

Private Law Unit
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To: Private Law Unit

Consultation on the Scottish Law Commission report on review of contract law

The Competition and Markets Authority (CMA) is the UK's principal competition and consumer 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

The CMA has a role in providing information and advice to government and public authorities.² The CMA's advice and recommendations are made with a view to ensuring that policy decisions take account of the impacts on competition and consumers.

We welcome the opportunity to respond, through this letter, to the consultation on the Scottish Law Commission (SLC) report on review of contract law.^{3,4} In line with the consultation's objective to establish whether the landscape around contract law has changed since the SLC's last review in 2018, this response provides an update

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

² Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, "on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law)."

³ [Scottish Law Commission report on review of contract law](#).

⁴ The CMA previously responded to the Scottish Law Commission's Discussion Paper on Penalty Clauses in March 2017.

on relevant developments in consumer protection law, and in particular changes made by the Digital Markets, Competition and Consumers (DMCC) Act 2024.⁵

The DMCC Act, which received Royal Assent on 24 May 2024, grants new direct enforcement powers to the CMA in relation to consumer protection law. The UK government recently set out the steps it will take to implement the Act in a written statement to the UK Parliament.⁶

These new powers enable the CMA to investigate, determine and take enforcement action to address: (a) infringements of certain consumer protection laws, (b) breaches of undertakings given to the CMA, (c) breaches of CMA direct enforcement directions, (d) providing false or misleading information in connection with the CMA's exercise of a direct enforcement function, and (e) non-compliance with statutory information notices

The DMCC Act 2024 makes two changes that could have some indirect impact on the enforcement of contract law in Scotland.

Part 3 Chapter 3 makes changes to the existing court-based consumer enforcement model open to all enforcers including the CMA and Trading Standards Scotland. In particular, it enables enforcers to ask the courts to impose financial penalties for substantive breaches as well as non-compliance with information notices and undertakings. As these powers include the Consumer Rights Act 2015⁷ and other contract-adjacent law, this could change the way public enforcement works.

Part 3 Chapter 4 provides the CMA alone with a direct enforcement process that enables it to make decisions on whether some specific consumer protection laws have been broken, as well as imposing penalties (as above). These decisions are subject to appeals to the Outer Court of the Court of Sessions in Scotland. Colleagues in the Department for Business and Trade (DBT) are working with the Office of the Advocate General on appropriate court rules. The laws within the scope of this direct enforcement regime include the Consumer Rights Act 2015 and hence could impact on the public enforcement of contract issues.

The DMCC Act 2024 also makes some changes to the UK's implementation of the Unfair Contract Terms Directive UCPD, including the Consumer Protection from Unfair Trading Regulations (CPRs) 2008⁸ which the CMA is working on new draft guidance to cover. This includes some potential for the Secretary of State, through regulatory updates, to change the provision of redress from breaches of the CPRs,

⁵ [Digital Markets, Competition and Consumers Act 2024 \(legislation.gov.uk\)](#).

⁶ [Written statement HCWS74 on Implementation of the Digital Markets, Competition and Consumers Act, 9 September 2024](#)

⁷ [Consumer Rights Act 2015 \(legislation.gov.uk\)](#).

⁸ [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](#).

the subject of a (England and Wales) Law Commission report “*Consumer Redress for Misleading and Aggressive Practices*”.⁹

In addition, the UK’s departure from the European Union has changed the way that the Court of Justice of the European Union decisions are treated by the courts. Although the unfair contract terms provisions deriving from the (UCPD) were retained, there is an uncompleted exercise on the retained case law still due to be carried out by DBT.

We have recently completed a consultation on the draft direct consumer enforcement regime guidance,¹⁰ and we hope to publish updated guidance in early 2025, subject to approval by the Secretary of State.

If it would be helpful to discuss the changes our new powers will make to the wider landscape, we would be happy to meet with you.

Yours sincerely,

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⁹ Consumer Redress for Misleading and Aggressive Practices - Law Commission

¹⁰ Direct consumer enforcement guidance and rules - GOV.UK (www.gov.uk)