



Consultation Document

ENHANCING CONSUMER CONFIDENCE BY CLARIFYING CONSUMER LAW

Response from:

British Vehicle Rental and Leasing Association

River Lodge

Badminton Court

Amersham

BUCKS HP7 0DD

Tel: +44 1494 434747

Fax: +44 1494 434499

E-mail: info@bvrla.co.uk

Web: www.bvrla.co.uk



Response to Department for Business, Innovation & Skills

Executive Summary

The BVRLA welcomes the opportunity to comment on the Government's proposal for simplifying and clarifying consumer law in relation to the supply of goods and services.

We note the Government is proposing to establish clear rules where uncertainty about rights and remedies is causing disputes, including a defined period for the short term right to reject within which consumers can get a full refund for faulty goods with the objective of increasing growth for business and promoting fairness for consumers.

The key areas of our concerns relate to circumstances where a motor vehicle has been purchased by a leasing company from a motor manufacturer or a motor dealer for the purpose of providing a consumer with a lease.

Under the proposed changes a consumer would have the right to reject any motor vehicle provided, if it was of a sub-standard condition within 30 days and a right to a number of repairs before a full refund was due.

Our members as the supplier of a vehicle leasing service, sit between the consumer and the producer of the goods, the motor manufacturer. In this scenario, the consumer has no direct relationship, however the motor manufacturer 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 would ask the department to review the matter so that a leasing company, in such a scenario, was able to extend the proposed rights 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 where it was applicable and to avoid the creation of different levels of consumer rights.



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It is encouraging to note that the Government 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 car. We note that after 30 days, the consumer will have a right to pursue second tier remedies after a number of repairs have been carried out to the vehicle or where the consumer has been provided with a replacement 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. In the case of a lease agreement where the customer wishes to reject the vehicle, the customer should not be entitled to recover any lease or rental payments made.

We are concerned with the proposals for bringing hire contracts into scope of the right to reject goods which are hired on a short term basis. The proposal as written 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 only a significant failure of the product, which prevents it being used for the purpose intended should enable a consumer to terminate the hire contract. 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.

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.

Specific Comments

Questions from Chapter 4: Introduction

Q1. Do you agree that all businesses should be subject to the same framework of consumer protection for the sale and supply of goods, services and digital content, or

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Do you consider that micro-businesses should be exempt from any or all of the new proposals and remain subject to the current framework? (4.21-22)

We support the approach that all businesses should be subject to the same framework and think that micro-businesses should not be exempt. This is because it could reduce micro-businesses chances for winning business as a consumer would not be entitled to the same rights as from other businesses. As an alternative solution, it could be that a micro-business is exempt from the regulations but can opt-in if they wish to offer enhanced consumer rights.

Q2. Do you agree with the Government's proposal to introduce a single definition of 'consumer' and a single definition of 'trader'? (4.25-38)

Do you have any concerns with any aspects of the proposed definitions?

The proposed definitions can be summarised as follows:

Consumer - this would be limited to an individual acting for purposes which are wholly or mainly outside of his or her trade, business, craft or profession; but would not include an individual buying goods at an auction which individuals may attend in person (for the purposes of protections currently subject to this restriction).

Trader – this would be an individual ('natural person') or organisation ('legal person') whether publicly or privately owned, who is acting – including through any other person acting in their name or on their behalf – for purposes relating to their trade, business, craft or profession in relation to contracts for goods, digital content or services.

We support the above definitions and are happy with the approach of just one definition for consumer and trader.

Questions from Chapter 5: Supply of Goods

Q3. Do you agree that it would be beneficial for a single definition of 'goods' to be used for the protections explored in this chapter and provisions of EU law? Do you consider that the use of the following EU definition would be appropriate (please give reasons)?

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"Goods" means any tangible movable items, with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity shall be considered as goods where they are put up for sale in a limited volume or a set quantity. (5.57-60)

We agree that it would be beneficial and support the above definition.

Q4. Do you believe that this is a sensible change or can you foresee problems arising from a move away from the implied terms model? (5.61-75)

Q5 What benefits can you see from moving away from the implied terms model? (5.61-75)

We support the idea of a system of statutory guarantees which clearly state the quality standards that goods must meet and the remedies available to the consumer if these guarantees are breached.

This should help both consumers and businesses understand the rights and remedies. That said, we should ensure that courts would be free to imply terms into a contract to help bring about fair outcome between the two contracting parties.

Q6. Is 30 days a reasonable period to set for the short term right to reject sub-standard goods? (5.76-91)

We support 30 calendar days as a reasonable period to reject sub-standard goods from the date the goods are received. However, we suggest that a definition of sub-standard is provided to ensure that for goods which a customer has simply decided they do not they are not able to reject and get a full refund. Our suggestion would be that the regulation excludes cosmetic defects that are not primary to the use and enjoyment of the goods.

Q7. Do you agree that an exemption is required for goods where there may be a delay before use, or does this represent an unwarranted complication? (5.92-93)

We believe this could be open for abuse and difficult to enforce. For example, consumers could claim they had not used something months after it was purchased and then claim a refund.

Q8. What evidence should a consumer have to produce to benefit from this exemption and do you think this can and should be provided for in statute? (5.92-93)

As above we not believe an exemption should be provided.

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Q9. If an exemption is provided, do you agree that in order to make use of the provision, the likely delay must be raised by the consumer at the time of sale and the exemption be agreed by both parties at that time? (5.92-93)

As above we not believe an exemption should be provided.

Q10. Do you agree that the consumer should be allowed 7 days to examine the goods after any repair has been carried out, before losing the right to reject? (5.88)

This seems to be an excessive amount of time to allow people to examine goods, we would suggest that two days from the point of receiving the goods back is sufficient. This should allow the consumer ample time to determine if a fault has been sufficiently rectified.

Q11. Do you consider that there is a need for the remedies for sale by description and for misleading practices to be aligned? If yes, do you think that they should both have a period of 30 days or 90 days? (5.94-97)

We believe it makes sense to align the practices for description and misleading practices and we would suggest that 30 days is sufficient.

Q12. Which of the proposed models do you believe would be the best approach? (5.98-127)

Having reviewed the options proposed by the Government, we would support Option 4 in the consultation which does not restrict the number of repairs or replacements but allows consumers to automatically access second-tier remedies if repairs or replacements have not been completed satisfactorily within an agreed timescale.

We also support the proposal that consumers still have a right to access second-tier remedies if the repair or replacement caused significant inconvenience or took more than a reasonable time to complete.

However, we would urge the Government to recognise that when there is a complex problem with a product such as a motor vehicle this can take time to diagnose and rectify, in most cases a replacement vehicle will be provided and therefore you could argue that the inconvenience to the customer is minimal and alternative transport has been provided.

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Q13. In Option 4, do you agree that a cumulative total of 14 days for repairs or replacements is a reasonable limit? If not, how many days do you believe would be preferable? (5.120-127)

We would suggest 28 days is more reasonable especially when you are talking about complex problems with a car which may require parts to be shipped in. This of course would be a maximum and many repairs would be carried out much quicker.

Q14. Do you agree that, if a temporary replacement of equal or higher quality is provided for the duration of any repair/replacement process, the limit under Option 4 should be set higher, for example at 28 days or 30 days, or waived altogether? (5.126)

Yes, as we have mentioned above, in many cases a replacement car is provided whilst the vehicle is off the road. This therefore removes any inconvenience to the customer and we would suggest the limit should be removed altogether.

Q17. Which of the proposed models (or which mix of the models) do you believe would be the best approach? (5.131-155)

We believe that option 4 is the most appropriate option for the Government to take forward. Option 4 gives the most flexibility for businesses and recognises the price drop in new vehicle values in the first year. Within the motor sector there are independent used vehicle guides to help determine the market value of a second hand vehicle based on the age, mileage and condition of the vehicle, these will be able to help businesses and consumers to ensure a fair deal for all.

Q19. Do you agree that it makes sense to allow exceptions to the stated minimum refund where robust, impartial third-party evidence exists for the current value of the goods in question? (5.149-155)

Yes, as per our comments above if option 4 is taken forward then this would be required as part of our general support for option 4.

Q20. Do you agree that, if such exceptions are allowed, the appointment of an adjudicator would be necessary to rule on the reliability of evidence? If yes, do you have suggestions for what sort of organisation might be best placed to act in this capacity? (5.153-154)

No, where a dispute arises there are other avenues for adjudication for example, trade association conciliation services or the Financial Ombudsman Service who could review the matter.

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Q21. Do you believe that this is a sensible change or can you foresee problems arising from applying broadly the same remedial scheme to all transaction types? (5.156-174)

We support the same approach for all transaction types with the exception of hire contracts and have expanded on this in our response to question 23.

Under the proposed changes a consumer would have the right to reject a motor vehicle that was sub-standard condition within 30 days and a right to a number of repairs before a full refund was due beyond that.

Our members as the supplier of a vehicle leasing service, sit between the consumer and the producer of the goods, the motor manufacturer. In this scenario, the consumer has no direct relationship, however the motor manufacturer 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 would ask the department to review the matter so that a leasing company, in such a scenario, was able to extend the proposed rights from the supplying dealer and or the motor manufacturer to the consumer. This would help to ensure that the consumer's rights were extended to the producer of the goods where it was applicable and to avoid the creation of different levels of consumer rights.

Q22. What benefits can you see from aligning the rules for different transaction types in this way? (5.156-174)

We think the key benefit would be that both consumers and businesses could have one approach regardless of how the product is funded. This would reduce confusion and help everyone understand their rights and redress, however we do have some concerns with hire contracts and have expressed these further below.

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Q23. Do you agree that the approach outlined above for hire contracts is sensible? (5.173-174)

We are concerned with the impact on vehicle rental that aligning the rules would have for our members. In the first instance we believe that the consumer should only be entitled to early terminate a lease agreement for a substantial failure of the product. For example, if it was a vehicle hire for two weeks and after a week the CD player stopped working this should not necessarily allow the consumer to terminate the rental or lease contract. If a consumer was entitled to do this the rental or lease company could find it difficult to rent the vehicle out to another customer immediately. We would suggest that instead of allowing a consumer to terminate the contract it would be preferable for the consumer to only be allowed to do this due to a significant failure of the product. Our suggestion would be that the regulation excludes cosmetic defects that are not primary to the use and enjoyment of the goods.

We also are concerned with the comments around the consumer being able to claim damages for loss suffered. Most hire contracts will only allow for compensation for foreseeable damages or as a consequence of the rental or lease company's negligence. If an unforeseen fault developed during the rental hire period, such as the one described in the consultation with regards to a faulty CD player, the consumer would not necessarily be entitled to compensation for their losses. Our suggestion would be that the regulation excludes damages for loss suffered due to cosmetic defects that are not primary to the use and enjoyment of the goods.

Closing Comments

We trust our comments will help to add value to the debate on simplifying and clarifying the law in relation to the supply of goods and services. Should you require any additional information or clarification then please do not hesitate to contact us.

We are aware that there is a range of proposals and legislative changes surrounding consumer protection at the moment. This type of piecemeal approach is very difficult for businesses as it adds unnecessary cost to businesses and causes confusion for consumers.

We would suggest the Government considers a single review of all aspects of consumer legislation which can all be introduced at the same time therefore minimising the impact on UK businesses.



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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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Response from: British Vehicle Rental and Leasing Association
Address: River Lodge
Badminton Court
AMERSHAM
Bucks HP7 0DD

Contact: Mr Jay Parmar, legal and policy director

Phone: +44 1494 545706

Fax: +44 1494 434499

Email: jay@bvrla.co.uk

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