



Draft Consumer Right's Bill – legislative scrutiny

Introduction

The British Vehicle and Rental Leasing Association would like to offer our comments on the draft Consumer Rights Bill to the committee and would welcome the opportunity to give oral evidence.

We note that the proposal aims to simplify and clarify consumer law in relation to the supply of goods and services and we would wish to offer our input into how these twin objectives can be strengthened.

We specifically note that the Bill attempts to establish clear rules around rights and remedies. This includes a new defined period for the short term right to reject and claim a full refund for faulty goods which the Department for Business Innovation and Skills (BIS) state would help to boost business growth and promote fairness for consumers.

Our industry has specific concerns with the proposal, which if it goes unchecked could adversely create consumer harm through a reduction in competition and choice.

We offer specific comments on Section 82 and Schedule 7 of the draft Bill as these provisions propose a new form of private action in competition law which is of serious concern to our members.

Right to reject for consumers who have leased vehicles

The draft Bill proposes to change consumers' rights so that they are able to reject any motor vehicle provided which was of a sub-standard condition within 30 days.

Our members, as the supplier of a motor vehicle lease service, sit between the consumer and the motor manufacturer who has produced the sub-standard product. In this scenario, the consumer has no direct contractual relationship

with the motor manufacturer and as such would only have right of redress against the leasing firm. Our view would be for the motor manufacturer to be jointly and severally liable and that they should not be absolved of their responsibility to the consumer in providing repairs and replacements if required.

As the contract to purchase a motor vehicle is directly between a leasing company and the supplying dealer or motor manufacturer, the proposed legal changes would not extend to a business, as the legislative changes would only offer protection to a consumer.

We therefore would suggest that the Bill enables a leasing company, in such a scenario, to extend the right to reject a sub-standard vehicle to the supplying dealer and or the motor manufacturer. This would help to ensure that the consumer's rights were extended to the producer of the goods and avoid the creation of different levels of consumer rights.

Deduction for use

We are encouraged to note that BIS has recognised the high drop in resale value of new motor vehicles in the first year of purchase. We therefore welcome the proposal being put forward to help businesses to mitigate against such losses by introducing a deduction for 'use' which can be applied after 30 days of the customer taking delivery of a new motor vehicle. We note that after 30 days, the consumer will have a right to pursue second tier remedies after one repair has been carried out to the vehicle.

We would recommend that where a refund is requested, that the consumer is only entitled to recover the market value for a similar age, mileage and condition of vehicle and that where a replacement vehicle is provided this is taken into account. However, the use or reference to market value needs to be carefully clarified as there will be new vehicles, such as electric or hybrid vehicles, that are so new they may not have an established used vehicle market value.

In the case of a lease agreement where the customer wishes to reject the vehicle, we seek clarification that the customer is unable to recover lease or rental payments made for the use of the vehicle.

Hire contracts

We are concerned with the proposals insofar as they bring vehicle hire contracts into scope of the right to reject goods. We raise our concerns as these products are hired on a short term basis. The Bill, as drafted, would add excessive costs to vehicle rental companies who would be unable to immediately find a new customer to whom they are able to rent a vehicle for circumstances where the rental vehicle has been rejected due to a minor cosmetic fault.

We would therefore suggest that a consumer's legal right to reject the vehicle should only arise when there has been a substantive failure of the product, which prevents it being used for the purpose intended.

We do not believe that the seven standards as currently set out go far enough and would suggest this is amended to include reference to excluding cosmetic defects that are not primary to the use and enjoyment of the goods.

Opt out

The draft Bill sets out a new procedure for damages in competition cases which is a substantial change to the UK legislation and we question whether this is fully warranted.

We have summarised below our principal reasons why this aspect of the proposal is justified:

- There is no clear evidence which supports the 'opt out' mechanism
- Legal procedures relating to competition claim for damages work well today
- International experience in the US, Canada and Australia provide evidence that the opt-out proposal do not work well – with the US looking at moving away from such a system due to abusive operation and the poor outcomes delivered for consumers
- The 'opt-out' has resulted in unjustified settlements as the class of potential claimants in an undefined group. Opt-out procedure is frequently used as a means to maximise leverage for settlement as defendants find it easier to settle than to undergo the costly and lengthy

process of fighting the claim (known as blackmail settlements). This creates uncertainty and open ended costs for business.

- The proposed safeguard in Schedule 7 that a Judge will control proceedings is insufficient and creates uncertainty on when and how this is applied.

Incompatibility with EU's Recommendation

We are of the view that the draft Bill goes beyond the EU's consensus on collective actions. The European Commission's 2013 recommendation firmly rejects an opt out model on the grounds that it would give rise to the potential for abuse, and only goes as far as opt in.

The draft Bill proposes to give the Competition Appeal Tribunal the power to stay an action and to give the CMA power to intervene in any private action; this is not a sufficiently strong safeguard. Schedule 7 clause 5(13), as drafted put business at risk of actions being taken in parallel, which would be unduly burdensome.

Alternative Dispute Resolution (ADR)

We are pleased to note that BIS has fully recognised that court action should be only as a last resort and fully acknowledges the role Alternative Dispute Resolutions (ADR) can offer consumers.

We are therefore surprised that Government has opted in the Bill for the model which will promote litigious culture – this is in fact contrary to the Government's stated policy aims.

BVRLA fully supports ADR as the most effective form of providing collective redress. BVRLA's own conciliation service is testament to how effective, cheap, quick and less confrontational an ADR scheme can be, and is in sharp contrast to any redress through a collective redress solution.

Furthermore, ADRs, make regulatory enforcement more efficient and are growing in importance both in the UK and across the EU. We believe that the Government could do a great deal more to encourage the adoption of ADRs, rather than placing further focus on litigation.

The collective redress mechanism envisaged in the draft Bill risks increasing costs unjustifiably for businesses and creating unnecessary uncertainty for businesses. This runs counter to the growth agenda.

Implementation

With regards to implementation of the proposed legislative changes, we would welcome clarification that any changes will only be introduced for new goods and services purchased after the legislation changes.

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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 2.75 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.