



Consultation Document

Draft Consumer Rights Bill

Response from:

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Response to Department for Business Innovation and Skills

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

- Established in 1967, the British Vehicle Rental and Leasing Association is the UK trade body for companies engaged in the rental and leasing of cars and commercial vehicles. Its members operate a combined fleet of 2.75 million cars, vans and trucks.
- BVRLA members buy nearly half of all new vehicles sold in the UK, supporting around 184,000 jobs and contributing more than £14bn to the economy each year.
- By consulting with government and maintaining industry standards, the BVRLA helps its members deliver safe, sustainable and affordable road transport to millions of consumers and businesses. For more information, visit www.bvrla.co.uk.



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Executive Summary

The British Vehicle and Rental Leasing Association welcomes the opportunity to comment on the Government's draft Consumer Rights Bill.

We note that the proposals aim to simplify and clarify consumer law in relation to the supply of goods and services. We therefore wish to offer our input into how these twin objectives can be further enhanced.

We specifically note that the draft Bill attempts to establish clear rules around rights and remedies. These, inter alia, include a new defined period for the short term right to reject and claim a full refund for faulty goods which we note the Government believes will help to boost business growth and promote fairness for consumers.

Our industry has specific concerns with this aspect of the proposal which we believe could, if it remains unchanged, give rise to consumer detriment through a reduction in a competitive marketplace and choice.

We also 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 concern to our members.

Specific Comments

Right to reject for consumers who have leased motor vehicles

We note that the draft Bill proposes to change consumers' rights so that they are able to reject goods, including motor vehicles, which are proven to be of a sub-standard condition within **30 days** of the goods being supplied or delivered.

We believe it would be sensible for the Government to give due consideration into changing the law so that the producer / importer or manufacturer is held jointly and severally liable in relation to the supply of defective goods. While the end-customer may have no direct contractual relationship with the producer of the goods, a change in law would help to enhance consumer protection, especially where the retailer is unwilling or unable to assist the consumer.



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Deduction for use

We are encouraged to note that the Government has recognised that businesses supplying goods should be permitted to make a lawful deduction for use where the consumer chooses to exercise their right to reject goods **after** 30 days of taking delivery of a new motor vehicle.

We acknowledge the difficulties the Government faces in striking a fair and proportionate balance between protecting consumers from traders who may wish to unfairly reduce the price of the goods and protecting businesses from rogue consumers using the goods and returning them after 6 months and claiming a full refund.

We call on the Government to ensure that a right to deduction is enshrined in the law. The right to deduction supports the principle of restorative justice, especially as the consumer will have had the benefit of using the goods over a prolonged period of time. Motor vehicles, as high value goods, tend to see the greatest drop in value in the first year of purchase and a right of deduction would help to ensure fairness for both parties to the contract.

We understand that the Bill currently makes reference to second hand valuation, which we understand has been inserted to help ensure that the trader does not reduce the refund price below a used market value.

Following our recent productive discussions with Departmental officials, we would encourage BIS to consider making the necessary amendments so that the Bill does not prevent a trader from make a deduction for use where there is no current or active used market valuation available. To help illustrate this point, while the motor trade has a number of used vehicle valuation guides these are unlikely to reflect new products such as electric vehicles.

Customers entering into a personal contract hire agreement will not take legal ownership of the motor vehicle being leased. Instead, the customer would simply pay the pre-agreed monthly rentals during the term of the agreement and return the vehicle to the leasing company at the end of the agreement. We would therefore wish to seek assurance that a leasing company would, under these circumstances, not necessarily be expected to use the monthly rentals as a basis of working out the deduction of use, but instead be permitted to apply a fair and reasonable methodology to help calculate the deduction for use.

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For financed goods where legal ownership transfer to the consumer, we would recommend that where a refund is requested, that the consumer is only entitled to recover the fair market value for a similar age, mileage and condition of vehicle and that where a replacement vehicle is provided this is taken into account.

As explained, the use or reference to market value needs to be carefully clarified especially as new motor vehicles, such as electric or hybrid vehicles, will be so new that there may be no active or established used vehicle market value for the trader to reference.

We appreciate the complexities in ensuring that the law meets the various stakeholders concerns, as it relates to deduction for use, and we would welcome the opportunity to continue our constructive dialogue to ensure that a measured and proportionate balance is secured in the Bill.

Daily Rental Agreements

We are concerned with the proposals insofar as they bring daily rental 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 or major failure of the product, which prevents it being used for the purpose advised to the trader.

We do not believe that the draft standards as currently set out in the Bill go far enough and would suggest this is amended to include reference to excluding cosmetic defects that are not primary to the use or 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 not justified:

- There is no clear evidence which supports the 'opt out' mechanism
- Legal procedures relating to competition claim for damages work well today

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- International experience in the US, Canada and Australia provide evidence that the opt-out proposal does 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 is 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 start an action and to give the Competition and Markets Authority 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 used 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.



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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.

Closing Comments

We trust our comments will help to add value to the debate on the Bill as it progresses through Parliament. Should you require any additional information or clarification then please do not hesitate to contact us.

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.