



## **Consultation Document**

### **Extending the range of remedies available to public enforcers of consumer law**

#### **Response from:**

#### ***British Vehicle Rental and Leasing Association***

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## Response to Department for Business Innovation and Skills

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### Executive Summary

We welcome the opportunity to comment on the Department for Business Innovation and Skills consultation on extending the range of remedies available to public enforcers of consumer law.

We are concerned with the impact the proposals would have on our members, in particular the wider impact of collective redress action and attaching remedies to enforcement orders and undertakings powers.

We also question the robustness of the cost benefit analysis published to help underpin and support the policy objective. In particular, we note that the number of enforcement orders and undertakings has stayed fairly constant since 2007/08 and which we believe helps to suggest that the level of consumer harm or detriment caused by businesses has not risen to justify the introduction of additional compliance burdens on businesses.

### Remedies to enforcement orders

We believe that attaching remedies to enforcement orders will detract from the core principles of enforcement orders and simply impose excessive costs on UK businesses.

In many circumstances we believe that if a public enforcer has had to get involved to issue an enforcement order or undertaking, then there should be sufficient publicity around the issuance of such an order to ensure that consumers are aware that such redress is available.

We therefore would propose that the department gives serious consideration to other alternatives to new legislation. For example, we would support wider publicity around consumer's right to access Alternative Dispute Resolutions (ADR) and in particular for those consumers who have suffered harm arising from the enforcement order. Such an approach would allow consumers to access restorative justice in a cost effective manner, and at the same time provide businesses with the opportunity to remedy any breach in an effective and efficient manner.



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### Collective redress

We remain concerned with the proposals for collective redress as we believe they will have a negative impact on businesses due to the publicity and administrative costs that are commonly associated with such actions.

If collective redress powers are introduced it is vitally important that this is considered as a last resort and where all other non-litigation routes have failed. We would encourage consumers to seek other forms of redress such as an alternative dispute resolution (ADR) scheme.

The BVRLA has years of positive experience of operating a successful ADR service for our members and their customers. The operation of our industry code of conduct and our ADR has encouragingly received favourable comments, most notably from the European Consumer Centre in Ireland<sup>1</sup> which has published various reports.

It is also worth noting that the United States of America has introduced a collective redress/class action in which the media has played a huge role in plying negative PR to businesses which can result in businesses forcing to accept highly expensive settlements in order to put an end to the harmful advertising. These type of class actions provoke a lot of negative publicity they can also have a detrimental impact on businesses. Many businesses may have no option but to accept an expensive out of court settlement to resolve collective actions rather than risk negative media exposure, there is also the possibility that many businesses may go out of business as a result of this negative PR.

We believe the costs for collective redress on businesses could be huge, having reviewed evidence from the research conducted as part of the Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union<sup>2</sup> we note that the UK report estimates that the costs for one simple individual redress case is £32,000 costs which would increase significantly if the case was on a collective basis. We believe this demonstrates the need for free to access alternative dispute resolution schemes for consumers to ensure they can access redress.

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<sup>1</sup> Car Rental Contracts Report – European Consumer Centre Ireland – 2008

<sup>2</sup> [Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union](#) (UK report)

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### Specific Comments

- 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?**

We believe the consultation is lacking information on what these consumer problems are and therefore while we believe the outcomes of:

- a) increased business compliance with the law
- b) improved redress for consumers affected by the breach

and

- c) more confident consumers

are worthy outcomes, however, without the evidence of consumer detriment it is difficult for us to comment on proactively.

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

We believe the act is sufficient to achieve the outcomes mentioned above but that other action should be considered by Government rather than amending legislation to help support the outcomes. As we have mentioned in our opening comments this should include wider publicity of enforcement actions and promotion of alternative dispute resolution.

- 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, we have not seen enough evidence to suggest that this is required and once again would suggest that consideration is given to alternatives to amending legislation.

- 4. Do you agree with the Government's proposed enforcement mechanisms?**
- 5. Do you agree that only Hampton-compliant enforcers should have access to these extended remedies?**

We are unable to support the mechanisms without evidence of current consumer detriment.

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

We would suggest that criminal level would be more appropriate given the implications and the potential for higher costs for businesses.

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

Yes, we would support this approach they should be exempt.

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?

The remedies seem sensible, we would add promotion to join a trade association with a Code of Conduct and access to an ADR scheme. This will also help ensure that businesses go beyond legislative compliance and are supported and have access to best practice advice.

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

This approach seems sensible.

11. Do you agree that the Government's proposals will achieve the outcome of improved redress for consumers?
12. Where individual consumers cannot be identified, how do you think the schemes could operate?

No, we strongly object to the proposals for collective redress. We believe this will have a disproportionate impact on businesses and have significant impact on their costs. As we have mentioned with one legal case having an average cost of £30,000 we believe the costs for a collective redress case would be far more than this.

We would suggest that instead the Government look at alternative dispute resolution as a solution instead. This is in line with proposals that are still under discussion in Europe for a European wide alternative dispute resolution scheme.

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**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?**

We think it is unnecessary for a court to be involved and that access to an alternative dispute resolution scheme should be sufficient as a way for consumers to access redress.

**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, this will add significant costs on businesses and we fail to see what issues are being addressed as there is no information in the impact assessment about how consumers are losing out through there not being a redress scheme in place. We would suggest that access to an alternative dispute resolution scheme should be sufficient to meet this requirement.

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

As we have already suggested in our response we support the proposal to make enforcement orders and undertakings more transparent to consumers, however we see this as an alternative to legislative measures.

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

We have nothing further to add.

**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?**

We believe that there should not be specific actions and businesses should have the freedom to determine the best remedy for a breach.

### Closing Comments

You will see that our members are particularly concerned with the proposal outlined in this consultation on extending the range of remedies available to public enforcers of consumer law.

We welcome the opportunity to discuss our response further and add value to the shaping and development of initiatives aimed at improving consumer protection.



## **Response to Department for Business Innovation and Skills**

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### **Leasing Members**

In general, vehicle leasing is an arrangement where the user simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

### **Short Term Rental Members**

Rental Members offer hourly, daily, weekly and monthly rental of vehicles to corporate customers and consumers. As explained above, rental members are the owners of the vehicle.



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**Bona-fides** **BVRLA, the industry and its members**

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its members provide rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.5 million cars, vans and trucks, buying nearly half of all new vehicles sold in the UK.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and the millions of people who use a rental vehicle each year. As well as lobbying the Government on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct.  
[www.bvrla.co.uk](http://www.bvrla.co.uk)