Consumer Scotland Consumer Service Codes Review

Response from the Competition and Markets Authority (CMA)

Background

1. The CMA is the UK's principal competition and consumer protection authority. We are an independent non-ministerial government department, and our responsibilities include protecting people from unfair trading practices, including in cases where unfair treatment suggests there may be a systemic market problem.

2. Although CMA access to the data underpinned by the coding that is the subject of this consultation has been recently on hold, the CMA nonetheless consider that it can provide valuable insight. The CMA is therefore responding with that direct interest in mind but also with a clear view that decisions must take account of the wider consumer protection landscape and the impacts on consumers wherever they may interact with landscape partners.

The CMA's overall view on the consultation

3. The CMA welcomes the decision to conduct a codes review. As the consultation document identifies, there are balances to be struck between ensuring coding reflects current consumer patterns while maintaining some continuity for legacy reporting. Similarly, any greater degree of granularity in the coding that brings benefits for analysis should be considered alongside the need for it to be manageable for the advice providers.

4. The CMA therefore supports the removal of redundant codes and the consideration of limited addition of codes needed to rationalise and reflect current issues. With some specific exceptions, described below, we have not attempted to identify individual inclusion/exclusion suggestions. Some of that can be achieved by review of actual code use, reflecting on already well-understood issues (electric vehicles are often given as an example) and understanding the consensus of landscape services teams.

CMA views on specific points

<u>Alignment of coding</u>

5. So far as makes sense for individual organsations, the CMA would encourage the position that coding and categorisation should be aligned, including where that can be achieved with the England & Wales structure in particular. Harmonisation of codes would be helpful to the CMA to be able to make comparisons and spot trends across the UK, and would also assist joined-up pan-UK consumer policy thinking and government prioritisation as well as supporting enforcement.

6. The CMA notes that over time the Scottish coding structure has evolved and that it now differs from the England & Wales structure. The CMA encourages Consumer Scotland to consider options that would achieve at least high-level structural integration, but which might maintain a scale and level of detail that is appropriate to Scottish consumers and the partners that support them.

Potential new coding

7. There are two specific areas of the coding that the CMA asks to be reviewed further: closer alignment with the banned practices of the Digital Markets, Competition and Consumers Act 2024 (DMCCA) and identification of issues linked to Artificial Intelligence (AI):

    a. The DMCCA introduced a prohibition on fake reviews that is not currently reflected in the complaints coding, beyond misleading advertising. We propose that, subject to a reassessment of the structure described at paragraph 6, an amendment to incorporate this might be helpful.

    b. AI is identified in the consultation document as a potential area to explore by reference to a role in tools making semi-autonomous orders. Identifying potential harms linked to AI is challenging. It seems highly likely that familiar harms will present in an evolving way (for example an AI service may provide misleading information that a customer is not entitled to a refund). Given the potential ubiquity of AI, it may be necessary to accept that separately identifying where AI may have had a role in a complaint is impractical. On balance, we consider that, subject to a reassessment of the structure described at paragraph 6, a potential new complaint-type code: *Business Practice, AI-linked loss or harm* could be considered, but recognise this is an issue likely to benefit from further development.

    c. For new challenges which might emerge around the loss of consideration or decision-making (such as the example autonomous or semi-autonomous decision-making tool), we consider that a new product code should be provided for: *AI Tools*.

Interfacing with the data

8. As noted above, the CMA highly values the insights provided by the data that is underpinned by the consumer coding. That value can be multiplied or diminished by the ease with which it can be understood and processed. Analysis that requires manual downloads and assessments of data can be unnecessarily time consuming and have the potential to be unreliable. The CMA would therefore welcome development of an Application Programming Interface (API) workstream that would allow the CMA and landscape partners to better interface with the data.

9. Our understanding is that such a workstream is not currently underway for the Scottish data. However, the CMA would be ready to contribute its own user requirements and support testing should it develop.

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