Reforming Competition and Consumer Policy

Holiday Park Action Group - Consultation Response

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1.) Introduction

1.1) The Holiday Park Action Group is a consumer group founded in 2014 in response to the systemic consumer issues that have persisted for many decades across UK Holiday Parks. The Group comprises a small team of volunteer administrators and advisors, and has a current membership of **21,000+ individual consumers** who either own, have owned, or have an interest in the private ownership of static holiday caravans across the UK.

1.2) The Holiday Park business sector is unique, and does not easily fit into the business categories as listed in the Government paper. As a result the many systemic issues of the sector are in danger of going unrecognised by the process for reforming competition and consumer policy.

1.3) The Holiday Park sector caters for consumers, historically from working class backgrounds, yet no reference to the sector or the many serious consumer issues are contained in the report. As a result, the ‘Build Back Better” references throughout the report, ring rather hollow to our 21,000+ members and the 250,000 consumers, UK wide, caught up in a web of unfair consumer contracts, unfair trading practices and persistent breaches in competition rules.

1.4) When leading consumer advocate Dean Dunham, 'The Consumer Lawyer', publicly states, in February 2021;

"If you do not do something about this sector this will continue and people will continue to be detrimental and this should never happen, especially in a country that is so pro-consumer as this one. They are running roughshod all over our very good consumer protection laws, which of course are worthless unless we do something about them"

in relation to the systemic issues in this sector; then it should be obvious to the Government why so many consumers and workers have little or no confidence in regulations or regulators purporting to work for their benefit.

1.5) There is an All Party Parliamentary Group on Holiday Parks and Campsites, chaired by Peter Aldous MP, which demonstrates that there is cross party political interest in the sector, yet the sector remains unidentifiable within the Government paper.

1.6) The APPG recently wrote directly to the Cabinet Office regarding the many issues following a speech we gave to them. This is an extract from that letter which can be found on this link APPG Letter :

"Parliamentarians at our meeting in March cited examples of rogue holiday park operators in their constituency where local authorities are seemingly unable to use their enforcement powers"

1.7) A copy of this letter was also sent by the APPG to The Rt Hon Kwasi Kwarteng MP Secretary of State for Business, Energy and Industrial Strategy.

1.8) Group members have also written to The Rt Hon Kwasi Kwarteng MP. This is an extract from one of Mr Kwarteng's responses;

"While I understand your frustration, the Competition and Markets Authority (CMA) are best placed to consider whether any holiday caravan company is operating within consumer protection law and if they are not, to consider what action under legislation is appropriate including prosecuting in the criminal court."

1.9) In January 2021, the Holiday Park Action Group submitted the following report directly to the CMA, detailing the many systemic issues relating to consumer protection, unfair trading practices and breaches of competition rules. Our report can be read on this link, HPAG Report.

1.10) The CMA have expressed their frustration to us, at being unable to tackle many of the issues we have raised, as a direct result of current legal powers restricting their ability to intervene. This is the constant theme which runs through the Government report “Reforming Competition and Consumer Policy”.

1.11) The lack of any acknowledgement of this business sector or any of the consumer and competition issues relating to it, is perhaps a sign of ‘snobbery’ by the Government with regards to what is a traditional working class pastime and risks undermining the “build back better” ethos.

1.12) Without having a detailed understanding of the nature of the issues in this sector, then it is unlikely that any reforms will improve the experience for the many consumers who find themselves exploited by it.

It will be a case of “build back the same”.

1.13) It is therefore imperative for this sector to be individually identified as the ‘Holiday Park Business Sector’, following the consultation process, so that the unique issues can be addressed by any reforms to consumer protection and competition policy.

2.) Brief History of Persistent Consumer Protection and Competition Issues.

2.1) This sector has suffered for decades from seriously underhand commercial practices.

2.2) In 2005 The OFT started a process of trying to improve the sector with its intervention targeted at the national trade associations the British Holiday& Home Park Association (BH&HPA) and the National Caravan Council (NCC). This culminated in the OFT 734 guidance on unfair terms in agreement caravan agreements.

2.3) However as the following timeline of quotes demonstrates, this had little if any impact on the systemic nature of the issues, and the matter has never been formally revisited since.

Quotes

2.4) **2005** Office of Fair Trading

"Caravan owners have complained that park owners use terms and conditions that allow park owners to treat them arbitrarily.

Caravan owners who are in dispute with park owners may be reluctant to take action on their own account in case of reprisals.

Caravans are of little benefit to caravan owners without the right to station them on pitches, and they fear losing their licences and being unable to find another pitch."

Source on this link OFT734

2.5) **2012** Conran Meehan, Senior Trading Standards Officer (from written submission to Communities and Local Government Committee)

"Being unfairly tied into the supply of goods and services. For example, when residents on one park decided to buy gas cylinders from an outside supplier instead of the site owner, they received a letter reminding them to buy from the site owner and stating that their licence was "at stake".

"Residents report that tied services are invariably more expensive, and usually much more expensive, than the same services on the open market. Other examples include building steps to access the caravan, or insurance services.

Whilst some site owners create a semblance of competition by allowing the consumer to choose from an approved shortlist of contractors, (as with the example involving the construction of steps), all contractors on the shortlist appear to be unusually expensive."

Source on this link Communities and Local Government Committee

2.6) **2019** Helen Whately MP- Parliamentary Debate

"Residents of leisure park homes in my constituency appear to have been mis-sold their properties by rogue site owners, and they are now vulnerable to exploitative charges and intimidation."

" and that there is a culture of fear and intimidation,"

"some of whom are elderly, in poor health and vulnerable to exploitation with very few rights or protections."

" As well as introducing stronger rights and protections for the purchasers of

2.7) **Aug 2020** Lord Toby Harris National trading Standards - In response to our formal letter of complaint.

"The Ministry of Housing, Communities and Local Government also have an interest in this area of work and I am aware that they have received a number of complaints from residents and groups such as yourselves. They are currently assessing possible action they may take on a national basis to investigate these complaints. NTS are involved that conversation and therefore may be tasked to investigate ***should resources be made available*** *in future."*

Our letter can be read on this link Letter of Complaint to NTS

2.8) **2020** Dr Andrea Coscelli CBE, Chief Executive - CMA - In response to a letter from The Rt Hon Dame Cheryl Gillian DBE MP.

"The CMA will continue to monitor new developments and consumer protection issues in the sector. We consider each complaint that we receive as part of the range of intelligence and information that helps us to decide which cases to take forward within our remit,"

2.9) **2021** The Government Response to Our Petition for a Public Inquiry into Unfair Trading Practices of Holiday Caravan Park Owners

"The Government is committed to ensuring we have one of the world's strongest consumer protection regimes to ensure consumers' interests are safeguarded in our economy.

The Consumer Rights Act 2015 (CRA) and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) protect individuals who purchase or rent caravans and park homes, and the Competition and Markets Authority is responsible for the enforcement of the CRA and CPRs.

The CRA protects consumers when buying goods and services from traders. Under the CRA, all terms of written contracts must be fair and transparent. If terms in a consumer contract are assessed by a court as unfair, they will not be binding on the consumer, even if the consumer has "accepted" them."

Source on this link Petition

2.10) **2021** Consumer Lawyer Dean Dunham - Live Stream Broadcast Re: Holiday Park Consumer Issues.

“If you do not do something about this sector this will continue and people will continue to be detrimental and this should never happen, especially in a country that is so pro-consumer as this one. They are running roughshod all over our very good consumer protection laws, which of course are worthless unless we do something about them”

Source on this link The Consumer Lawyer

2.11) It is time that the Government grasped the nettle and dealt with this sector.

The reform policy process offers some hope that improvements can be achieved but only if there is Government acknowledgement that there are significant issues in this sector.

The sector requires individually identifying within the reform policy so that focus can be placed on the issues that are unique to it.

3.)Value of the Holiday Park Business Sector to the UK Economy

3.1) In November 2017, the UK Caravan and Camping Alliance (UKCCA) commissioned Frontline Consultants Ltd (Frontline) to undertake an independent economic impact and benefit assessment of the holiday park/campsite sector across the UK.

The Frontline report can be read on this link UKCCA Final Report

The UKCCA comprises the following organisations, the British Holiday & Home Parks Association (BH&HPA), the National Caravan Council (NCC), The Caravan and Motorhome Club and The Camping and Caravan Club.

3.1) In 2018 it was estimated that the holiday park and campsite sector in the UK generated a total visitor expenditure impact of £9.3bn. This expenditure impact equates to a Gross Value Added (GVA) contribution of £5.3bn, and 171,448 supported FTE jobs in the UK economy.

3.2) According to a report commissioned by Visit Britain the tourism sector across the UK had a direct GVA of £64.7bn, therefore the holiday park and campsite sector with a direct GVA of £5.3bn (8%) makes a substantial contribution to the sector’s GVA.
The report can be read on this link Visit Britain

3.3) When you break down the GVA economic impact by accommodation type, for the industry, you see that private owners of static caravan or lodge holiday homes add the value of £2.539bn or 48% of the GVA impact for the sector.

Economic impact by accommodation type

UK	Visitor expenditure (£m)	Employment (FTE jobs)	Gross Value Added (£m)
Caravan Holiday Home (owned)	4,136.9	76,607	2,359.7
Touring Pitches (includes touring caravans, motorhomes/campervans and tents)	3,406.4	63,074	1,952.9
Caravan Holiday Home (rented)	1,175.0	21,761	669.5
Lodge/chalet/cottage (owned)	314.3	5,822	179.8
Lodge/chalet/cottage (rented)	188.1	3,480	107.7
Glamping e.g. pods/yurts/wigwams/other	37.5	704	22.0
All accommodation	**9,258.2**	**171,448**	**5,291.6**

Source: Frontline, 2019

3.4) Based on the information provided by the UKCCA, in the summer of 2018 there were 6,243 trade member holiday parks/campsites operating in the UK accounting for 438,076 pitches. Private owner occupied static caravan holiday homes or lodges accounted for 223,537 or 51% of the overall amount of pitches.

Composition of UK holiday parks/Campsites sector

	Number of parks	Touring Pitches	Caravan Holiday Home Owned	Caravan Holiday Home Rented	Glamping	Lodge/ chalet/ cottage Owned	Lodge/ chalet/ cottage Rented	Total pitches
England	4,845	120,363	138,966	40,340	1,354	11,765	7,217	320,005
Wales	898	15,943	37,488	6,055	81	2,621	398	62,586
Scotland	390	1,3048	16,287	3,280	250	1,058	739	34,662
Northern Ireland	110	2,567	15,303	2,854	0	49	49	20,823
Total	**6,243**	**151,921**	**208,044**	**52,529**	**1,685**	**15,493**	**8,403**	**438,076**

Source: UKCCA, 2018

3.5) The majority of the 223,537 private owners will have signed the BH&HPA or NCC licence agreement, which are broadly the same in terms and conditions. Therefore £2.539bn of GVA income for the UK economy is controlled without regulation and only subject to a standard consumer contract.

The vast majority of consumer complaints are based on the unfair terms contained within the standard consumer contracts used UK wide.

4.) Brief overview of issues for consumers in the Holiday Park sector

Unfair terms

4.1) Challenging companies with regard to unfair terms is a complex legal process, involving the High Courts and as such is beyond the financial means of the vast majority of consumers. Therefore without the support of the CMA or NTS most consumers cannot currently access the legal protections of the current legislation.

4.2) Is it realistic that those involved in the administration of ADR processes will have the required level of legal understanding and skill to resolve such complex disputes?

4.3) There should be direct public access to CMA and NTS where disputes cannot be resolved by ADR or the 'Small Claims' courts.

4.4) It is also often the case in this sector that holiday caravans can cost consumers upwards of £100k, a level far exceeding the small claims courts, yet the claims could still be on a basic level of legal challenge, i.e. not fit for purpose or mis-sold.

4.5) Increasing the maximum amount that consumers can claim in the small claims courts from £10k to £100k, for disputes that are no more complex than claiming for a faulty kettle, would give access to consumer protections that are currently unavailable due to the cost of the goods purchased and the legal costs involved in higher court action.

4.6) Social Media - Consumers Have Lost the Freedom Of Speech

The Government makes numerous references throughout the report in respect of influences over consumer choice. It asks the question if they affect markets and competition in a manner that breaches regulation?

4.7) We would suggest that they consider adding to Schedule 2 Part 1 of CRA 2015 an additional term that prevents traders from including any terms in a standard consumer contract that has the object or effect of preventing a consumer from making any comment or review on any social media platform with regard to the trader, the goods or services offered by the trader or seeking advice from others.

4.8) There is unequivocal evidence of this happening, as standard, across the Holiday Park sector, which has been brought to the attention of the CMA, but which has seen little if any action.

4.9) There has been a significant trend towards including terms in the standard consumer contracts, issued by many influential companies across the sector, that prevent consumers from making bad reviews on any social media platform.

Examples of Social Media terms from large, medium and small companies;

Parkdean Resorts UK Ltd - 67 holiday parks (extract from park rules 17.1.4)

All persons, including holiday homes owners, their guests and tradesman must not deliberately and/or persistently use social media of any kind in a way that is calculated to be harmful or prejudicial to the company, its business or its employees.

Pure Leisure Group Ltd - 18 holiday parks (extract from park rules 30/01/2020)

You may not post any negative comments towards the park or Pure Leisure online.

You may not create any social media pages or groups relating to the park or Pure Leisure online.

Park Leisure 2000 Ltd - 11 holiday parks (extract from licence agreement v2021 term 5.3.10)

Not to: Use any social media platform to make any statement about the company or member of the team that is either defamatory or misleading.

Together these companies (which are just small examples) run 96 holiday parks across the UK with thousands of consumers contracted to them

4.10) Often the penalty for leaving negative reviews is the termination of the consumer's contract. The value of a static caravan with no place to pitch it is a small fraction of what the consumer paid for it as the cost included a licence to pitch it on a holiday park. This causes a significant detriment to the consumer

4.11) This is a significant threat to the consumer and we have a substantial amount of evidence to show that it is used as such to prevent negative reviews of the company and/or the services provided.

4.12) Article 10 of the Human Rights Act 1998 provides

*" Everyone has the right to a freedom of expression"*There are adequate legal routes companies can take if consumers make malicious, defamatory or damaging public comments, so there is absolutely no legitimate reason to include such terms in contracts.

4.13 It is a complete abuse of the traders' relationship with consumers to include terms that remove their rights under the law. Employing or threatening to employ a penalty, which causes significant financial detriment, as a result of expressing one's views, is an affront to UK democratic values and a free and competitive market.

4.14) Pitch Fee Increases

The single biggest complaint we receive is the fact that companies can and do increase consumers' annual fees for pitching their caravans, by whatever amount they wish.

4.15) Since 2005 there have been over 3.5 million individual annual pitch fee price increases for private owners of static caravans and lodges. Although the agreements contain a term that allows for an objection and review of the increases, there has not been a single occasion where the term has been successfully used by consumers.

4.16) We simply do not accept that all consumers have agreed with all the increases to their annual pitch fees since 2005.

4.17) It is the case that consumers can not access terms to challenge the increase as the terms require 51% of consumers on a park to object in order to trigger a review.

4.18) We cannot identify any other business sector where consumers are required to rely on the actions of other unknown consumers to access protections in their contracts.

4.19) As an example the company running Beacon Fell View Caravan Lancashire have tried to change the contracts of consumers on their park. As the new contracts offered less favourable terms some owners resisted the change and as a result have seen an increase in their fees by £2,000, which is over a 50% increase.

There are no longer over 51% of consumers on the park that are subject to that contract and therefore they cannot object by 51% in order to force a review of the increase.

4.20) We repeat again, since 2005 no consumer has been successful in objecting to an increase.

4.21) There should be provisions that permits 'individual' consumers to challenge increases in annual fees for long term contracts.

5.) Competition and Markets

The Holiday Park sector is notorious for operating trading practices that remove consumers' choice for products or service providers, as the written submission of

Conran Meehan, Senior Trading Standards Officer to the Communities and Local Government Committee demonstrates;

“Residents report that tied services are invariably more expensive, and usually much more expensive, than the same services on the open market. Other examples include building steps to access the caravan, or insurance services.”

“Whilst some site owners create a semblance of competition by allowing the consumer to choose from an approved shortlist of contractors (as with the example involving the construction of steps), all contractors on the shortlist appear to be unusually expensive."

5.1) We have submitted evidence to the CMA of price fixing in this sector, yet due to legal restraints they are not permitted or not willing to provide any feedback to us with regards to any actions or enquiries they may or may not be taking.

This damages the public's confidence in the ability or willingness of regulators to act.

5.2) There should be provisions that allow for limited information to be passed to parties to a complaint, albeit with confidentiality attached to that information.

5.3) Restricting consumers' choice for products or services, increases prices to consumers, prevents other businesses from accessing markets and is bad for the economy.

5.4) It provides for the exploitation of consumers and for practices that encourage tax evasion by companies.

5.5) This is a list of examples for the areas where we have evidence that restricting consumer choice and price fixing occurs in the Holiday Park sector.

A key indication that these areas of business practices are breaching competition rules is the fact that the majority have ‘mark ups’ of 100% above what the consumer could reasonably be expected to pay if they were free to shop around.

Gas safety checks,
Gas boiler service and repairs,
Supply of gas and electricity,
Water supply,
Insurance services,
Plumbing,
Decking and steps

Storage and cycle sheds,
Paving slabs,
Wifi,
General caravan maintenance and repairs,
Winter drain downs,
Electrical PAT testing,
De-siting of caravans.

5.6) Every standard consumer contract should have a term that allows for consumers to have the freedom to choose their own product and service suppliers for goods and services that are ancillary to their main purchase.

6). Recommendations of Consumer Group - Holiday Park Action Group

1) A new business sector category should be recognised and referred to as the Holiday Park Business Sector, due to the persistent consumer issues unique to that area of business.

2) Funding should be made available to NTS as referred to by Lord Toby at 2.7 above.

"NTS are involved in that conversation and therefore may be tasked to investigate ***should resources be made available*** *in future."*

3) There should be direct public access for consumer groups to CMA and NTS where consumer disputes cannot reasonably be expected to be resolved by ADR or the 'Small Claims' courts.

4) There should be provision for the CMA/NTS to provide information to consumer groups who have complained of or provided evidence of breaches in consumer and competition regulations.

5) The maximum amount for claims in the 'small claim' court should be increased from £10k to £100k to allow all consumers to access consumer protection provisions otherwise denied due to legal costs associated with higher courts.

6) Schedule 2 part 1 of the CRA 2015 (Unfair Terms Grey List) should be amended to include terms that prevent consumers from commenting on social media platforms.

7) The CRA 2015 should be amended to include a term that must be included in all standard consumer contracts that allows for the freedom of choice for all consumers for

the supply of goods or services ancillary to their main purchase, be that purchase goods or services.

7.) Answers to Consultation Questions

Q1) Consumer Groups/Individual complaints will raise questions that will indicate a market or competition problems. Many consumers find contacting CAB or TS time consuming, bureaucratic and frustrating but they regularly turn to online groups for advice. Monitoring of such groups will identify rough data that points to areas for further investigation. Making use of such groups is an efficient way of gathering information, and empowers consumers to help address the issue specific to their group.

Q2) Yes

Q3) Yes

Q4) Yes the CMA needs to be far more proactive in challenging early before issues cause significant detriment to consumers, traders, and undermine competition. Prevention is better than cure on most occasions.

Q5) One size does not fit all. The CMA needs to be dynamic and have tools that are flexible enough to meet ever changing market issues.

Q6) Yes. Early intervention is key to the efficient use of resources and to prevent issues becoming ingrained and limiting any subsequent detriment.

Q7) Yes. But this should not prevent prosecution where warranted due to the serious nature of any commercial practices. A consideration of such early binding commitments should mitigate any punishment if prosecuted to encourage business to react early.

Q8) Yes to a degree. Funding and staffing are key. The ability to react quickly will improve the ability of the market to improve accordingly.

With regards to the power that requires businesses to participate in implementation trials which would allow the CMA to test and trial how best to implement its remedies we would suggest that the Holiday Park Business Sector would be a good place to start. The issues are both systemic and endemic across the whole sector and they have remained persistent for decades. There is a large group of consumers who can quickly

feedback and we know there are Industry Leaders willing to embrace change if required to do so by the regulators..

The process has to start somewhere and we are willing to engage in that process.

Q9) Bottom up rather than top down. We are known as an island of shopkeepers yet all the focus of the CMA appears to be toward the larger companies and business sectors. The CMA should have teams dedicated to small, medium and large business, not everyone shops online, the current issues with transportation, import and export, has shown the value of small independent traders. This is an area of business that could add security of supply to the UK in the event of further national crisis. It should never be underestimated and the value of it running competitively should be recognised.

Q10) We have no strong view one way or the other. Efficiency is key, anything that improves the CMA ability to act should be considered.

Q11) See Q10

Q12) See Q10

Q13) Yes

Q14) Yes definitely. Companies are wise to regulation and find ways to avoid accountability under it. In the Holiday Park sector companies often run their parks through a myriad of smaller companies. This avoids scrutiny in relation to competition mergers, anti competitive practices, unfair trading, price fixing and competition regulation breaches.

The CMA takes a market wide approach to enforcement which cannot be easily identified as a result of the business structures across the industry. They are easily fobbed off by experienced business people, who have developed their business models over decades, without sufficient scrutiny or understanding by regulators, which is why we see so many consumer and market issues today.

Q15) Yes

Q16) Should be applied to a).

Q17) Yes. We have to trust that the CMA and other regulators are acting in good faith. The power and wealth of some companies can and is used to avoid action by the CMA

or to frustrate investigations. The ethos for competitive markets should be “If you’ve got nothing to hide you’ve got nothing to fear.” Most public law enforces, including the Police, suffer from being too risk averse, due to financial implications of getting things wrong, even when acting in good faith.

Q18) Yes they will be more effective as a result of a) and b)

Q19) Yes. Voluntary attendance puts more pressure on witnesses as a result of being seen to be helping the authorities in the same manner as ‘whistleblowing’. Individuals have their own family, jobs and security to consider. There are many examples where whistleblowing has had a dramatic impact on an individual's life. The proposals should consider the psychological pressure faced by witnesses who volunteer as opposed to being obliged to be interviewed. If you have no choice in the matter then you are less likely to suffer the same consequences as if you simply volunteered. Businesses look for loyalty from their employees.

Q20) Early resolution should be used as a way of addressing the issues efficiently but there is a risk that this becomes a measurement of the CMA’s success, at the cost of credible resolutions against the benefit gained by the company's breach.

Q21) This depends on the likelihood of individuals being able to seek separate legal redress. Most individual consumers would not be in the position to do so and would therefore be content with some form of reasonable redress obtained via the scheme. Most businesses would be in a position to legally challenge for suitable redress without access to the documents as Pre Action Protocols provide for information to be obtained in any action against the offending company.

The danger is that the CMA accepts a low level of redress, on behalf of consumers, but which is not acceptable to the majority of them. They would struggle to challenge the business, without these documents. Perhaps a two tiered approach could be adopted, one for those unlikely to be financially able to challenge and one for those who would be able to do so.

Q22) The more complex the process the more difficulties will be encountered in the administration of it. Lawyers for Business know how to play the system and will soon learn how to play any new system to their clients’ advantage. Perhaps an independent Judicial Process or Panel could review the information capable of being made available is worth consideration.

Q23) No. The Government should fund adequately for the CMA to effectively operate the rules.

Q24) If it is not broken don't fix it. If it is funding alone that provides for the requirement of change, then fund appropriately in the first instances rather than reinvent.

Q25) The Tribunals appear to be the correct level

Q26) No

Q27) Yes, however it is individuals that drive these companies and they are incentivised to do so. The threshold for individual penalties needs to be far greater if there is to be any impact on what drives the business to behave in the manner it does.

Q28) Yes but it depends on the quality and ability of the CMA team to correct levels of funding.

Q29) We need to lead the way with regard to Competition and Markets so as to influence Governments and Business worldwide. Assisting overseas investigations will enable us to seek reciprocal arrangements for our investigations.

Q30) No. The definition and purpose for its drafting appear to be focused on goods or services purchased online, received at home by delivery or download and is therefore at odds with gym membership, which is service received at the traders premises. No account appears to have been taken of the stated case findings in Office of Fair Trading v Ashbourne Management Services Ltd and others [2011] EWHC 1237.

Q31) It would have little impact on traders ability to trade. All this information should already be provided as a result of the various consumer regulations in place. The fact that there is a need to address this particular issue is an indication that those regulations are not being sufficiently adhered to or enforced by regulators.

Q32) There is no difficulty for any trader in complying with pre contract information requirements. They simply avoid doing it as there is limited if any sanctions where they fail to do so and consumers have limited ability to seek access redress for any failures that detriment them.

Q33) b)

Q34) Limited if any impact on traders given the range of software available for such administrative actions.

Q35) b) obtain explicit consent.

Q36) Traders business models have a consideration for the benefits gained from long term inactive subscriptions. Money for old rope or Unjust enrichment.

Q37) It would encourage efficiency and the development of more sustainable business models reliant on guaranteed business, therefore less risk which would encourage investment and innovation.

Q38) 3 to 6 months depending on the service or goods provided and costs involved.

Q39) Yes and the 14 day process for cancellation can be insufficient time and cause worry and concern for consumers who have to spend many hours attempting to contact businesses. There will be many examples where business deliberately frustrates consumers in this process.

Q40) Yes

Q41) Possibly but there would have to be a warning of such to the consumer pre contract.

Q42) a) Is the most efficient way of addressing all the issues. Good services, good products and well run businesses will generate independent and honest reviews.

Based on our experience in the Holiday Park sector we would also urge the review team to consider the impact of businesses including Social Media Terms in their standard consumer contracts, as described at section 4.6 of our report above.

Having the ability to influence consumers from writing negative reviews is just as damaging to competition and consumers as paying for fake positive reviews or incentivising such reviews. There are legal remedies already available to companies in the event that reviews or comments are malicious, untrue or defamatory.

We would recommend that the Government should add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of including social media terms in a consumer contract that has the object of effect of influencing a consumer in any decision they take to comment on social media platforms or which prevents them from

commenting on any social media platform in respect of the trader or the goods and services they supply.

Q43) Most small and micro businesses already benefit as a result of word of mouth; they do not have the budgets for glossy advertising or to pay for fake reviews and therefore providing a quality service is key to their success. We are a Nation of shopkeepers and most are proud to be so. Larger businesses already have sufficient advertising or trademark presence and those run professionally should not need to pay for such reviews. Consumers trust the word of other consumers and you will often hear friends or family asking for recommendations for decorators or carpet fitters etc. Reviews are powerful as we trust our fellow citizens to be open and fair. Businesses exploit this using paid for or fake reviews. This undermines far more than simple consumer choice, it undermines our trust in each other.

Q44) Identification of the reviewer is key. Anonymous postings or using fake logins to the review sites creates the opportunity for fake or unwarranted bad/good reviews. People are more likely to be truthful if their comment can be traced back to them. Most reviewers will be internet savvy and have a genuine online presence, FB, Twitter, Gmail Accounts etc, there may be a way of requiring a confirmation of review via an email or FB account. Alternatively giving a postcode and house number in a drop down field. There will always be ways around it for the determined fake reviewer.

Q45) Yes

Q46) Consumers are not aware of the complexities and lengths business goes to in order to encourage them to purchase goods, based on behavioural psychology. Those that do have an idea may not accept they can be influenced so readily. The majority of consumers will not know how the use of algorithms, cookies, internet history can present them with choices and influence their decisions. If it were to be explained in layman's terms then we are sure consumers would view this as underhand and want some controls put in place.

Q47) Yes to both a) and b)

Q48) Yes. Every standard consumer contract should have a term that allows for consumers to have the freedom to choose their own product and service suppliers for goods and services that are ancillary to their main purchase or service contract. The CRA 2015 should be amended so that this term is deemed to be included in every such contract for the reason we have provided at section 5 of our report above.

The CPUTRs 2008 should be amended to include an additional offence for carrying out a commercial practice that restricts competition by denying consumers the freedom to choose their own product or service suppliers for goods and services that are ancillary to their main purchase or service contract.

The CC(ICAC) regs 2013 should include terms that require a minimum 7 day cooling off period for on premises contracts. In the Holiday Park sector our experience is that traders take advantage of consumer behaviour and exploit their willingness to sign contracts, in the excitement of the moment, without having adequate time to consider the implications for them when entering into contracts, which on the whole are for the duration of 15 years.

There is little evidence of courts carrying out their duty to consider the fairness of terms under section 71 CRA. Our experience is that courts consider consumer cases on the basis of the construction of the terms against contract law with no consideration as to their fairness for the purpose of CPRs.. “These new considerations just aren’t cricket, My Lord !.” The old school rules.

There have been very limited precedents set through case law and, to all intent and purposes, many CPRs parchments lay gathering dust in the archives.

Courts should be required, by way of amendments to the CPRs, to specifically record their considerations as to the fairness of the terms for all consumer dispute cases and they should be made publicly available. Consumers should feel confident that they can present their cases at court or through ADR without the need to employ costly lawyers, following research of previous similar cases.

There should be a requirement, by amendment to the CPR’s, that all standard consumer contracts terms have been verified by independent legally qualified bodies/ law firms as being compliant with CPR’s.

In the Holiday Park Business Sector we have seen contracts that are woefully deficient and cause significant harm to consumers. They contain many unfair terms but to challenge them would require a complex legal argument beyond the means of most consumers.

The fact that some of these contracts are drafted by solicitors demonstrates that there is limited comprehension and experience and/or interest with regards to CPRs.

We challenge the Reviewers of this consultation process to identify any law firm that specialises in Consumer Protection Law or which employs lawyers on that basis.

There should be a maintained list specifically identifying lawyers qualified to deal with CPRs.

Q49) There are a limited number of stated cases based on challenges under CPRs, which may indicate that they are either clear and effective or that they have not been subject to rigorous scrutiny by our legal system.

Our experience is that they are inaccessible for consumers in the Holiday Park sector

Consumers cannot easily access the protections offered due to the value of the goods involved. We would therefore recommend the ceiling for claims made via the 'small claims' court from £10k to £100K.

The argument being that the issues, subject of dispute, is the same for a £10k caravan as they are for a £100k caravan. Most caravans cost substantially more than £10k which means most consumers cannot afford the legal costs associated with the higher courts.

There should be a legal requirement for CMA and other regulators to subject cases to the rigour of the judicial process where there are cases that point to a risk of substantial consumer detriment and where the facts of those cases are likely to be applicable to many other consumers in the same company or sector.

Q50) No

Q51) Yes

Q52) The Holiday Park sector. Consumers pay between £3k and £10k annual pitch fees in advance of the season for pitching their caravans. In the event that a company went bust those fees would be at risk.

Q53) This is not a common issue in the Holiday Park sector.

Q54) Yes. Where a consumer requires goods or services for a specific purpose, then a delay in when ownership is classed as being transferred, may be detrimental to the consumer. It is not uncommon for prices to fluctuate from when an order is placed to when the conclusion of the purchase. As with the likes of Amazon, when viewing or

researching products, the prices vary from the first viewing to the second and third, as a direct result of processes designed to entice consumers to buy as soon as possible to avoid further increases.

Q55) Yes

Q56) It may prove more efficient, if the CMA is funded adequately to carry out such functions, but it may impinge the development of case law and the rigorous test of CPRs.

Q57) If previous enforcement powers have proven successful, why remove them? Adding additional tools will strengthen the ability to enforce. The main point for consumers is that enforcement takes place. The technicalities are of no consideration when it comes to consumer confidence in the enforcing authorities or the system. Justice is seen to be done.

Q58) The normal rules of evidence should apply with legal experts and/or business experts, from within the sector subject of investigation, and should be part of the teams carrying out investigations or making administrative decisions.

In addition to the investigation and prosecution there should be a built in requirement to review actions from a problem solving point of view. These are problems that require solving not just prosecuting, in the hope that the deterrent solves sector wide issues.

A multi agency approach should be taken making use of a wider skill set and experience, which will feed back into each member's organisation. Knowing how your partners work and what they bring to the table is key to tackling issues as they start to appear. Early intervention.

Q59) There should be a two lane approach to appeals. One via a tribunal in cases where legal principles are well established and not subject to serious contention. The other via court where it is in the wider public/business interest for rigorous examination of contentious legal arguments.

Q60) Yes. It is more likely to be more efficient and timely in reaching decisions.

Q61) Yes. The main benefits would be timely compliance rather than playing the game to delay and frustrate investigation.

Q62) Option 2 and 2A. Enforcement needs to mean Enforcement. Undertakings will be entered into in good faith and adhered to if a failure to act in good faith carries serious consequences.

Consumer contracts require good faith for them to operate fairly for consumers. It is often the case that breaches of CPRs will be as a direct result of companies carrying out commercial practices that breach the doctrine of good faith.

All processes that underpin enforcement should reinforce the doctrine that it is in companies interests to act in good faith and should carry serious consequences for failing to do so.

The Government should strive to ensure that operating in good faith is the foundation on which our economy and businesses are built. This will build trust in our economy and encourage investment from outside the UK.

Q63) Yes

Q64) Fines for Individuals who gave those undertakings on behalf of the company and additional fines for the company, specifically for breaching good faith by failing to adhere to the undertakings.

The message being that companies are required to deal with consumers and the CMA in good faith and it is therefore the breach of good faith that carries the punishment rather than the admission of liability.

Q65) The proposals and independent reports, referred to in the consultation paper document, argue that ADR is easy to navigate for consumers and more cost effective than court. This is simply not the case. The Holiday Park sector has two national trade associations BH&HPA and NCC, which recommend ADR for some disputes but not all. Significantly it is the ones that cause most consumer detriment that are not subject to an ADR process. For one of the very few cases that have ever been subject of ADR it was the complex process of defining and agreeing the terms to be subject of resolution that halted ADR taking place. This was a tactical move by Park Holidays UK Ltd, one of the largest Holiday Park companies in the UK, to avoid being subject to any decisions of ADR. We have documentation and information from witnesses to this effect.

If consumers are to have confidence in ADR, and it is to work as a cost effective alternative to court, then all disputes between consumer and trader should be subject to

ADR, not just those areas cherry picked by Trade Associations or companies using terms in their contracts with consumers.

It needs to be a legal right to take all disputes to ADR just as much as it is in seeking remedy through the courts.

ADR providers will need to be sector specific as are the regulated ombudsman services. They will need to have a comprehensive and detailed understanding of the sector as well as considerable knowledge of CPRs.

Q66) In some instances disputes will be over fees payable by consumers to traders for services or goods. Where there are such disputes then companies should have to formally notify consumers that the fees will not be payable until such time as the dispute has been resolved. Consumers will not feel under pressure to pay until such time as the company has looked into the matter and resolved it, or it has been to ADR and a decision taken.

Where companies fail to adhere to this then they could be subject to a complaint of carrying out unfair commercial practices CPUTRs.

This would incentivise companies to investigate and reach resolution more efficiently or to progress to ADR.

Q67) The Competent Authority should be able to require ADR providers to consider the fairness of terms in consumer contracts that are subject of any dispute in the same manner as the courts are required to do so under sec 71 CRA.

In the event that such terms are identified as being unfair or suspected of being unfair then there should be a mechanism that requires those terms to be reviewed or challenged by the Competent Authority or CMA.

If the decision from the ADR process is likely to be in favour of the consumer then that decision can be delivered whilst the terms are being reviewed. If the decision is likely to be in favour of the trader then it should be delayed until the terms are reviewed, in the event that terms were unfair and had an impact on the decision.

Q68) Ask yourself this question. How many consumers or businesses have heard of The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ?

The only way confidence will be increased in ADR is if it is clear to both consumers and traders that the providers are not simply independent companies seeking to make money out of the quick turnaround of dispute cases. They appear all too slick, covered in the veneer of a profit making business.

It needs to be clear that they are regulated, competent and accountable to the Government.

The Holiday Park Action group has previously petitioned for an Ombudsman for the sector. Why? Because consumers have more faith in organisations that are clearly independent of the trade, have no incentives other than to settle disputes and are accountable to the Government.

Q69) The ADR process should be mandatory in the Holiday Park Sector. The prices paid for static caravans is far above those paid for motor vehicles.

The expenses and services associated with ownership of a static caravan are far higher than those for motor vehicles.

The Holiday Park Business Sector should be recognised in its own right as a specific business sector.

Q70) The cost of legal action to settle disputes for consumers is a deterrent from accessing their rights and a burden to traders in defending against claims.

Enabling consumers to access their rights in a timely, non-confrontational and cost effective manner would give them confidence to stand up for their rights and, by way of collective effort, influence those businesses who choose to ride roughshod over our consumer protection regulations.

Good traders have nothing to fear from such processes, but rogue traders will either clean up their act or be subject to numerous ADR processes, which will eventually force them to clean up their act.

Monitoring which traders are subject to frequent ADR claims will be an indicator for further investigation by the CMA.

Q71) Collective redress would work well for consumers in the Holiday Park sector, where issues are common to all consumers across the sector.

We have provided evidence in our report to the CMA (21/01/2021) on many of these issues which have remained constant for decades, as highlighted by the comments from MPs, NTS, OFT and Lawyers at section 2 in our report above.

Our report to CMA can be read on this link CMA report

Q72) Very necessary. As a long standing consumer group we are not confident that the CMA, NTS or TS have sufficient insight into the sector, in which we help consumers to understand the issues and breaches of CPRS and Competitions regs.

Q73) This could be a significant step forward for consumers rights, however the mechanisms need to be examined to see if this is a realistic prospect and achievable for groups like ours, the Holiday Park Action Group.

Businesses are more likely to be willing to work with consumer groups to resolve issues where there is the possibility that failing to do so could end in a collective redress case.

Q74) We have seen these failures first hand with the NTS, TSS and CMA. Many of our group members have been passed from organisation to organisation, each time being told it was the responsibility of the other organisation to deal with the complaints.

Each member is told by the organisations that they do not deal with individual cases.

Each organisation refuses to acknowledge the evidence that shows this is a collective consumer issue.

As we have stated earlier, we believe a Joint Agency, problem solving approach is required. Investigations and prosecutions should be seen as a problem solving tool, not a solution to the problems which are often diverse in nature. Lead agencies should be identified as part of the initial groundwork and other agencies should have responsibility for collating information, intelligence, and gathering evidence.

As has been seen over many years Anti Social Behaviour is best resolved by a multi agency response, the causes being diverse, the solutions being tailored to the victims, the responsibility being with all agencies.

Both consumers and authorities would benefit from such an approach.

Just as ASB legislation provides for professional witnesses to give evidence on behalf of victims, so too should consumer legislation where serious criminal activity is involved.

75) The 'Primary Authority' partnership scheme is reliant on the legal knowledge, understanding and experience of the LA staff to operate in the interest of both business and consumer.

We have documentary evidence following a FOI request that the trade association, NCC, circulated guidance in relation to covid refunds across the UK, which was marked as 'Primary Authority' approved yet the LA state it was not approved by them.

It is clear the LA did not accept that legal advice offered by the NCC to trade members was correct based on the CMA guidance on Covid refunds. Most consumers have been denied covid refunds yet no action has been taken by the LA to challenge the advice given under the Primary Authority scheme or by the CMA.

The covid refunds due to individual holiday makers are peanuts when compared to those due to owners of static holiday caravans, for their pitch fees, paid for in advance of covid but subject to the restrictions of use.

Any guidance issued should be sector specific.

[redacted] *Holiday Park Action Group*
Representing 21,100+ Caravan/Lodge/Chalet Owners

27th September 2021-09-21