

## **PART 8 OF THE ENTERPRISE ACT 2002 ('EA02')**

### **UNDERTAKINGS TO THE COMPETITION AND MARKETS AUTHORITY ('CMA') UNDER SECTION 219 OF THE EA02**

**Wowcher Limited**, company number 04264984, of Dalston Works, 69 Dalston Lane, E8 2NG;

**Wowcher West Limited**, company number 11934196, of Dalston Works, 69 Dalston Lane, London, E8 2NG; and

**LivingSocial Limited**, company number 07227708, of Dalston Works, 67 Dalston Lane, London, E8 2NG;

(together, '**Wowcher**');)

voluntarily give the following undertakings to the CMA under section 219 of the EA02 (these '**Undertakings**').

For the avoidance of doubt, these Undertakings do not amount to an admission that any person has infringed the law.

### **UNDERTAKINGS**

In accordance with section 219(4) of the EA02, Wowcher undertakes to the CMA:

- not to continue or repeat any conduct which contravenes paragraphs 1 to 34 below;
- not to engage in such conduct in the course of its business or another online-based marketplace business over which Wowcher has Control; and
- not to consent or connive in the carrying out of such conduct by a body corporate with which it has a special relationship (within the meaning of section 222(3) of the EA02).

### **Interpretation**

Where a date or time period is specified, the obligation must be met by 17:00 in the time zone of the UK on the relevant day.

Unless an alternative meaning is expressly provided for, any reference to 'day' means calendar day. Where a deadline falls on a non-working day, the reference shall be taken to mean the deadline falling on the following working day.

Defined terms are set out in Schedule 1. Where applicable, the singular includes the plural and vice versa.

### **Part 1 – Countdown Timers**

1. Wowcher shall comply with the Undertakings set out in this Part 1 no later than sixty (60) days following the Effective Date.
2. Wowcher shall remove and not replace the Deals Refresh Timer.
3. Wowcher shall ensure (including by making reasonable modifications where necessary) that any Countdown Timers used on the Online Selling Channels:
  - a) do not make claims that give Consumers a false impression that they must act quickly to avoid missing out;

- b) are not otherwise Misleading; and
  - c) fulfil the requirements set out at paragraph 4 (Deal/Product specific timers), paragraph 5 (category timers), or paragraph 6 (Checkout Timers).
4. Wowcher shall ensure (including by making reasonable modifications where necessary) that any Countdown Timers which are Deal or Product specific (other than any Checkout Timer):
- a) are Clear;
  - b) specify Prominently which Deal(s) and/or Product(s) the Countdown Timers apply to;
  - c) are displayed only on pages that are directly relevant to the Deal(s) and/or Product(s) to which the Countdown Timers apply;
  - d) state Prominently which characteristics of the Deal(s) and/or Product(s) will change when the Countdown Timers conclude; and
  - e) are not used where the Deal(s) and/or Product(s) will continue to be offered on substantially the same terms immediately or shortly after the Countdown Timer concludes, including where the Deal(s) and/or Product(s) are likely to be restocked quickly.
5. Wowcher shall ensure (including by making reasonable modifications where necessary) that any Countdown Timers which apply to a category or categories of Deal(s) and/or Product(s):
- a) are Clear;
  - b) specify Prominently which category or categories of Deal(s) and/or Product(s) the Countdown Timer applies to (e.g. 'all products sitewide' or 'garden furniture'), and whether any exclusions apply;
  - c) state Prominently which characteristics of the Deal(s) and/or Product(s) falling within the category or categories to which the Countdown Timer applies will change when the Countdown Timer concludes; and
  - d) are not used where a substantial proportion of the Deal(s) and/or Product(s) falling within the category or categories to which the Countdown Timer applies will continue to be offered on substantially the same terms immediately or shortly after the Countdown Timer concludes.
6. Wowcher shall ensure that any Checkout Timer:
- a) operates so that a Product added to a Consumer's basket, to which the Checkout Timer relates, is reserved for that Consumer at the price which prevailed when the Product was added to basket until the expiry of that Checkout Timer;
  - b) is of a duration that is sufficient to ensure that the Checkout Timer does not give rise to a false impression that Consumers must act quickly to avoid missing out, having regard to the nature of the Product(s) in question; and
  - c) specifies Prominently that the Product is reserved for the duration of the Checkout Timer.

## Part 2 – Marketing Claims

7. Wowcher shall comply with the Undertakings set out in this Part 2 no later than sixty (60) days following the Effective Date.
8. Wowcher shall either:
  - a) remove Marketing Claim(s) from all Online Selling Channels that do not comply; or
  - b) make reasonable modifications to Marketing Claim(s) to ensure that they do comply, with the remaining provisions of this Part 2.
9. Wowcher shall ensure that any Marketing Claims used on the Online Selling Channels:
  - a) do not make claims that give Consumers a false impression that they must act quickly to avoid missing out; and
  - b) are not otherwise Misleading.
10. In particular, Wowcher shall ensure that any Marketing Claims:
  - a) are Clear;
  - b) disclose Prominently (or via a 'hover over' or a webpage linked in the same location as the Marketing Claim, provided the Qualifying Information Requirements are met) the definition of and any material limitations / qualifications to the statement; and
  - c) accurately reflect, in relation to a particular Deal and/or Product:
    - for Scarcity Claims:
      - (i) Wowcher's original stock levels;
      - (ii) Wowcher's remaining stock levels; and
      - (iii) the rate and recency of Wowcher's sales;
    - for Popularity Claims:
      - (i) Wowcher's sales figures;
      - (ii) the rate and recency of Wowcher's sales; and
      - (iii) the relative popularity of the Deal and/or Product as compared to other similar Deals and/or Products over a recent time period.
11. Without prejudice to the generality of paragraph 10 above, and for additional clarity:
  - a) Marketing Claims that refer to sales figures must disclose in the text of the Marketing Claim the time period to which the statement relates. For example: 'Over # sold in March 2024' or '# bought in the last 24 hours'.

- b) Marketing Claims that refer to sales figures must accurately reflect the number of Products that have been refunded to Consumers exercising their cancellation rights under the CCRs or their right to reject under the CRA.
- c) Wowcher will not make Marketing Claims which are Popularity Claims in circumstances where the Deal and/or Product has not been sold in the past seven (7) days.
- d) Wowcher will not make Marketing Claims which are Scarcity Claims in circumstances where:
  - (i) Wowcher knows or has reasonable grounds to expect that the Deal and/or Product will be restocked within the seven (7) days after the date on which the last unit is sold; and/or
  - (ii) the Deal and/or Product is not estimated to stock out within the next seven (7) days (calculated by dividing the total remaining stock by the average daily sales from the previous seven (7) days).
- e) Where Wowcher wishes to use Marketing Claims which draw a comparison between Products (for example, 'best seller') it must:
  - (i) disclose in the text of the Marketing Claim the set of Products against which the product is being compared, and the basis for that comparison (e.g. 'Best seller – this is the best-selling option within this deal'); and
  - (ii) ensure that the Marketing Claim is not applied to more than 10% of the total Products currently available for Purchase on Wowcher's Online Selling Channels.
- f) Where Wowcher wishes to use a Marketing Claim which draws a comparison between Merchants (for example 'Top Rated merchant') it must:
  - (i) disclose by way of a 'hover over' or similar mechanic that a top rated merchant is one that is rated in the top 10% of over [5,000] merchants; and<sup>1</sup>
  - (ii) ensure that at any given time, the Marketing Claim is not applied to more than 10% of the Merchants currently offering Products available for Purchase on Wowcher's Online Selling Channels.
- g) The Marketing Claim 'New deal today' (and any similar claims) must only be shown on the first day the Product is available for Purchase on the Online Selling Channels.
- h) Wowcher must ensure that it is Clear whether any Marketing Claim relates to one Product, or to all Products within a particular Deal.

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<sup>1</sup> The number of merchants will change from time to time.

### **Part 3 – Statutory Rights**

#### **Provision of customer services functions**

12. Wowcher will, within one (1) month of the Effective Date, review and amend or update all Customer Service Documents and any associated staff training programs to ensure they are compliant with these Undertakings and with consumer protection law.
13. Wowcher will ensure that it regularly reviews, at least annually, the effectiveness of the Customer Service Documents and staff training programs and, where necessary, implements any change that is required to ensure compliance with these Undertakings and compliance with consumer protection law.

#### **Ensuring Consumers can exercise their statutory rights**

14. Wowcher shall comply with the Undertakings set out in paragraphs 15 to 21 below no later than thirty (30) days following the Effective Date.
15. Wowcher will ensure that Consumers are Clearly and Prominently informed, prior to completing a Purchase on the Online Sales Channels, that once they redeem a voucher a separate contract arises between the Consumer and the Merchant.
16. Wowcher shall continue to place a contractual obligation on Merchants to comply with applicable consumer protection laws, including the 'right to cancel' under the CCRs and a Consumer's refund rights under the CRA.
17. Wowcher shall continue to assist Consumers in obtaining their statutory rights from Merchants, including by liaising with Merchants to seek to remedy complaints, and by issuing refunds on a Merchant's reasonable request.
18. Where Wowcher wishes to offer Consumers a Credit Refund, it must comply with paragraph 21(b) below.
19. Wowcher shall continue to honour the Consumer's right of cancellation in respect of unredeemed vouchers under Part 2 CCRs, within fourteen (14) days of Purchase of the voucher. Where a Consumer exercises a right of cancellation in respect of unredeemed vouchers, Wowcher will ensure that reimbursement is made without undue delay, and no later than the end of fourteen (14) days after the day on which Wowcher is informed of the Consumer's decision to cancel the contract.
20. Wowcher shall continue to include in its contracts with Merchants a clause permitting Wowcher to issue, in its sole discretion, refunds to Consumers where: (i) the Merchant has failed to respond to Wowcher's request for information; and/or (ii) the Merchant has failed to deliver the Product or Service to the Consumer.
21. If Wowcher wishes to offer Consumers a Credit Refund (with or without an uplift) as an alternative to a Cash Refund:
  - a) Wowcher must ensure Consumers are informed: (i) that they may choose between a Cash Refund and a Credit Refund; and (ii) of the period of validity of the Credit Refund; and

- b) Wowcher must not issue Credit Refunds:
  - (i) for refunded Purchases with a value of one hundred GBP (£100) or more, with a period of validity of less than six (6) months; or
  - (ii) for refunded Purchases with a value of between one GBP (£1) and ninety nine GBP (£99), with a period of validity of less than three (3) months.

#### **Part 4 – VIP Membership**

##### **VIP Membership sign-up process**

22. Wowcher will not reinstate the VIP Membership pre-ticked box on its Online Selling Channels.
23. If Wowcher wishes to offer VIP Membership to Consumers then, by no later than seven (7) days from the Effective Date:
- a) it will ensure that it obtains the Consumer's express consent;
  - b) it will make available to Consumers in a Clear and Prominent way:
    - (i) the price for VIP Membership;
    - (ii) the main benefits included in VIP Membership; and
    - (iii) the duration of VIP Membership, including whether the membership auto-renews or not.
24. If VIP Membership is to be offered after the initial transaction, it must be made Clear to Consumers that: (i) the initial transaction has been completed; and (ii) VIP Membership is optional and has a separate user journey.

##### **Refunds to Affected Consumers**

25. Within thirty (30) days of the Effective Date, Wowcher shall:
- a) provide all Affected Consumers with a Credit Refund equivalent to the price that the Affected Consumer paid to Wowcher for their VIP Membership (the 'VIP Credit'); and
  - b) send each Affected Consumer an email and (where possible) a text message communicating:
    - (i) the reason for the VIP Credit;
    - (ii) the fact that the Affected Consumer may, if they wish, exchange the VIP Credit for a Cash Refund of the same amount within twelve (12) months of the VIP Credit being provided;
    - (iii) the bank or payment information required from the Affected Consumer to exercise a conversion from a VIP Credit to a Cash Refund; and
    - (iv) the deadline for choosing to withdraw VIP Credit as a Cash Refund.

26. Wowcher must not issue VIP Credit with a period of validity of less than twelve (12) months.
27. Where an Affected Consumer chooses to convert the VIP Credit to a Cash Refund pursuant to paragraph 25(b), Wowcher shall ensure that the Cash Refund is processed and paid to the Affected Consumer within fourteen (14) days from the date that the Consumer provides to Wowcher the necessary banking / payment information and details that Wowcher requires in order to process the same.
28. For the avoidance of doubt, where a Consumer has already been provided a full refund in respect of their VIP Membership (either as a Cash Refund or as a Credit Refund) then no further VIP Credit shall be granted.

## **Part 5 – Compliance and Reporting**

### **General**

29. Within seven (7) days following the Effective Date, Wowcher shall provide the name and contact details of the Wowcher employee whom the CMA should contact in relation to any requests regarding compliance with these Undertakings. Wowcher shall ensure that it continues to retain a staff member with the function of being this point of contact for the CMA, and provides up to date contact details for every such staff member to the CMA, for as long as Wowcher has obligations under these Undertakings.

### **Initial report**

30. Wowcher shall provide a written report to the CMA, due four (4) months from the Effective Date. This report shall include the following information:

#### *Implementation of Undertakings*

- a) An explanation of the changes made to implement the Undertakings.
- b) An explanation of how the Undertakings and changes have been embedded in internal policies, guidance, and training materials for employees, providing copies of such documents.

#### *Refunds to Affected Consumers*

- c) The total number of Affected Consumers.
- d) The total value of the VIP Credit owing to all Affected Consumers.
- e) The number of Affected Consumers who have received VIP Credit in accordance with paragraph 25(a) and the total value of that credit).
- f) The number of Affected Consumers who have requested to exchange the VIP Credit for a Cash Refund in accordance with paragraph 27 above, and the number of Affected Consumers who have received a Cash Refund.

### **Report on completion of refund process**

31. Wowcher shall provide a written report to the CMA, due no earlier than twelve (12) months and no later than fourteen (14) months from the Effective Date. This report must include the following information:

- a) The number of Affected Consumers who have received VIP Credit in accordance with paragraph 25(a) (and the total value of that credit).
- b) The number of Affected Consumers who have requested to exchange the VIP Credit for a Cash Refund in accordance with paragraph 27 above, and the number of Affected Consumers who have received a Cash Refund.

### **Ongoing reporting regarding Countdown Timers and Marketing Claims**

32. Wowcher shall provide written reports to the CMA:

- a) the first being due four (4) months from the Effective Date;
- b) the second being due eight (8) months from the Effective Date; and
- c) the third and final report being due twelve (12) months from the Effective Date,

for a total period of twelve (12) months.

33. In relation to Countdown Timers, these reports shall include the following information:

- a) a list of any new Countdown Timers used on the Online Selling Platforms in the last four (4) months;
- b) a description of how each new Countdown Timer works and an explanation of what occurs when the Countdown Timer concludes; and
- c) an explanation for the rationale and justification for each new Countdown Timer, and an explanation of how it complies with Part 1 of these Undertakings.

34. In relation to Marketing Claims, these reports shall include the following information:

- a) a list of all new Marketing Claims used on the Online Selling Platforms in the last four (4) months;
- b) an explanation of how each new Marketing Claim is 'triggered', including an explanation of the specific data sources relied upon; and
- c) an explanation for the rationale and justification for each new Marketing Claim, and how it complies with Part 2 of these Undertakings.

**BY SIGNING THESE UNDERTAKINGS, WOWCHER LIMITED, WOWCHER WEST LIMITED AND LIVINGSOCIAL LIMITED ARE AGREEING TO THE TERMS OF THESE UNDERTAKINGS.**

**IF, HAVING SIGNED THIS DOCUMENT, WOWCHER LIMITED, WOWCHER WEST LIMITED OR LIVINGSOCIAL LIMITED BREACHES ANY PART OF THESE UNDERTAKINGS, THE**



**COMPANIES ARE AWARE THAT THEY MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215 OF THE EA02.**

**THE CMA WILL CONSIDER VARYING OR TERMINATING THE UNDERTAKINGS, EITHER UPON REQUEST FROM WOWCHER LIMITED, WOWCHER WEST OR LIVINGSOCIAL LIMITED, OR UNDER THE CMA'S OWN INITIATIVE, WHERE THERE HAS BEEN A CHANGE OF CIRCUMSTANCES SUCH THAT THESE UNDERTAKINGS ARE NO LONGER APPROPRIATE IN DEALING WITH THE ISSUES THEY WERE DESIGNED TO REMEDY (FOR EXAMPLE, THESE UNDERTAKINGS ARE AFFECTED BY NEW LEGISLATION OR CHANGES IN MARKET CONDITIONS).**

## Schedule 1: Defined Terms

<b>'Affected Consumer'</b>	Means a Consumer who satisfies both of the following conditions:  (a) has Purchased the VIP Membership from Wowcher by means of a pre-ticked box; and  (b) has not already accepted a full refund of the VIP Membership either in credit or cash.
<b>'App'</b>	Means the official Wowcher or Living Social mobile application controlled or used by Wowcher which is directed towards Consumers in the UK and which is available for download on mobile devices.
<b>'Cash Refund'</b>	Means a refund provided by any bankable method of payment.
<b>'CCRs'</b>	Means the Consumer Contracts (Information, Cancellation, and Additional Charges) Regulations 2013.
<b>'Checkout Timer'</b>	Means the countdown clock used on the checkout page of the Online Selling Channels (including the use of the text 'this price may increase if you buy later', or equivalent).
<b>'Clear' and 'Clearly'</b>	Means information must be:  (a) clear;  (b) in plain language;  (c) easily understandable; and  (d) not Misleading.
<b>'Consumer'</b>	Has the meaning set out in the CPRs or subsequent legislation of a similar effect.
<b>'Control' and 'Controlled'</b>	Has the meaning given in section 1124 of the Corporation Tax Act 2010.
<b>'Countdown Timer'</b>	Means any form of countdown clock, countdown timer or countdown mechanism (whether by time or date) used on the Online Selling Channels.
<b>'CPRs'</b>	Means the Consumer Protection from Unfair Trading Regulations 2008.
<b>'CRA'</b>	Means the Consumer Rights Act 2015.
<b>'Credit Refund'</b>	Means an option Consumers are offered as an alternative option to a Cash Refund (for example, a 'Wowcher Credit').
<b>'Customer Service Documents'</b>	Means internal and external customer service policies, scripts, decision trees, training manuals, customer FAQs and other relevant documents.

<b>'Deal'</b>	Means an advertisement for a particular Product or group of Products on the Online Selling Channels.
<b>'Deals Refresh Timer'</b>	Means the countdown clock which is displayed following the text "Deals Refresh In*:" on the Online Selling Channels.
<b>'Effective Date'</b>	Means the date on which these Undertakings are signed.
<b>'Good'</b>	Means a tangible movable item advertised on the Online Selling Channels.
<b>'Marketing Claim'</b>	Means a claim made by Wowcher which consists of a phrase, symbol and/or other graphic which: <ul style="list-style-type: none"> <li>(a) is a Popularity Claim; and/or</li> <li>(b) is a Scarcity Claim; and/or</li> <li>(c) indicates, or otherwise implies, that a Merchant is popular, has positive attributes or has received positive feedback; and/or</li> <li>(d) indicates, or otherwise implies, that a particular Product and/or Deal is new to the Online Selling Channels.</li> </ul>
<b>'Merchant'</b>	Means any third-party seller of Goods or Services on the Online Selling Channels that is not part of or under the Control of Wowcher.
<b>'Misleading'</b>	Means a misleading action as defined under section 5(2) of the CPRs or a misleading omission as defined under section 6(1) of the CPRs, or subsequent legislation of a similar effect.
<b>'Online Selling Channels'</b>	Means the Website and App.
<b>'Popularity Claim'</b>	Means any claim that suggests the Deal and/or Product is popular, other Consumers are buying it, or the total sales or rate of sales is high. A list of Popularity Claims currently used by Wowcher is provided in Schedule 2.
<b>'Product'</b>	Means a Good or Service advertised on the Online Selling Channels.
<b>'Prominent' and 'Prominently'</b>	Means information shall be presented so that it is: <ul style="list-style-type: none"> <li>(a) noticeable to Consumers;</li> <li>(b) in respect of written communications, in a font, size, colour and position which enables the Consumer easily to identify, read, and understand the information;</li> <li>(c) in respect of oral communications, delivered at a speed and in a manner which enables the Consumer easily to understand the information; and</li> <li>(d) does not require the Consumer to take any additional action to access the information.</li> </ul>

<b>'Purchase' and 'Purchases'</b>	Means a Product or Products purchased via the Online Selling Channels.
<b>'Qualifying Information Requirements'</b>	Means that: <ul style="list-style-type: none"> <li>(a) the information does not contradict the Marketing Claim;</li> <li>(b) the information is presented Clearly and Prominently; and</li> <li>(c) the information is not information that must be disclosed in the text of the Marketing Claim itself, as set out in 11(a) and 11(e)(i).</li> </ul>
<b>'Scarcity Claim'</b>	Means any claim that indicates, or otherwise implies, that the Deal and/or Product has low stock remaining, has limited availability, is at risk of selling out, or is otherwise scarce, and/or that there is a need for the Consumer to act quickly to Purchase the Deal and/or Product. This includes claims that use stock data variables and/or rate of sales as triggers. A list of Scarcity Claims currently used by Wowcher is provided in Schedule 3.
<b>'Service'</b>	Means a service advertised on the Online Selling Channels.
<b>'VIP Credit'</b>	Has the meaning given in paragraph 25(a).
<b>'VIP Membership'</b>	Means a paid membership which offers to provide access to services such as prioritised customer service via live chat, WhatsApp and email and/or exclusive access to advantages such as Deals, discounts and credit benefits, exclusive offers and entry into prize draws - which may be described as "Wowcher VIP" or "LivingSocial VIP" or other materially similar wording.
<b>'Website'</b>	Means <a href="http://www.wowcher.co.uk">www.wowcher.co.uk</a> , <a href="http://www.livingsocial.co.uk">www.livingsocial.co.uk</a> , and any other website Controlled or used by Wowcher which is branded as "Wowcher" or "Living Social" and directed towards Consumers in the UK.
<b>'Wowcher Credit'</b>	Means a voucher or credit note issued by Wowcher that is capable of being redeemed against Purchases.

**Schedule 2: Popularity Claims used by Wowcher as at June 2024**

- I'm popular!
- Over [x] sold!
- BEST SELLER!
- IN HIGH DEMAND! - already [x] sold!
- [x] others bought this deal in the last 24 hours!
- [x] others have already bought this deal today!
- Selling Fast!

**Schedule 3: Scarcity Claims used by Wowcher as at June 2024**

- Limited Availability!
- ALMOST GONE – only [x] remaining!
- Running out