Consultation:	BEIS 'Reforming Competition and Consumer Policy'
Response from:	Consumer and Public Interest Network (CPIN)
Date:	1st October 2021

1. ABOUT CPIN

The Consumer and Public Interest Network (CPIN) is an independent organisation that exists to empower and protect consumers through effective representation in British Standards.

We believe that all consumers have a right to safe and accessible goods and services, clear information, fair treatment, effective systems of redress and a healthy environment. Our volunteer consumer experts, with secretariat support from BSI's Consumer Team, work to ensure that standards deliver on these rights, address consumer needs, and minimise harm.

CPIN collaborates with leading UK consumer organisations, via the BSI Consumer Forum (members include Which? Citizens Advice, Age UK, CTSI, UKRN, OPSS, Resolver, RoSPA and CAPT), to strengthen the consumer voice in standards and maximise the potential of British Standards as a consumer protection tool. To find out more about how standards make consumers' lives safer, fairer and better see our Consumers and Standards leaflet.

CPIN operates with support from BSI and BEIS. For further information and queries please contact the CPIN Secretariat at consumer@bsigroup.com or visit the BSI Consumer web pages at: www.bsigroup.com/consumers.

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2. OVERVIEW

CPIN welcomes BEIS proposals to reform and strengthen consumer protection. In particular, we support proposals to:

- **Enhance consumer protection in online markets** – reform is needed to address rapidly emerging, fast changing and complex risks of harm, which are not addressed adequately by existing legislation. CPIN supports the current Which? campaign for tougher new laws to make tech giants take greater responsibility to protect online consumers from scams, dangerous products and fake reviews.

- **Strengthen investigative and enforcement powers** – without effective deterrents and sanctions there is no real consumer protection.

Noting that many of the questions in this consultation are framed in terms of impact on the trader, CPIN suggests that the determining factors for decisions about reform, should be the **a) the scale and nature of consumer detriment (existing and potential) and b) whether reforms would be effective in preventing or minimising that harm.**

British Standards, developed in consensus by all relevant stakeholders, with strong consumer participation, play a critical role in protecting consumers in their everyday lives, reducing the risk of harm and building trust and confidence in new technologies that can make their lives safer, fairer and easier.

British Standards benefit all stakeholders, providing a clear understanding of 'what good looks like' and how it can be achieved. Benefits include:

- **Consumers** - improved safety, quality, accessibility and sustainability of goods and services. Goods and services that are fit for purpose and meet consumer needs, and effective complaints handling processes.
- **Businesses** – standards provide detailed good practice guidance for organizations, helping responsible businesses to improve quality and safety, reduce incidence of consumer problems, and minimise complaints.
- **Enforcement agencies** – standards provide a benchmark of good practice, agreed by experts.
- **Government** – standards provide the detail to underpin legislation, helping to achieve shared consumer protection goals.

In our responses to specific questions (below in Section 3), we highlight existing standards of relevance to BEIS's work, and identify where new standards could be developed to add value.

However, we would like to highlight four standards here, as horizontal issues that apply throughout the consultation document. This includes two standards already in development and suggestions for two new standards, which could potentially fill consumer protection gaps as identified in a CPIN research project in 2021.

a) Consumer Vulnerability (in development)

In Chapters 2 and 3 of this consultation, 'vulnerable consumers' are referenced in relation to ADR. CPIN would like to stress that consumers in vulnerable situations are at greater risk of harm in all of their interactions with organisations, if appropriate actions are not taken.

Identifying and supporting consumers in vulnerable situations is critically important at all stages of the consumer journey, and we urge BEIS to consider the forthcoming **BS ISO 22458 Consumer Vulnerability: requirements and guidelines for the design and delivery of inclusive service** - throughout the implementation of these reforms.

b) Enabling the development of inclusive standards (in development)

BSI Flex 236, currently entitled "Enabling the development of inclusive standards – understanding the role of data and data analysis – Guide" is sponsored by BEIS, who are also active on its Advisory Group. It aims to foster future standards which do not disadvantage any groups in society, as well as redress historical inequities resulting from existing standards.

While Flex 236 will specifically target standards makers, the thought processes that it recommends will also be highly applicable in other contexts, including the drafting of regulations, guidance and codes of practice. See our response below to Question 46.

c) Online Marketplace Monitoring (potential new standard)

To define good practice and set out processes for any platform provider to monitor the behaviour of third parties on platforms, prevent poor behaviour, minimise harm and enforce rules. This could have a wider coverage than just marketplace transactions and cover misinformation, copyright breaches, fake reviews, scams, specifying a process by which online platform can remove/ block harmful content.

d) Virtual Consumer Markets (potential new standard)

Virtual consumer markets are constantly evolving. The e-commerce innovations that are already emerging suggest a further blurring of boundaries between on and offline experiences, and between the different channels and functions of online services.

To future proof consumer protection, a new standard could encompass all aspects of consumer transactions in the digital environment, regardless of type or channel, covering all issues related to platform responsibility, dealing with third party traders, information, data security, fair choices, environmental impacts etc.

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3. CPIN RESPONSES TO SPECIFIC QUESTIONS

Q.42 Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

AND

Q.45. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

Yes. CPIN believes that commissioning of fraudulent reviews on any scale has the potential to influence consumer purchasing decisions. This practice is misleading and unfair and can lead to significant harm by encouraging consumers to purchase goods and services that may be poor quality, unfit for purpose and unsafe. It is important that there are rules in place to stamp out fake reviews and ensure effective penalties for those found to be breaching the law.

However, it is not just retailers/ businesses that should take responsibility for fake reviews. The role of review administrators – those that collect, manage or publish reviews – is incredibly important. Many reviews are hosted by intermediary platforms, and these must take responsibility too.

CPIN supports the Which? Campaign, launched in September 2021, which calls for tougher legislation to make tech giants take responsibility for harmful content on their platforms, which includes fake reviews. If new rules are implemented to address the submission, commissioning or facilitating of fake reviews, CPIN would like to see these aligned with tougher rules that address the full range of online content – from fake reviews to scams and sale of dangerous products – that can lead to consumer harm.

Q.44. What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?

Online reviews have the power to strongly influence consumer behaviour and impact businesses. Millions of consumers check reviews before deciding which products and services to buy, spending an estimated £23 billion each year as a result. On the plus side, online reviews can empower and inform consumers, support good business practices and drive industry improvements.

However, Which? research shows that fake reviews are widespread and have the potential to lead to significant consumer harm. These fraudulent reviews (written by consumers, businesses or their competitors) can mislead consumers, damage a business's reputation and

impact sales. It is vital to both consumers and businesses that online reviews are managed with transparency and integrity to ensure that information is fair, accurate and trustworthy.

CPIN would like to draw attention to the international standard **BS ISO 20488:2018 Online Consumer Reviews - principles and requirements for their collection, moderation and publication,** which could underpin new and tougher legislation in this area**.** The standard details good practice for review administrators in the collection, moderation and publication of online consumer reviews including:

- Site rules (T&Cs) for submitting content, which set a benchmark for moderation and sanctions;
- How to maintain privacy and security of consumers' personal information;
- Fair, unbiased and consistent calculation of ratings and reviews, with transparency in publication (e.g. incentivised/ paid-for reviews);
- Effective moderation of reviews;
- How to deal with post-publication editing and removal of reviews;
- How to deal with fake reviews and disputes about content.

For more details about the key requirements of the standard, see CPIN's leaflet.

Q46. Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

A 2021 CPIN study into Virtual Markets highlighted that the choice architecture of many online platforms is designed to push consumers towards particular outcomes and obfuscate meaningful choice.

We all know that businesses collect huge amounts of personal data from consumers and a key area of concern for CPIN and consumer organisations is what AI allows businesses to do with that data. It can be used to restrict choices, manipulate decisions – for example, an individual might be offered different prices, a different selection of goods, different ads based on what companies know about their shopping habits, income and credit history.

These issues have been highlighted in work by the Norwegian Consumer Council on dark patterns ('You can log out, but you can never leave', 'Deceived by design' and 'Every step you take').

CPIN believes that there is potential for a new standard, **Fairness by Design**, which could provide details of good practice for businesses on what processes to follow to ensure that fairness is achieved across all digital applications. Guidance for businesses could help to minimise unintentional harm and improve consumer outcomes by specifying requirements for:

- Fair and inclusive design of digital systems to prevent bias and discrimination and maximise benefits for consumers (e.g. to improve access to information or identify vulnerability);
- Regular assessment of digital systems and processes for their actual and potential impact to cause harm;

- Taking corrective action in a timely manner if there is evidence that digital systems and processes create bias or discrimination, or cause harm to consumers.

Q53. How common is the practice of using terms and conditions to delay the formation of a sales contract?

AND

Q54. Does the practice of using terms and conditions to delay the formation of a sales contract cause, or have the potential to cause, detriment to consumers? If so, what is the nature of the detriment or likely detriment?

CPIN believes that online terms and conditions (T&Cs) have the potential to lead to significant consumer harm.

Imbalance of power

There is currently an imbalance of power, with many T&Cs drafted by organizations unduly biased towards their own interests and to the detriment of consumers.

All online retailers apply a set of T&Cs to govern the sale, which must be 'agreed to' in advance of the service delivery. These contracts are known as 'adhesion contracts' because, unlike traditional contracts, they are not negotiated between the two parties. As businesses draft the T&Cs and can set their own terms, these contracts can exacerbate the weaker position the consumer holds in the relationship, making it more likely that detriment will occur.[1]

Difficult to understand

The clarity of T&Cs is a matter of increasing relevance and importance to consumers as global markets and e-commerce flourish. The UN Guidelines for Consumer Protection (revised 2015) state in Guideline 14d) that national policies should encourage: 'clear concise and easy to understand contract terms that are not unfair'.

Online T&Cs can be onerously complicated and long, creating confusion and deterring consumers from reading them. It would take a little over three hours to read, let alone understand, the terms of service and privacy notices of the five most popular social media and messaging apps.

The Swedish Consumers' Organisation found that, when printed out, Airbnb's T&Cs are 39 metres long. Consumers International estimates that it would take the average person 76 working days to read all the T&Cs that they encounter online in one year. [2]

When consumers do try to engage with T&Cs, the documents often seem impenetrable. A recent paper on online harm and manipulation highlighted that privacy policies frequently require college-level reading ability, yet the average reading ability is much lower than this.

Accepting terms without full understanding or consent

Consumers International says that the result of complex, lengthy and impenetrable T&Cs is that many consumers often absentmindedly tick a box to 'agree' and less than 1% click to view the full text of contractual documents online. It claims that: 'it is now well understood that hardly anyone reads the small print before they click agree'.

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[1]BEUC study 2017 'The Challenge of protecting EU consumers in global online markets', https://www.beuc.eu/publications/beuc-x-2017-122_the_challenge_of_protecting_eu_consumers_in_global_online_markets.pdf

[2]Consumer International, 'Building a digital world consumers can trust' March 2017

A 2016 study by the European Commission showed similar findings[3] , saying that T&Cs are often long and written in complex legal jargon and consumers often have no other choice than to accept T&Cs if they want to complete the purchase. 'However, blindly accepting T&Cs may be costly, because consumers may end up with a contract they would not have signed if they had been aware of the content.'

It is strongly suspected that obscure language and excessive length of T&Cs has been used deliberately by some organizations to confuse or overwhelm consumers. In summary, it is unrealistic to expect consumers to read the T&Cs of every online retailer they do business with, let alone understand them. However, this means that they often enter contracts without being fully aware of the conditions they have agreed to be legally bound by. A lack of understanding of T&Cs leads to less informed consumer decisions and increases the likelihood of consumers experiencing detriment. For example, being unaware of additional charges; early termination fees; lack of cancellation rights; or how personal data will be shared. Consumers in vulnerable situations may be at a greater risk of harm.

Reliance on T&Cs to form contracts esp. cross border

Although the UK has laws that prohibit unfair contract terms, legal requirements and tests for unfairness vary globally. In many cases, especially cross-border, a consumer's legal protection relies solely on the T&Cs provided by the seller, based on their jurisdiction.

As many online interactions take place cross-border, solutions should be cross-border too.

New international standard for online T&Cs

CPIN believes that an international standard to provide guidance on best practice for T&Cs could help to improve positive outcomes for global consumers and increase confidence in businesses. CPIN proposed a New Work Item to ISO COPOLCO, citing the BEIS best practice guidance for improving consumer understanding of contractual terms, which was endorsed by its members.

International standard 'ISO PC 335 Guidelines for organizations to increase consumer understanding of online terms and conditions', was approved unanimously by ISO member states and work on this standard will start soon. BSI will host the secretariat for this important work.

Q55. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

Yes. Access to effective systems of redress is a key consumer principle that underpins CPIN's work. Individual consumers often do not have the resources to pursue breaches of consumer protection law through the courts, even where they have a legitimate case. Imbalances of power place them in a weaker position than the businesses they are in a dispute with.

Collective action can be an effective way of achieving satisfactory redress, levelling the playing field between consumers and businesses. However, collective action is currently limited in scope, in terms of how the harm occurred and the remedies available.

CPIN would like to see collective redress rights extended to consumer protection law – as an additional option to private enforcement - to make it easier for consumers to seek effective

[3]http://ec.europa.eu/consumers/consumer_evidence/behavioural_research/docs/termsconditions_factsheet_web_en.pdf

redress when things go wrong and benefit from a wider range of remedies including: compensation, repair, replacement, price reduction, contract termination or reimbursement or even injunctions to stop harmful behaviour.

This would help to address the current imbalance of power and allow consumers to achieve fair and consistent redress in situations and markets where there is evidence of widespread and significant harm, for example in the housing sector.

CPIN would be pleased to work with the CMA to explore standards solutions that would help them in their regulatory role.

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

See response in 1.a) above regarding forthcoming **BS ISO 22458 Consumer Vulnerability: requirements and guidelines for the design and delivery of inclusive service**. To better understand the needs and experiences of vulnerable consumers it is essential to collaborate with individuals who have lived experience of vulnerability and the groups that represent them.

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

Q71. How can government best encourage businesses to comply with these changes?

CPIN strongly supports the existence of independent and accessible ADR schemes – across all consumer markets - to provide effective dispute resolution for those who have been unable to resolve disputes directly with business. It is important that schemes are available to all consumers equally, to prevent barriers to access, particularly for those in vulnerable circumstances.

CPIN would like to draw attention to ISO 10003:2018 - Quality management — Customer satisfaction — Guidelines for dispute resolution external to organizations which provides guidance on how to plan, design, develop, operate, maintain and improve an effective and efficient dispute-resolution process for complaints, that have not been resolved by the organization.

Businesses should be encouraged to better understand the value of consumer feedback in:

- identifying areas of improvement,
- improving products and services,
- increasing efficiency and
- reducing incidence and cost of complaints.

Businesses that have the right mindset towards complaints, and understand the value of consumer feedback, will be more likely to comply with changes to ADR. Businesses should be encouraged to follow good practice through awareness and implementation of customer satisfaction standards (ISO 10000 series) to help them improve their internal complaints handling processes, so that issues can be deal with effectively before ADR becomes necessary.