



Department for Business, Innovation & Skills

PROTECTION OF SMALL BUSINESSES WHEN PURCHASING GOODS AND SERVICES: CALL FOR EVIDENCE RESPONSE FORM

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation has been extended to 30 June 2015 (formerly 15 June 2015).

Your details

Name:

Organisation (if applicable):

Address:

Please return completed forms to:

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Please tick the box below that best describes you as a respondent to this consultation:

Y	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)

	Trade union or staff association
	Other (please describe)

Question 1 What examples are there of problems with the current arrangements?

Comments: Small businesses, especially what we would call nano-businesses (1 person operating from a home or mobile) may buy services suited to both business and consumer, but be unable to apply consumer rules as used partly for a business. Overall there is a lack of clarity at this level of what constitutes a small business.

Question 2 Are these problems one-off examples, or are there problems which suggest trends, or structural issues, in certain sectors?

Comments: No obvious trends except with services where communications, especially mobile and fixed line broadband are concerned.

Question 3 Why are these problems not resolved through market mechanisms or current protections (including, for example: the ability to contract; trust, goodwill and supplier reputation or long-term supplier relationships; or the ability to switch supplier)?

Comments: No helpful comment to make.

Question 4 What examples are there of advantages with the current arrangements?

Comments: No helpful comment to make.

Question 5 Are these advantages one-off examples, or are there advantages which are ongoing, or which occur in certain sectors?

Comments: No helpful comment to make.

Question 6 What features of the current arrangements are most beneficial to MSBs?

Comments: No helpful comment to make.

Question 7 What features of the current arrangements are most costly to MSBs?

Comments: No helpful comment to make.

Question 8 How familiar are MSBs with the current arrangements, as described in Section 2?

Comments: Poorly.

Question 9 With examples, what types of MSB are affected by any issues identified with the current arrangements, in terms of their size (by employee number and turnover), the nature of their business activity and location of their business?

Comments: Businesses in the 1-5 employee range are the most affected. Realistically the 3.6 million one person operations where there is little or no separation between work and home will be the most affected.

Question 10 What types of transactions are affected with possible reference to the goods or services purchased, the frequency of purchase, the size or volume of purchase, the characteristics of the seller?

Comments: Contract services, such as telecommunications, because of their increasing importance – broadband especially. Products designed for use in a domestic context but used in a business context (a cordless drill, a food mixer, for example).

Question 11 What has been the effect on the terms of trade for the MSB when making the purchase (or purchases) in question?

Comments: Small retailers often decline to sell if they believe consumer goods may not be suitable for business use.

Question 12 What indirect effects have there been on MSBs, for example, in consequential impacts on trade or competitiveness?

Comments: No helpful comment to make.

Question 13 What other losses has the MSB suffered, for example, in time taken to resolve a problem (please quantify where possible)?

Comments: No helpful comment to make.

Question 14 Or, what additional benefits has the MSB enjoyed as a result of the current arrangements, either as a purchaser, or as a supplier?

Comments: Retailers often give trade discounts to businesses buying as businesses.

Question 15 What types of problems are occurring with purchases? For example, are any issues identified mainly about problems of redress, i.e., refund or remedy?

Comments: Arguments after problems have appeared over fitness for purpose (the drill isn't up to all day everyday use). Generally though small retailers will go further than required in order to encourage future business.

Question 16 Or are they about disputes over contract terms, or related to unequal bargaining positions between two parties?

Comments: No helpful comment to make.

Question 17 What other type of problem might there be, if not related to remedy or contract?

Comments: No helpful comment to make.

Question 18 To what extent do MSBs negotiate contract terms as against accepting standard terms and conditions?

Comments: Extensively. They use their greater buying power to work for advantages. This only works where the supplier is also small.

Question 19 To what extent do contracts for sales and supplies to MSBs tend to limit liability for breach of statutory protections regarding goods and services, or other breaches of contract?

Comments: Consequential loss.

Question 20 Do MSBs struggle to make effective purchasing decisions?

Comments: They seem to, especially in assessing the provision of services such as telecommunications.

Question 21 If so, what are the reasons?

Comments: The time and effort involved in gathering and assessing information.

Question 22 How do MSBs approach different purchasing decisions? For example, do they approach the purchase of core items and non-core items differently?

Comments: They buy best where they know the product best and worst where they buy least often (drills v broadband)

Question 23 Do MSBs believe they have sufficient information when entering a contract with a larger supplier?

Comments: It varies. A small business is likely to be time poor and time spent studying a contract is time not spent earning.

Question 24 If so, what steps can MSBs take to ensure this is the case?

Comments: Only by trading off time buying against time selling and producing: more transparent terms help with this.

Question 25 If not, what types of information, and to what extent, are MSBs lacking?

Comments: As above.

Question 26 Does the ability of MSBs to make effective purchasing decisions differ depending on the type of purchase?

Comments: Yes, as above: services v products.

Question 27 If so, how and for which types of purchases?

Comments: No further helpful comment to make.

Question 28 How are the current arrangements reflected in the business models of suppliers, both other MSBs and larger firms?

Comments: Where they are geared for it small businesses distinguish buyer types at the point of sale. Larger businesses which serve both consumers and businesses may struggle.

Question 29 Would different rights and remedies for MSBs affect the business models of suppliers, both other MSBs and larger firms?

Comments: Yes. More information would be required when selling to MSBs.

Question 30 Would it be costly for suppliers to distinguish between MSBs and other customers?

Comments: Yes, especially for bigger businesses.

Question 31 How would firms supplying MSBs respond to changes in the rights of MSBs?

Comments: They would have to gather more information at the point of sale and possibly withhold sale depending on the fitness of the product for a particular purpose.

Question 32 What might the benefits be of applying any of the consumer protections set out in Part 3 to MSBs?

Comments: Might assist nano-businesses with work/life crossover.

Question 33 We are interested in views, with supporting evidence, on any of the protections – in responding, these need not be considered as a package. The key protections are set out in Part 3, but in summary these are:

- rights and remedies in relation to contracts for goods;
- rights and remedies in relation to contracts for services;
- rights and remedies in relation to contracts for digital content;
- terms limiting liability for key protections being automatically non-binding;
- right to challenging certain terms as unfair;
- requirements to provide certain information before a contract is made;
- right to withdraw from distance and off-premises contracts.

Comments: No helpful comment to make.

Question 34 Alternatively, is there evidence that regulating MSBs with consumer legislation might have unintended consequences, e.g., chilling effect on the willingness of firms to enter contracts or costs associated with their being less flexibility in contracts etc?

Comments: Small retailers might well be less willing to serve businesses. The need to distinguish business users at point of sale and to establish intended use and fitness for purpose would add complexity and cost to the sales process.

Question 35 If problems arise, to what extent are MSBs also the suppliers and what are the costs to MSBs as supplier of extending consumer protection provisions to SMBs?

Comments: Small retailers and many nano-businesses will be both supplier and customer. There are administrative and risk-related costs to extending consumer protection provisions to SMBs?

Question 36 Are there any benefits or costs of having rights for MSBs aligned with those for consumers but not with other businesses?

Comments: Only where the business and the consumer are hybrid. Distinguishing which businesses are in scope would be a cost to all suppliers.

Question 37 What other approaches could the Government take to protecting MSB rights?

Comments: Distinguish on some definitive legal basis – eg Partnerships and Sole Traders could be consumers but Limited businesses not.

Question 38 Does an extension of rights need to be applied on a universal basis, i.e., equally to all MSBs?

Comments: For clarity (all regulation should be clear and consistent) yes, but see answer to 37.

Question 39 Or should it be targeted at micro businesses only, or other specific types of MSB?

Comments: As above, definitive specifics.

Question 40 Should any additional protections apply to certain types of transaction only?

Comments: Not on the basis of clarity and consistency.

Question 41 How is the option to limit liability in the current arrangements used? Is it a useful option?

Comments: Not clear that it is widely understood.

Question 42 How would MSBs – and their suppliers – react if the option to limit liability was removed in all purchases?

Comments: This would chill sales as sellers would have to protect themselves against greater liabilities.

Question 43 What impact on enforcement might there be if any of the consumer rights set out in Part 3 were applied to MSBs?

Comments: The volume of enforcement events might need to rise with more consumers in scope.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below. Please acknowledge this reply ☐



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