

8th August, 2024

by email to trp@cma.gov.uk

Improving trader recommendation platforms

Draft consumer law compliance advice for businesses

About us

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 defines consumers as individuals and small businesses that purchase, use or receive in Scotland goods or services supplied by a business, profession, not for profit enterprise, or public body.

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

Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer perspective through the application of the Consumer Principles of access, choice, safety, information, fairness, representation, sustainability and redress.

Consumer Principles

The Consumer Principles are a set of principles developed by consumer organisations in the UK and overseas.

Consumer Scotland uses the Consumer Principles as a framework through which to analyse the evidence on markets and related issues from a consumer perspective.

The Consumer Principles are:

- Access: Can people get the goods or services they need or want?
- Choice: Is there any?
- Safety: Are the goods or services dangerous to health or welfare?
- Information: Is it available, accurate and useful?
- Fairness: Are some or all consumers unfairly discriminated against?
- Representation: Do consumers have a say in how goods or services are provided?
- Redress: If things go wrong, is there a system for making things right?
- Sustainability: Are consumers enabled to make sustainable choices?

We have identified information as the Consumer Principle which is particularly relevant to the consultation proposal that we are responding to.

Consumer Scotland Response

Consumer Scotland supports this draft Guidance which will greatly improve the protections offered to consumers, who are engaging with businesses through trader recommendation platforms (TRPs) in increasing numbers.

We agree that it is important that such platforms take greater responsibility for the quality of the traders they platform - and be more transparent with consumers about the extent to which such traders are sourced, vetted, monitored, rated, and sanctioned.

Accordingly, our comments are relatively minor and should be viewed in the context that we endorse the draft guidance and look forward to its implementation.

In particular we consider it helpful that the Guidance reflects the dual enforcement roles (and the overlapping remit) in this area between the CMA and local and national trading standards bodies. We welcome this partnership approach, and we would encourage this to be considered in future business guidance and enforcement projects, where relevant.

Our comments are largely restricted to the “general and additional issues” section - see below.

Scope

“Is the scope of the draft compliance guidance appropriate and clear? If not, what else should this compliance advice address and why?”

“Are there any additional sector-specific considerations which the draft compliance needs to reflect? If so, what are these and why? How can these be addressed?”

Consumer Scotland Response

We agree that the scope of the Guidance is clear and comprehensive. As it is framework-centred, and provides clear examples, we believe it is drafted flexibly enough to cover sector specific considerations as they arise.

Compliance principles

“The draft compliance advice sets out a number of principles for TRPs to follow.

- a) Are the principles identified in the draft compliance guidance the right principles? If not, why not? What other principles would help TRPs comply with consumer protection law and why?
- b) Is the description of the principles sufficiently clear? If not, what needs to be done to improve their clarity?”

Consumer Scotland Response

Consumer Scotland agrees that the principles are the correct ones. They are clearly drafted and transparent enough to widely cover the issues of concern with TRPs.

Do's and don'ts' examples

“The draft compliance advice sets out a number of ‘Do’s and don’ts’ examples for each principle:

- a) Are these examples clear and easy to follow? If not, how can they be improved?
- b) Are the examples provided in the draft compliance advice helpful? If not, why not? How could they be improved?
- c) Are there any additional or different examples that would help businesses to understand how to apply the principles in the draft compliance advice? If so, what should these cover and why?”

Consumer Scotland Response

We also welcome the approach of adding substance to practices through the indicative (but not exhaustive) list of key practices which are likely to either comply with or infringe the broad principles. This adds sufficient detail and direction for TRPs on how they should comply, without being too prescriptive.

For consideration,

- Under Paragraph 63 [Principle 6 on Fake Reviews]

“Examples of practices that are more likely to uphold this principle include:

Publication of reviews

(j) Publishing reviews promptly once submitted, even if a review is disputed by the trader.

We reflect there is a balance to be struck here by TRPs, between ensuring legitimate reviews (good or bad) are timeously published to ensure that consumers can make the most informed choices, while also avoiding immediately publishing potentially damaging and malicious false reviews specifically intended to damage a trader’s reputation (whether as a means of falsely gaining a competitive advantage, or for other unfair intentions).

We understand that the ‘promptly publish’ example comes with the caveat (under footnote 59) whereby it should be subject to the overall steps taken to prevent fake and misleading reviews. However, it may be more helpful for this qualification to be set out more explicitly under this section. Otherwise, TRPs may decide to apply the principle to ‘promptly publish’ at the expense of proper consideration of the veracity of the review, regardless of the impact on the trader’s reputation and despite the requirement that vexatious or offensive reviews should not be published at all.

“Under publication of reviews (I)

Where your processes have identified a potentially fake and misleading review which requires further investigation, the review should be flagged as being potentially fake until such time your investigation is completed”.

Again, we support the principle that legitimate reviews are promptly published in order to ensure that consumers can make the most informed choices. However, we found this principle a little ambiguous as to intent.

We are unclear if publishing then flagging a review as ‘potentially fake’, whether as a positive or negative opinion, will give consumers any confidence or useful information upon which to base their decisions. It may be more helpful, where there is any suspicion that a review is fake, for it to remain unpublished until any investigation is carried out. The review can then either be published as an accurate experience or discarded as false. It is important that any investigation that is required into the veracity of a review is carried out timeously, to ensure that consumers have access to relevant information as quickly as possible.

General and additional issues

“Generally, are there any aspects of the draft compliance advice that you consider need further clarification or explanation, and why? In responding, please specify which section of the draft compliance advice (and, where appropriate, the issue) your comments relate to.

Overall, is the draft compliance advice sufficiently clear and helpful for the intended audience? Is the language and terminology helpful?

Any there any other comments that you wish to make on the draft compliance advice?”

Consumer Scotland Response

The following are minor comments in the context of the overall draft –

- In paragraph 18, reference to the CMA’s ability to impose ‘fines’ suggests criminal enforcement. It should perhaps refer to ‘monetary penalties’ as per the language of the [DMCCA 2024](#).
- On paragraph 23, the CTSI business advice portal is called ‘Business Companion’, not ‘The’ Business Companion.
- For consideration, on pages 23 to 25 there are key guidance points referenced in the footnotes that expand on the main points in the paragraphs above. In several cases

this information seems to be quite substantive in relation to the main requirements on TRPs, including elements such as –

- important details on how to ‘act’ to effectively monitor complaints,
- how to be mindful of data protection rules,
- how to identify patterns and how to record, sanction, highlight, and deal with the worst performers (including referring the worst examples to TS as best practice),
- making clear that very poor performance will result in expulsion from the platform.

To provide a clearer understanding of these important TRP requirements in key areas, it might be beneficial to integrate them into the main text rather than placing them in footnotes.