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From: James Macbeth
Project Director

10 June 2016

Short-Term Car Rental – Achieving Compliance with UK Consumer Protection Law

Dear

We are writing to you following the roundtable workshop you attended at the Competition and Market Authority's (CMA) office earlier in the year on achieving compliance with UK consumer protection law. At the roundtables, a number of questions were raised regarding the best way to implement the changes that the CMA requires of brokers and metasearch providers across the sector. We have thought carefully about the points raised at the roundtables and, in light of these, revisited what the CMA requires of you to ensure your business is compliant with consumer protection law. This has taken a little longer than we initially anticipated and we are grateful for your patience while we finalised our position.

We have decided to focus our attention on just seven key areas where we want brokers to ensure that they meet our requirements. This reduces the total number of changes that we will require compared with the position set out at the roundtables and, perhaps more importantly, focuses on areas where in most instances the information necessary to make the changes is already in the broker's possession. We have been particularly mindful of the point raised at the roundtables that the brokers must have access to the information in order to make changes and have reviewed again the websites to assess whether the key information is available. In the large majority of cases we have found that key information is already available but is simply not presented prominently or clearly enough. The seven areas in

respect of which we have particular requirements are:

- Young driver surcharges
- One way fees
- Fuel charges
- Excesses
- Pre-authorisations or deposits
- Collision Damage Waiver (CDW) exclusions
- Warnings about the need for snow chains (which are a legal requirement in some countries in winter) and no guarantees for optional extras so consumers know in advance that they may not be available.

With respect to each of these seven areas we require the relevant information to be clearly and prominently presented to consumers. Annexe A to this letter sets out the CMA's view on achieving compliance with consumer law in each of the seven key areas. We have carefully considered which aspects of compliance fall to a broker and which should be left to car rental providers – Annexe A covers only those aspects of compliance that we expect brokers to observe. Annexe B is a summary of the relevant law.

We have identified your business as a car rental broker which we distinguish from metasearch businesses in that brokers typically take a booking (or allow the consumer to make a reservation) whereas metasearch providers typically only allow a consumer to search for deals before being passed on to a broker or rental provider to make the booking. We have also asked metasearch providers to make changes to the transparency of their prices and where those metasearch businesses have commercial relationships with you I would anticipate that they will ask you for transparent pricing in any data that you provide to them.

At the roundtables, some attendees expressed concern that the amount of additional information the CMA required to be shown to consumers would clutter up the consumer's experience of online booking. We are mindful of this and you will see that, as well as reducing the requirements, much of the additional information required could be combined into a single Key Terms document or incorporated into a simple set of Rental Conditions (indeed many brokers already have such a document or pop-up on their website). We also set out that we would usually consider it compliant to provide additional explanatory information to consumers on the 'one-click away' principle – that is by providing a link / icon or other method that allows consumers to access the necessary information in a separate browser window / separate page with a single click. The key principle is **prominence** –see the discussion in Annexe A under 'How should this information be displayed' for more detail.

If you comply with these changes the CMA is less likely to prioritise enforcement

action against you, although you should understand that the CMA's prioritisation decision does not bind third parties (including Trading Standards Services). As with all businesses, you are ultimately responsible for ensuring your business is compliant with consumer law: the information in this letter is intended to be a helpful guide to compliance but cannot and does not cover every possible eventuality.

We welcome the willingness expressed at the roundtables to make the necessary changes to achieve compliance with consumer protection law. From a recent review of websites we have seen that a number of brokers and metasearch businesses have started to make changes and that a number of websites now include the young driver's surcharge and one way fees in the headline price, provide a total price for optional extras and include improved transparency regarding fuel policies and excesses. We expect all brokers to make such changes.

The CMA is allowing a period of several months until 1 January 2017 to give you time to make any changes that may be necessary to bring your business into compliance (we have given meta-search businesses the same deadline). Some brokers have sensibly already started to make the necessary changes and we welcome this action. Starting in early 2017, we will review the market for compliance. If we consider that companies are not complying with consumer law we and Trading Standards Services have powers to take enforcement action. You should review your website and confirm to the CMA in writing when you have made the necessary changes, if any.

We intend to announce publicly that we have written to the broker and meta-search industry to advise it of how to comply with consumer law, that we expect businesses to review their practices and make any necessary changes, and that we will undertake a compliance review in early 2017. We will not name individual companies. I anticipate that we will issue that announcement in the week commencing 27 June.

Should you have any queries regarding this letter please contact either myself or Sue Aspinall: James Macbeth (james.macbeth@cma.gsi.gov.uk; 020 3738 6958) or Sue Aspinall (sue.aspinall@cma.gsi.gov.uk; 020 3738 6788).

Yours sincerely

James Macbeth
Project Director
Competition and Markets Authority

Annexe A - Key principles for you to apply to help achieve compliance with UK consumer protection law, meet best practice, and ensure that the market works well for consumers.

Mandatory Charges (Fuel surcharges, YDS and one-way fees)

To provide clarity on how to present prices to consumers in a compliant manner, the CMA recognises that it may be necessary to show the same consumer different prices at different stages of the booking process. The CMA considers that in a compliant booking process there are likely to be two prices with which the consumer will be presented:

- An initial **headline price** which is shown to the consumer at the start of their booking journey when they enter their intended location and proposed dates. This price will typically exclude any optional extras the consumer might purchase but must include all the mandatory charges.
- A **final drive away price**, that must include all the mandatory and optional charges associated with the rental.

We use the terms '**headline price**' and '**final drive away price**' as defined above in this document.

- All unavoidable and foreseeable charges (mandatory charges) paid by all consumers should be included in the headline price quoted to consumers, and not just in the reservation price at the end of the booking process or at the rental desk. The most common of these charges is a refuelling surcharge that is unavoidable with certain fuel policies.
- Charges that are mandatory for a certain group of consumers (mainly age-related surcharges and one-way fees) should also be included in the headline price quoted to consumers. This may require you to change your booking process so that the appropriate information (i.e. the driver's age and whether the rental car is to be returned to the pick-up location) is obtained from the customer before the headline price is returned.
- The final drive away price provided to consumers at the end of the booking process should include all mandatory charges as well as the charges for any additional optional products.

Prices in local currency

- Charges quoted in local currency and payable at the desk should be presented to the consumer alongside any prices that are in sterling when the consumer is

shown both the headline price and the final drive away price (e.g. Total price: £100 payable now, €100 payable in local currency at pick-up).

- Where charges payable at the desk are quoted as a range you should add that range to the headline price (e.g. a €100 fixed charge for one-way fee plus a charge of €20 - €40 should be quoted as a headline price of €120 - €140).

Fuel Policies

- The fuel policy should be clearly and prominently stated.
- If the policy mandates that the customer must purchase a tank of fuel (or leave a deposit) you should prominently highlight this to the customer (i.e. next to where the fuel policy is stated).

Excesses and pre-authorisations or deposits

Pre-authorisations and guarantees/security deposits

- You should prominently and clearly state, the amount of the excess on the Collision Damage Waiver (CDW).
- If pre-authorisation of a credit card or a deposit payment for the excess (or any other amount) is required then you should inform the consumer in a prominent manner of the amount.
- If you sell a product for reducing the consumer's excess you should inform them of this product and its cost so that they may know their total costs if they wish to reduce their exposure.

CDW exclusions

- Any important exclusions from the CDW and optional waiver products (such as damage to the roof or to the undercarriage of the car) should be highlighted to the consumer by you. This must be prominent (e.g. It could be put in a 'What's included section' or made clear by comparing the CDW with your own waiver product).
- If the specific exclusions are not available to you then you should, as a minimum, include instead a prominent general statement that rental providers' CDWs typically include exclusions for items like tyres, glass, mirrors, undercarriage, roof, etc.

- If you sell a product to reduce the scope of the exclusions from the CDW, you should inform the consumer of this product and its costs.

Warnings

- Where optional extras are offered but not guaranteed you must inform the consumer of this fact.
- Where snow-chains are required (or likely to be required) by law you should warn consumers and advise them that a charge may apply.

How should this information be displayed?

The key requirement is that the information is clear and prominent. For information related to mandatory prices this means putting the information in the headline price. You may wish to draw attention to the fact that your headline prices include these items if that is helpful for your marketing.

For fuel policies, excesses, pre-authorisation and deposits and CDW exclusions prominence requires that this information is no more than one-click away. This might be in the 'Rental Conditions' or a 'Key Facts' document or simply by way of clicking an icon. You should not leave this information only in your Terms and Conditions; it requires a more prominent placement.

Warnings about legal requirements for snow chains could, for example, be flagged to consumers when options are offered (e.g. 'for this booking you will require snow chains') or similarly highlighted. For all other optional products if availability is not guaranteed a simple prominent statement placed on the options selection page will suffice (e.g. 'The availability of these optional products is not guaranteed').

Annexe B

Relevant UK consumer protection legislation

All businesses are required to comply with consumer protection legislation. Below is the applicable laws most relevant to car rental brokers.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

Part 2 & Schedule 2, Consumer Rights Act 2015, Unfair Terms (CRA).

The Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013 (CCCRs).

Transparency of Prices

Consumers need to know the price upfront when booking and/or renting and if possible the most inclusive price (i.e. including all compulsory and optional charges). Consumers cannot be put in a situation where they may have little option other than to accept additional charges and a higher final price at the rental desk than the price they envisaged at the start of the booking process. This may be because mandatory charges are only revealed at the rental desk and/or some options are only available at the rental desk and their price not displayed beforehand. Mandatory charges, such as full fuel tank, premium location pick up fees, one-way fees and young driver surcharges, cannot be excluded from the headline price and only revealed later during the booking process or at the rental desk. Mandatory charges cannot be presented to the consumer as being optional, for example in relation to safety equipment such as snow tyres/chains.

The relevant parts of the applicable legislation are briefly summarised for your convenience below.

Mandatory charges

Regulation 3(3) CPRs: presenting mandatory and/or legal obligations on vehicle equipment as options is a commercial practice contrary to the requirements of professional diligence.

Regulation 5(2) CPRs: presenting mandatory charges as options is a commercial practice that is misleading with regard to the price, or the manner in which the price is calculated if it causes the average consumer to take a transactional decision that they would otherwise not take.

Regulation 6(1) & 6(4) CPRs: presenting mandatory charges as options is a

commercial practice that is misleading if it omits material information that the average consumer needs or if such material information is hidden, provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision that they would otherwise not take.

Regulation 9 CCCRs & Schedule 1 paragraph c: with respect to a contract that has been concluded at the business' office it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Regulation 10(1) & 13(1) CCCRs and Schedule 2 paragraph f: with respect to a contract that has been concluded at a distance or not on business premises it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Optional products

Regulation 6(1) CPRs: a lack of information regarding the availability of optional products is a commercial practice that is misleading in that it omits material information that the average consumer needs or that such material information is hidden, provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision that they would otherwise not take.

Section 68 CRA: the terms in respect of optional products must be drafted in plain, intelligible language and be prominently placed.

Pre-authorisation process and guarantee/security deposit

Regulation 6(1) & 6(4) CPRs: a lack of information about the need for pre-authorisation and its process and/or the need for a guarantee/security deposit and its process is misleading if it omits material information that the average consumer needs or that such material information is hidden, provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision that they would otherwise not take.

Section 62 CRA: An explicit right of a business to take payment of unspecified amounts at its discretion and without going through a fair process is likely to cause a

significant imbalance in the parties' rights and obligations to the detriment of the consumer, contrary to the requirements of good faith.

Section 68 CRA: the terms in respect of any deposit and the requirement for payment card pre-authorisation must be drafted in plain, intelligible language.

CRA Schedule 2, Part 1 paragraph 10: a lack of clarity around terms relating to any deposit and the requirement for payment card pre-authorisation is likely to have the object or effect of irrevocably binding the consumer to terms which they have no real opportunity of becoming acquainted with before the conclusion of the contract.

Regulation 9 CCCRs & Schedule 1 paragraph c: with respect to a contract that has been concluded at the business' office, it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Regulation 10(1) & 13(1) CCCRs and Schedule 2 paragraph f: with respect to a contract that has been concluded at a distance or not on business premises, it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Regulation 10(1) & 13(1) CCCRs and Schedule 2 paragraph u: with respect to a contract that has been concluded at a distance or not on business premises it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the existence and the conditions of deposits or other financial guarantees to be paid by the consumer.

Regulation 40 CCCRs: before the consumer is bound by the contract or offer, the business must seek the express consent of the consumer to any extra payment, such as any deposit and/or the pre-authorisation of their payment card, in addition to the payment agreed upon for the main contractual obligation.

Transparency and clarity on fuel policies and charges

Regulation 5(2) CPRs: with respect to the clarity of fuel policies and associated charges a commercial practice is misleading with regard to the price, or the manner in which the price is calculated if it causes the average consumer to take a

transactional decision that they would otherwise not take.

Regulation 6(1) & 6(4) CPRs: with respect to clarity of fuel policies and associated charges a commercial practice is misleading if it omits material information that the average consumer needs or if material information is hidden or provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision that they would otherwise not take.

CRA Schedule 2, Part 1 paragraph 10: a lack of clarity around terms relating to fuel policies and associated charges is likely to have the object or effect of irrevocably binding the consumer to terms which they have no real opportunity of becoming acquainted with before the conclusion of the contract.

Regulation 9 CCCRs & Schedule 1 paragraph c: with respect to a contract that has been concluded at the business' premises, it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Regulation 10(1) & 13(1) CCCRs and Schedule 2 paragraph f: with respect to a contract that has been concluded at a distance or not on business premises it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Insurance and waivers

Clarity about insurance cover, exclusions and price

Regulation 6(1) & 6(4) CPRs: with respect to lack of clarity on insurance cover, exclusions from cover and price a commercial practice is misleading if it omits material information that the average consumer needs or that such material information is hidden, provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision that they would otherwise not take.

Section 62 CRA: the use of unreasonable exclusions and/or limitations to contractual waivers is likely to cause a significant imbalance in the parties' rights and obligations to the detriment of the consumer, contrary to the requirements of good faith.

Section 68 CRA: the terms in respect of insurance cover, exclusions and price must be drafted in plain, intelligible language.

CRA Schedule 2, Part 1 paragraph 10: a lack of clarity around terms relating to insurance cover, exclusions and price is likely to have the object or effect of irrevocably binding the consumer to terms which they have no real opportunity of becoming acquainted with before the conclusion of the contract.

Optional insurance/waiver products added by default/misinformation

Regulation 5(1) CPRs: the practice of including optional products by default, or the consumer selecting the same under the mistaken belief they are mandatory, is a commercial practice that is misleading if it causes the average consumer to take a transactional decision that they would otherwise not take.

Regulation 6(1) CPRs: it is a commercial practice that is misleading if it omits material information that the average consumer needs such that it causes the average consumer to take a transactional decision that they would otherwise not take.

Regulation 7(1) CPRs: adding optional products by default and/or allowing the consumer to choose such products because they are misinformed are commercial practices that are aggressive and significantly impair, or are likely to significantly impair, the average consumer's freedom of choice or conduct with regard to the products and thereby causes them, or is likely to cause them, to take a transactional decision that they would otherwise not take.

Regulation 40 CCCRs: before the consumer is bound by the contract or offer, the business must seek the express consent of the consumer to any extra payment in addition to the payment agreed upon for the main contractual obligation.

Unfair terms

All terms of booking and/or rental should be clearly accessible to consumers, with key terms drawn to their attention, when they book and/or rent their vehicle. Wording should not be ambiguous and should be easily understood by the average consumer.

Transparency and clarity generally

Regulation 6(1) CPRs: it is a commercial practice that is misleading if it omits material information that the average consumer needs or that such material information is hidden, provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision

that they would otherwise not take.

Section 68 CRA: the vehicle booking and/or rental terms must be drafted in plain, intelligible language.

CRA Schedule 2, Part 1 paragraph 10: the vehicle booking and/or rental terms should not have the object or effect of irrevocably binding the consumer to terms which they have no real opportunity of becoming acquainted with before the conclusion of the contract.