



Department
for Business
Innovation & Skills

**CONSUMER RIGHTS BILL:
PROPOSALS ON SERVICES**

IMPACT ASSESSMENT: FINAL

JUNE 2013

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Title: Consumer Bill of Rights: Proposals On Services IA No: BIS 0389 Lead department or agency: Department for Business, Innovation and Skills Other departments or agencies:	Impact Assessment (IA)
	Date: 12/02/2013
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
Contact for enquiries: consumerbill@bis.gsi.gov.uk	

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£290.89m	-£6.97m	£0.81m	Yes IN

What is the problem under consideration? Why is government intervention necessary?

There are two main problems:

- **Consumer services law is inaccessible and difficult to understand**, which causes confusion among businesses and consumers as to what consumers are entitled to expect as a minimum from businesses providing them with services.
- **No statutory redress regime in the services sector**, which causes confusion among businesses and consumers as to what consumers are entitled to request, and businesses required to provide, by way of redress when something goes wrong with service provision.

What are the policy objectives and the intended effects?

- To clarify and, as necessary, enhance consumer rights applicable to consumer contracts for services; and
- To clarify and enhance the remedies available when these rights are breached
- To implement one of the provisions of the Consumer Rights Directive, a provision of EU law

Clarifying and enhancing where appropriate, law in this area should:

- Benefit the market as a whole by increasing consumer confidence, empowering consumers and driving stronger competition between firms;
- Make it easier for consumers to secure redress when their rights in relation to service provision are breached; and
- Reduce business costs, by allowing traders to resolve disputes more quickly and easily, and reduce expense in staff training over consumer rights.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Do Nothing - Rejected as does not achieve policy objectives.

Information Campaign - Rejected because previously attempted with little impact and does not achieve policy objectives.

Option A - Preferred as supported by respondents in the consultation and achieves the policy objectives. Introduce a new statutory right that the service must meet information given by the trader in certain circumstances, even if not in a written contract; Introduce new statutory remedies; Make it clear that any attempt by businesses to render these remedies inapplicable will have no legal effect; and remove references to 'implied terms' and replace these with less legalistic language.

Option B – Option not being taken forward at this stage. Further work being taken forward. Business respondents in consultation suggested it would place higher burdens on them and we could not estimate the impact. It would amount to Option A with the additional requirement that the outcome of the service be of 'satisfactory quality' and 'fit for

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/2019					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: n/a		Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ **Jo Swinson** _____ Date: _____ **4 June 2013** _____

Summary: Analysis & Evidence

Policy Option 1

Description: Changes to consumer law for supply of services

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 187.93	High: 393.37	Best Estimate: 290.89

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	2.4	2.7	25.2
High	6.2	5.7	55.1
Best Estimate	4.3	4.2	40.1

Description and scale of key monetised costs by 'main affected groups'

Business transition costs from familiarisation, training and legal costs of £4.3 million (comprising of familiarisation and training costs of £2.6 million and seeking legal advice £1.68 million)

Ongoing costs to business from an increase in the number of consumer complaints and providing remedies. Increased consumer complaints costing £0.49 million and providing remedies of £3.7 million.

Other key non-monetised costs by 'main affected groups'

There are no non monetised costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	28.3	243.1
High	0	48.8	418.6
Best Estimate	0	38.5	331.0

Description and scale of key monetised benefits by 'main affected groups'

Ongoing benefits to business from simpler complaint handling, reduced legal costs and training costs for staff of £3.8 million. (Broken down in to simpler complaint handling of £1.6 million, reduced legal costs of £0.9 million and saving from staff training of £1.4 million)

Ongoing benefits to consumers of reduced risk of consumer detriment and transaction costs of £33.2 million which increases annually in line with the growth in household expenditure.

Other key non-monetised benefits by 'main affected groups'

The introduction of new statutory remedies will enable a minority of firms to make savings by making right the service instead of providing compensation (where the consumer chooses this option).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

There is a risk that the changes will not provide greater simplicity and clarity for consumer and businesses and therefore incur costs to business without comparable benefits. This risk has been mitigated by wide consultation with businesses and consumers.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 4.7	Benefits: 3.8	Net: -0.8	Yes	IN

Evidence Base (for summary sheets)

Problem under consideration

1. This Impact Assessment relates to proposals to reform consumer law on the supply of services. The proposals form part of a wider programme of work to reform consumer law (the 'Consumer Law Reform Programme'). This section outlines the overall motivation for simplification and clarification of consumer law, before explaining the specific proposals covered by this IA.

Background context:

2. UK consumer law is unnecessarily complex. A bench-marking study by the University of East Anglia in 2008, found that the current system of consumer law offers a high degree of protection but is confusing, because it has grown piecemeal over the years¹. Consumer law is fragmented and in places unclear, for example where the law has not kept up with technological change or lacks precision. There are also overlaps between EU and pre-existing UK legislation and the law is couched in legalistic language.
3. It is widely understood that consumers who understand their rights can play a strong part in driving growth because they force businesses to innovate and pursue efficiency. For this driver to work, we need both competitive markets and a strong but simple framework of consumer law that can be effectively enforced.
4. For traders, poorly understood law wastes business time and creates costs arising from unnecessary and prolonged disputes with consumers, additional staff training and the need to seek legal advice. Unscrupulous traders can exploit the law's complexity and undermine competition from legitimate businesses. Consumers who lack confidence in their rights are less likely to try new market entrants and innovative products, which in turn weakens competitive pressure on incumbent firms².
5. The proposals within this Impact Assessment form part of a proposed wider reform of Consumer Law (the 'Consumer Law Reform Programme'). They are intended to come into effect alongside or shortly after another part of the package – regulations which will implement the Consumer Rights Directive ('CRD'). Reform will require primary legislation (the proposed Consumer Bill of Rights), amendment of the Consumer Protection from Unfair Trading Regulations as well as the implementation of the new Consumer Rights Directive through regulations. The package of reform intends to:
 - **Consolidate** the law to reduce fragmentation;
 - **Clarify** the law to reduce the scope for costly disputes;
 - **Update** the framework to ensure that consumer rights keep pace with technological advances;
 - **Deregulate** to introduce key business-friendly provisions; and
 - **Enhance** consumer rights where it is appropriate to do so

These proposals on services both clarify and enhance consumer rights and remedies.

¹ University of East Anglia 'Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries' for BERR 2008

² ICF GHK 'Consumer Rights and Economic Growth' for BIS Report (to be published 2013)

Problems with the law covering the supply of services

6. There are two main problems with the law covering consumer rights in the supply of services:
 - **Consumer services law is inaccessible and difficult to understand**, which causes confusion among businesses and consumers as to what consumers are entitled to expect as a minimum from businesses providing them with services.
 - **There is no statutory redress regime in the services sector**, which causes confusion among businesses and consumers as to what consumers are entitled to request, and businesses required to provide, by way of redress when something goes wrong with service provision.

7. In 2010 Professors Howells and Twigg-Flesner produced a report, 'Consolidation and Simplification of UK Consumer law', in which they highlighted various areas of consumer detriment caused by the current law. Conclusions they drew in relation to the law on the supply of services included:
 - That whilst consumers seeking to identify their legal rights might notice the implied terms in the legislation, they will not understand the legal effect or consequences of these.
 - That the reliance on contract common law principles and remedies makes the law incomprehensible and inaccessible to consumers.
 - That the complexity of the current law means those advising consumers (e.g. generalist lawyers, citizens advice volunteers and non-legally qualified business advisers) with limited time and expertise are less able to perform their advice functions.

8. The Consumer Focus *Consumer Detriment 2012* report ('the Consumer Focus Report')³ estimates that consumers experienced 15.7 million problems with goods and services purchased during 2012, resulting in an estimated £3.08 billion of financial detriment.

9. The main areas in which consumers experienced problems in 2012 (based on the numbers of consumers experiencing problems in each area) were: regulated services, house fittings and appliances, other household requirements, professional and financial services, personal goods and services, and transport. Of these areas, three fall squarely within the services sector (*regulated services*, *professional and financial services*, and *personal goods and services*). In addition, problems with the quality of a service accounted for 51% of the total problems within the *other household requirements* area, and 58% of the total problems within the transport area.

10. The current law leads to the following problems.
 - i) Consumer services law is inaccessible.
 - **It is not easy for consumers or businesses to identify their consumer rights as these are confusingly referred to in current legislation as "implied terms"**. OFT (2011)⁴ found that 37% of consumers were not knowledgeable about their consumer rights with just under a quarter of consumers claiming they would not feel confident exercising their rights. The rates were even higher with 48% of consumer-facing businesses not knowing any areas that consumer protection rules applied to⁵.

³ Available at <http://www.consumerfocus.org.uk/files/2012/10/TNS-for-Consumer-Focus-Consumer-Detriments-20121.pdf>

⁴ OFT 'Know Your Consumer Rights Campaign' 2011 pg3

⁵ Synovate 'Competition Act & Consumer Rights' for the OFT 2006.

- **It is not clear whether/to what extent the businesses can exclude or limit liability for the statutory rights;** such exclusions or limitations must be “reasonable” but it is hard for consumers and businesses to know what “reasonable” means. The problem is exacerbated by the fact that the rules on limitation of liability and reasonableness are set out in different pieces of legislation to that which sets out the consumer’s rights.

ii). There is no clear statutory remedies regime.

- **Consumers and business staff are unlikely to know what remedies consumers are entitled to when their rights are breached,** as legislation does not set out any remedies, and the common-law is difficult for consumers and businesses to access, let alone interpret.
- **Consumers might want the business to put the service right, but in England and Wales, this remedy is only given at the court’s discretion and there are a number of factors which would preclude the courts from ordering such a remedy.** In England and Wales, the courts are much more likely to order the business to pay the consumer a sum of money by way of compensation.⁶ In Scotland, the position is different and the courts are more willing to order a remedy to put the service right. OFT (2006)⁷ asked consumers what they believed to be their right of redress when they thought work had been completed unsatisfactorily; 62% of consumers felt the business had to put the problem right, only 18% of consumers correctly stated that they could get compensation.
- **When a business includes a contract term excluding or limiting liability, a consumer might think he/she is not entitled to anything if the service has been supplied inadequately, when in fact he/she will be entitled to a remedy if the term is unreasonable.** The need to refer to three pieces of legislation (Supply of Goods & Services Act, Unfair Contract Terms Act and Unfair Terms in Consumer Contracts Regulations) to determine whether the term is valid makes this area of the law inaccessible to consumers.

11. Further information about the current law can be found in Annex A.

12. These problems have two direct outcomes:

- **Consumers are less likely to engage in the market,** as consumer confidence and empowerment are undermined where consumers are not sure what they are entitled to expect from businesses.
- **Consumers are more likely to suffer detriment they are unable to resolve,** as they are unlikely to know what they are entitled to demand from the business when things go wrong with service provision.

13. These direct outcomes lead to wider market detriment in a number of ways:

- **Poor service provision, and detrimental business practices are not challenged,** as consumers who receive poor service provision merely accept this, or are left

⁶ Courts will not order specific performance (i.e. that the service be re-performed in line with the contract) where damages (i.e. monetary compensation) would be an adequate remedy – *Societe des Industries Metallurgiques SA v Bronx Engineering Co Ltd* [1975] 1 Lloyds Rep 465.

⁷ Synovate ‘Competition Act & Consumer Rights’ for the OFT 2006

unsuccessful in their attempts to secure satisfactory redress. In response to BIS's consultation on proposals to clarify consumer law on the supply of services, OFCOM, the Law Society, trade bodies and individual businesses cited this issue.

- **New market entrants are unable to expand as rapidly as they might**, as the absence of a clear body of consumer law applicable to the provision of all services reduces consumers' confidence to try out unfamiliar or new businesses due to their uncertainty as to what they would be entitled to demand from these businesses should something go wrong with the service. Consumers instead stick to well-known businesses, with known company policies and reputations which make it clear what they can expect from the business.
- **Productivity, innovation and market growth are inhibited**, as consumers do not sufficiently drive competition.

Economic Rationale For Intervention

14. The key motivation for simplifying and reforming consumer law is to make markets work more effectively and to drive economic growth.
15. Well-functioning competitive markets encourage growth by creating incentives for firms to become more efficient and innovative.⁸ Markets can only be fully competitive if consumers are active and confident, meaning that they are willing to challenge firms to provide a better deal, switch between suppliers, and take up new products.⁹ Consumer law reform can play a central role in empowering consumers and hence supporting more effective competition.
16. First, by simplifying and clarifying consumer law, the reforms aim to raise consumers' awareness and understanding of their existing rights. The proposed consumer law reforms will reduce and streamline the number of pieces of consumer legislation. They will also clarify consumer rights where these are currently unclear – for example, clarifying that it is not reasonable for traders to limit liability for services to any amount less than the contract price.
17. Greater awareness of consumer rights should make markets work more effectively because consumers will have greater confidence to switch to alternative suppliers or take up new products. Where consumers are unclear what will happen if things go wrong with a new product or service, they will take account of this risk either by engaging in costly search to find out more about the product, or by requiring a 'risk premium' on the new product. Clarifying consumer rights can thus reduce transaction costs of switching suppliers or taking up a new product. It can also help to overcome behavioural inertia, where customers prefer to stick with what they know rather than the slightly less certain (but potentially better) alternative.
18. This is particularly important in allowing new entrants to compete and win customers from established firms. For example, in online markets the strength of established brands comes in part from a perceived lack of consumer confidence in the protections afforded by consumer law for consumers purchasing from smaller suppliers.
19. Second, and related to these simplification benefits, consumer law reform can also ensure that substantive consumer protections are focused on addressing key market failures – particularly information asymmetries between consumers and firms.
20. There is strong academic support for the position that some minimum degree of consumer protection is required in order for markets to function effectively.¹⁰ For example, in the absence of consumer law, consumers would typically not know how a firm would respond if something went wrong with a product or service. Having to find out this information in each case, and potentially negotiate an insurance agreement with each firm, would be extremely costly. Having a minimum level of consumer protection in place is an efficient way of reducing search and transaction costs.
21. The overall impact on growth of consumer law simplification could be significant. For example, in Australia the Productivity Commission estimated that simplifying national consumer law could increase productivity by 0.13 per cent, and in turn lead to higher GDP. In the longer term, these productivity gains were estimated at A\$6 billion over forty years.

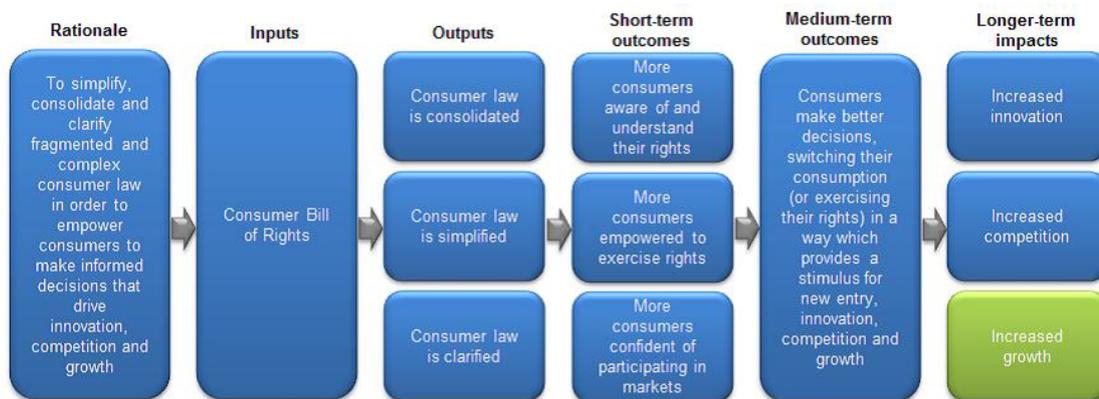
⁸ For references to literature on the links between competition and growth, see OFT (2011), 'Competition and growth'

⁹ Mark Armstrong (2008), 'Interactions between competition and consumer policy'

¹⁰ Armstrong (2008)

22. Figure 1 summarises the way simplified consumer rights can have an impact on economic growth.

Figure 1: Logic model linking simplified consumer rights and economic growth¹¹



¹¹ Model taken from ICF GHK 'Consumer Rights and Economic Growth' for the Department for Business, Innovation and Skills (to be published 2013) pg20

Policy objectives

23. This Impact Assessment is concerned with proposals relating to the law applicable to consumer contracts for services. These proposals sit within a wider package of reforms to consumer law, as mentioned above.

24. We have three objectives in clarifying and enhancing the law on the supply of services specifically:

- To clarify and, as necessary, enhance consumer rights applicable to consumer contracts for services; and
- To clarify and enhance the remedies available when these rights are breached
- To implement one of the provisions of the Consumer Rights Directive, a provision of EU law

25. Clarifying and enhancing the law in this area should:

- Benefit the market as a whole by increasing consumer confidence, empowering consumers and driving stronger competition between firms.
- Make it easier for consumers to secure redress when their rights in relation to service provision are breached.
- Reduce business costs, by allowing traders to resolve disputes more quickly and easily, and reduce expense in staff training over consumer rights.

26. Increasing consumer confidence will empower consumers to challenge incumbent firms, switch to competitors and take up new products. In turn, this should force businesses to compete on price and quality, stimulating innovation and growth – along with greater investment in the long term.

27. Actions such as issuing guidance and providing education on the current law would be insufficient to achieve these policy objectives.

- For example, whilst it did have some success, the OFT's 2009 'Know Your Consumer Rights Campaign' was only able to address a limited amount of the confusion experienced. The Consumer Detriment 2012 Survey by Consumer Focus shows that consumers continue to suffer unacceptable levels of detriment, and consultation responses strongly suggest that a high level of confusion continues to exist.
- Whilst it is vital that consumers are educated about their rights, the success of such education may be dependent on the clarity of its content. In a report for BIS on how consumer contract law could be simplified, streamlined and rationalised, Professor Howells and Professor Twigg-Flesner noted that where the law is clear and accessible this makes it easier to provide effective consumer education¹². If

¹² Department for Business, Innovation and Skills, *Consolidation and Simplification of UK Consumer law* 2010. Para 4.42 (Edited by Professor Howells and Professor Twigg-Flesner)

consumers cannot understand the education they are given because the content is too complex they are likely to become more, rather than less, confused.

- Behavioural economics further suggests that consumers are unlikely to be able to understand complex law; consequently, the way information is presented to them, and the ease with which it can be understood, is likely to be crucial in consumers' awareness¹³.

28. Therefore, a consolidation, clarification and, where appropriate, enhancement of the law is needed. This should be delivered along with consumer and business education campaigns, in order to ensure that all involved in the provision of services are aware of the rights and obligations that affect them.

BIS is already working with a variety of consumer and business organisations to ensure effective education campaigns are provided alongside the changes to substantive law outlined below.

¹³ See discussion at <http://web.iese.edu/jestrada/PDF/Research/Others/L&BE.pdf> (Accessed on 7/2/13 at 16:50)

Description of options considered

Do nothing

Why rejected

29. This would fail to address the consumer detriment and the costs to business listed above.

Consultation 'Part A'

Description

- i. Introduce a new statutory right that the service must comply with the information given by the trader in certain circumstances, even if this is not recorded in the written contract.
- ii. Introduce new statutory remedies. Where a service is substandard, to require the business to put the service right. If that is impossible, cannot be performed within reasonable time or without avoiding significant inconvenience to the consumer, to require the business to give a reduction in price the consumer has to pay. Finally, if the service does not meet the description given or is not carried out within a reasonable time, the business must give a reduction in price.
- iii. Make it clear that the consumer can always request these rights and remedies where there is a contract between a business and consumer for the supply of services, and any attempt by businesses to render them inapplicable will have no legal effect
- iv. Remove references to 'implied terms' and replace these with less legalistic language

For more detailed information refer to Annex A.

These options would apply to any contract entered into after the legislation comes into force.

Why preferred

30. This option is preferred because it will clarify and in some cases enhance consumer rights in a way which will benefit consumers, businesses and the market as a whole.

31. In most areas the focus is on clarifying existing law, rather than enhancing it. The modest extensions to rights that are proposed either ensure proper implementation of EU law, or seek to translate rules which already apply in the vast majority of cases into general rules. The remedies being proposed reflect what is already best business practice.

- Where the enhancements to the law reflect current best practice there is a need to introduce statutory requirements that such practice be adopted by businesses in order to ensure that all businesses are competing on a level playing field, and that all consumers are adequately protected.

32. Introduction of 'Part A' should encourage innovation and increase competition within the services sector, as consumers who know and understand their rights should feel more confident in trying out new services and service providers (knowing that if they have problems they are backed up by clear statutory rights and remedies).

- When consumers know they are backed up by legal rights and remedies they can make their purchasing decisions based on factors such as quality and price, rather

than, for example, being over-reliant on firms with a track record in fair dealing. This opportunity for lesser-known firms drives competition.

- Introduction of Part A will make the law both more accessible and more comprehensible to consumers. This will create more “empowered” consumers who know their rights, recognise when these have been breached and if so, complain and seek redress when necessary”.¹⁴ It will reduce the number of cases where consumers over-estimate their rights and demand remedies beyond their legal entitlement, which businesses say cost them significant time and money.
- According to the European Commission “as well as being able to maximise their own welfare, empowered consumers are a significant driver of growth, as they intensify competition and innovation.” The Commission also asserts that “empowered consumers who complain and assert their rights are the most effective consultants in helping businesses to innovate and improve.”¹⁵
- Thus in improving consumer empowerment, Part A will also drive growth and benefit the UK economy.

Consultation ‘Part B’

Description

33. ‘Part A’ (above), plus an additional requirement that the outcome of the service be of ‘satisfactory quality’ and ‘fit for purpose’. This would better align the law on services with the law on sale of goods.

Why not taken forward

34. Whilst the proposals made in ‘Part A’ of the Consultation received wide-spread support, views on the ‘Part B’ proposals were much more polarised.

- Although consumer groups and most enforcement bodies and some legal commentators believed introduction of an outcomes-based liability standard would strengthen consumer protection and be fairer and clearer, trade body and business respondents stated that this might lead to unintended consequences, to the detriment of consumers.
- Many respondents also thought that although an outcomes-based standard might be appropriate in relation to some services (e.g. services to property) its introduction across the board would be inappropriate.
- Many respondents felt that more research was needed to determine for which services an outcome-based standard might be appropriate and to assess the likely impact of this change.
- Several respondents with expert legal capability (e.g. Scottish Law Commission, Law Society, Professor Hugh Beale and the OFT) proposed different tests that they thought would achieve the same aim. .

35. Given this diversity of opinion, and the possibility that this change may have unintended consequences, more time is needed to consider whether and how such a standard should be introduced. The evidence base for proceeding with the ‘Part B’ proposals is not strong enough at the current time and BIS is undertaking further work and analysis.

¹⁴ EU Consumer Strategy Commission Staff Working Paper, ‘Consumer Empowerment in the EU - http://ec.europa.eu/consumers/consumer_empowerment/docs/swd_consumer_empowerment_eu_en.pdf

¹⁵ *ibid*

Preferred Option

36. The combination of preferred policy options ('Part A') provides what we consider as the best balance between consumer and business interests, while ensuring better clarity and its associated benefits for both parties.

Table 1: Overview of preferred policy options and impacts

Change	Starting position	Additional Requirement	Clarification
i. Right that service complies with description	Unclear	Yes. Small addition where description would not form part of the contract under current law.	Yes. Where the description would already form part of the contract under current law.
ii. Statutory remedies	No statutory remedies	Yes. New statutory remedies requiring the business to put the service right or provide a refund.	No. More than a clarification
iii. Limited exclusion or limitation of liability	Exclusion and limitation of liability only valid if "reasonable"	No.	Yes. Clarify that it is not "reasonable" for liability to be limited to any amount less than the contract price.
iv. Implied terms to be expressed in clearer terms	"Implied terms"	No.	Yes – simply removing references to 'implied terms' and replacing with clearer language.

This table summarises the policy described in detail in Annex A.

Estimating the number of businesses within scope of the reform

37. The majority of businesses that sell services to consumers will be within scope of the policy changes described in this Impact Assessment.
32. The total number of businesses selling either goods or services to consumers has previously been defined as all retail, accommodation, automotive and personal service enterprises.¹⁶ Using this definition and the 2012 Business Population Estimates for the UK, this was estimated to be 742,000 businesses.¹⁷
38. To estimate the proportion of firms within this population specifically selling services, we have divided the overall figure by the proportion of household expenditure on goods and services (48% goods, 52% services). This suggests an estimate for the number of businesses providing services of 386,000 (52% of 742,000). 93 per cent of these businesses are micro employers with fewer than 9 employees.¹⁸

¹⁶ Department for Business, Enterprise and Regulatory Reform: Impact Assessment: The Consumer Protection from Unfair Trading Regulations (2008)

¹⁷ <https://www.gov.uk/government/organisations/department-for-business-innovation-skills/series/business-population-estimates>

¹⁸ The IFF survey used a different methodology for estimating the business population. They used the same Business Population Estimates but assigned different types of businesses to be either service or goods providers and excluded sole traders.

Monetised and non-monetised costs and benefits of each option

39. Reforms to consumer law on the supply of services are part of a suite of proposed improvements to consumer law to be introduced through the Consumer Law Reform Programme.
40. Many of the impacts are common across all of the proposed changes to consumer rights law. In these cases we have apportioned an appropriate share of the impact to the changes relating to goods, as explained in the text. The following analysis also outlines specific impacts of reform of the law in relation to the supply of services.
41. In order to get a better understanding of the potential impacts of the proposed reforms, we consulted stakeholders and commissioned an independent survey of businesses. The survey was conducted by IFF on behalf of the Department of Business, Innovation and Skills during the autumn of 2012. This project comprised two stages: the first stage gathered data on current business practices in relation to treatment of complaints and redress given to consumers of substandard goods and services. The second stage of the survey involved the return by a smaller sample of businesses of a cost sheet of estimates for expenditure and resources allocated to consumer rights issues¹⁹.
42. Table 2 summarises the established costs and benefits of the different proposed measures. More detail of the estimates are given in the following paragraphs.

Table 2: Summary of costs and benefits of preferred option

Type of cost	Impact	High (£ million)	Low (£ million)	Best Estimate (£million)
One-off costs to business	Familiarisation and training costs	3.76	1.44	2.60
	Initial increase in legal costs	2.40	0.96	1.68
Ongoing costs to business pa	Increased number of complaints	0.79	0.20	0.49
	Cost to business of new remedies	4.90	2.45	3.67
Total cost net present value		55.1	25.2	40.1
Ongoing benefits to business pa	Simpler complaint handling	2.18	1.00	1.61
	Reduced legal costs because of clarification of the law	0.96	0.48	0.72
	Reduced number of cases escalating to court cases	0.23	0.12	0.17
	Long-term reduction in staff training	2.07	0.62	1.35

¹⁹ Stage 1 of the survey was conducted on 1,000 firms engaged in business-to-consumer trading. Stage 2 involved a selected sample of 60 Stage 1 participants who provided additional detail on their Stage 1 responses.

	Anticipated switch towards use of 'making good' remedy rather than paying compensation	Not Quantified		
Ongoing benefits to consumer	Reduced transaction and search costs ¹	32.21	16.10	24.16
	Reduced risk of consumer detriment ¹	9.20	8.80	9.00
Total benefit net present value		418.6	243.1	331.0
Equivalised annual net cost to business				0.81

1. These benefits will increase annually by 1%, in line with the forecasted increase in household expenditure.

Costs to Business

Transition Costs

Familiarisation Costs

43. While we anticipate that all consumer service providers will incur familiarisation costs from reform to supply of services law, we believe those costs will not be significant because the changes are not substantial. For Services, the main change for business will be the introduction of a statutory scheme of remedies, but this is similar to the approach in Goods and is not a complex system to understand. Moreover, as the proposals on services will be introduced in parallel with the Consumer Rights Directive and other reforms within the Consumer Bill of Rights we believe that the cost incurred may be lower than if these changes were introduced in isolation (synergy in familiarisation and training provision).
44. As the proposed reforms are straightforward to explain we do not think it will take more than 10-20 minutes for a staff member to become familiar with the changes. This is based on the assumption that the training for all consumer rights reform will be delivered in one session, of which 10-20 minutes would be spent on the services changes. This is underpinned by the plan to include an awareness campaign as part of the reforms and the reality that most businesses are informed of changes by their trade associations and businesses groups, and likely to involve reading purpose-drafted literature. Cumulatively, over all changes to consumer rights, training would amount to a couple of hours, which will be documented in the individual Impact Assessments.
45. As stated above, most firms providing services are micro businesses with 9 or fewer staff members. For these, we assume that consumer complaints are typically handled by a senior staff member (often the owner or proprietor). Therefore we have based our familiarisation cost on the wages costs for Customer Service Managers and Supervisors, up-rated to include non-wage labour costs, giving an estimated cost of £15.55 per hour²⁰. Assuming the time taken for familiarisation is 10-20 mins as noted above, the average cost per business would be £3.89 to £7.78. Extrapolated across the business population, the best estimate overall cost is **£1.5 million**.
46. In addition, firms with 10 or more employees are assumed to incur additional familiarisation costs in training 10-20 frontline staff members on the reforms. We estimate this will take place in conjunction with the other changes in the CBR and CRD. On Services' reforms we

²⁰ This is based on ASHE 2012 hourly wage of £13.58 for Customer Service Managers and Supervisors, with non-wage labour costs at 14.5%, giving an hourly cost of £15.55

estimate a cost of approximately 10-20 mins based on a staff hourly cost (including wage and non-wage costs) of £9.78²¹ with a total one off cost of **£1.1 million**.

47. In total businesses will incur familiarisation costs of £1.44m to £3.76m, with a central estimate of **£2.6 million**.

One-off transitional legal costs

48. We anticipate that reforms under the Consumer Rights Bill, in parallel with the CRD, may initially lead some businesses to seek additional external legal advice. This is likely to be a one-off transition cost to help business apply the reforms (in the longer term we expect firms to have less need for legal advice, as set out in the benefits section below). Based on the responses to the IFF survey, only a small proportion of businesses (25%) have sought external legal advice in the last year. As the reforms do not represent significant legal change, we believe that there will only be a small increase in legal advice costs. We used the data from the IFF survey on annual legal costs²² to estimate the impact of an increase of 2-5%. This was done by firm size to reflect the variation in legal advice costs faced. We have estimated a cost range of £0.96 million to £2.40 million, resulting in a best estimate cost of **£1.68 million**.

Ongoing Costs

Increase in the number of complaints from consumers

49. It is expected that the clarification of rights will increase slightly the number of complaints to businesses on deficient services for two reasons:

- First, there may be consumers who are currently eligible to complain and receive redress who are unaware of their rights. We expect that under the proposed legislation a proportion of these consumers will exercise their rights, resulting in increased costs for businesses.
- Second, the introduction of new statutory remedies is likely to make consumers clearer of their rights, and more likely to be able to claim redress for a problem.

50. It is difficult to estimate how many more consumers will seek redress as a result of the new statutory remedies, because this will depend on consumers' behavioural response to the new regime which cannot be observed from current market data. To estimate the scale of the impact, we have assumed that the number of complaints to businesses might increase by 5-10% - which suggests a range of 38,000-76,000 additional complaints²³. We consider that this is a conservative estimate (i.e. errs on the side of over-estimating business costs) because there will only be a limited subset of consumers who will be influenced by changes in consumer law to complain more. In addition, even before introduction of the statutory scheme of remedies in Services, the IFF survey shows that firms already provide consumers with a range of different remedies as set out in the new statutory scheme.

51. These additional complaints will impose costs on businesses in two ways.

²¹ Based on Annual Survey of Hours and Earnings 2012 hourly wage for frontline customer service occupations at £8.54, uprated to include 14.5% non-wage labour cost is £9.78 per hour.

²² Average annual legal advice costs were £684 for micros and small firms (population 331,199), £23,654 for med firms and large firms (pop24,929)

²³ We estimated 763,374 complaints annually. Estimated by the total number of complaints is 2,040,000 (This figure is a combination of the 2012 Consumer Detriment's cited number of problems (15.7 million) (page ii) and the Consumer Conditions 2011 percent of complaints directed to business in the UK (13%) (page 42)). The proportion of complaints to services firms has been estimated using the number of goods, services and digital content firms in the business population estimates (37% services, 35% goods and 28% digital content)

- First, businesses will face the time costs of complaints handling. We have assumed first that complaints handling takes 20-40 minutes per complaint on average, based on responses to the IFF survey. Multiplying this by the expected number of additional complaints leads to a cost in the range £0.2m-£0.79m with a **mid point best estimate of £0.49m**.
- Second, in some cases, businesses will have to offer redress to consumers. The IFF survey suggests that, on average, 64% of complaints are resolved without providing remedies – so we assume that 36% of the additional complaints will lead to redress. Further, the weighted average cost of redress offered by business in the IFF survey is £178. Multiplying the additional number of complaints * 36% * £178 suggests additional business costs in the range £2.45m-£4.9m with a mid point **best estimate of £3.67m**.

52. Adding these two costs together gives a net additional cost to business of £2.6m-£5.4m per year.

Additional impact of statutory consumer remedies²⁴

53. Under the new statutory remedies, where a customer has a valid complaint that the service was not performed with reasonable care and skill, the business must agree to put the service right (re-performance) if the consumer prefers that to a refund. Eligibility for compensation payments has not changed, but the option to have the service put right is additional to the existing right to damages (monetary compensation).
54. In addition to the likely cost to firms from increasing the number of redress payments captured above (see paragraph 46), there may be some offsetting small benefits to business because of a switch from paying compensation remedies to making right the service. Making right the service will typically be cheaper for firms than the levels of compensation that might be demanded by a court (which would factor in costs of a third party making right a particular service defect).
55. However, we have not attempted to quantify or monetize this impact because the scale of the shift, and the average benefit to firms, is unclear. This is a conservative assumption (i.e. it is likely to err on the side of under-estimating the net benefits to business in terms of overall quantified impact).

Benefits to Business

Ongoing benefits

Simpler Complaint Handling

56. A key objective of the reforms to the law on supply of services is to provide clarity for consumers and businesses on their rights and obligations in the event of complaints about defective services. We envisage that this will result in quicker and easier handling of complaints for businesses, where less time and staff resources will be required to resolve issues; including moving complaints handling to more junior staff because procedures and remedies can be simplified and easily applied.
57. To estimate the impacts on business of simpler complaint handling we took the volume of complaints (including the increase in number of complaints as in paragraph 45-48) and

²⁴ The cost of remedy to business is a transfer from business to consumer. We assume that the consumer benefit is the value of the remedy.

assumed that there would be a slight decrease in time costs of 5-10 mins. We estimate that these reforms will make it easier for businesses to handle complaints and decide quickly which complaints have merit, which require a standard response/remedy and which need to be escalated for legal advice. As with the familiarisation costs, these savings are based on Customer Service Managers and Supervisors, at £15.55 per hour²⁵ (as our research shows that currently in the majority of cases, complaints are handled by senior staff members). Based on the business population assumptions, this suggests estimated savings of £1.00m to £2.18m, with a best estimate of **£1.61 million**. We believe that some businesses may wish to reduce the number or seniority of staff complaint handling but it was not possible to quantify and monetise this additional potential benefit.

Reduction in legal costs because of clarification of the law

58. Linked to simpler complaint handling and based on simplified regulations, we estimate that businesses will incur reduced legal costs as a result of the reforms. According to the responses to the IFF survey, approximately 25% of services businesses sought external legal costs in the previous year. Based on the population of businesses that incur legal costs²⁶, we have conservatively assumed a reduction of 1-2% in legal advice costs. There is no additional information about why businesses engage external legal advice. This suggests savings of £0.48 to £0.96m, with a **best estimate of £0.72m**.

Reduced number of cases escalating to court

59. The clarification through the proposed reforms is also expected to reduce the number of consumer complaints which escalate to court cases. This is based on raising the understanding of both consumers and businesses on rights and obligations through clarifying the language of the law.
60. The IFF survey indicated that only a small percentage of businesses (6%) had incurred costs for court cases in the previous year and so we assume that only a small proportion of the business population will experience savings. We calculated the impacts using the Stage 2 data, by splitting business into micro and other, as the costs varied significantly based on firm size. We estimated a saving of 1-2%, due to the clarifications, resulting benefits to business in the range £0.12m to £0.23m, with a central estimate of **£0.17million**. We believe this is a conservative estimate as it is based on the cost of legal fees and not on the full cost of going to court to contest the case (e.g. time spent not on the shop floor).

Reduction in ongoing training costs

61. Although we have estimated an initial increase in training costs as businesses inform their staff about the reforms, we believe that after the first year, training costs should decrease with businesses experiencing savings over time. This is primarily due to clarification of the law where businesses no longer have to interpret their obligations or prepare scenario responses and can reduce training times accordingly.
62. Only a third of businesses (127,316)²⁷ in the IFF survey stated that they provided consumer rights training. We calculated a range of savings based on 3 employees with a time saving of 10 mins, to 5 employees with a time saving of 20 mins. At a staff hourly cost (including

²⁵ This is based on ASHE 2012 hourly wage of £13.58 for Customer Service Managers and Supervisors, with non-wage labour costs at 14.5%, giving an hourly cost of £15.55

²⁶ Average annual legal costs are £503 for micros and £441 for small, medium and large firms.

²⁷ 33% of the 385,806 services business population

wage and non-wage costs) of £9.78²⁸ we estimated a range of benefits from £0.62m - £2.07million. The mid point of **£1.35 million** is the best available estimate.

Benefits to Consumers

63. We expect that, overall, consumers will benefit from the proposed reforms to services. While we have up-to-date information on consumer detriment, there is not sufficient detail provided to assess the impact of each individual legal change against current sources of detriment. In order to quantify and monetise the consumer impacts, we have assessed two forms of consumer detriment:

- Transaction and search costs
- Risk of consumer detriment

64. We think that together these two impacts offer a clear and realistic estimate of how the reforms will benefit consumers in their daily lives. The consumer benefit estimates in this section are based on independent research commissioned by BIS into the links between consumer law reform, consumer benefits and economic growth²⁹. This research included adapting a model previously used in Australia by the Productivity Commission (APC) which sought to analyse the impact of the simplification of consumer law implemented in 2011. This approach to assess consumer impacts is common across the Consumer Bill of Rights using figures appropriate to Goods, Services and Digital Content³⁰.

Reduced transaction and search costs

65. Consumers with a greater understanding of their rights will have lower search and transaction costs. Transaction costs include those which consumers bear to prevent risks such as the cost to consumers of learning their consumer rights. Simplifying consumer law will enable consumers to make better decisions and reduce search time.

66. Transaction costs are difficult to measure accurately in monetary terms and in many cases, the greater part of these costs do not cause consumers harm, such as a consumer's search for goods and services that match their preferences. Assuming a conservative estimate of 1 per cent³¹ of household expenditure equates to transactions costs of £8.6 billion in 2011.

67. This high level estimate would include expenditure outside the scope of changes in services consumer law. Using a similar method to that outlined earlier (see paragraph 65), it is possible to apportion a share of the transaction costs which would accrue to consumers purchasing services and we estimate to be £3.2 billion (37% of £8.6 billion).

68. The simplification of consumer law and enhanced consumer remedies will not lead to a large reduction in harmful consumer transaction costs. If we assume a reduction in costs of between 0.5 and 1%, the benefit to consumers of services will be between £16.1 and £32.2 million. In absence of evidence to inform which is the better estimate the mid point of **£24.16 million** is chosen as the best estimate. These estimates will increase with the forecasted growth in consumption spending which has been estimated using the average long run growth rate in real household expenditure, at 1%.

²⁸ Based on Annual Survey of Hours and Earnings 2012 hourly wage for frontline customer service occupations at £8.54, up-rated to include 14.5% non-wage labour cost is £9.78 per hour.

²⁹ Source: ICF GHK 'Consumer rights and economic growth'

³⁰ Breakdown in business population is 357,000, Service 386,000 and Digital Content 289,000

³¹ Source: Dept BIS Report by ICF GHK "Consumer rights and economic growth", p20 (2013);

Benefit to consumer from reduced risk of consumer detriment

69. Consumer detriment exists in the form of financial cost of problems with services as well as the lost personal time and emotional distress suffered by consumers. The simplification of consumer law and enhancements to consumer remedies will reduce the risk of consumers encountering detriment.
70. The 2012 Consumer Detriment survey³² estimated that the annual financial cost to consumers was £3.08 billion. This includes the costs incurred by consumers from trying to resolve problems themselves such as seeking legal advice, or re-performing the affected service affected at the consumer's own expense. Many consumers use their personal time trying to solve consumer problems and using the 2012 Consumer Detriment survey it is estimated that consumers lost 59 million hours. The median hourly wage rate in the UK in 2011 was £11.14³³ giving an estimated cost to the consumer of lost personal time of £660 million per year (£11.14 multiplied by 59 million hrs).
71. The emotional distress from consumer problems can be as significant as the monetary costs to consumers. While it is difficult to accurately value this detriment it has been estimated at 25 – 30 per cent³⁴ of the value of consumers' financial detriment. The sum of lost personal time, financial detriment to consumers and emotional distress gives a total consumer detriment of £4.7bn to £4.9 billion, accounting for 0.5% of total household expenditure in 2011 (£4,900,000,000/£860,679,000,000³⁵). This figure represents the objective risk faced by consumers. When they engage in transactions they face a small risk that they will suffer detriment. An aim of the improved consumer policy framework is to lower that risk.
72. Calculating the gain in reduced consumer risk from the simplification of consumer law and the enhancement of consumer redress is difficult and requires estimation of the future level of household expenditure. The long-run average growth of household expenditure is estimated at 1%, which has been used to forecast future household spending.
73. Finally to estimate the gain to consumers from reduced risk of consumer detriment an estimate of the impact of the reforms on the detriment is needed. The changes are not a significant enhancement of consumer rights and so they should have only a limited impact on the detriment avoided, so a conservative estimate of a reduction in detriment of 0.5%.

Formula:

Gain from reduced risk of consumer detriment =
% reduction in consumer detriment from reforms (0.005) *
% objective risk to consumers before reforms (0.01) *
Forecast household consumption

74. The best estimate for the ongoing net benefit to consumers in the services market is estimated at **£9 million** initially and increasing with a 1% increase in household spending.

³² Available at <http://www.consumerfocus.org.uk/publications/consumer-detriment-2012>

³³ 2011 Annual Survey of Hours and Earnings, all employees, table 1.4a

³⁴ Source: Dept BIS Report by ICF GHK "Consumer rights and economic growth", (2013)

³⁵ Consumer Trends, Household final consumption expenditure, Total Expenditure, table 0GSCS - SOURCE ONS
<http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-266058>

Risks and assumptions

75. The key risk associated with these proposals relates to where the balance is set between providing clear and robust remedies for consumers, while minimising any additional burden on business.
76. The overall policy aim is to provide greater clarity and introduce new statutory remedies. If the proposals fail to meet the overall policy aims of greater clarity, there is a risk that the impact will be a burden on business with little tangible benefit in terms of consumer protection. If, on the other hand, the balance is pitched too far in favour of consumers, there is a risk that this will lead to a direct cost to business from dealing with additional claims that would otherwise not have been made by consumers. In either of these scenarios, it seems likely that any additional costs would be passed on to consumers through increased prices.
77. In developing these proposals we have sought to mitigate these risks by consulting widely with businesses and consumer groups to identify the correct balance point

Alternative Approaches for Small/Micro Businesses

78. We do not propose to exempt small or micro businesses from the new consumer protection regime as this would be detrimental to consumers and businesses, and would hinder rather than improve market conditions.

79. At the beginning of 2012 small and micro businesses accounted for 99.2% of all private sector businesses in the UK³⁶. All such businesses are subject to the existing consumer law. To exempt such a large proportion of businesses from the new consumer protection regime would create an even more complex legal regime with consumer rights varying according to the size of the trader. This would deprive the changes of most, if not all, of their desired clarity and would disadvantage the micro-businesses it purported to protect.

80. Consultation responses showed strong and widespread support for applying the consumer protection regime (including the proposals set out in this IA) to all businesses, regardless of size. There was no support for a small or micro-business exemption. The reasons respondents gave for supporting the application of a uniform regime across businesses of all sizes were numerous. In particular it was noted that any exemption:

- Would be counter-productive, and detrimental to small and micro businesses, as consumers would be discouraged from buying from them. Consumers would be encouraged to stick to large businesses and would be less likely to try out new suppliers, hindering innovation and growth and creating obstacles to market entry³⁷;
- Would not encourage business growth, and would cause problems to businesses looking to expand beyond the small business threshold³⁸;
- Would allow rogue traders to continue to operate, benefiting from the opacity of the current law and might encourage unscrupulous traders to manipulate the way they trade in order to fall into the exemption³⁹; and
- Would cause confusion among businesses, consumers and enforcers, undermining the aim of achieving a clear and consistent consumer protection regime⁴⁰.

³⁶ <http://www.bis.gov.uk/assets/biscore/statistics/docs/b/12-92-bpe-2012-stats-release.pdf>

³⁷ Response to Department for Business, Innovation and Skills Consultation on Clarifying Consumer Law 2012 - BVRLA, Consumer Focus, Retail Motor Industry Federation, Electrical Safety Council, British Retail Consortium, Ofcom, Citizens Advice, various local Trading Standards Services

³⁸ Ibid - Trading Standards Institute, Retail Motor Industry Federation

³⁹ Ibid - Retail Motor Industry Federation, Electrical Safety Council, Which?, Citizens Advice);

⁴⁰ Ibid - Co-operative Food, Law Society of Scotland, Consumer Focus, British Retail Consortium, Finance and Leasing Association, Citizens Advice Scotland, Ofcom, Direct Line Group, Bar Council, Citizens Advice, various local Trading Standards Services

One-In One-Out (OIOO)

81. This measure is in scope of OIOO as it has direct impacts on business. The Government expects the proposed changes to result in an 'IN' of £0.81m. This has been calculated on the basis of best estimate calculations on impacts which are direct and in scope for businesses as follows:

Costs:

- Familiarisation and training costs for business of £2.6m (paragraphs 42 to 47); and
- Increase in legal advice costs of £1.68m (paragraph 48);
- Increase in the number of complaints received from consumers of £0.49m (paragraphs 49 to 52);
- Cost of new consumer remedies (repair/re-performance remedy) of £3.67m (paragraphs 49 to 52)

Benefits:

- Time savings from simpler complaint handling of £1.61m (paragraph 56 and 57).
 - Savings in legal advice costs because of clarification of £0.72m (see paragraph 58);
 - Savings from reduced number of cases escalating to a court case of £0.17m (paragraphs 59 and 60);
 - Savings from reduced training costs of £1.35m (see paragraphs 61 and 62);
82. Over the life of this measure there are direct annual costs of £4.7m and direct annual benefits of £3.8m falling on business, netting to an IN of £0.81m (Equivalent Annual Net Cost to Business).

Annex A: Detailed outline of preferred option

i. Description of service: service must comply with description given

More detail

1. This right will apply to three categories of information:
 - a. Information voluntarily given by the business, which the consumer relies on being made good when contracting with that business for provision of a service. Under existing law such information will usually form part of the contract between the business and consumer, especially if the information is material enough to cause loss if the consumer relies on it and therefore to give rise to a claim. But this will depend on the application of rules from general contract law to the particular facts of each individual situation, and these rules are complex and inaccessible to consumers. The proposed new right will make it clear that such information does form part of the contract, which the business must comply with. As the business is voluntarily offering information in each case this is not within scope of 'One In One Out' (OIOO).
 - b. Information the business is required to give the consumer under the Consumer Rights Directive (CRD). The CRD is a piece of EU legislation which applies to business-to-consumer contracts. It requires businesses to give certain information to consumers before they buy goods or services. In relation to services, the CRD requirement that information be correct will be implemented through this new consumer right that the service must comply with information given before contracting. This is part of the directive and therefore out of scope of OIOO.
 - c. Information the business voluntarily gives that would be required under the Consumer Rights Directive if it applied to the particular service concerned and information which the business is required to give under sector-specific regulations.
 1. Some services are not covered by the information requirements in the Consumer Rights Directive. These services are: financial services, gambling services, the construction of new buildings and substantial conversions, package travel/holiday/tour services, passenger transport services. Member States are also allowed the discretion not to apply the information requirements to certain services priced under £40 (€50) if the contracts are concluded 'off premises'. Financial and other services listed are subject to sector specific rules containing similar information requirements, however this is not true for all services falling outside the scope of the CRD's requirements.
 2. As the trader is voluntarily offering this information this is not within scope of OIOO.

Impact of Policy

3. Information under (a) above will normally form part of the contract according to normal contract law principles. Therefore, a right that the service provided comply with such information will merely clarify the current legal position. There should not be any significant costs associated with the introduction of this right.
4. Information under (b) above is information the business will be required to provide under EU legislation from June 2014. This legislation requires that the information given is correct. Therefore this right is implementing EU law and is outside the scope of OIOO.

5. Information under (c) above may be given either voluntarily or (more likely) under existing sector specific rules. Again, it seems reasonable to assume that most businesses will give consumers information that is correct and that, therefore, this right will involve minimal additional costs for businesses. As stated above, such information may either be supplied voluntarily or under sector-specific rules.
6. If supplied voluntarily, the new rule will create new consequences for error or misleading claims, but because the business can avoid such consequences by supplying accurate information or no information, this is outside scope for OIOO purposes.
7. If supplied pursuant to sector-specific rules there is an existing obligation to supply accurate information. Refining the consequences of breach of such obligations is out of scope for OIOO purposes.
8. In all categories (a) – (c) above the new right will allow changes to be made to the information where this is agreed between the business and the consumer, either in the contract or subsequently. This will address concerns voiced by businesses (in response to the Government’s consultation) that failure of a service to comply with information given before contracting will sometimes be due to factors beyond the business’ control, which it could not have foreseen at the time the contract was made and the business should be able to agree changes with the consumer. For example, a decorator agrees to paint a room with the consumer’s choice of paint. He then finds the colour or make is no longer available and under this option will be able to agree with the consumer that a different paint is used.
9. In consultation businesses agreed that this proposal does not raise significant costs to business. Generally they already assume or have decided that the description they give of their service should be correct and that it is reasonable for their customer to expect that. The law simply clarifies the uncertainty.

ii. New statutory remedies

More detail

10. Current legislation contains no remedies for consumers where their consumer rights in relation to the provision of services are breached, except in very limited circumstances where a trader supplies and installs the goods. In order to obtain any form of redress, consumers must therefore look to general contract law, under which courts in England and Wales will rarely order the business to put the service right. The English and Welsh courts are much more likely to order the business to pay the consumer a sum of money by way of compensation¹. The amount of money awarded will depend on the particular facts of each case, and it is impossible even for legal advisers to state with certainty how much the court will award an individual consumer. Scotland has a different legal system and a different common law, where the remedy of putting the service right is more commonly used than in England and Wales.
11. The uncertainty as to what remedy, or level of monetary damages, should be provided also means that in many cases it will be difficult for the business and consumer to resolve problems with service provision between themselves. Where the business and consumer do not resolve the problem between themselves the consumer is left with two options, either to give up and leave the problem unresolved (or unsatisfactorily resolved) or to take his/her claim to court. The cost of initiating a claim in the small claims court can be anywhere between £175 and £465, with

¹ Courts will not order specific performance of a contract where damages would be an adequate remedy - *Societe des Industries Metallurgiques SA v Bronx Engineering Co Ltd* [1975] 1 Lloyd’s Rep 465

additional costs being incurred as the claim progresses². In addition to court fees, solicitors' fees may also be incurred. The Consumer Focus Report suggests these may be as high as £2,500, and costs are not always repaid even in successful claims. These costs mean less affluent consumers are unlikely to be able to pursue redress in the courts and better off consumers will be dissuaded if the costs exceed the potential value of the claim.

12. Under the preferred option new statutory remedies will be introduced alongside those available in general contract law. These will offer a basic level of redress intended to cover most situations where a consumer's statutory rights in relation to service provision are breached and the service can be re-performed. It is envisaged that in most cases consumers and businesses will be able to apply these remedies between themselves, reducing the need for consumers to take their problems to court.
13. The remedies will be split into two tiers and will be as similar as possible to those available where a consumer's rights in relation to the purchase of goods are breached.
 - Tier 1: Where the business has failed to provide the service with reasonable care and skill the consumer will have a right to request the business to put the service right (i.e. re-perform the service, or the element of it that was not performed with reasonable care and skill). The business will have to do so, unless putting the service right is impossible; or cannot be done within a reasonable time or without significant inconvenience to the consumer.
 - Tier 2: A reduction in the price the consumer has to pay for the service to 'an appropriate amount'. This will be available in two circumstances:
 - Where the business has failed to provide the service with reasonable care and skill and it is impossible to put the service right, or this cannot be done within a reasonable time and without significant inconvenience to the consumer; or
 - Where one of the consumer's other statutory rights is breached:
 - the service does not meet the description given (see paragraphs 1-3 above ; or
 - that where the time for performance of the contract is not specified the service is completed within a reasonable time

Impact of Policy

14. The introduction of statutory remedies will result in additional costs to businesses who currently offer no or inadequate redress to consumers when their rights are breached and avoid consumer enforcement of their contractual rights.
15. However, responses to the Government's consultation, and data from a recent business survey (The IFF Report)³ suggest that many businesses do already offer such redress.
 - In response to the consultation a number of trade bodies (the Finance and Leasing Association, Home Retail Group and British Hospitality Association and the Association of Train Operating Companies) stated that most of their members already offer the types of redress proposed.

² <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf>

³ IFF Consumer Rights and Business Practice Report (2012)

- In addition some regulatory bodies (the Civil Aviation Authority, the Office of Rail Regulation) drew attention to sector-specific legislation and rules which already require such redress to be provided in particular circumstances.
 - Due to these factors a number of respondents thought the proposal to introduce a scheme of basic statutory remedies might not have any significant impact.
 - One trade body, the Association of Manufacturers of Domestic Appliances, suggested that introducing these remedies will reduce costs for businesses which currently provide redress which goes further than the proposed statutory remedies.
16. Data from the IFF Report also shows that most businesses already offer the types of redress 'Part A' will provide for. When asked what types of remedy they would ever provide to consumers when a service they have purchased from the business has not been provided with reasonable skill and care, of those services businesses questioned:
- 59% might already offer to repair or remedy the service,
 - 54% might already offer full refunds,
 - 50% might already offer partial refunds, and
 - 30% might already offer compensation.
17. In addition, when service sector businesses were asked what their most common approach to consumer redress would be:
- 48% stated that their most common approach is to offer to repair or remedy the inadequate service
 - 20% stated that their most common approach is to offer a partial refund
 - 17% stated that providing a full refund is their most common approach
 - 7% stated that providing compensation (i.e. allowing the consumer to keep the service whilst also offering some other form of recompense) is their most common approach
18. This shows that most businesses are already providing the types of redress which would be required under the new statutory remedies.
19. In response to the Government consultation, business have told us that a full refund will normally be more expensive to the trader than correcting or re-performing the inadequate service, some of those businesses currently offering a full refund may switch to the cheaper statutory remedies. It is possible that some of these service providers offer full refunds in the mistaken belief that the Right to Reject goods also applies to services. The statutory remedies will make it clear that it does not.
20. On the other hand those currently offering a partial refund or some form of "compensation" may be required to offer a re-performance remedy instead, which may cost more or less, depending on the circumstances.
21. Respondents to the Government's consultation also noted that introducing statutory remedies may encourage more consumers to seek redress and so increase business costs. Government acknowledges that this may happen, but believes that the increase will be modest.
22. The Consumer Focus Report shows that a number of consumers are already complaining about the problems they experience with goods and services, and that

the likelihood of consumers making complaints increases with the value of the good or service concerned⁴.

iii. Restricting businesses' ability to exclude or limit their statutory liability

More detail

23. Under current law businesses are able to exclude or limit their liability to provide a service with reasonable care and skill if the term doing so is reasonable.
24. The preferred option will include a provision making it clear that businesses will not be able to exclude or limit their liability to provide the statutory remedies to any amount less than the contract price when a consumer's statutory rights have been breached.

Impact of Policy

25. The costs and benefits associated with introduction of statutory remedies have been dealt with above. The provision relating to a business' ability to exclude or limit its liability to provide these remedies should not result in any additional costs above those already described. It is unlikely that in the vast majority of cases that any attempt to reduce liability to this extent would be found to be 'reasonable' under the current law in a consumer sales context.
26. A number of business and trade body respondents to the Government's consultation (including Direct Line Group, Mobile Broadband Group, the Direct Marketing Association and the Retail Motor Industry Federation) agreed that this provision is unlikely to have any effect on legitimate businesses who do not currently seek to exclude or restrict their liability in an unreasonable way, though one response did think that such a change might increase business costs.
27. Ofcom thought that a provision such as that proposed might enhance the position of fair dealing businesses in relation to their more scrupulous competitors, thus having a beneficial impact on fair competition in the services market.

iv. Implied terms to be expressed more clearly

More detail

28. The rights a consumer has under current legislation are expressed as "implied terms" but this legalistic language may not be readily understood by consumers or businesses. It is therefore thought desirable, in introducing new legislation, to express consumers' rights in clearer language which consumers and businesses will find easier to understand.

Impact of Policy

In response to the Government's consultation, businesses were unconcerned by this proposal, and Consumer groups agreed that such a change would be unlikely to have any direct effect, whilst noting that it would help to clarify and simplify the legislation.

⁴ <http://www.consumerfocus.org.uk/files/2012/10/TNS-for-Consumer-Focus-Consumer-Detriments-20121.pdf> - Table 4.9

Annex B – Overview of position under current Services law

1. In order to understand the core issues causing the two main problems identified above it is necessary to have some awareness of the current legal position.
2. There are various sources of law applicable to consumer contracts for services. Some rules are found in legislation⁵, and others in Judge-made common law (which the courts themselves develop).
3. In relation to services, consumers have certain legal rights, and the law contains remedies which may be sought if these are rights are breached:
 - **Consumers' general statutory rights** when they contract with businesses for the supply of services in England and Wales are set out in the Supply of Goods and Services Act 1982 (SGSA), the rights are called 'implied terms' (because they are terms implied into the contract even though they might not have been expressly stated) and are as follows:
 - That the service be provided with reasonable care and skill (s13)
 - That where there is no agreed time for performance of the service the business carry out the service within a reasonable time (s.14)
 - That where there is no price agreed the consumer will pay a reasonable amount for performance of the service (s.15)
 - The legislation does not extend to Scotland and consumer rights in Scotland derive from the Scottish Common Law (Scottish judge-made case law); the rights are similar but not identically expressed to those found in the SGSA

Consumer's have other rights in sector specific legislation but our proposals do not affect those.

 - **Consumers' remedies** when these rights are breached are not set out in legislation, but derive from the judge-made principles of common-law of contract.
 - These principles are continually being refined by the courts and, in relation to services, are not set down in a piece of legislation in any of the UK jurisdictions. They are therefore much less accessible than rules set down in legislation.
 - The remedies available might include money back from the business to compensate the consumer, or (rarely, in England and Wales at least) re-performance of the service or a part of it. However, the type and detail of remedy available will depend on a number of factors, which will apply differently in each individual scenario.
4. Businesses are able to agree with consumers that these rights and remedies will not apply, or will only apply to a limited extent, provided what is agreed is reasonable.⁶

⁵ Supply of Goods and Services Act 1982, Unfair Contract Terms Act 1977

⁶ Combined effect of the Supply of Goods and Services Act 1982 s13 and ss16(1), and the Unfair Contract Terms Act s2, s11 and s14

Annex C: Post Implementation Review (PIR) Plan

<p>Basis of the review:</p> <p>This Impact Assessment includes a commitment to review the proposed changes 3-5 years after implementation.</p>
<p>Review objective:</p> <p>To assess:</p> <ul style="list-style-type: none">• the level of take-up of new remedies• whether the policy changes are meeting policy objectives• whether policy objectives are in practice feeding through to increased consumer empowerment.
<p>Review approach and rationale:</p> <p>The review would evaluate the effectiveness of the changes within this Impact Assessment. The review will incorporate stakeholders' views that will include consumer groups, business groups, LATSS, the Consumer and Markets Authority (CMA) and the Citizens Advice services.</p>
<p>Baseline:</p> <p>Total detriment suffered by consumers has been estimated in the Consumer Focus Consumer Detriment 2012 Report at £3.08 billion per year. This results from a wide variety of consumer problems including services not being up to standard, poor service quality and failures by firms to re-perform services.</p>
<p>Success criteria:</p> <p>Increased consumer empowerment, reduction in consumer detriment, reduced disputes including court cases.</p>
<p>Monitoring information arrangements:</p> <p>Feedback from businesses, consumers groups, TSS, the CMA and Citizens Advice will be achieved through regular engagement. The transition costs will be recorded during the implementation stage and Government will monitor the ongoing costs via annual reports and management information.</p> <p>More general information about the impacts on business from the proposed changes will be collected from business groups and through surveys.</p>
<p>Reasons for not planning a review:</p> <p>N/A</p>

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