



Law Society
of Scotland

Consultation Response

European Commission consultation on the targeted
revision of EU consumer law directives

October 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest,¹ a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

We welcome the opportunity to consider and respond to the European Commission's Public Consultation on the rules on the targeted revision of EU consumer law directives. This response has been prepared on behalf of the Law Society by members of our Consumer Law Sub-Committee.

General Comment

The Committee considered the questions contained in the European Commission's consultation. However, we felt that many of these were targeted more directly at consumers or would require statistical information which we do not have available. We have therefore concentrated our responses on those questions of most relevance to legal professional experience.

¹ Solicitors (Scotland) Act section 1



Response to questions

21. What should be done, in your opinion, to ensure that traders comply better with consumer protection rules?

	Strongly agree	Tend to Agree	Tend to disagree	Strongly disagree	Do not know
EU and Member States should stimulate self-regulation by traders		X			
Enforcement authorities should be given more financial and administrative resources	X				
Penalties for infringing consumer law should be strengthened (more proportionate, effective and dissuasive)		X			
Victims of unfair commercial practices should be given rights to claim remedies from the traders (for example, to terminate the contract or claim damages)	X				
Other					X

22 Please explain your reply and describe any other solution that you would like to propose.

Penalties for infringing consumer law should be made more proportionate, effective and dissuasive. However, this would not mean that they should necessarily be increased when compared to the consumer detriment in question.

29. In your professional experience, do consumers experience harm (e.g. financial and/or time loss, psychological harm) when buying on online marketplaces due to the following problems:

	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer was denied the right to cancel the order and return the product within 14 days					X
Consumer was denied a repair or replacement of a faulty product					X
Consumer did not know to whom to direct his/her claim					X
Other					

30. Please explain your reply and describe which kind of harm consumers suffer and which type of goods or services this relates to.

The committee is not in a position to give detailed examples but creating clarity in relation to the identity and contact details of the supplier of goods or services must be in the consumer interest and measures which seek to achieve this are to be welcomed.

1.1.2 "Free" online services

34. Based on your professional experience, do consumers suffer harm (e.g. financial and/or time loss, psychological harm) when concluding contracts for "free" online services due to the following problems:

	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer was not informed about the main features of the service, such as its functionality and compatibility with his/her IT equipment (e.g. information on whether the service will be fully interoperable with his/her hardware and software)					X
Consumer could not cancel the service within 14 days					X
Other					



35. Please explain your reply, including description of harm due to any other problems that consumers face, according to your professional experience.

No further comment.

36. In your view, is it problematic that consumers do not have the right to be informed (before acquiring the service) about the main features of "free" online services (e.g. on functionality and interoperability with hardware and software)?

	Strongly agree	Trend to agree	Tend to disagree	Strongly disagree	Do not know
No, it is not a major issue			X		
Yes, it creates harm for consumers including when they use services cross-border		X			
Yes, it discourages consumers from acquiring such online services					X
Yes, it disrupts level playing field between digital traders offering services with and without payment					X
Other					X

37. Please explain your reply.

We consider that it could be useful for consumers to have a right to be informed about the main features of “free” online services but we do not have any other data on the need for this right.

39. Based on your professional experience, would consumers use "free" online services more often if they had the right to be informed (before acquiring the service) about the main features of the service (e.g. on functionality and interoperability with hardware and software)?

Yes	
No	
Do not know	X

40. In your view, is it problematic that consumers do not have the right to cancel "free" online services within 14 days?

	Strongly agree	Trend to agree	Tend to disagree	Strongly disagree	Do not know
No, it is not a major issue			X		
Yes, it creates harm for consumers including when they use services cross-border		X			
Yes, it discourages consumers from acquiring		X			



such online services					
Yes, it disrupts level playing field between digital traders offering services with and without payment		X			
Other					

41. Please explain your reply.

Again we lack data on this point. However we note that a “cooling off period is” mandated for other distance contract and it would seem to be anomalous if this were not extended to “free” online services also.

43. Based on your professional experience, would consumers use "free" online services more often if they had the right to cancel the service within 14 days after acquiring it?

Yes	
No	
Do not know	X

1.2 Better enforcement and redress opportunities for consumers

1.2.1 Individual redress/remedies for harm suffered from unfair commercial practices

46. In your professional experience, do consumers experience problems with getting redress from traders when they have been victims of unfair commercial practices?

Yes, often	
Yes, a few times	
Yes, once	
No	
Do not know	X

47. Please explain your reply, ideally referring to concrete cases.

We do not have data in relation to this question but practitioners report that access to redress from traders where consumers have been subject to unfair commercial practices has improved.

48. Do you agree that differences between national rules on remedies for unfair commercial practices cause the following problems?

	Strongly agree	Trend to agree	Tend to disagree	Strongly disagree	Do not know
Harm to consumers as they cannot remedy the consequences resulting from unfair commercial practices on the national		X			



and cross-border level					
Costs for traders engaging in cross-border trade due to need to adapt to different national rules on remedies		X			
Other					

49. Please explain your reply.

No further comment.

50. Do you agree that the following differences between the national legislation of EU Member States on penalties cause insufficient enforcement of EU consumer protection rules across the EU?

	Strongly agree	Trend to agree	Tend to disagree	Strongly disagree	Do not know
Differences regarding the nature of penalties - For example in some Member States traders using standard unfair terms in contracts with consumers (e.g. a standard term which denies the consumer right to a remedy where the good is defective) cannot be penalised with a fine whereas in other Member States the use of such terms		X			

may be penalised by a fine up to 50 000 EUR.					
Differences regarding the level of maximum fines - For example fines for unfair commercial practices such as misleading green claim may go up to 32 000 EUR in one Member State, whereas in another Member State up to 5 million EUR		X			
Differences regarding the way of calculating fines - For example breaches of the Consumer Rights Directive (e.g. not providing to consumers a mandatory information on their rights) may be fined up to a lump sum of 1 500 EUR in one Member State, whereas in another Member State up to 10% of a trader's turnover.		X			

51. Please explain your reply, preferably by providing examples of concrete cases. In addition, if possible please include a description of any other situation where differences in penalties and in fines in EU Member States cause insufficient enforcement of the EU consumer protection rules.

We consider that in the context of the Internal Market remedies should be similar to ensure that the level of protection is consistent across the market although we do not think that harmonisation as such is required.

Where enforcement is lacking, this can cause problems. It will be a matter for individual courts or regulatory authorities to weigh the gravity of a particular offence but all consumers should benefit. There should be consistency across the Member States in terms of both remedies and enforcement to ensure equal access to effective justice for all consumers.

1.4 Doorstep selling

62. Under current EU law, doorstep selling is a legitimate sales channel in Europe, except for certain specific exceptions under the UCPD. Do you agree that Member States' authorities should be allowed to introduce a general ban on doorstep selling, as explained above?

Strongly agree	
Tend to agree	X
Tend to disagree	
Strongly disagree	
Do not know	

63. Please explain your reply.

We are aware that doorstep selling is often targeted at vulnerable groups, especially the elderly. There is also a danger of high-pressure sales and scams. We also note that doorstep approaches are unsolicited although in some situations they may still be welcome. One potential avenue might be licensing of particular services to allow relevant providers - eg gardeners or window cleaners – to offer their services within controlled parameters.



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