

Consumer Protection and Enforcement
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

13th October, 2023

Dear Sir/Madam

This letter sets out Consumer Scotland's response to the 'Improving Price Transparency and Product Information for Consumers' consultation. We are content for this response to be published.

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act provides a definition of consumers which includes individual consumers and small businesses that purchase, use or receive products or services. Our purpose is to improve outcomes for current and future consumers and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support.

Display of Pricing Information

In line with the well-established consumer principlesⁱ Consumer Scotland considers that access to accurate, and useful information underpins effective consumer choice. In relation to the matters consulted on here, this principle is best served by the mandating of consistent unit pricing measures for products. Clear guidance on the operation of the Price Marking Order (PMO) for traders will make standards easier to comply with, and will likely improve the ability for consumers to understand unit pricing when they are making spending choices.

Similarly, we also agree that consistent rules, that are as simple as possible to follow, should also apply to temporarily discounted prices in place due to multibuy or loyalty promotions. We note the issues found by the Competition and Markets Authority (CMA) regarding inconsistencies with the operation of unit pricingⁱⁱ, and broadly welcome the solutions recommended in the consultation. Though such requirements may necessitate increased agility from traders, the principle that consumers should be able to make informed choices and have clear information on the prices of items they are considering buying remains important.

We acknowledge that compliance may be more onerous for some small businesses and note the proposed small shop exemption set out in the consultation. However, we would ask that further consideration be given to the impact this may have on consumers who are more isolated from larger retailers and where small shops may be their closest or most realistic choice. This may especially be the case in rural, remote, or island regions.ⁱⁱⁱ In places where a small shop is the closest or primary option for consumers, an exemption

for small shops may lead to local consumers being provided with less clear pricing and unit information than other consumers.

Consumer Scotland would also query whether the same arrangements should apply to both independent small shops and small shops that operate on a franchised basis. Where small shops operate as part of a larger franchise, they may be able to reasonably access corporate support to more easily comply with pricing display standards; whereas an independent small shop may not be able to access similar support. If this is the case, we recommend consideration of whether an exemption for independent small shops only, may be more feasible and appropriate.

With regards to how potential Deposit Return Schemes will function within pricing displays and the PMO, we note that Scotland has regulations already in place for the launch of a DRS. We would also suggest that the potential for regional differences affecting price in Scotland, such as minimum alcohol unit pricing, or potential charges for single use plastics, should be taken into account when planning price transparency standards. This will help regulation across Great Britain to be clearer to consumers and more workable for traders.

Hidden Fees and Drip Pricing

As with the display of pricing information, in relation to hidden fees and drip pricing, Consumer Scotland supports moves to ensure that consumers can easily access accurate and useful information about products or services they are intending to purchase. We acknowledge that this is a more complicated issue than the display of pricing information for basic products. Many products both online and offline offer legitimate choices for additional optional goods or services beyond an item's base price.

Consumer Scotland would support a starting point whereby traders have a duty to ensure that clear information is provided to potential consumers at the start of consumer journey. This would include, for example, clear information stating that the base price listed for the product or service may not be the final price, depending on potential additions the consumer may wish to make.

We would further recommend that any mandatory fixed fees should be included in the up-front base price for goods and services. If consumers have no choice but to pay certain fixed fees, for example, booking fees, cover charges, set postage fees (for example, where there are not different postal options available) then these can fairly be understood to be part of the base price for a product or service.

We recognise that it may not be possible to provide precise information on mandatory costs where they are variable or dependent on choices or usage by the consumer (for example, where they have a choice over postage method or mileage for hire vehicles). However, where products feature such mandatory variable fees, we would wish to see a formal requirement on traders to make this clear at the beginning of the consumer journey, for example, by listing the types of additional mandatory variable charges that can be expected alongside the base price for the product or service in question.

Consumer Scotland acknowledges that there are cases where traders can fairly offer additional optional items at extra cost. However, there are some instances where the information provided about these optional dripped fees is opaque, or where they are presented at a late stage in the consumer journey which can cause consumers to feel obliged to pay for additional items, whereas if they had been provided with this information upfront they may have chosen to shop around for an alternative deal.

With this in mind, we recommend, in the case of optional dripped fees, that:

- Clear information should be provided to consumers, stating that the additional items in question are optional, and not necessary to access the basic product or service
- Clear information, should be provided up-front in the consumer journey, about the additional charges that are likely to be necessary for most consumers even if they are technically optional (such as charging cables for phones or luggage for flights, seat choice on planes for families with young children)
- Optional dripped fee options should be presented as early as possible in the consumer journey, possibly directly following the consumer opting into the choice to purchase the base product.

Such measures will allow consumers to make informed choices about any additional items they wish to purchase alongside the base product. This will help to ensure that consumers better understand the overall cost of their purchase earlier on in the consumer journey, avoid undesired extra spending and are able to take earlier decisions to seek alternative services or products if they so wish.

The work of the CMA on online choice architecture explored the effects of drip pricing alongside many other practices, but also the effects of consumers being overwhelmed with information in a way which leads to less meaningful engagement with their purchasing choices.^{iv} This is ultimately a question of balance as we also acknowledge the danger of overwhelming consumers with too much information about the product or service up front, which may be off-putting. There may be a need to produce effective guidance outlining practical ways that traders can present the types of information listed above in a balanced way that informs consumers without overwhelming them.

Fake Reviews

Consumer Scotland has previously provided evidence to the House of Commons Public Bill Committee regarding the Digital Markets, Consumer and Competition Bill. We noted that fake reviews can undermine the accuracy of the information that consumers need to make an informed and fair choice when making purchasing decisions, and as a result, can further undermine consumer confidence in markets.^v We support the proposals set out in this consultation regarding the practices which should be banned under Schedule 18.

In answer to question 31 from the consultation, we are not clear whether adding ‘the misrepresentation of consumer reviews in ways which are likely to mislead consumers’ to Schedule 18 will be sufficient to prohibit some of the practices listed as examples in the question. While we do not have sufficient information to take a definitive view, we would question whether the following practices would be effectively addressed in the legislation as presented:

- ‘deleting or suppressing negative reviews’
- ‘only publishing positive reviews’
- ‘publishing or providing access to incentivised reviews that are not clearly labelled as such’
- ‘disabling the consumer from changing default sorting options’

The practices listed above may affect the overall tenor of the aggregate pool of reviews for a given product or service as opposed to other practices where a singular or specific review may be fake or misrepresented. We would welcome consideration being given as to whether wording could be developed which addresses the issue of misrepresenting the range of reviews in totality, rather than simply ‘misrepresenting reviews.’

To help encourage compliance with these requirements, Consumer Scotland would also support the publishing of guidance for traders, setting out the practical requirements in a simple, clear, and consistent manner.

We also support, in principle, the idea that traders should have responsibility for removing fake reviews of their products to minimise the chances of consumers encountering them. However, consideration should be given to making this requirement proportionate to the size of the business. With that caveat, we broadly support the requirement that traders should have proactive detection processes in place to identify suspicious reviews and also procedures for removing and preventing consumers from encountering fake reviews.

We also agree in principle that traders should have a process for assessing the risk of them hosting fake reviews, a mechanism that allows for reporting suspicious activity, and a process that evaluates the effectiveness of these measures. As with the previous question, there may be a need to ensure these requirements are proportionate for small businesses. For example, consideration could be given to whether small businesses who are not able to maintain such processes could be encouraged to only utilise reviews from third-party sites who may be able to provide such quality assurance.

We are of the view that the definition of a fake review need not require that a consumer has actually purchased or used the relevant product in order for such a review to impact on them. This is because whether or not they purchase a given product, a fake review can still affect their view of the relevant market and may impact on the likelihood of the purchase of similar products in the future.

Finally, in response to question 39, we are in broad agreement with the proposed policy on incentivised reviews.

Online Platforms

We do not offer views on the specific consultation questions in this area, but would take the opportunity to share some broader, principle-based considerations about consumer interaction with online platforms.

We note the extremely large instances of detriment caused to consumers when purchasing goods and services via third-party platforms - estimated at £4.9bn in the Consumer Protection Study 2022 - which amounts to around 10% of all monetised net detriment for UK consumers in that period.^{vi} Aside from financial detriment, recent findings by OPSS show exceptionally high levels of non-compliance with minimum safety standards for goods sold via online marketplaces, with an estimated 81% of goods failing to do so.^{vii}

Further, from our communication with stakeholders in the youth sector, as well as reports about the ability for children and young people to circumvent age restrictions when accessing social media,^{viii} we have specific concerns about the ability for children and young people to buy inappropriate goods and services online and suffer detriment as a result. Consideration should be given to the operation of the market in areas that may be of particular interest to young people, such in in-game or in-app purchasing, 'lootboxes', cryptocurrency, and products targeted at young people and promoted by social media 'influencers.' This is especially crucial given the Consumer Protection Survey findings that young people are consistently among the most likely groups to experience detriment, not to take actions for redress, and face the most negative consequences as a result.^{ix}

Considering the level of detriment experienced, and the potential vulnerabilities of those accessing online marketplaces, we broadly support any policies or initiatives which aim to create a fairer, safer online marketplace for consumers, including the provision of guidance on professional diligence for online platforms. We don't take a specific view regarding best practice for how this should be communicated,

though as with fake reviews, we would advocate for simple, clear, and consistent guidance to encourage effective compliance.

Schedule 18: Other Matters

The consultation also seeks suggestions about making other improvements or changes to Schedule 18 (which lists a number of practices which are automatically unfair to consumers).

Greenwashing

As part of our response to the DMCC Bill^x, we advocated for the inclusion of the practice of greenwashing in Schedule 18, and we would like to reiterate that suggestion here. Greenwashing is an unfair practice in a similar way to practices such as fake reviews as it can misinform and mislead consumers into making purchasing decisions they may not otherwise make, especially if climate concerns are important factors in their buying decisions. The prevalence of and potential detriment caused as a result of greenwashing is also substantial, with a recent CMA investigation finding that up to 40% of green claims made online could be misleading to consumers.^{xi} If not explicitly challenged, greenwashing could have a negative effect on consumer confidence in green technology and other markets that will be crucial to the transition to net zero.

Online Interface Orders

Consumer Scotland also supports extending powers to additional enforcers to make applications to the court for online interface and interim online interface orders under Part 3 of the DMCC Bill. This could provide for a more agile enforcement regime against online trading sites that risk harming consumers, and allow for quicker action to be taken.

Summary

Consumer Scotland welcomes this consultation. The practices addressed in the consultation each have fundamental impacts on the consumer purchasing experience, and, subject to the caveats set out above, the proposals will help to ensure fairer and more consistent practices, which should assist in protecting consumers from detriment. The introduction of these requirements, or the implementation of further guidance may however have limited impact if not accompanied by appropriate enforcement powers and resources. To that end, we would encourage close working with Trading Standards and enforcement agencies across the UK to maximise the effectiveness of any new provisions.

Yours sincerely,

Tracey Reilly

ⁱ [cas_cfu_booklet_on_consumer_principles.pdf](#)

ⁱⁱ [CMA launches grocery unit pricing review to help shoppers spot the best value for their money - GOV.UK \(www.gov.uk\)](#)

ⁱⁱⁱ [5 Calculating the uplift - The cost of remoteness - reflecting higher living costs in remote rural Scotland when measuring fuel poverty: research report - gov.scot \(www.gov.scot\)](#)

^{iv} [Evidence review of Online Choice Architecture and consumer and competition harm - GOV.UK \(www.gov.uk\)](#)

^v [Digital Markets, Competition and Consumers Bill \(14th June 2023\) \(parliament.uk\)](#)

^{vi} [Consumer protection study 2022: understanding the impacts and resolution of consumer problems \(publishing.service.gov.uk\)](#)

^{vii} [OMP product testing programme: October 2021 to September 2022 - GOV.UK \(www.gov.uk\)](#)

^{viii} [A third of children have false social media age of 18+ - Ofcom](#)

^{ix} [Consumer protection study 2022: understanding the impacts and resolution of consumer problems \(publishing.service.gov.uk\)](#)

^x [Digital Markets, Competition and Consumers Bill \(14th June 2023\) \(parliament.uk\)](#)

^{xi} [Global sweep finds 40% of firms' green claims could be misleading - GOV.UK \(www.gov.uk\)](#)