

Mary Hammond
Consumer and Competition Policy
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

19 December 2012

Dear Ms Hammond

Consultation on extending the range of remedies available to public enforcers of consumer law

AMDEA is the trade association for large and small domestic appliances; heating; water heating; floor care and ventilation. We represent manufacturers at UK, European and International level; with government and EU political institutions; in standards and approvals; with non-governmental organisations; with consumers and in the media. AMDEA protects and promotes its members' interests in all these fields.

As such we are surprised that we are not included in the list of consultees, although other trade associations are.

We would have completed the electronic form but unfortunately there is an error in the formatting. We have therefore listed the questions below with our comments, some of which are reiterated from responses to other consultations earlier this year.

QUESTION 1. Do you consider the Government's proposed outcomes to be valid for remedies to address breaches of consumer law? Will these outcomes address consumer problems?

It is not apparent to what extent the proposed sanctions would benefit the consumer in general. We do feel that there needs to be consistent enforcement of UK-wide (or even Europe-wide) legislation.

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QUESTION 2. What are your views on the suitability of the RES Act to achieve the proposed outcomes?

A key intention of the RES Act was to reduce the regulatory burden on businesses so we are concerned about proposals for additional powers. This consultation also appears to suggest that these additional powers would be granted by a court - it is not clear how this aligns with other proposals for alternative dispute resolution. The idea that penalties are an ultimate sanction seems perfectly reasonable but certain of the suggested undertakings do have worrying implications. We are not convinced that these proposals would give businesses sufficient protection from allegations placed in the public domain (c.f. feedback sites). It is also apparent that the basis of this consultation is an assumption of consumer detriment arising from dealings with utility companies (cf references to "switching") and it is not clear how sanctions aimed at utility providers would apply in wider commercial markets. There also seems to be a presumption that a system of monetary compensation for individual consumers would encourage compliance with the law rather than enforcement of that law. The RES Act is probably not appropriate in a consumer compensation culture but it could be argued that it serves its purpose in all other respects.

QUESTION 3. Do you think that amending Part 8 of the Enterprise Act 2002, to extend Enforcement Orders and undertakings, would be an appropriate way to mandate one or more actions by businesses to address breaches of consumer law?

No.

QUESTION 4. Do you agree with the Government's proposed enforcement mechanisms?

No.

QUESTION 5. Do you agree that only Hampton-compliant enforcers should have access to these extended remedies?

If extended remedies are introduced, then yes, only Hampton-compliant enforcers should have access to them.

QUESTION 6. Do you think the burden of proof should be at the criminal or civil level?

Criminal.

QUESTION 7. Do you agree that the evidence requirements should be at the civil level and that an enforcer's report should be admissible in lieu of formal witness statements?

No.

QUESTION 8. Do you consider that micro-businesses should be exempt from the new proposals?

No.

QUESTION 9. Do you agree with the Government's proposed remedies to increase business compliance with the law? Do you have any additional remedies to be considered?

No. Most compliant businesses would already be using the most appropriate of these measures.

QUESTION 10. Do you agree with the Government's proposed mechanisms for enforcement via undertakings and Enforcement Orders?

No.

QUESTION 11. Do you agree that the Government's proposals will achieve the outcome of improved redress for consumers?

No. The outcome would be to encourage certain consumers to pursue compensation claims thereby driving up costs for all consumers. The costs of advertising in national, regional or specialist press are considerable yet such advertisements are not necessarily seen by the relevant consumers - this is already an issue for product recalls. Paying compensation to those customers who claimed would not be of benefit to those who would/could not.

QUESTION 12. Where individual consumers cannot be identified, how do you think the schemes could operate?

They could not – again certain consumers could gain financially with no benefit to others.

QUESTION 13. Should businesses be able to offer undertakings to enforcers agreeing to implement consumer redress schemes or should the agreements be 'rubber-stamped' by a court before coming into force?

Neither. A court can impose financial penalties. The argument is whether such funds could then be made available to compensate individual consumers, not whether a business should be required to implement compensation schemes.

QUESTION 14. Should the court have a power to impose a requirement that a business set up a scheme aimed at providing compensation or restitution?

No.

QUESTION 15. Do you agree that the Government's proposals would be workable and appropriate?

No.

QUESTION 16. Are there any other measures you think could achieve this objective?

Providing sufficient funds for enforcement would ensure that legislation was in fact enforced consistently and fairly across the UK.

QUESTION 17. Do you think legislation should list specific actions to be chosen from or simply set out the outcomes while leaving discretion to the parties and ultimately the court as to the best action to address the breach?

See replies to previous questions. Legislation could only set generic actions that would be inappropriate in many cases – if the intention is to avoid court action then any proposed remedy would need to be negotiated by the enforcement body.

We are not convinced by the suggested remedies (3.23), some of which seem to seem to be targeting particular sectors – e.g. mobile telephone contracts. There has been much adverse publicity about the integrity of feedback sites so we would not see them as sufficiently impartial mechanisms for dealing with breaches of legislation. Likewise a “naming and shaming” database would need to be extremely strictly moderated (who would pay for this?) otherwise it would merely be another social media site for disgruntled consumers to post comments that smaller businesses would not have the resources to counter.

We have not commented on the draft impact assessment as we cannot discuss costs.

However we would reiterate that existing consumer legislation already offers UK consumers a high degree of protection. The fact that such legislation is not consistently enforced and that many parties are ignorant of what rights consumers do have is not an argument for expanding the penalties rather than ensuring that the legislation is suitably enforced.

Yours sincerely

A handwritten signature in black ink that reads "Douglas Herbison" with a long horizontal flourish extending to the right.

Douglas Herbison
Chief Executive