlikely to succeed, because enforcement is always regarded by Government as an overhead rather than as an investment. The likelihood will be that those who can least afford it will pay, and those who are most flagrant in their non-compliance will not.

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.:

Existing judicial authority, including fines, custody, and compulsory winding-up are adequate.

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

Yes

Please expand on your answer here.:

This is something that Trading Standards officers already achieve on an informal basis: the problem is that TS departments are inadequately resourced to sanction non-compliance with such informal undertakings.

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.:

As per answer to question 62: fines, custody, and compulsory winding-up by judicial processes.

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

Please respond here.:

The main current obstacle to ADR is inadequate resourcing, closely followed by the fact that in many cases Part 27 proceedings in the County Court produce a better (i.e. binding and enforceable) result.

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.:

Largely, by the businesses engaging with the customer at the outset, following the complaint to the regulator, and keeping him/her up-to-date with progress in line with a broadly-defined timetable for such enquiries, notified to the customer (and agreed by the regulator) in advance.

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.:

No response.

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

Please respond here.:

No response.

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?

Not Answered

Please expand on your answer here.:

(1) Business participation: Maybe.

(2) "Per case" payment: definitely yes.

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.:

There is a disconnect with reality here. Responsible traders regard the protection of their reputation as the driver for complaint resolution and use ADR as a last resort. Irresponsible traders are only interested in maintaining and protecting revenue and are far less likely to participate in ADR. Therefore, the strategic thrust should be towards impacting on the latter whilst accommodating the former, rather than regarding trader attitudes as being a homogenous quality.

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

Please respond here.:

See response to last question (number 70). Compliance levels by responsible businesses will be high simply because they ARE responsible.

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.:

Quite frankly, it is imperative to do so, for the simple reason that BEIS has been so utterly irresponsible in supporting consumer redress to date. This consultation lists Part 6 of The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015, made under Section 82 of the Companies Act 2006, as being in scope of Part 8 of the Enterprise Act 2002. However, despite the Minister (Paul Scully MP) stating in response to a PQ that responsibility for enforcement of the Regulation 28 offence lies with the BEIS (Insolvency Service), the BEIS response to an FoI request (wrongly) claims that there has never been any complaints of non-compliance with Part 6. In fact, the present widespread non-compliance with Part 6 even by otherwise respectable companies appears to arise from the fact that there is no enforcement whatsover of this legislation by any public authority, as Companies House refers complaints to the Insolvency Service and the Insolvency Service refers complaints to Companies House.

It is therefore hardly surprising that even companies that are informed of their criminal conduct under Regulation 28 continue to offend with impunity, and where companies are trading anonymously (one such anonymous company has been trading in partnership with the Scottish Government under a non-existent name, "Chargeplace Scotland Limited"!) it is of course impossible to commence civil proceedings against them.

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.:

Any such arrangements are a huge improvement on the present position, i.e. where BEIS creates so-called consumer protection legislation that is not enforced by anyone - see previous response (Question 72).

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.:

Adequate resourcing and a will to enforce legislation rather than sending "boilerplate" letters to complainants, stating why no action will be taken, would be an excellent start.

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.:

Enforcement of any sort would be a good start: see answer to Question 72.