



FLA SUBMISSION TO THE DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS CALL FOR EVIDENCE ON THE PROTECTION OF SMALL BUSINESSES WHEN PURCHASING GOODS AND SERVICES

1. The Finance & Leasing Association (FLA) welcomes the opportunity of responding to the Department for Business, Innovation and Skills' (BIS') call for evidence.
2. The Finance & Leasing Association (FLA) is the leading trade association for the asset, consumer and motor finance sectors in the UK, and the largest organisation of its kind in Europe. Our members include banks, subsidiaries of banks and building societies, the finance arms of leading retailers and manufacturing companies, and a range of independent firms.
3. In 2014, our members provided £100 billion of new finance. £74 billion of this was in the form of consumer credit to support purchases ranging from cars to household goods and £26 billion was provided to businesses and the public sector, representing 27.9% of UK investment in machinery, equipment and purchased software in the UK last year.
4. We have chosen to make a number of high-level points.

FLA Position

5. The FLA is opposed to the extension of the Consumer Rights Act (CRA) protections to micro and small businesses (MSBs). The current arrangements enable a clear distinction to be maintained between lending to business and to consumers.
6. No endemic or systemic problems for MSBs have been identified in the markets served by FLA members. The Federation of Small Businesses' (FSB's) [report](#) published in January 2014 provides anecdotal evidence of concerns in other markets, including with regard to relationships with suppliers, but these do not impinge on FLA members offering leasing and hire purchase to small business customers. There is therefore no justification to extend the CRA to MSBs.
7. Other anecdotal evidence tends to suggest that MSBs themselves frequently fail to acquaint themselves not only with their own responsibilities as businesses, for example in terms of dealing with taxation liabilities, but also the protections currently available to them. There is an inherent danger in regulating traders to

address a lack of engagement by customers with their own rights and responsibilities in as much as it increases cost and reduces choice and flexibility without addressing the underlying issue. We would suggest that if there is genuinely an issue of protection then MSB engagement with existing protections should be addressed first rather than introducing new rules.

8. MSBs are already adequately protected, for example under the Unfair Contract Terms Act 1977, the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982. The current arrangements enable businesses to distinguish clearly between their consumers and business customers. Were an additional customer category to be introduced in the form of extending protection to MSBs then a business would need to ascertain whether the prospective customer was an MSB or not adding a further level of complexity and potentially cost. It would also serve to reduce flexibility for MSBs wishing to access goods, services and finance.
9. The UK has a long-standing tradition of applying consumer protections to small businesses in respect of the provision of consumer credit. Further divergence from European legislation, which clearly delineates between consumer transactions and business to business transactions, will create barriers for firms seeking to do business-to-business lending and risks making the UK an outlier.
10. It is worth noting also that the definition used for MSBs of the number of employees gives cause for concern as it is not a good indicator of whether a firm is in need of protections beyond what is provided under existing legislation. Moreover, the number of employees can vary over time meaning that businesses would have to constantly review the number of employees a customer has to determine whether additional protections might apply. In our view, a firm's turnover is often a better indicator of its size.
11. We see potential difficulties in the car finance market. Typically, it may take several weeks or months before a new car is delivered. A finance company will conduct credit checks when the customer orders the vehicle. If the CRA were to be extended to MSBs then further checks, including the status of the MSB and its business plan, would have to be conducted at the time of delivery. This would add a layer of bureaucracy providing little tangible benefit to the customer.
12. In practice, bringing MSBs within scope of the CRA would require suppliers, including finance companies, to introduce different IT, customer verification and other systems. This would naturally impose costs which would ultimately be priced into the cost of doing business with MSBs. This would put smaller suppliers at a disadvantage compared to larger businesses. It would likely result in a reduction in the supply of finance which in turn would affect the ability to acquire goods and services.

13. The FLA expressed concerns during parliamentary scrutiny of the Consumer Rights Act about the potential for abuse by consumers of the short-term right to reject goods¹. Whilst the Guidance accompanying the Act has provided some reassurance that this will not be the case, we fear that this could be exacerbated if the short-term right were extended to MSBs. For example, a small business which acquired an item designed for domestic use may well make heavier use of that item than was intended by the manufacturer. This could lead to more failures of goods/equipment and disproportionate use by MSBs of the right to reject goods.
14. The call for evidence is set against a backdrop of unprecedented regulatory change in the credit markets. Consumer credit regulation moved to the Financial Conduct Authority in 2014. This included 1.5 million SMEs, mainly unincorporated businesses and partnerships, which are treated as consumers under the Consumer Credit Act (CCA), the basis for the new regime.
15. Some small firms who may only conduct a small proportion of CCA-regulated business are actively considering whether to withdraw from these markets. If the Government applied the CRA to MSBs this would exacerbate the burden of regulation and contradict the Government's commitment to cut red tape as outlined in the Enterprise Bill. It would also significantly reduce consumers' choice of providers.
16. It is critical that the Government does all it can to support a thriving small business-driven revival rather than putting potential regulatory obstacles in its way. If MSBs are unaware of their rights, then a logical place to start would be to conduct an awareness campaign rather than widening the regulatory scope without concrete evidence of MSB detriment.

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¹ Under the CRA, a consumer can reject the goods within the first thirty days if they are of unsatisfactory quality (however minor the defect). Sellers are unable to deduct the costs incurred (for example, depreciation) while the goods have been used by the customer. Our concern stemmed from the fact that the new right to could have significant cost implications for our members, particularly in the motor finance industry, where 75% of private new car sales are bought on finance. New cars typically lose 15-20% of their value in the first thirty days.