**Competition and Consumer policy consultation responses by Helen Dewdney**

**Consumer Rights**

**Subscription Traps**

**Question 30** Do you agree with the description of a subscription contract set out in Figure 8 of this consultation? How could this description be improved?

**My Response**

The description should include energy, insurance and telecoms because these are the biggest problematic areas. They should all be included so that consumers understand the scope of the contracts covered.

**Question 31**. How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?

**My Response**

Provide more transparency. Consumers will have more trust in the companies and be more likely to spend money with them in future. It will stop the rogue traders who deliberately try and catch consumers out, reducing consumers being out of pocket and increasing sales for the companies which have integrity.

They will need time to implement the new systems. However, this should be reasonable and not used as a reason to delay matters. In the short term companies may take a hit because they will be used to making money from the auto renewals. However, the changes being made to insurance companies in October 2021 and January of 2022 show that it can be done with a fair warning. Good practice in business results in more trust and therefore improved sales, particularly as consumers are spreading the word of good and bad practice more and more.

When using a comparison website, an insurance company may provide some free add-ons and then these will not be included in the renewal and this should also be addressed, so that clarity is provided and so consumers know what they are paying for on renewal.

**Question 32.** Would it make it easier or harder for traders to comply with the pre-contract requirements? And why?

**My response**

This is irrelevant. Initially it will take some work to implement the changes but these changes need to happen as soon as possible.

**Question 33**. How would expressly requiring consumers to be given, in all circumstances, the choice upfront to take a subscription contract without autorenewal or rollover impact traders?

**My response**
See 31 above.

**Question 34**. Should the reminder requirement apply where (a) the contract will auto-renew or roll-over, at the end of the minimum commitment period, onto a new fixed term only, or (b) the contract will auto-renew or roll-over at the end of the minimum commitment period

**My response**
B

**Question 35.** How would the reminder requirement impact traders?

**My response**
See 31 above

**Question 36.** Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (a) provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (b) obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?

**My response**

B. Option A is not too different to the situation now, which is not working well for consumers.

**Question 37**. What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?

**My response**
See 31 above.

**Question 38.** What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?

**My response**

3 months to notify that suspension is being considered, then 5 months for the suspension itself. It should not go straight to suspension, so as to give both traders and consumers a chance to reactivate.

**Question 39.** Do you agree that the process to enter a subscription contract can be quicker and more straightforward than the process to cancel the contract (in particular after any initial 14 day withdrawal period, where appropriate, has passed)?

**My response**

Currently, yes. Consumers frequently complain that it is difficult to cancel, with no email address or people not answering the phone. It should be much easier for consumers to cancel and there should be clearly defined ways of doing this.

**Question 40**. Would the easy exiting proposal, to provide a mechanism for consumers that is straightforward, cost-effective, and timely, be appropriate and proportionate to address the problem described?

**My response**

Yes, and should also be made simple to cancel, as well as to get a refund, where appropriate

**Question 41**. Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?

**My response**

Whilst there may be a need for some goods and services to continue, such as with medical requirements, care needs to be taken not to abuse this. The proposal cites insurance as a possible exemption. However, this is the sector which is one of the worst for potential auto-renewal abuse, so strict rules must be applied regarding notifying consumers regularly and using more than one form of contact.

**Consumer Rights**

**Fake Reviews**

**Question 42.** Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

**My response**

C.

**Question 43**. What impact would the reforms mentioned in Q42 have on (a) small and micro businesses, both offline and online (b) large online businesses and (c) consumers?

**My response**

To ban all commissioning and incentivising would be bad for businesses, not just the business selling the good or service. Writing reviews is a core part of a blogger's

work and income, for example. Small and micro businesses need reviews to help with marketing. To block all commissioning and incentivising would mean that new businesses will be slower to grow. Consumers would also have less choice and information to draw conclusions from.

There needs to be tighter controls on people doing the reviews from influencers. The ASA does not currently have enough powers and should be able to fine abusers. It also needs to be able to investigate influencers who aren't high profile. When influencers and bloggers write reviews they currently have to say that they have been gifted or paid for the review but not all do. Sometimes this is lack of awareness, sometimes deliberate, especially if a business has asked them not to mention it.

There needs to be greater enforcement in this area. It is unlikely that someone will write a review that is negative if they are being paid for it. Although not fake, it may leave out some negative aspects. Good bloggers will have a strong policy regarding only writing honest reviews which needs to be rolled out and checked by regulatory bodies.

**Question 44**. What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?

**My response**

Companies need a clear policy that they must enforce.

This should include:

- Blocking anyone from the site who has been found writing a fake review.
- Taking full details, name, address and phone number of anyone writing a review making it harder to set up another account if blocked.
- Allowing the company being reviewed a right of reply.
- To thoroughly investigate any complaints from companies and consumers and take action where necessary.

**Question 45**. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

**My response**

Yes. Make it explicit, so that it is easier for enforcement agencies to take action.

**Question 46.** Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

**My response**

It is not something that consumers cite as problematic when talking about consumer issues. This is more to do with them not being aware, rather than anything else. Once it is pointed out to a consumer that techniques have been used to lead them into a sale that they would not otherwise have made, they feel cheated. They would then want something done, so prevention is better than cure and consumers are not disadvantaged without knowing it.

**Question 47**. Do you think government or regulators should do more to address (a) 'drip pricing' and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?

**My response**

Yes. Similar to my response in 46.

**Question 55**. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

Yes, this would be a positive development, as the CMA is already showing itself to be effective in the area of enforcement.

**Supporting consumers enforcing their rights independently**

**Improving Alternative Dispute Resolution**

**Question 65**. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

**My response**

In its November 2014 document "Government response to the consultation on implementing the Alternative Dispute Resolution Directive and the Online Dispute Resolution Regulation", the Government acknowledged the potential for consumer confusion over the choice of ADR provider and stated:

> "The majority of the responses to our consultation supported our intention to establish a consumer complaints helpdesk as a means to helping consumers navigate the ADR system, minimise confusion and also increase access to and awareness of ADR among businesses." (para 39)

It is now seven years on and still no work has been undertaken to do this. In fact, the situation has become considerably worse.

The response of the Law Society to the 2014 report concurs, suggesting in its consultation response that

> “Creating a single portal for consumers would remove much of the confusion while maintaining the specialist skills of the various Ombudsmen.” (Law Society response, p. 7)

It is of no surprise to see that consumers find it difficult to navigate the system. This was highlighted in our reports of 2016 and 2018, as the situation got worse.

We continue to call for a single website listing all the ombudsmen and the sectors that they deal with as a solution suggested when this issue was highlighted in the Ombudsman Omnishambles report in June 2016 which followed the Law society 2014 report.

It is worth noting that the confusion has increased due to i) the continued poor approval and monitoring of providers highlighted in both reports. ii) some providers still do not list their members, giving false hope and causing more confusion to consumers. ADR companies should be required to list on a dedicated section of their own websites, the retailers with which they have contracted to provide ADR service. iii) at least one provider has openly promoted their own service rather than the longest standing Ombudsman service which has run for over 25 years and iv) there are too many providers in some sectors, where does a consumer go?

For example, a few Trading Standards departments run ADR schemes in their local area which is confusing for businesses as well. There is no consistency. A competitive environment between multiple ombudsmen, especially when the new entrant is inexperienced in that sector, can only lead to further confusion for consumers.

There should be only one provider per sector and that provider should be an Ombudsman to provide clarity and high standards.

Whilst an ADR Helpdesk telephone number already exists (0345 404 0506), run by Citizens Advice, there is currently no UK-based, consumer-oriented web portal which consumers can access to obtain a full list of ADR providers. Most importantly, consumers want to know which ADR providers have relationships with which retailers, so that they can then approach the ADR provider directly.

This is a major oversight that must be resolved if ADR and the use of the ombudsman process is to be successful for consumers. A single ombudsman for each sector is required to reduce confusion which would help all consumers and those who are vulnerable, in particular.

See answer to question 70.

**Question** 66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

**My response**

In October of 2020, the CAA consulted on whether the time should be increased for complex cases. To do this would be a negative step which would sway the ADR complaints process in favour of the company.

It is quite clear that there is no need for cases to take 8 weeks, with email speeding up communication considerably. This should be halved to 4 weeks. It is unlikely that a complex case should take longer than this because all the information would be given to the ADR provider by the consumer. This could be increased to 6 weeks if the ADR provider needs further information. Both parties should have to provide this information within a week.

**Question 67**. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

Checks and balances to ensure that they are doing the job appropriately. The Ombudsman Omnishambles and More Ombudsman Omnishambles evidenced a number of failings. See below answers to Question 68

**Question 68**. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

**My response**

As both the *Ombudsman Omnishambles* (OO) and *More Ombudsman Omnishambles* (MOO) reports highlighted, the Ombudsman Association currently has higher standards for approval of an Ombudsman than the CTSI and CAA have for all ADR providers in the non-regulated areas. This is an unfortunate situation which can easily be remedied

In May 2017 the Ombudsman Association did not revalidate the Retail Ombudsman's membership, so it could no longer be an Ombudsman, as evidenced in the OA minutes. Yet these standards have still not been adopted by the CTSI or CAA. There were a number of recommendations in both these reports which should be implemented:

1) OO and MOO evidenced the failure in not having a "fit and proper person" test in place. Marcus Williamson and I, as co-authors of Ombudsman Omnishambles, were the first to highlight this as an issue and called for such a test to be put in place in both reports. Other organisations, such as MSE, in their report followed suit. A "fit and proper person" test must be put in place for all key members of all ADR providers.

A "fit and proper person" test, as already required in a number of business and public sector environments, would include a DBS check and verification of an individual's business background. This would seek to ensure that an ombudsman, employee or contractor of an ADR has neither a criminal record nor a history of running companies with financial problems.

2) The competent authorities must undertake due diligence of people seeking approval to provide ADR. They need to review their processes to ensure that individuals with criminal records and those with a history of financial problems, either as an individual or as director of a company which has had financial or administration

problems, are excluded from becoming involved as directors, staff or contractors of ADR bodies. As identified in the OO/MOO reports, CTSI and CAA continued to approve a provider that had these issues.

3) Competent authorities must implement ongoing monitoring of ADR companies to ensure that their quality of service is maintained and that enquiries are responded to according to defined service level agreements. This must include ensuring that:

a) all ADR providers submit annual reports on time and to the necessary specification

b) statements made in the media by ADR providers are correct statements of the truth

c) statistics and statements are correct and can be verified. These three areas were identified as not being done and specific examples given.

4) Competent authorities must ensure that appropriate sanctions are applied to companies which do not respect approval rules, in particular to those relating to openness and transparency, to independence and to reporting. This should include the facility to revoke the approval of ADR bodies which are not fully compliant with the rules laid down by approval bodies. There should be a standardisation of criteria that should be met and all ADR companies should be regularly monitored. The OA revoked membership of the Retail Ombudsman for a number of reasons including these areas but the CTSI and CAA continued to approve it as an ADR provider.

5) Competent authorities and the OA should provide a means by which consumers can lodge complaints about ADR providers and their behaviour, so that those complaints can be recorded, investigated and resolved. If ADR providers are found to be in breach of approval bodies' rules then appropriate sanctions must be made available and enforced. These should include the removal of ombudsman status from an offending company, where applicable, and the removal of the ability to provide ADR services. BEIS - As the Government body ultimately responsible for this area, it needs to bring the approval bodies, such as CTSI and CAA, to account.

BEIS has consistently maintained a "soft touch" approach, leaving important issues unresolved. It is time that BEIS acted upon the warnings in the OO and MOO reports. Approval bodies should ensure that all ADR and Ombudsmen annual reports and reviews are appropriately and adequately monitored, they should be verified by a chartered statistician. As a minimum, approval bodies should have access to case management systems to check that figures are correct. This should form part of the annual renewal approval process.

6) If the Government really is focusing on four key principles to improve the quality of ADR – neutrality, efficiency, accessibility, and transparency then it must implement the recommendations outlined in the OO and MOO reports as it highlighted the failures of providers in all these areas and the failure of approval bodies to address the matters appropriately.

7) The competent authorities should adopt all the OA standards for all providers. It is not appropriate for consumers to possibly receive a second rate service where there is not an Ombudsman in the sector.

**Question 69**. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

**My response**

1) Yes, ADR should be mandatory in both these sectors. These are high cost areas for consumers.
2) The "pay by case" is a seriously flawed model. "Pay as you go" is forbidden under OA rules because it is such an unsound practice.
3) It is poor for businesses which can't plan finances appropriately.
4) It provides a "race to the bottom", if more than one provider is available and the consumer is at an extreme disadvantage as they have no say in who the provider should be. So, for example, a business may choose a provider with lower standards than another. This could be one that does not meet he OA standards.
5) There is already a well-established Motor Ombudsman which should be the only provider in this sector. This provider is meeting the OA standards and does not provide "pay as you go". This provider has the proven necessary experience and trust in the sector, with both businesses and consumers, to continue and be the only provider. Having other providers will only lead to signficant confusion for consumers.
6) There is already a well-established Home Improvement Ombudsman run by the Dispute Resolution Ombudsman which is the longest running Ombudsman scheme in the UK, at nearly 30 years old. Having the credentials to grow into other sectors, such as Rail, it is a proven high quality provider of ADR. Again, it should be the only provider in the sector. Allowing other providers into the space will undoubtedly cause confusion for consumers.
7) "Pay as you go" is clearly detrimental to consumers whilst there is more than one provider of ADR in a given sector.
8) The "pay as you go" model does not encourage businesses to improve their offering. Most Ombudsman services offer training and advice, which cannot be given using this model.
9) Engagement with the process is likely to be inconsistent with a "pay as you go" model. Unscrupulous businesses will try not to engage and will prolong matters, making it difficult for the consumer to complain.

10) This model does not exist anywhere and rightly so, as to introduce it would cause confusion for both businesses and consumers, particularly where they have used an ADR provider before.

11) A business may well find it more cost effective to use the “pay as you go” model but this should not be a consideration. With a cost to join and a fee per case it means it is still in a company’s interest to resolve an issue before going to ADR.

**Question 70** How would a ‘nominal fee’ to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

**My response**

1) This would not be good for consumers. There is *no* evidence for the need for a fee. I am unable to find evidence that any ADR provider has found that because it is free to consumers that a consumer brings a spurious or frivolous claim. It takes time and effort to bring a claim, few people can be bothered to undertake the work necessary, with a risk that they may lose. There is therefore no need to introduce one.

2) Where a “nominal” fee has been introduced, such as in the airline sector (which should also be an Ombudsman as called for by every consumer body) it has been £25. This is not nominal for many vulnerable people. But in fact CEDR's stated policy is that they may charge a £25 fee if a claim is completely unsuccessful. There are exemptions to the application of the fee and, in practice, it is rarely charged. Passengers do not pay a fee in advance to submit an application.

   Nor is the £10 - £20 suggested a nominal amount. This could be a week’s shopping for some families. Already out of pocket with their purchase, this places an extra burden and goes totally against the desire to help vulnerable customers.

3) To introduce a fee where it is returned only if the customer wins will put consumers off from making a claim and should not be considered.

4) This will have an adverse effect on consumers’ confidence that the system is there as a support and be put off going through the process. This is particularly true for those who are vulnerable.

**Question 71.** How can government best encourage businesses to comply with these changes?

**My response**

1) Education. It can cost less in time and money to use ADR than go to court. Using an Ombudsman will also provide access to training and raising of standards which

will result in more sales, so businesses need to see the benefit of using ADR. Confidence in the market will grow if consumers know that there is a system that they can use if something goes wrong.

2) The suggestion that a company should receive some sanction for not engaging in ADR when a case lands in court should not arise if ADR is made mandatory.

3) There is be an opportunity here to drive money towards the economy. Consumers who feel safe and protected are more likely to spend their money. The more they spend, the stronger the country's economy becomes. If the Government were to actively encourage consumers to spend with businesses that offer enhanced protection, it would help to kick start the recovery of the high street too. The cost of participation in an Ombudsman would soon be swallowed up by new business.

4) When the Government put money to market the "Eat Out to Help Out" scheme it really worked, with consumers to raise awareness and people flooded to restaurants who were participating. If the Government were to market the advantages and added protection to a consumer of shopping with a trader that is affiliated with an Ombudsman, it would actually become a commercial advantage to businesses signing up in the first place.

**Question 72.** To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?

**My response**

Opening up the routes for other organisations to take action is to be welcomed. It does, however, need to be funded. We have seen the reduction of funding for Trading Standards across the board and this has resulted in fewer cases being brought. Consumers individually cannot bear the cost of class actions.

Funding bodies bringing cases to court will serve as a deterrent and hold companies to account which currently flout the law. Whirlpool (faulty driers) was a good example. Cases should be brought by a national body and not by a local body (such as local trading standards) where a national company happens to be based.

**Question 73** What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?

**My response**

(a) More scope and opportunity for consumers.

(b) It will be good for businesses because it will raise standards. Raising standards will increase consumer confidence and therefore increase future sales.