

CMA response to MCS’s consultation on proposed MCS scheme redevelopment

Background

1. The Competition and Markets Authority (CMA) is the UK’s principal competition and consumer protection authority. It is an independent non-ministerial government department and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
2. The CMA’s key strategic priorities include:²
 - (a) Ensuring that people can be confident they are getting great choices and fair deals – by protecting people from harmful practices; and
 - (b) Continuing to take action to help accelerate the UK’s transition to a net zero economy and promote environmental sustainability – including through a focus on energy efficiency.
3. In line with this, the CMA launched a review of consumer protection in the UK green home heating³ and insulation⁴ sector in September 2022. As well as considering the consumer experience of buying products and businesses’ practices in marketing and selling these, we assessed the landscape of standards bodies⁵ (including MCS) which oversee quality and consumer protection standards for member businesses, and their effectiveness in protecting consumers.
4. The CMA welcomes the opportunity to respond to the [MCS consultation on proposed changes to the MCS scheme](#). Our response is structured into two main sections: we first provide general feedback on the proposed changes

¹ The CMA’s statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

² [CMA 2023/24 Annual Plan](#).

³ The following green heating products were included in the scope of the CMA’s review: heat pumps, solar products, biomass boilers and ‘hydrogen capable’ boilers.

⁴ The CMA recognises that MCS does not cover insulation products or their installation.

⁵ The CMA defines ‘standards bodies’ as organisations that set quality and consumer protection standards, certify or accredit businesses against those standards and monitor compliance by businesses in the green heating and insulation sector. Further details are set out on pp67-69 of our [findings report](#).

followed by comments on some specific proposals. Our response is informed by our work on consumer protection in the green heating and insulation sector.

Summary of the CMA's findings on the standards landscape

5. In May 2023, the CMA published its [findings report](#). Standards bodies play a key role in providing further protections and safeguards for people (in addition to those under consumer protection law), such as ensuring that member businesses are competent to carry out the work and treat consumers fairly, among others. This is particularly valuable given the fragmented and developing nature of the green heating and insulation sector.
6. However, we found that while standards bodies in the sector play an important role in helping to increase consumer trust, the standards landscape is not working as effectively as it could, and levels of protection vary in some important areas. In summary:
 - (a) The landscape is complex and can be confusing for people to navigate, which can mean that they miss out on the benefits. People also have low awareness of standards bodies which can create confusion about the protections that are available, how to take advantage of these and how much weight to put on a business's membership of a standards body.
 - (b) Some aspects of standards bodies' protections – such as the levels and robustness of standards (including compliance monitoring processes), complaints processes and financial protections – need to be strengthened to safeguard consumers more effectively.
7. The CMA published a set of [good practice principles](#) for standards bodies alongside our findings report, to help improve the level of protections and ensure consistently high standards of consumer protection. We called on standards bodies to review their current practices against these principles and, where necessary, implement any changes to meet them. The principles cover:
 - 1. Effective promotion:** Standards bodies to actively promote their activities to help ensure consumers understand their scope and purpose and the benefits of using a member business.
 - 2. Robust vetting and monitoring:** Standards bodies to conduct robust compliance checks on applicants and, on an ongoing basis, their members, to ensure they meet (and continue to meet) requirements.
 - 3. Smooth dispute resolution:** Standards bodies to actively oversee and assist consumer complaints and dispute resolution to make the process as

straightforward as possible and to help parties reach a resolution in a timely manner.

4. Effective use of sanctions: Standards bodies to ensure that any potential non-compliance is investigated and dealt with as effectively, impartially and quickly as possible. Where appropriate, a sanction decision will be communicated to consumers.

5. Strong financial protections: Standard bodies to ensure that consumer deposits and guarantees are effectively protected and the terms of these protections are made clear to consumers.

8. The principles, together with the CMA's findings report, have informed our response to the MCS consultation. We note that our review did not focus on individual green heating products, so our response is informed by a general analysis and understanding of products in the sector.⁶
9. In the light of our findings on the standards landscape, we welcome the fact that MCS is reviewing its scheme and its stated intention to refer to our report.⁷
10. Our report also called on UK government to consider carrying out a holistic review of the standards landscape to look at how it can be simplified and further improved in the areas of concern we identified. We note that it is not within the CMA's powers to mandate the structure of the MCS scheme or, more broadly, to deliver direct changes to the standards landscape in the green heating and insulation sector – which are likely to require regulatory or legislative change.⁸ We will therefore continue to engage with UK government on this matter.

General comments on MCS's proposed changes

11. We have set out several considerations to inform MCS's proposed changes to its scheme, with the objective of helping to ensure good outcomes for consumers through a high level of consumer protection. These relate to:
 - (a) Impact of changes on the overall level of consumer protections;
 - (b) Mitigating potential design and delivery risks; and
 - (c) Wider implications for the standards landscape.

⁶ Our review was completed prior to the launch of the MCS consultation and therefore we did not consider MCS's proposals in detail as part of that work.

⁷ MCS consultation document, page 32.

⁸ The CMA could directly intervene in specific circumstances where it considered that a standards body had breached consumer protection law, for example by promoting an unfair commercial practice in a code of conduct.

12. The CMA strongly encourages MCS to take these into account, and more broadly to review its current practices and proposed changes against the CMA's good practice principles.
13. MCS might also wish to consider and, where necessary, seek advice on the nature and extent of any potential implications for competition arising from its proposals. We have not conducted a competition assessment as part of our response.

Maintaining and enhancing the level of consumer protections

14. The CMA welcomes the stated aim and principle of the proposed changes, namely 'to place consumer protection at the heart of the scheme' through improvements in transparency, consistency, and surveillance. These areas of focus reflect the areas of concern we identified in our assessment of the standards landscape.
15. We also note MCS's intention to 'create industry leading customer protections'. It is crucial that, in practice, any changes to the MCS scheme are delivered in a way that at the least maintains and, preferably, enhances existing levels of consumer protection. This will be important to ensure people are treated fairly and to help increase consumer confidence and trust.
16. It is the CMA's view that MCS should therefore carefully assess the impact on, and outcomes for, consumer protection from its proposed changes, taking into consideration the wider standards landscape and consumer protection law. We provide further comments below in relation to some of the specific proposals (see paragraphs 23 – 51).

Mitigating potential design and delivery risks

17. Given the extent of the proposed changes (and notwithstanding any extended transition period), MCS will need to carefully consider the design and delivery (and associated risks) of its proposals. We further note that some of the proposals (for example, new financial protections) are currently at a relatively early stage of thinking and therefore further development of their design is needed.
18. We would encourage MCS to consider:
 - (a) Its capacity and expertise to expand existing, or take on new, functions (and, particularly, to take these on at the same time); and the practical implications arising from this.

For example, the proposal for MCS to take on responsibility for conducting checks to ensure contractor compliance with the new Scheme Rules and Customer Duty.

It is important that MCS thoroughly assesses whether its staff have the necessary expertise, training and knowledge to be able to undertake checks to ensure businesses are treating their customers fairly, including understanding the extent to which their marketing, sales activities and contracts are compliant with their consumer law obligations. MCS staff will also need to be equipped to provide information and advice to certified businesses to support their compliance. There is otherwise a significant risk that consumer protection could be overlooked or become a ‘tick-box’ exercise.

- (b) MCS’s ability to scale up the proposed changes to its scheme, given the expected expansion of the sector to help achieve UK government’s commitment to Net Zero by 2050. In particular in relation to the proposals on compliance monitoring and a remedial fund of last resort, taking into account both the need to maintain a high level of consumer protection and any potential regulatory costs to businesses.
 - (c) Ensuring that its proposals are compliant with any specific legal and/or regulatory requirements that may be applicable, including both UK competition and consumer law.
19. To help mitigate some of the potential design and delivery risks, we think there is considerable merit and value in MCS testing or piloting some of the proposed (and more substantive) changes to help ensure their effectiveness, prior to full implementation.
20. More broadly, we would stress the importance of early and ongoing evaluation to ensure that changes have been implemented effectively and the overall scheme is delivering good outcomes for consumers. Evaluation will allow MCS to make adjustments as necessary, for example to refine the risk measures, alter the minimum frequencies of compliance inspections, update Scheme Rules etc as necessary. We consider there would also be significant benefit in MCS submitting its scheme to periodic review/audit by an independent third party as part of a holistic evaluation approach, to ensure its effectiveness.

Considering the potential implications for the wider standards landscape

21. The CMA’s findings report highlighted that the standards landscape is complex for people to navigate, which can mean that they miss out on the benefits.

22. We think it is important that MCS continues to engage with other standards bodies, UK government/regulators and relevant stakeholders (including through its Stakeholder Advisory Group) on the development and implementation of the more detailed aspects of its proposals, to ensure that any changes do not inadvertently lead to further complexity for consumers or unintended consequences for the sector.

Comments on specific proposals

23. Despite the considerations and potential risks expressed above, the CMA can see potential benefits to several of MCS's reform proposals. We have identified below a number of considerations which we encourage MCS to factor into the design and delivery of its proposals to help ensure their effectiveness and to mitigate potential risks of undermining consumer protection in the green heating and insulation sector.

Proposal 1: New scheme structure

Customer duty

24. MCS proposes to form a new Customer Duty for contractors. As part of this, it would no longer mandate membership of a Consumer Code (while recognising that contractors may choose to continue to be a Code member).
25. The CMA supports the principle that consumer protection should be an integral part of scheme membership. As highlighted above, the CMA is strongly of the view that any scheme changes should at the least maintain and, preferably, enhance the overall levels of consumer protection in the sector. We are concerned that the proposal to no longer mandate membership of a Consumer Code could potentially lead to gaps or reductions in protections or, in some cases, add further complexity to the standards landscape.
26. Therefore, in considering whether to proceed with this change, we strongly encourage MCS to assess the full implications (including against existing Consumer Code requirements) and put in place appropriate measures as necessary to ensure consumer protections remain at the same or, ideally, greater levels. This should include consideration of practically delivering, monitoring and enforcing the new Customer Duty and Scheme Rules. We note that it is up to MCS as to how it chooses to deliver consumer protections and ensure these are not reduced.

Scheme approval checks

27. MCS proposes to perform its own upfront and ongoing Scheme Approval checks to establish compliance with its new Scheme Rules and Customer Duty.
28. The CMA's good practice principle 2 stresses the importance of conducting checks robustly and on an ongoing basis. The CMA considers that MCS taking on its own checks could result in more consistent vetting and monitoring. It will be important to ensure that sufficient checks are carried out on contractors' general integrity, financial stability and sales practices and to a robust standard. This will be particularly relevant should MCS remove mandatory Consumer Code membership, given that these types of check are currently carried out by or on behalf of the Codes as part of their own requirements.

Proposal 3: Risk-based compliance assessments

29. MCS proposes to mandate risk-based compliance assessments that are focused on evidencing a contractor's 'delivered quality', moving away from a focus on contractors' back-office systems and paperwork.
30. The CMA's good practice principle 2 covers robust vetting and monitoring. We consider risk-based approaches that determine the regularity and/or scope of checks are good practice – in particular, by monitoring members more closely and more often in some cases and focusing more intensive monitoring on areas, including types of product, complexity of installation and business practices, where consumers may be at higher risk of detriment.
31. The CMA therefore strongly supports the principle of a proportionate risk-based compliance approach and welcomes MCS's plans for assessing the quality of installations through its Compliance Risk Model. This should allow more resources to be focused on inspecting and assessing contractors that pose a higher risk to consumers and therefore help to mitigate consumer harm where this is most likely to arise.
32. However, it is important that:
 - (a) The proposed risk assessment formula to determine a contractor's risk rating/level is based on a robust set of risk measures. As well as the kinds of risk measures set out on pages 14-15 of the consultation document, this might also include the relative risks associated with different types of green heating technologies; and

- (b) The minimum volume and frequency of compliance assessments (including installation/site assessments) is set at a sufficiently robust level to be able to quickly identify and address non-conformities and prevent future harm.
33. It is also important that MCS has strong oversight of the certification bodies that conduct the technical compliance assessments, both directly and through the regular UKAS accreditation process, to ensure checks are being carried out robustly and in accordance with scheme requirements (see CMA principle 2e).

Post-installation contact with every customer

34. MCS further proposes to deploy a proactive programme of post-installation contact with every customer who purchases an MCS certified installation, irrespective of whether they use a government scheme.
35. The CMA findings report noted that some standards bodies were not always collecting customer feedback as part of their monitoring practices, which was potentially a missed opportunity to inform a holistic assessment of business activities. The CMA's good practice principle 2 refers to the use of tools and techniques that draw on direct consumer experiences – including consumer surveys and mystery shopping – to help enable robust compliance checks.
36. The CMA therefore welcomes MCS's proposal to proactively capture an early view on customer satisfaction. This will provide MCS with another means to speedily identify and address potential compliance issues, and – in accordance with CMA good practice principle 1 – may help to promote and raise consumer awareness of the MCS brand too.
37. However, consideration should be given to how MCS could capture problems that may only emerge sometime after the installation, such as where a product is installed during the summer but problems only become apparent when the home heating product is fully utilised in the winter.
38. Given the lack of awareness and understanding of complaints and dispute resolution – see below for details – post-installation contact might also provide an opportunity to remind consumers about the complaints process should they need it.
39. The CMA is also of the view that it would be valuable for MCS to consider how it will gain a picture of pre-installation sales practices (for example through additional customer contacts or mystery shopping).

Proposal 7: Centralised complaint management

40. MCS proposes to take a central role in managing customer complaints and disputes, including a single point of contact for customers and an assigned case manager. MCS also intends to extend and enhance its existing complaint handling capability.
41. The CMA's report found that the complaints process was generally confusing for consumers. We found it can be unclear who to complain to as it often depends on the nature of the problem, and that the lack of oversight of the complaints process can add to consumers' difficulty navigating the process. The CMA set out its expectations for smooth dispute resolution in its good practice principle 3.
42. We consider that MCS's proposal to develop a new, centralised complaints management capability will bring benefits to consumers by providing direct support as they navigate the process, and by helping to provide some clarity (for example through a single MCS point of contact). There may also be potential benefits where this change improves the information that MCS gathers on the nature and causes of installation problems, to help inform risk-based compliance assessments.
43. However, we would also urge MCS to consider how this proposed change interacts with the wider standards landscape – as there is a risk that the complaints process ends up inadvertently being more, not less, complex for consumers. In particular, where an MCS certified contractor also chooses to be a member of a Consumer Code, it is not clear how the centralised complaints management process would work in practice, and whether a consumer would be expected to approach both the Consumer Code or MCS in the first instance where the complaint related to a contractual issue or sales practice.
44. It is therefore crucial that there are protocols in place reflecting potential interactions with other standards bodies, and clear and accessible communications to consumers about the practical implications. We would also encourage the sector to consider having a single oversight body for complaints management to help simplify and improve the consumer experience.

Proposal 8: Implementation of new financial protections

45. MCS proposes to introduce the 'MCS Guarantee' (fund of last resort) that would offer financial support to help remedy installation problems that a contractor is

unable or unwilling to fix, and recover deposits paid for work that does not proceed because of a failure of the contractor.⁹

46. The CMA's findings report encouraged standards bodies to review their financial protection mechanisms to ensure that they are fit for purpose. We also saw value in the sector considering remedial funds or equivalent options, where this provided a better option for consumers to existing protections. CMA good practice principle 5 covers the need for strong financial protections (including of deposits and guarantees).
47. The CMA notes that MCS is considering:
- 'Remediation' (so installation problems get put right directly);
 - An extended term period for the guarantee ('not less than 6 years', which would be consistent with the current requirements under Competent Person Schemes);¹⁰
 - Wider coverage than just where the contractor ceases to trade, including situations where the contractor cannot or will not fix the problem; and
 - Funding remediation where the physical fault is caused by defects in a certified contractor's installation design (in addition to workmanship) or where installations are not performing in line with their promised system performance as designed.

The CMA would, in principle, welcome these added protections for consumers compared to what MCS's current scheme provides.

48. The CMA is also pleased that MCS is considering extending the Guarantee to installations that were not registered with MCS when they should have been. The CMA is strongly of the view that consumers should not be disadvantaged because the MCS-certified contractor failed to register (and especially here because they cannot conduct their own check to confirm registration).

⁹ Our understanding from the consultation document (bullet 5 on page 28, and the example given at page 29) is that the MCS Guarantee would include deposit protection, for example in situations in which a contractor has taken a deposit from the customer and then ceased to trade. Our comments reflect this understanding.

¹⁰ Condition 17 of the Conditions of Authorisation for Competent Person Schemes requires the scheme operator to ensure consumers are provided with appropriate financial protection to put work to dwellings right, which is non-compliant with the Building Regulations, where the original installer cannot do so (because they are no longer trading). Financial protection must be provided for a minimum of six years from the date of completion for work to dwellings.

49. We note that MCS is still developing the detail of the fund. However, in developing its design (or considering equivalent alternative options) we would urge MCS to take into account the following:
- (a) Ensuring the proposed fund complies with any relevant regulatory and other legal requirements;
 - (b) The need for clear governance arrangements to ensure the ongoing financial stability of the fund;
 - (c) The need for strong protections for customer deposits and advanced payments;
 - (d) Having a clear claims process for consumers and rights of appeal where a claim has been rejected;
 - (e) Careful consideration of the appropriate level of the limit to the full cost of remediation (currently proposed at being no more than £20,000) to ensure it is adequate and we would suggest the appropriateness of the level is kept under ongoing, regular review;
 - (f) How to mitigate the risk that some unscrupulous certified contractors may seek to exploit the fund by refusing to remediate problems with installations or by closing down their business, knowing that the problem will be rectified through the fund. It is also important that contractors who have benefited from the original payment for the installation are held to account for the 'delivered quality' of their certified installations (we note that the proposed new Contractor Agreement will remain in force even when a contractor loses or decides not to maintain their certification, but is unclear how MCS would enforce the agreement).
 - (g) How the proposals would interact with any similar financial protections provided by other standards bodies.
50. As the green heating and insulation sector grows, any remedial fund (or equivalent option) would also need to be sustainable. The CMA would be concerned if the fund added significant financial burdens on member-businesses (compared to the current regime's insurance-backed guarantees).
51. Given the limitations we identified with some existing financial protections, it is also critical that the coverage of any fund is clearly explained to consumers, including any exemptions or requirements, limits of coverage, and rights of appeal.