Professional Publishers Association (PPA) Submission to the BEIS Consultation on Reforming Competition and Consumer Policy (Subscription Contracts) and to the Subscriptions Regulations Impact Assessment Questions

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Submitted on behalf of the Professional Publishers Association (PPA)

Sent by email to RCCPconsultation@beis.gov.uk

About the PPA

The Professional Publishers Association (PPA) is the membership network for UK consumer magazine media and business information publishers, representing around 160 of the UK's most renowned publishing houses. With more than 40 million adults in the UK reading magazine media every month, the sector is worth £3.74 billion to the UK economy, and employs around 55,000 people.

The PPA's membership incorporates the UK's largest publishing houses, including Future plc, Bauer Media Group, Condé Nast, The Economist, Haymarket Media Group, Hearst UK, Immediate Media, William Reed Business Media, and many smaller independent publishers. A full list of members can be found here: https://www.ppa.co.uk/members

Introduction

Both print and digital subscription contracts are an integral part of PPA members' businesses. The pivot towards digital sales, accelerated by the pandemic, has only heightened their importance to the press sector. Subscriptions to specialist media publications guarantee consumers uninterrupted access to trusted information sources on the topics that matter to them.

As the Government acknowledges in the Consultation document: '*In the specific case of news publishers, subscriptions are an increasingly important part of online business models, driving readership and revenues, and contributing to the sustainability of a sector*.' Both core-news and specialist media publishers already enjoyed a trusted relationship with consumers before the advent of digital subscriptions, and have maintained a 'gold standard' in consumer care.

The pandemic has accentuated the value of print and digital subscriptions. The PPA Sector Report shows digital edition volume growth was 35% YOY in 2020, whilst digital edition revenue growth was 59% YOY. For B2C and combined B2C/B2B publishers, subscriptions make up around one-quarter of revenues. For many medium and smaller publishing businesses, this proportion will be significantly higher.

Proportionate, effective, and innovation-focused regulation to protect consumers and responsible, low-risk subscription businesses from detriment

The proposed policies have been created in reaction to the accelerated use of subscription contracts across a range of sectors, caused by the digitisation of markets. However, the policies are at odds with the aims and objectives of the Government's Plan for Digital Regulation (the Plan).

The Plan sets out three guiding principles designed to achieve its key objectives, intending to create '*proportionate, agile, flexible measures*'. One of the principles is '*Actively promoting innovation'*, by seeking to *'remove unnecessary regulations and burdens where possible'*. Where the Government does consider regulation is needed, '*it should be designed to minimise unnecessary burdens on businesses*'. The one-size-fits-all approach to the Government's proposals on subscription contracts is clearly at odds with the Government's principle of only introducing regulation where necessary; the Government should instead seek to identify and then focus on the sectors where the detriment to consumers is concentrated.

Referring to the same innovation-focused principle, the Plan states that regulation '*should be outcomes-focused, backed by robust evidence, and consider the effects of proposed policies on innovation*.' Neither the Consultation document nor the Impact Assessment offer evidence that the media and press sector are drivers of consumer detriment.

Furthermore, some of the proposed policies would restrict innovation by reducing investment in new journalistic projects. As we will explain, some of the proposed changes could make low-cost introductory offers unviable. Low-cost introductory offers are a key method of testing new products and services, and any changes that inhibited such offers would necessarily inhibit innovation. High compliance costs would also see more revenue diverted away from investment in expertly researched content.

Another of the Plan's principles is to '*Achieve forward-looking and coherent outcomes*' – '*policymakers must make sure that new regulation minimises contradictions, undue burdens, or overlaps and gaps with existing frameworks'*. Regulators have already taken action to combat subscription traps in high-risk sectors. The Consultation document acknowledges that Ofcom, the PSA, and the FCA have all recently intervened across a range of sectors, whilst the CMA and other regulators have helped businesses understand their legal obligations and protect consumers, and have taken enforcement where necessary. **Instead of introducing sweeping changes which do not target high-risk subscription sectors, the Government should encourage and empower expert regulators to target consumer detriment in specific sectors, with suitably tailored measures.**

One of the Plan's three key objectives is '*Promoting a flourishing, democratic society'*; one of the three key tenets of this objective is ensuring the '*UK's media and press sectors are able to flourish online*'. The Government is seeking to support sustainable journalism through the new pro-competition regime for digital markets, putting the Digital Markets Unit on a statutory footing. It would be inimical to the Government's ambitions to restrict a valuable revenue stream for specialist press and media publishers without evidence of any significant detriment caused by the sector. **The Government should focus policies on sectors where harm is concentrated, particularly given that indiscriminate application of the policies could hurt the media and press, a sector that the Government has expressly committed to help 'flourish'.**

Recognising the diverse range of subscription contracts

As well implementing a targeted, sector-specific approach, the Government must also recognise that it is not effective to treat all goods and services provided via subscription in the same way: two clear distinctions must be recognised.

First, there is a substantial difference in providing digital content via subscription, as opposed to a physical magazine. A trader will generally have far fewer opportunities to interact with or monitor the activity of a consumer with a subscription contract for a physical product, yet the arrival of that physical product is a recurring reminder to the consumer that they have entered a contract.

Second, there is a substantial difference in the purchasing of essential services such as motor insurance and broadband, and discretionary services such as digital content subscriptions. It is probable that consumer detriment is concentrated in the former category, as it is likely that behavioural biases will be far more pronounced when a subscription contract is for a service that is essential for the consumer. Indeed, a consumer can cancel a discretionary service at any time without fear of detriment and without the need to devote time to finding a new provider. Yet the cancellation of a service that the consumer considers essential will necessarily entail the signing of a new contract with another provider; customers may well value the short-term benefit of time saved over the long-term cost of a sub-optimal subscription.

These two distinctions further demonstrate that a one-size-fits-all approach would be inefficient and would not properly account for the diverse range of products and service provided via subscription contracts. **A sector-specific approach that recognises the diverse nature of subscription contracts would ensure that action would only be taken when an expert regulator judged action to be necessary, based on robust evidence. This would allow responsible businesses to innovate freely, whilst more stringent requirements would be placed on businesses that are the major drivers of consumer detriment.**

Consultation Questions

To clarify, PPA agrees that action is required for certain subscription varieties and sectors. **PPA and its members would welcome the opportunity to work with the Government and demonstrate how the effective subscription processes they already have embedded could be used as an example of best practice upon which to base new regulations.**

Q30. Do you agree with the description of a subscription contract set out above? How could this description be improved?

As expressed, regulating the wide range of subscription contracts under a single definition for the purposes of consumer law is problematic in itself. The Government should recognise the following major differences:

- A digital service vs. a physical good
- Essential services/goods vs. discretionary services/goods
- The scale of detriment (and consumer care standards) varies widely from sector to sector

Q31. How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?

Q32. Would it make it easier or harder for traders to comply with the pre-contract requirements**?**

Publishers already provide consumers with clear and prominent information at the pre-contract stage. PPA members appreciate that the single most effective way to prevent consumer detriment is to ensure that consumers are fully aware of the conditions of the subscription contract before a consumer places their order. This guarantees, as the Consultation document specifies, that the consumer is fully aware of the minimum contract terms and price per billing period; whether the contract will auto-renew or auto-extend at the end of the contract term; and any minimum notice period for cancellation.

Ensuring that the consumer is fully informed from the beginning of the consumer-trader relationship obviates the need for duplicative reminders and opt-in requirements at a later stage, as the consumer will have all the information needed to make informed choices consolidated in a single summary. By preventing information failures from occurring from the inception of a subscription contract, it is also less likely that there will be hidden detriments, with consumers fully aware of their expenditure and terms of the contract.

Q33. 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?

The Government's Impact Assessment states: '*Government could clarify that existing regulation already requires traders to offer the consumer the choice, at the pre-contract stage, to enter into a subscription contract without autorenewal or rollover, if the contract would otherwise contain such auto-renewal or rollover clauses. While we have estimates for how much of unwanted subscriptions might be related to such clauses, we could not quantify the impact of such a regulatory option. It would depend on firms' compliance with existing regulation and the level of enforcement activity by the Competition and Markets Authority, among other enforcement agencies*.'

The Government's Plan for Digital Regulation states that '*policymakers must make sure that new regulation minimises contradictions, undue burdens, or overlaps*'. Clarification of the existing regulation would be consistent with the Government's Plan.

This proposal does not take into account low-cost introductory offers, where a trader must have a reasonable expectation of future revenues via automatic renewal. If applied to low-cost offers, this proposal could harm innovation by disincentivising traders from trialling new products via these offers, and also deny consumers the substantial benefit of being able to sample a new product at a low price.

Furthermore, renewing a fixed-term subscription burdens the trader with additional costs. This is particularly pertinent for print subscriptions, where the cost of distributing a physical product (even for a short trial) is a considerably higher cost to a trader than a digital trial.

If the new requirement encompassed low-cost introductory offers, publishers would likely be compelled to offer low-cost introductory offers alongside full-price contracts without autorenewal or rollover. This would be confusing for consumers and create additional costs for traders which are not accounted for in the Government's Impact Assessment.

Q34. Should the reminder requirement apply in the circumstances where:

(i) the contract will auto-renew or roll-over, at the end of the minimum commitment period, *onto a new fixed term only*, or
(ii) the contract will auto-renew or roll-over at the end of the minimum commitment period

Q35. How would the reminder requirement impact traders?

Option (i) is a difficult proposition to evaluate, as it is very unlikely that a contract would auto-renew or roll-over onto a fixed term at the conclusion of the initial commitment period.

Regarding Option (ii) it would be unreasonable to compel traders to send reminders when a very short time has elapsed between the beginning of the contract and the end of the minimum commitment period. For example, it would be unreasonable for a trader to send a reminder regarding a rolling contract for a monthly physical magazine, every time a payment is taken. In addition, the delivery of the physical product should act as a sufficient reminder.

It should be noted that the requirements of the Direct Debit Guarantee means that a consumer is always notified in advance if the price of their subscription will change. If there are any changes to the amount, date, or frequency of Direct Debit the consumer will receive a notification (normally 10 working days) in advance of being debited or as otherwise agreed. This is important in preventing hidden detriments.

In addition, publishers are making increasing use of email newsletters to connect with consumers on a regular basis, bypassing social media or search engines to connect with people who are interested in their specialist content. PPA's Sector Report 2021 showed that 78% of members produced an e-newsletter; this regular, sustained interaction is a distinctive sector-specific attribute that makes consumers far less likely to forget their digital subscription.

One publisher estimates that to introduce an automated system to contact its roughly 4,000 recurring payment subscribers to notify them of an upcoming payment would cost around £3,500 to set up. It would also cost around £0.50 for any letter sent out concerning this. This would be especially problematic for short-term subscription lengths, such as monthly and quarterly, and would result in a price increase or the removal of shorter-term options. These outcomes would both be negative for consumers.

<u>Q36. Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to</u>

(i) <u>provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or</u>
(ii) <u>obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?</u>

If one of the above proposals were to be implemented, Option (i) would have a less detrimental impact on traders; this would be the preferable option, were one of the two to be implemented. However, if a low-cost introductory offer runs for a particularly short period (for example, two weeks), the Government could conclude that the policy proposal to clarify pre-contract information requirements for subscription contracts is a sufficient reminder for the consumer to make an informed decision.

Furthermore, for a relatively short free trial/low-cost introductory offer, there would be confusion over what constitutes a 'reasonable period' before the end of the free trial/low-cost introductory offer. A situation could occur whereby publishers would be compelled to send reminders immediately after the consumer enters the contract, rendering the reminder obsolete.

Option (ii) would be particularly detrimental for publishers' revenues, consumer satisfaction, and innovation.

Requiring explicit consent could be extremely confusing for consumers, adding unnecessary friction to the consumer-trader relationship. Reminders can easily be left unseen or ignored, meaning many consumers would unintentionally opt out of a subscription contract by default. Also, publishers try to avoid sending emails containing links such as this, as consumers are wary of phishing attempts and are less likely to click through. This policy could cause a great deal of customer dissatisfaction, discouraging consumers from taking up subscriptions with publishers. A rise in complaints and service queries would increase costs for publishers.

The likely high (unintentional) drop-off in subscribers taking up a full or higher price contract would inhibit publishers' ability to offer free trials/low-cost introductory offers. This would harm innovation as it closes off a key route by which publishers can trial new products such as memberships or new titles.

The Government's Impact Assessment states that one key rationale for intervention is to tackle an unhealthy market equilibrium, with the changes intended to give consumers more confidence in their ability to switch services. Yet a reduction in free trials/low-cost introductory offers will severely impede consumers' ability to sample services. If businesses are less able to utilise these offers, then this could reduce the ability of smaller firms to disrupt markets.

As already stated, the single most effective way to prevent consumer detriment is to ensure that consumers are fully aware of the conditions of the subscription contract before a consumer places their order, a requirement which publishers already fulfil. Creating unnecessary friction could potentially alienate consumers who use subscriptions for ease of purchase.

<u>Q37. What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?</u>

<u>Q38. What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?</u>

The Government's Impact Assessment estimates that a 'Maximalist combination' of policies, would resolve a detriment of £848 million. Of that figure, the detriment caused by inactive subscriptions that would be resolved is put at £4 million, or just under 0.5% of the total detriment resolved by the 'Maximalist combination'. The Government calculates that transition costs for the 'Maximalist combination' would be £27.5 million. Of that figure, the transition costs for complying with the policy on inactive subscriptions is estimated at £6.2 million, or just over 22.5% of the total transition costs for the 'Maximalist combination.'

The Government must consider whether it is reasonable to compel traders to divert significant sums to a solution that remedies a minuscule proportion of total detriment yet would represent nearly one-quarter of total transition costs if all proposed policies were implemented. Furthermore, this does not take into account substantial ongoing costs, which would also likely be highly disproportionate to the detriment resolved.

In addition, the Government's Impact Assessment recognises the impracticality of applying such a policy to a subscription contract for a physical product, such as a magazine. When analysing the impact of a requirement for traders '*to automatically cancel the subscriptions of customers who have not used the service in 24 months*', the Impact Assessment states: '*For the purposes of this analysis, we exclude from this description subscriptions that involve physical delivery of goods. This simplifying assumption is primarily because a firm is unlikely to be able to monitor the use of goods and so could not identify which consumers to unsubscribe. Moreover the physical delivery of goods to the consumer* *constitutes some form of 'use' and we expect it would act as reminder of the need to unsubscribe*.' We agree wholeheartedly with this assessment, which demonstrates why subscription contracts for physical products should not be regulated in the same as those for digital products.

It should also be noted that, regarding the consumer detriment caused by inactive subscriptions, the Government's Impact Assessment states: '*Of this we assume 70% is not related to the delivery of physical products. In fact, this no-physical-products share could be higher since some of the sectors most likely to be inactive, such as gym and fitness subscriptions, or streaming services, are do not involve delivery of products.'*

Furthermore, many subscribers of consumer magazine and business media publications take up a combined digital and physical copy subscription. In cases such as these, consumer policy should recognise that the delivery of the physical copy will also act as a sufficient reminder to the consumer that they are also subscribed to the digital edition.

For purely digital subscriptions, there are also significant barriers to this proposal being workable in practice. To understand if a consumer is definitely and completely inactive, traders would need to track and monitor every potential interaction that a consumer has with their digital product. For PPA members this would require multi-platform tracking: 75% of surveyed members operate across five or more platforms. This raises serious questions over how this requirement would square with data protection rights and digital consent (particularly given the changes to Google and Apple browsers), as many consumers would not wish to have their every interaction tracked.

If the Government were to proceed with its proposals, 24 months inactivity is a reasonable timeframe of inactivity after which traders should give notice of suspension. This would account for the fact that many consumers use specialist sources on an infrequent basis as an ad hoc research tool.

<u>Q39. 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)?</u>

<u>Q40. 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?</u>

The Government's consultation states the exit process must be 'automated' – it would be inappropriate for non-digital subscriptions such as print magazines (where there is no need to 'amend' orders or make selections regularly as with other physical product subscriptions) to have an entirely automated system through an online account This would unnecessarily require customers to make an account and provide data which they may well do not wish to do.

Furthermore, many consumers prefer to cancel subscription contracts via email, over the phone, or by letter, as they feel more comfortable with a process that has an element of interaction (even if at a distance). If publishers were compelled to update their systems to offer a fully automated cancellation process for all subscriptions, it would likely be unsustainable to continue to offer other methods of exiting a contract.

Publishers already offer mechanisms that make it simple and easy for a consumer to exit a contract, with processes that work best for their readers. Rather than mandating the specific methods by which consumers are able to exit a contract, the Government should set a general standard that a subscription contract should be as easy to exit as it is to enter (this is already the case for digital magazine subscriptions; for example, exiting a contract does not require consumers to enter card details or re-enter all of the information they provided at the pre-contract stage).

It should also be noted that the cancellation of payments for subscription contracts is outside of the control of traders. For Continuous Card Payments, traders don't have ultimate control of how a consumer can cancel their continuous card payment via management platforms such as PayPal, Apple Pay, etc. The customer must do this directly because PCI compliance regulates that traders cannot store card details or access the customer's account as this is private and confidential between the payment platform and the customer. The Government could instead focus on ensuring that the cancellation procedure is clear and effective via the payment platforms, complementing publishers' already clear and easy exit processes.

We support the combination of information and easy exit requirements (provided the specific processes for the latter are not rigidly mandated).

We agree a consumer should (a) be in full possession of the terms when they enter a subscription contract, and (b) should be able to exit a contract with ease. This ensures the consumer has the all knowledge necessary to both understand the subscription contract and the information necessary to inform a decision to exit, as well as the ability to exit it without unnecessary friction.

Therefore, PPA tentatively supports (a) proposals of clarifying the pre-contract information requirements for subscription contracts (Question 31), proposals of an easy exiting process (Questions 39 & Question 40), provided that the easy exit proposals do not mandate the specific methods by which consumers can exit a contract. Instead, the Government should set a general standard that a subscription contract should be as easy to exit as it is to enter. These are the only proposals that could be applied across all varieties of subscription contracts without causing serious detriment to some/all traders and without creating serious potential detriment for consumers. The others, in their current form, would have a range of detriments, as discussed above.

The Government could look to encourage and empower expert regulators to apply subscription contract regulations on a sector by sector/market by market basis, concentrating on the areas where detriment and subscriptions bad practices are concentrated. The application of such policies should also account for the differences between (a) subscription contracts for essential services/products as opposed to discretionary services/products and (b) a digital service as opposed to a physical good.

Subscriptions Contracts Impact Assessment Questions

IA Consultation Question: Do you agree the costs to firms estimated in section 8.1 and 8.6 reflect the types and approximate size of costs an individual firm would likely incur complying with these policies?

No: the Government has seriously underestimated the familiarisation costs in its Impact Assessment.

Examples include:

Fixed costs to firms associated with changing subscription offers - *Changes to websites and customer communications:*

'We base these costs on web IT professionals, £19.08 per hour. Across all affected businesses, these will result in a one-time cost of £3.4 million.'

'And we assume the costs are uncorrelated with the size of the firm.'

Publishers estimate that the cost of hiring IT professionals would be around five times the Government estimate. Large businesses with more complex web setups would likely have to invest more in changing their websites and customer contracts, meaning the assumption that costs are uncorrelated with the firm size is misguided.

Easy exiting – *costs to firms:*

'*We assume, that these integration costs do not vary with the size of the firm, so at a cost of £400 across 9,600 firms, we estimate a total one-off cost of £3.8m*.'

Publishers estimate this would cost a minimum of £5,000 per firm, and again the IA states that these costs would not vary with the firm. This is misguided.

Furthermore, the lack of calculations for ongoing costs ignores a high level of potential costs that would divert money away from investment in high-quality journalism and innovative new products. Substantial ongoing costs would likely be the major factor in harming innovation.

IA Consultation Question: Do you agree these reflect the likely wider impacts of the proposed policies? Can you provide additional evidence that could indicate the scale of wider impacts on businesses and consumers?

Increased competitive pressures

As specialist publications focus on an immensely diverse range of topics (even titles with similar focuses target different consumer segments) it is unlikely that there would be any positive competitive pressure for the sector.

Improved consumer confidence in subscription models

Consumers already have confidence in trusted specialist publishing brands. Complicating the process of renewal after a trial period, particularly requiring explicit consent, would create additional friction which would reduce consumer confidence in subscription models as an easy way to have access to their favourite title.

Changes to business practices

We agree that: *'Firms may respond to these changes by reducing introductory price offers, which are valuable to consumers, both by allowing access to the subscription product at a reduced price and allowing customers to compare products with reduced risk.'*

It is right that the Government commits to *'use the consultation period to explore how businesses could respond to the policies and the possible effects that will have on consumer surplus.'* These harms to consumers should be at the forefront of the Government's policy development.

As at present there seems to be an assumption that any costs to consumers will be outweighed by reduced detriment, and that the impact on consumers will be wholly positive (as evidenced by the repeated focus on a trader, rather than consumer impact in the main Consultation document). This is a narrow perspective that should be robustly scrutinised and revised.

Better allocation of spending

As the suggested policies would likely cause businesses to reduce low-cost introductory offers, consumers would be compelled to pay a full price for a subscription which may not turn out to be valuable to them. The Government’s calculations do not account for this potential driver of unwanted subscription purchases.

Business-to-Business Subscriptions Contracts

The application of the proposed changes should recognise that individuals sign subscription contracts using personal payment methods, and are subsequently reimbursed through their business expenses. In addition, individuals may use their own funds to purchase subscription contracts yet their usage is exclusively or predominantly business-related.

The Government must consider how these changes could be implemented in such a way that B2B subscriptions were not seriously impacted by laws intended to protect consumers. B2B publications play an important function in scrutinising and connecting a diverse range of industries and sectors, as well as being drivers for economic activity through their events and trade show operations. The costs associated with creating dual subscriptions contract systems would restrict the ability of B2B publications to invest in expertly researched content.

PPA welcomes the opportunity to respond to this consultation, and would be happy to respond to further requests for evidence. Email [redacted]@ppa.co.uk *for more information.*