

Consumer Scotland submission of evidence to the UK Parliament's Digital Markets, Competition and Consumers Bill Committee

About Us

1. Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament.
2. The Act provides a definition of consumers which includes individual consumers and small businesses that purchase, use or receive products or services.
3. 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.

The Consumer Principles

4. In advocating for the needs of consumers, Consumer Scotland uses seven consumer principles, developed over time by consumer organisations in the UK and internationally. A principles-based approach to regulation enables the provision of products and services to be considered from a consumer perspective and can allow consideration of important questions about consumer impact and engagement. An effective framework of consumer principles can help support the development of more consumer-focused policy and practice.¹ Consumer Scotland has approached this policy response by considering how the proposals set out in the Bill interact with the consumer principles. The principles referred to are:
 - Access: can people get the goods and services they need or want?
 - Choice: do consumers have any meaningful choice?
 - Safety: are consumers adequately protected from risks of harm?
 - Information: is it accessible, accurate, and useful, and does it enable participation?
 - Fairness: are all consumers treated fairly?
 - Representation: do consumers have a meaningful role in shaping how goods and services are designed and provided?
 - Redress: if things go wrong, is there a simple way to put them right?

Summary

5. Consumer Scotland notes the wide scope and large scale of the Digital Markets, Competition and Consumer (DMCC) Bill, and welcomes, in large part, the measures proposed within it.

6. Our focus, as Scotland's statutory body for consumers, is predominantly on the consumer protection elements of the Bill, though we also provide comment on competition-focused areas of the Bill which may have an impact on consumers. As such, our response is focussed on Parts 1, 3 and 4 of the Bill. In summary, Consumer Scotland:
 - welcomes the enhanced enforcement powers provided to the CMA in relation to both competition and consumer law
 - supports the proposal to redraw the list of banned unfair practices under the Consumer Protection Regulations (CPR), and welcomes measures allowing Ministers to adjust this list, subject to consultation with stakeholders and use of affirmative statutory instrument procedures
 - appreciates the regard given to consumers in vulnerable circumstances by providing a specific definition for 'vulnerable persons' and its application in reference to aggressive practices
 - considers that further thought should be given to whether small and micro businesses should fall within the definition of consumers in relation to the consumer protection aspects of the Bill along with consideration of whether Ministers should have parallel powers to amend lists of unfair practices under the Business Protection Regulations (BPR)
 - supports the intended addition of fake reviews to the list of banned practices, and also invites consideration of whether greenwashing claims should also be added to the list
 - approves of the proposed measures to tackle subscription traps, but considers that these measures could have gone further, for example by requiring consumers to opt into subscription contracts after trial periods and before renewals of subscription contracts
 - welcomes the clear and comprehensive measures outlined in the Bill to protect consumers of saving schemes
 - welcomes the proposed reforms to ADR schemes, especially the proposal to require accreditation for ADR providers. We would advocate, however, for additional measures to improve consumer knowledge and understanding of the ADR landscape, and to limit the financial costs for ADR, especially for consumers in vulnerable circumstances.

Background

7. The Bill is a large and wide-ranging piece of legislation which aims to address the operation of online markets which are fast-moving and innovative. While consumers often benefit from such technical innovations, the fast pace with which digital markets can move can leave potential gaps in consumer protection. An increase in online

transactions since 2017, and especially during the Covid-19 pandemic,² has highlighted the need for oversight and reform in digital markets. The Bill aims to effectively address issues both with competition law and consumer protections in the digital marketplace by adding extra agility to the enforcement of regulatory frameworks, and by addressing some key headline areas where consumers have faced detriment.

8. Many global digital businesses, such as Meta, Twitter, eBay and Amazon, have significant operations in the UK while the UK also has a substantial home-grown digital sector in cities across the country³, comprising companies such as Deliveroo, Rockstar North, and Skyscanner. As a result, the UK is one of only three countries to host a tech sector valued at £1 trillion or more.⁴ The Bill seeks to address competition issues arising from the top-heavy configuration of the digital landscape in the UK, where the digital market is dominated by a very small number of large and powerful firms⁵ in a way which can, in some circumstances, lead to consumer detriment in terms of price and service quality.⁶
9. Although the UK Government is of the view that the current consumer protection regime functions well, there is also a recognition that there are weaknesses in the enforcement of consumer law.⁷ For example, the CMA have raised concerns that the current limitations on their powers, requiring enforcement through the courts, adds delays and unnecessary costs to their processes in a way that risks weakening deterrence of non-compliant behaviour.⁸ Many of the proposals in the DMCC Bill seek to provide the CMA with broader powers to address this.
10. Specific risks of consumer harm that are addressed in the Bill are subscriptions, which generate around £28 billion - £34 billion spending annually⁹, and can cause detriment via 'subscription traps'; online reviews, which influence an estimated £23 billion of consumer spending per year¹⁰, but can be misleading when fake reviews are published; and pre-payment saving schemes (such as Christmas saving clubs) that are currently unregulated and where consumers currently face losing their investments if they become insolvent.

Response to Part 1 of the Bill

11. Consumer Scotland broadly welcomes the proposed measures in the Bill to enhance competition in digital markets. Though the UK Government has assessed that a small number of firms having a large share of commercial power in digital market is not uniformly bad for consumers¹¹, it remains the case that the nature of digital markets can lead to markets 'tipping' in the favour of a limited number of firms¹² in a way that is at odds with the consumer principle of choice, can stifle competition and cause consumer detriment.¹³ Consumer Scotland views the proposed new powers for the CMA to designate digital businesses with "substantial and entrenched market power" in the UK, as a positive step.
12. The ability for the CMA to impose conduct requirements encouraging fair dealing, open choices, or trust and transparency, will especially help to enhance fairer competition in digital markets and should, over time, lead to improved outcomes for consumers by promoting competition on pricing and providing greater consumer choice. Consumer

Scotland also welcomes the proposed new powers allowing the CMA to directly impose civil monetary penalties on digital traders with special market status who breach conduct requirements imposed on them. Previously such penalties could only be applied following lengthy court proceedings.¹⁴ We are of the view that this new power will allow for a more flexible, targeted, and timely process for the enforcement of the regulatory frameworks for digital markets.

Response to Part 3 of the Bill

13. Consumer Scotland welcomes the measures in the Bill which simplify and bolster the enforcement of penalties for relevant infringements of consumer protection law under Part 8 of the Enterprise Act 2002. We welcome the ability for the CMA to pursue court-based enforcement processes to impose monetary penalties on traders who breach consumer laws or fail to comply with an undertaking.
14. We also support the introduction of a new direct enforcement regime for the CMA in relation to consumer protection laws, parallel to their new powers listed in Part 1 to enforce competition law. As with those powers, providing the CMA with the ability to directly enforce consumer law administratively will reduce any reliance on lengthy court proceedings and allow for a simpler, more timely, and more flexible approach to enforcement. This should in turn benefit consumers.
15. Finally, Consumer Scotland also welcomes the amendments to schedule 5 of the Consumer Rights Act 2015 set out in the Bill which will strengthen the enforceability of statutory information notices which are not currently directly enforceable without a court order. As with other areas of the Bill, the proposals in this section provide both the courts and the CMA with the ability to impose civil monetary penalties in cases of non-compliance with information notices. We believe this will lead to improved levels of compliance with information notices, provide a useful deterrent for non-compliance and have positive outcomes for consumers.

Response to Part 4 of the Bill

Consumer Protection Provisions

16. Consumer Scotland's primary interest in this Bill relates to the provisions of Part 4 of the Bill. We support the revoking and restating (with minor amendments) of the Consumer Protection from Unfair Trading Regulations (CPR). These are a primary means of protecting consumers from unfair practices which in turn reduces detriment and increases consumer confidence.¹⁵ Reaffirming this commitment to fairness in consumer rights is something that aligns with the consumer principles of information and redress. We note that consumer protection regimes are important in safeguarding and promoting economic growth, as they allow consumers to spend with confidence. Consumer spending is vital to our economy – with estimates showing it accounts for almost two thirds of Scottish GDP.¹⁶
17. Given the challenge in ensuring that regulatory frameworks can keep pace with fast-moving digital markets,¹⁷ Consumer Scotland supports a more flexible, continuous

monitoring of digital services and technologies, and supports the ability for Ministers to seek to amend the list of unfair practices on an ongoing basis by regulations. Amending the list by regulation is a significant power, but one that allows for a timely response to emerging consumer harms. As such it is appropriate that any such changes require consultation with stakeholders and use of the affirmative statutory instrument procedures as set out in the Bill.

18. Consumer Scotland notes the definitions contained in the Bill of both 'average consumers' and 'vulnerable persons'. We welcome the efforts made in the Bill to consider the needs of people in vulnerable circumstances as Consumer Scotland has a statutory requirement to have regard for 'consumers in vulnerable circumstances'.¹⁸ We are broadly supportive of the definition of people in vulnerable circumstances, which includes the circumstances consumers are in, and may include fluctuating or situational characteristics resulting in them being more at risk of harm at certain points of their lives. For example, consumers who have recently experienced a bereavement may be more at risk of harm in relation to transactional decisions in financial or funeral services markets. We therefore welcome the inclusion of exploitation of consumer vulnerability as one factor in considering whether a practice is aggressive, due to use of harassment, coercion or undue influence under clause 220 of the Bill.

19. We also note that within many of the consumer protection elements of the Bill, consumers are defined as an individual acting for purposes that are wholly or mainly outside the individual's business, thus excluding small and micro-businesses. The latest figures for composition of UK businesses show that the overwhelming majority of private-sector businesses are micro to small in size, with 74% having no employees aside from the owner(s), and 99.2% of businesses being categorised as small businesses employing no more than 49 employees.¹⁹ These figures are also approximately reflected in the Scottish-specific landscape.²⁰

20. Within Consumer Scotland's remit, our legislative framework makes clear that we consider small businesses to act, in many cases, like individual consumers, and so should be treated in the same way as these consumers.²¹ In many cases, small and micro businesses will make transactional decisions in the same manner as individual consumers, may lack substantial bargaining power when dealing with larger companies and service providers and may be subject to the same risks as consumers arising from unfair, misleading or aggressive business practices.

21. It is our understanding that the Business Protection from Misleading Marketing Regulations (BPR) provide a narrower set of protections to small businesses, relating primarily to marketing, and that these are not frequently used to support enforcement activity or prosecutions. With this in mind, Consumer Scotland would welcome further consideration of whether small and micro businesses should benefit from the same protections as consumers in the Bill. We would also support consideration of whether Ministers should be granted similar powers which allow for review and amendment of what are considered to be unfair practices under the BPR in a similar way as is proposed in relation to the CPR.

Fake Reviews

22. The UK Government has indicated an intention to add 'fake reviews' to the list of unfair practices under the CPR in order to ban them in law.²² Consumer Scotland supports this. A recent Which? Investigation found that the practice of buying or facilitating fake reviews is common across the digital landscape, in online marketplaces such as Facebook, Trustpilot, and Google where preventative practices were not functional.²³ As a result, consumers are more than twice as likely to choose poor quality products as a result of misleading reviews.²⁴ Fake reviews contravene the consumer principles of information, fairness and choice as they can lead to less informed purchase decisions and ultimately, to consumer detriment. The estimated cost to consumers of fake reviews is anywhere from £50 million to £312 million annually.²⁵ Fake reviews can harm consumer confidence in markets, and we believe that the banning of this misleading practice will therefore serve to boost consumer confidence and reduce consumer detriment.

Greenwashing

23. We note that before the introduction of the Bill some commentators had expressed a desire to see 'greenwashing' feature as an unfair practice.²⁶ Just as with fake reviews, greenwashing can misinform and mislead consumers into making purchasing decisions they may not otherwise make, and therefore also infringes the consumer principles of information and choice. A recent CMA investigation found that up to 40% of green claims made online could be misleading to consumers.²⁷ This practice could affect consumer confidence in green technology markets, an area that will be crucial to the just transition to net zero in the coming years and which is a stated priority for both the UK and Scottish governments. Consumer Scotland would welcome consideration of whether greenwashing could be subject to explicit regulation under these powers, reducing the risk of the legality of the practice being left to interpretation.

Subscription Traps

24. Consumer Scotland broadly supports the measures in the Bill with regards to tackling subscription traps for consumers. Subscription traps occur when consumers are either unaware that a subscription payment is due to be charged to them following an automatic renewal of the subscription, or otherwise, potentially, when unsubscribing from the subscription is too onerous for the consumer.

25. Data from consumer advice services shows that consumers in Scotland do seek advice on issues arising from subscriptions. Data from Advice Direct Scotland shows that they received 54 requests for consumer support with unwanted subscriptions or renewals in Scotland between 1st May 2022 and 31st April 2023.²⁸ Of these requests:

- 30 were assessed to refer to Subscription Traps (consumers signed up to subscription services without their knowledge and consent),
- 17 related to subscriptions that consumers had knowingly taken out but could not cancel,

- 7 related to auto-renewals of subscriptions that had occurred automatically without the consumer being aware this would take place.

26. Subscription issues were experienced across a wide variety of products and services with 20 different categories represented across the 54 requests. The products and services that featured most commonly were Books, Newspapers and Magazines, Food and Drink, Digital or Media Content and Clothing and Footwear.
27. Recent research has also shown that unwanted renewal charges of subscription-based goods and services has cost UK consumers an estimated half a billion pounds during the pandemic.²⁹ Overall, the UK Government estimates the cost of subscription traps to now be approximately £1.6 billion per year,³⁰ clearly illustrating issues with the application of the consumer principles of fairness and information in these markets. With this level of consumer detriment in mind, and the fact that we know consumers in Scotland do experience detriment as a result of subscription issues, we welcome the proposed measures to protect consumers, such as requiring traders to provide specific pre-contract information to consumers before they enter a subscription contract; obliging traders to send reminders to consumers before a subscription contract automatically renews into a new subscription period; providing consumers with the opportunity to cancel subscription contracts, without penalty, during cooling off periods; and ensuring that traders provide a simple and accessible means for consumers to terminate subscription contracts they have entered in to.
28. These potential changes to the nature of subscriptions will help consumers to make more informed choices, better understand the nature of their subscription contract, and help them to avoid unwanted costs and other detriment. While welcoming this proposal, Consumer Scotland is of the view that some potential for detriment from subscription traps may remain. Under the proposals, the onus remains on the consumer to positively act to terminate any such contract. There may be a case for requiring consumers to actively opt into any renewals of subscription contracts after any trial period, or towards the end of any contracted subscription period. This would mean that any subscriptions entered would require the explicit consent of the consumer, having allowed them the opportunity to consider the cost and quality of the service, further minimising the risk of detriment.

Savings Schemes

29. Consumer Scotland welcomes the clear and comprehensive measures outlined in the Bill to protect consumers of saving schemes in the event that the schemes they are making payments to become insolvent. This market is currently largely unregulated, leading to difficulty in consumers accessing redress. The risk of allowing this market to continue unregulated was shown by the failure of Farepak, a Christmas savings scheme which held over £38 million in consumer prepayments at the time of its collapse, with only limited, voluntary compensation offered by retail partners.³¹ The provisions in the Bill requiring traders who run similar savings scheme to protect consumer pre-payments either via a trust arrangement or effective insurance policies should effectively safeguard consumers from detriment and improve confidence in the savings scheme market.

Alternative Dispute Resolution (ADR)

30. Beyond the measures contained in the Bill, Consumer Scotland is of the view that there remains a significant need for consumer advice and information, along with education, to ensure that consumers are aware of their rights and can access help and assistance to enforce these. There is also a need to increase consumer awareness of ADR, which is an umbrella term covering a multitude of disciplines, from informal mediation to the use of ombudsman services.
31. In terms of current levels of uptake, Citizens Advice Scotland data shows that 504 consumers in Scotland were provided with ADR support in 2022/23, and as many as 812 required ADR during the height of the Covid-19 pandemic in 2020/21.³² Advice Direct Scotland data shows that ADR was mentioned in 4,386 requests for consumer advice between May 2022 and April 2023. This includes cases where ADR was recommended as a potential solution, where a client was supported to use ADR to resolve their issue, or where a client was experiencing issues with the ADR process. It should be noted that a proportion of these requests likely relate to repeat contacts.³³
32. Consumer Scotland broadly supports the proposals in the Bill to replace the Alternative Dispute Resolution (ADR) for Consumer Disputes (Competent Authorities and Information) Regulations 2015. However, we would welcome further clarity on some aspects of the proposals. Currently ADR providers are not required to be accredited and as a result, consumers face potentially inconsistent quality of services and are at risk of detriment.³⁴ The Bill proposes prohibiting ADR provision in relation to consumer disputes unless the party is either accredited or otherwise exempt. We believe this change could help to improve consistency and quality in ADR services. However, consideration should be given whether this change will have any unintended consequences, for example, reducing the supply of ADR services in the market.
33. While accreditation of ADR schemes is a welcome development, accreditation alone will not resolve the issues experienced by consumers. The current ADR landscape can be confusing for consumers with significant gaps and overlaps in competing provision, and multiple sources of information to help consumers identify appropriate providers,³⁵ undermining the consumer principles of information, choice, and redress. Improved and accredited ADR will serve consumers best when there are simple and well-understood routes to redress across markets.
34. ADR processes may differ between providers and markets and are not always straightforward and it is important that consumers can access help to navigate these processes, for example from third sector advice agencies, and especially if they are in vulnerable circumstances. Accreditation procedures could usefully address, for example, how consumers in vulnerable circumstances can be supported to access ADR and how providers will interact with advocacy bodies.
35. In addition, it must be remembered that ADR only addresses issues in markets after a consumer has experienced a problem or entered a dispute. There is potential for

disputes and issues to be resolved earlier by improving standards of customer service and resolving product quality issues across high-risk markets such as home improvements, furniture or used car sales. This could for example be done through greater promotion of accredited trading schemes where businesses sign up to certain baseline requirements. An improvement in standards in these areas would be likely to result in fewer consumer disputes requiring ADR to resolve them.

36. We would welcome consideration of whether ADR frameworks could allow ADR providers to report to regulators on trends, for example identifying where there are many claims against particular companies or a pattern of unacceptable actions occurring across a particular sector. This would close the feedback loop and help drive up standards across regulated industries by enabling regulators to take action where issues are raised via ADR processes.
37. Consumer Scotland is of the view that access to ADR should be as frictionless as possible for consumers. We retain some concerns over charging for ADR services, as for consumers in vulnerable circumstances especially, this may affect the consumer principle of access as charging for access to ADR schemes may act as a barrier to redress.³⁶ Consumer Scotland welcomes the provision in clause 286 (1) allowing for limits on the fees that can be charged to consumers for ADR and would encourage exploration of the impact of remaining fees for ADR services. Consideration should for example be given to the possibility of introducing fee exemptions for low income consumers, similar to provisions in place for court and tribunal fees.³⁷ As a general principle we consider that it should be not more expensive for consumers to access ADR schemes than to access small claims or simple procedure court processes.
38. Finally, ADR is more likely to gain widespread support if redress recommended under such schemes can be obtained and enforced quickly. In this regard, Consumer Scotland notes that while consumer protection law is reserved, consumer advocacy and advice are devolved, and Scotland retains its own distinct legal system. It will be important that measures relating to ADR outcomes work across the UK and the mechanisms for accessing legal remedies and redress following ADR processes must take account of any devolutionary implications.

¹ [leading by example final.pdf \(cas.org.uk\)](#)

² [Internet retail sales, £ millions. All retailing - Office for National Statistics](#)

³ [UK tech sector achieves best year ever as success feeds cities outside London - GOV.UK \(www.gov.uk\)](#)

⁴ [CBI President kickstarts new campaign to scale British unicorns into companies valued over ten billion dollars | CBI](#)

⁵ [Digital markets and the new pro-competition regime - Competition and Markets Authority \(blog.gov.uk\)](#)

⁶ [Microsoft Word - Impact Assessment - Annex 1 - Digital markets reforms.docx \(parliament.uk\)](#)

⁷ [Reforming Competition and Consumer Policy \(publishing.service.gov.uk\)](#)

⁸ [Letter from Andrew Tyrie to the Secretary of State for Business, Energy and Industrial Strategy - GOV.UK \(www.gov.uk\)](#)

⁹ [Reforming Competition and Consumer Policy \(publishing.service.gov.uk\)](#)

¹⁰ [Enhancing consumer rights: policy summary brief \(publishing.service.gov.uk\)](#)

¹¹ [Microsoft Word - Impact Assessment - Annex 1 - Digital markets reforms.docx \(parliament.uk\)](#)

¹² [DP22/5: The potential competition impacts of Big Tech entry and expansion in retail financial services \(fca.org.uk\)](#)

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- ¹³ [New regime needed to take on tech giants - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- ¹⁴ [220294en.pdf \(parliament.uk\)](#)
- ¹⁵ [Consumer protection study 2022: understanding the impacts and resolution of consumer problems \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- ¹⁶ GDP Quarterly National Accounts
- ¹⁷ [Regulatory-effectiveness-in-the-era-of-digitalisation.pdf \(oecd.org\)](https://www.oecd.org)
- ¹⁸ [Consumer Scotland Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)
- ¹⁹ [Business population estimates for the UK and regions 2022: statistical release \(HTML\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- ²⁰²⁰ [Businesses in Scotland: 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot)
- ²¹ [Consumer Scotland Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)
- ²² [Written statements - Written questions, answers and statements - UK Parliament](#)
- ²³ [Facebook, Google and Trustpilot fail to filter out fake reviews - Which? News](#)
- ²⁴ [Facebook, Google and Trustpilot fail to filter out fake reviews - Which? News](#)
- ²⁵ [Investigating the prevalence and impact of fake reviews - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- ²⁶ [Developments in Regulatory and Private Action against Greenwashing | Oxford Law Blogs](#)
- ²⁷ [Global sweep finds 40% of firms' green claims could be misleading - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- ²⁸ Unpublished data from Advice Direct Scotland
- ²⁹ [Half a billion pounds spent on subscriptions that rolled over without people realising during the cost-of-living crisis - Citizens Advice](#)
- ³⁰ [Enhancing consumer rights: policy summary brief \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- ³¹ [Q&A: the Farepak collapse explained | Consumer affairs | The Guardian](#)
- ³² Unpublished data from Citizens Advice Scotland
- ³³ Unpublished data from Advice Direct Scotland
- ³⁴ [Resolving consumer disputes: alternative dispute resolution and the court system - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- ³⁵ [QMU Confusion, gaps, and overlaps](#)
- ³⁶ [gm-f5046213-9774-44d2-9800-e1bdf7c19564-60a3915155246-adr-report-v9-2.pdf \(which.co.uk\)](#)
- ³⁷ [Get help paying court and tribunal fees - GOV.UK \(www.gov.uk\)](https://www.gov.uk)