

Ofwat response - Consumer Protection: Guidance on the CMA's approach to use of its consumer powers

In September the CMA published its consultation on its guidance on future approach to use of its consumer powers.

Key Messages

Ofwat welcomes clarity and transparency around the way in which the new consumer landscape will work in practice.

We note that the CMA has in role in ensuring the new arrangements work in the way intended by the government and meeting the objectives of the government's consumer policy.

In particular it is important that the enforcement gap identified by the landscape review is addressed through the new regime.

Ofwat has a duty to protect consumers, and particularly vulnerable consumers, in the water sector. One of our key objectives is to ensure a fair deal for customers. We do this by using the regulatory framework to engage, empower and protect water customers.

We have powers that we share with the CMA and with Trading Standards Services under the UTCCRs and CPRs.

However in practice our opportunity to use these powers is limited to activities outside the core service provision which is undertaken by the licensed companies further to statutory obligation and not further to contractual arrangements.

We are exploring ways to ensure water customers benefit from the protections of general consumer law. We are also developing strategies to ensure that customers in the sector experience equivalent levels of protection to those they enjoy in other sectors.

In this regard it is extremely important that we work in partnership with TSS and the CMA where there are risks to consumers using goods and services associated with our sectors, to share intelligence and ensure a coherent approach that provides the best outcomes for customers.

It is also crucial for the well being of UK consumers that we share best practice and experience about enforcement approaches, policies and trends which may manifest across markets to ensure the best outcomes for customers. The CMA has an important role to play in ensuring cross sectoral and regulated sector issues do not fall through the gaps.

We note the strategic steer given by government which encourages CMA to focus on issues that affect consumers using utilities and we look to CMA to engage with the sectoral regulators effectively to ensure a coherent and proportionate approach to issues identified through each organisation's strategic priorities.

We look forward to the establishment of clear a MOU with CMA and TSS further to the new consumer protection landscape and welcome this opportunity to comment on the CMA consumer guidance ahead of its establishment in April next year.

Responses to questions

Question 1

We note the role of the Consumer Protection Partnership (CPP) in considering strategic priorities for enforcement. We also note that the CMA proposes to use the Consumer Concurrences Group as the conduit for informing the CPP of emerging issues from the sectors. In order to ensure effective communication and understanding of sectoral issues we propose that the sectoral regulator should be represented at meetings of the CPP where enforcement priorities relating to the sector are to be discussed. We consider operating at arms-length is unlikely to lead to effective outcomes for customers of the sectors given the expertise that sits within the sectoral regulators. Appropriate representation within the partnership by the sectors is crucial to ensuring these vital areas of the economy, recognised by the government as priority areas, are discussed in the most informed and productive way. While we value the CCG and the important role it plays, using it as the sole mechanism for informing CPP does not give sufficient voice to the concurrent regulators in contributing to decisions about enforcement priorities that may involve their sectors.

We also consider that the proposed approach to working in partnership in the guidance gives insufficient consideration to the needs of vulnerable customers across the economy. Given that vulnerable customers are a priority for consumer protection there needs to be a transparent way of hearing their voice within the partnership working proposals.

We also note that DBIS proposes to introduce powers to get compensation orders for customers who have suffered detriment further to breaches of the Enterprise Act - remove incentives of profit for rogue traders. These new powers will be concurrent for sectoral regulators. We would expect CMA to work with Trading Standards Services (TSS) to ensure a coherent approach to these new powers in the best interest of customers operating across all sectors of the economy and would

anticipate working with them on developing appropriate guidance to ensure this valuable new tool is effective.

Question 2

We advocate the use of behavioural economics specifically as a useful tool in enabling enforcement strategies that provide more choice, more confidence and better value for money for consumers.

We consider CMA has a role not only in looking within markets but also at tackling practices and behaviour manifesting across markets. Given its position in the regime it is well placed to identify cross sectoral trends and issues and take cases to set precedents which have resonance across markets and not just within them. For example practices of intermediaries for billing and other services.

Question 3

Given the lead role the CMA has for UTCCRs we would expect it to develop, in partnership with concurrent enforcers, some measures of effectiveness of the law and its application – further to desired outcomes. So we would expect to see what is CMA's strategic objective in this space. For example it might be to reduce the prevalence of unfair terms in consumer transactions.

Annex A – The guidance

This needs to be layered and be clearer to support the user – it is good that it brings forward guidance from the existing enforcement guidance to provide continuity but it feels like it has just been inserted in to a wider document dealing with a range of issues and as such feels an uncomfortable mix at present and very dense.

Section D

Sectoral regulators have a clear role in enforcing concurrent legislation and should therefore be identified both in the diagram and through appropriate representation at the CPP as additional or guest members where any particular agenda item merits their attendance. Alternatively they may wish to bring an issue to the CPP for discussion and the governance should enable this.

Guidance section 1.6b

Ofwat cannot say whether this is acceptable in the absence of understanding the CMA's clear prioritisation principles – we would hope these will be consulted on as they need to reflect wider enforcement policy in partner organisations.

1.14 in order for this to happen, the guidance needs to take on views and intelligence of the wider enforcement community including the sectoral regulators in an effective way.

We note the notification role will transfer to CMA from OFT. Notifications need to be accessible to enable gaps to be met.

Many thanks

Ofwat

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