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Dear Sir,

RE: Protection of Small Businesses when purchasing goods and services

The BVRLA welcomes the opportunity to contribute to the call for evidence on the protection of small businesses when purchasing goods and services.

You have raised concerns that micro and small businesses (MSBs) may be vulnerable when a problem arises with purchases they have made. We note the concerns that micro businesses are likely to face many of the same problems as individual consumers when making purchasing decisions. As a consequence BIS is considering whether MSBs should have the same rights as consumers under the Consumer Rights Bills ("CRB") and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCRs").

With 99% of all UK businesses being MSBs, giving these businesses the same rights as consumers will ultimately produce an uneven playing field with the remaining 1% of businesses. Whilst those businesses may ultimately be large in scale, with a stronger bargaining power, some will also fall short of being an MSB, and therefore placed at a severe disadvantage when conducting business with a MSB. Providing 5.2 million businesses with the same rights as consumers will certainly distort the marketplace and impact fair competition.

It would be disproportionate for a MSB to be given the same rights and remedies as a consumer, with a consumer enjoying the limited knowledge of a lay person, whereas a business is assumed to have the diligence, skills and knowledge to conclude a business agreement in their best interests. We do not consider MSBs to lack the sufficient information to make effective purchasing decisions, despite perceived unequal bargaining positions with larger businesses.

Larger businesses require MSBs and consumers to operate, and therefore it is in the best interests of both parties to an agreement to agree favourable terms. It is therefore unwarranted for the government to step in and assume responsibility for MSBs, and dictate terms within their business agreements.

The current arrangements for MSBs are that they can pick and choose the terms of an agreement with fellow MSBs, and the remaining 1% of businesses. This provides MSBs with freedom to conduct business on their own terms, and not to adhere to imposed implied terms into their business agreements.

MSBs benefit from the freedom to negotiate their own agreements without being bound by the red tape of government. If rights under CRB are provided to MSBs, businesses may choose to limit their liability in supplying goods and services, on the basis that goods or services may be rejected in the future, and impact on the functionality of the business. This would restrict business, and constrict growth, and businesses would be less likely to do business with each other.

Firstly, the government will need to clearly define a MSB. Whilst the call for evidence has defined this as a business within between 0-49 employees, business employment naturally fluctuates, and therefore, so will the rights of the business. Should rights under CRB be afforded to MSBs, the government will need to clearly define how these rights are afforded to MSBs. For example, will consumer rights be afforded to a MSB with 48 employees at the time of the contract? Will this remain the case if, at the time of dispute, the MSB has grown to employ 52 employees? Will a MSB be defined at the formation of the contract, or at the time of the dispute? How will the seller be made aware that they are doing business with a MSB, and that they will need to accommodate consumer rights?

It will be difficult for a MSB to conclude, simply on the number of employees that they employ at any given time, when an agreement is governed by either the current legislative arrangements, or newly introduced consumer rights for MSBs. This will invoke extra administrative burden on MSBs to determine their position in terms of implied terms within their business agreements, as a MSB would need to determine whether they are within the scope of a MSB in order to determine whether implied consumer rights apply to an agreement.

For example, MSB (1) leases a vehicle from MSB (2). MSB (1) employs 50 employees on the day that the lease agreement is signed, however, throughout that day, an employee's employment contract is terminated, and MSB (1), at the end of the business day, employees 49 employees. If the vehicle developed a fault after 20 days, within the short term right to reject, are MSB (1) able to rely on the consumer right to reject the faulty vehicle?

Another concern is that MSBs may forgo growth for the remedies available under CRB. An MSB will be faced with the decision to expand their business, by hiring more employees, or forgo their statutory rights under CRB to reject faulty goods. The current government has pledged to cut red tape, and an introduction of statutory rights to businesses would introduce further sanctions into private agreements, and provide some MSBs with a layer of confusion and complexity.

For example, a MSB that employs 49 employees, and has an agreement with a lease company to lease vehicles to be used as company cars for employees, may think twice about hiring any further employees, as to do so would prevent them from rejecting any faulty vehicles back to the lease company should any slight defects arise. This would prevent expansion of the business, and would hamper economic growth.

Secondly, a number of MSBs may be involved in a single transaction, and whilst the short term right to reject may be available at the start of the chain, this right may have been lost further up the chain, and therefore, a MSB is left without the remedies afforded under the CRB. If consumer rights are afforded to MSBs, the government will need to give careful consideration to the timeframes in which MSBs are able to reject faulty goods, or supply of services, and whether consideration needs to be given to the effect of another MSB handling the goods, when a MSB further up the chain wishes to reject the goods.

With businesses unable to utilise limited liability clauses, there will be a distortion in the market, with potential business hindered due to the introduction of liability in business where it had been established that limited liability could prevail. This may prejudice potential business agreements, with businesses unable or unwilling to be held liable to the full extent of CRB, and therefore an unintended consequence would be a downturn in the market.

Currently, a MSB cannot reject a product for a minor breach of the contract, for example, where the goods supplied have a slight defect. This may be, for example, where a MSB leases a vehicle from a lease company, and a fault in the DAB radio of a vehicle occurs. If consumer rights are extended to MSBs, a MSB would be able to reject this vehicle back to the lease company for a slight fault, and claim a refund, however, it is likely that the vehicle could be easily repaired and returned back to the MSB. It would be highly disruptive for business not to afford MSBs the opportunity to carry out a repair on a slight defect to a product, or correct a minor issue with a service.



MSBs have access to a wider range of resources than the consumer, and therefore, they are in a position to protect themselves from agreements that are not in the best interests of their business. MSBs should have the flexibility to conduct business on their own terms, during a government that is set on cutting red tape, rather than introducing further regulations on businesses.

In conclusion, we do not support the extension of consumer rights to MSBs for the reasons that we have set out above. Consumers require extra protection when purchasing goods and services; many will form contracts on a daily basis without knowledge. However, MSBs are diligent enterprises, with specialist knowledge, and therefore do not require the same protection afforded to consumers.

We welcome the opportunity to contribute to this inquiry, and will be happy to provide further evidence if requested.

Yours faithfully,

Jay Parmar
Director of Policy & Membership

Bona-fides: The BVRLA, the industry and its members

- Established in 1967, the British Vehicle Rental and Leasing Association is the UK trade body for companies engaged in the rental and leasing of cars and commercial vehicles. Its members operate a combined fleet of 3.8 million cars, vans and trucks.
- BVRLA members buy nearly 50% of all new vehicles sold in the UK, supporting around 317,000 jobs and contributing more than £24.9 billion to the economy each year.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and 10 million people who use a rental vehicle each year.
- As well as informing the Government and policy makers on issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct, helping its members deliver safe, sustainable and affordable road transport to millions of consumers and businesses. For more information, visit www.bvrla.co.uk