

# Written evidence submitted by Citizens Advice Scotland (DMCCB47)

## Digital Markets, Competition and Consumers Bill

The Citizens Advice network in Scotland is an essential community service that empowers people in every corner of Scotland through our local Citizens Advice Bureaux (CAB) and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

### Background

Citizens Advice Scotland (CAS), the Scottish Citizens Advice network, and the Extra Help Unit have assisted consumers throughout Scotland throughout the COVID-19 pandemic and the Cost-of-Living crisis. We have worked effectively within regulated markets alongside key stakeholders to ensure that consumers can access markets with confidence and detriment is addressed. We have a strong and established history of advocating on behalf of consumers in Scotland, with their experiences located at the centre of our work.

During 2022/23 over 15,000 pieces of advice on consumer issues were provided by the Citizens Advice network in Scotland. In 2022/23 there were over 320,000 unique page views of consumer advice pages on our public advice site. Of those unique page views:

- 47% sought consumer advice on energy.
- 10% sought consumer advice on what to do when something goes wrong with a purchase; and
- 7% sought consumer advice on holiday cancellations and compensation.

In polling of consumers in Scotland undertaken by YouGov in 2022 on behalf of CAS, it was found after analysis that<sup>1</sup>:

- 2.3 million adults in Scotland expect to save less, with 1.7 million expecting to have to dip into their savings.
- 506,342 adults in Scotland are expected to increase their overdraft use.

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<sup>1</sup> All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1002 adults. Fieldwork was undertaken between 10th - 14th November 2022. The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

- Around 460,000 adults in Scotland expect to go into debt, while 644,000 anticipate an increase in their existing debt.

CAS understands the many difficulties facing consumers in the current economic climate as demonstrated by the data highlighted above, and we greatly appreciate many provisions within the Digital Markets, Competition and Consumers Bill as it currently stands as efforts to help protect consumers from detriment and grant easier access to redress.

## Overview

Citizens Advice Scotland (CAS) welcomes the opportunity to provide evidence to the Public Bill Committee for the Digital Markets, Competition and Consumers Bill. CAS firmly believes that the Bill has the potential to deliver positive and meaningful outcomes for consumers in Scotland and we are pleased that some of our recommendations from the consultation stage are represented within the Bill as introduced.

As the Bill currently stands, we:

- Welcome retention of prohibition of unfair commercial practices and rights associated with these, alongside specific action to tackle fake reviews and the ability for new unfair practices to be included more quickly. We believe that this will allow for swifter detection of issues that are detrimental to consumers with rapid action that prevents harm from occurring.
- Welcome increased/enhanced powers for the CMA in order to protect consumers, deter bad practice by organisations, and act quicker. We believe that this will enable the CMA to intervene quicker in markets that are causing detriment while providing further clarity for businesses and traders.
- Welcome action on subscription traps which will benefit consumers as this supports our calls for action on this in our consultation response. However, monitoring of compliance from businesses of these measures may be key to how beneficial these are for consumers.
- Welcome measures on redress and enforcement to attempt to address consumer harm and additional protections for Christmas/similar savings clubs. Consumer information/awareness at various points in the consumer journey may also be key to ensuring these measures help address consumer harm and detriment in this area.
- Welcome moves towards mandatory accreditation of providers of consumer Alternative Dispute Resolution (ADR) to improve standards and transparency. However, the consumer journey and consumer awareness must be central to these changes otherwise it could lead to confusion for consumers.

## Average consumer and vulnerable persons

We note that within Chapter 4, Part 1 under the 'meaning of "average consumer": vulnerable persons' the definition of consumers who may be vulnerable would benefit from a definition that is more transient and reflective of the experiences of vulnerable consumers supported by the Citizens Advice network in Scotland.

The Scottish Citizens Advice network has consistently supported vulnerable consumers who have experienced detrimental practices, harm, or fraud. We understand that many vulnerable consumers are vulnerable due to their own individual circumstances, and we welcome this definition within the Bill. However, we would ask the Committee to note that vulnerability is not a fixed state.

Consumers can become vulnerable due to a change in their own individual circumstances, be that in terms of their status of employment, finances, or health. As such, an understanding of vulnerability that encompasses its transient nature would be of significant benefit to vulnerable consumers.

We would highlight the work of the Telecommunications regulator Ofcom on this issue who collaborated with Citizens Advice Scotland (CAS) and other consumer advocacy organisations to develop Ofcom's guidance to providers on treating vulnerable customers fairly. This guidance recommends providers be flexible on their parameters for identifying vulnerable customers and to understand that consumers who were previously not vulnerable may become so due to a change in their circumstances.

Similarly, the Extra Help Unit (EHU) which was established in 2008 to help people resolve difficulties with their energy supplier and has been managed by Citizens Advice Scotland since 2014 helped more than 40,000 people last year right across Great Britain.

The Extra Help Unit understands deeply the experiences of vulnerable consumers who are seeking redress and assistance with detriment within regulated markets. The Extra Help Unit's statutory duties are contained within the Consumers, Estate Agents and Redress Act 2007 which states that a person is "vulnerable" if the consumer advocacy body to which the complaint is referred is satisfied that it is not reasonable to expect that person to pursue the complaint on that person's own behalf. The Extra Help Unit works on the broad parameters of a consumer being vulnerable due to:

- Urgency of complaint or risk of disconnection
- Complexity of complaint
- Personal circumstances (this could be wide ranging and is not specific)

Given our experience of supporting vulnerable consumers through the Citizens Advice network and specifically supporting vulnerable energy consumers via the EHU we would strongly recommend vulnerability measures to support consumers avoid the practice of creating tick box exercises. We believe such exercises risk classifying consumers as vulnerable when they may not be and equally does not allow for the transient nature of vulnerability.

## **Alternative Dispute Resolution (ADR)**

Citizens Advice Scotland data shows that 504 clients were provided with consumer-related ADR support in 2022/23, and as many as 812 clients required the same during the height of the Covid-19 pandemic in 2020/21.

As outlined above CAS welcomes moves towards mandatory accreditation of providers of consumer ADR in the draft Bill in order to improve standards, transparency, quality, and oversight of ADR services. However, the consumer journey and consumer awareness must be considered as a core part of this, otherwise it could lead to confusion for those trying to access ADR services for consumer related issues.

## **ADR landscape and information requirements**

The Bill aims to simplify the currently cluttered landscape of ADR providers. Especially in unregulated sectors, consumers (and businesses) often face multiple providers, and it can be difficult to establish which one to use or take your complaint to.

In our previous engagement with efforts to reform consumer ADR we expressed a preference for a one-provider-per-sector or industry model - as currently found in some of the regulated sectors - to facilitate the consumer journey and improve coherence in ADR service provision and outcomes. We note the Bill does not contain such a model but rather aims to encourage competition and innovation among various accredited ADR providers. Under such a model, in which a multitude of dispute resolution methods continue to be offered by various providers and terminology remains unclear (e.g. different ombudsmen schemes have different powers in court), we believe that concerted efforts will be necessary to improve consumer awareness and business education in order to increase take-up of consumer ADR and reduce consumer detriment.

The below experiences are drawn from qualitative data from across the Citizens Advice network in Scotland and highlight examples of issues or concerns clients have experienced when accessing information or advice on ADR or with ADR processes themselves.

- Individuals seeking advice on consumer issues often found information on a trader's internal complaints processes to be missing altogether or lacking in clarity, or they had difficulties getting the business to engage with them to resolve the issue. Information on relevant ADR providers and schemes available seemed even harder to find.
- Clients found that a national retailer (in this case of electrical goods) was offering an online complaints form, but no email address to send correspondence to, leaving consumers without a paper trail. Clients received no responses to their online complaints for weeks and months or simply received a line which suggested they should contact the manufacturer for any complaints within the first 12 months after purchase. In one specific instance, an elderly client aged 65-79 made several failed attempts to speak to the consumer complaints department on the phone, the consumer and CAB adviser were transferred to different departments multiple times for 45 minutes and then cut off without explanation. The client and adviser carried out some online research but could not establish whether that retailer was signed up to an ADR provider.
- An elderly client had complained to an airline about wrong information he was given by one of its call centre staff regarding the ability to change his flight tickets for free. When he eventually tried to rebook the flights for his family, he was told he would have to pay £1700. He never received a response to the multiple complaints he sent by post and email, then went through the ADR scheme used by the airline but had no success.

CAS considers that the consumer-facing information requirements in clauses 294-297 of the Bill could be further strengthened and/or implemented in a way that prioritises clear and easily accessible information for consumers. The points outlined below detail some options CAS believes could be used to achieve this.

- Clause 292 in connection with schedule 23, part 1, criterion 1 sets out that accredited ADR providers should provide "consumers generally with accessible information" about the ADR or special ADR arrangements they provide. We believe this should be complemented by a publicly available, up-to-date list of accredited ADR providers. It should, as a minimum, contain information about accredited providers for each industry/sector and clear information about what kind of ADR services they offer, their procedures, fees, and possible outcomes, as well as any conditions or limitations on and dates of their accreditation. This would be vital for consumers to counter the existing information asymmetry in this field and would make it more difficult for rogue providers to operate. In addition, it would be important to ensure that this information is provided in an inclusive way - in various languages, not digital-only formats, and taking account of other special access needs consumers may have.
- Clause 299 (3) of the Bill requires traders to inform consumers about ADR or other arrangements to resolve an issue when communicating the outcome of

their consideration of a consumer complaint. We believe it would be beneficial for consumers if this information requirement were put in place earlier, for example, as part of T&Cs or contract information. This could also lead to better education of traders on their information duties vis-a-vis consumers and to higher consumer confidence in businesses and the ADR system.

## **Vulnerable consumers and additional support needs**

It must be recognised that some vulnerable consumers may need assistance from advice and advocacy services to access and navigate ADR. In some cases, the interests of vulnerable consumers may be better served by having advocacy bodies interact directly with providers on their behalf. For instance, ADR schemes' requirements may not be appropriate when dealing with vulnerable consumers who need more engagement and are unable to follow timelines and to submit information in the expected and structured manner. The Extra Help Unit (EHU) run by CAS provides a helpful illustration of individual support needs and how they can best be addressed to reduce consumer detriment.

The EHU forms part of a tripartite with Ofgem as the competent authority and Ombudsman Services: Energy as the sole ADR provider in the energy sector under the Alternative Dispute Resolution for Consumer Disputes Regulations 2015. From the experience of the EHU, having a single ADR scheme per sector is beneficial as it provides consistency in communication, the consumer journey pathway is clear, and the Ombudsman service can help track and monitor performance of energy suppliers. These three parties meet regularly to discuss concerns around compliance and performance. Some key points about differences between and interplay of the Ombudsman Service and EHU are worth noting:

- To use ADR schemes successfully, consumers often need to be able to articulate their problem. When consumers seek the support of the EHU, they may present with a specific problem but once the advice staff ask questions and unpick what happened, the nature of or reason for the complaint can be quite different. Instead of being stuck focussing on the issue the consumer initially presented with, the EHU can continue challenging energy providers on the issue at hand.
- ADR schemes can be quite rigid and do not always allow for the fluid exchange of communication and extended timelines needed by many consumers who are vulnerable, especially those with physical or mental health issues. ADR schemes cannot deal easily with urgent issues that arise as part of a complaint, which means the Ombudsman Service refers any urgent issues or cases to the EHU which provides a personalised service to respond to the needs of the individual consumer, e.g., by providing longer time frames and more direct engagement. A duplicate case process was set up so that EHU and Ombudsman Services are not working on a complaint simultaneously.

- For vulnerable consumers, the process of appealing a decision can be challenging too as, again, it can be quite formal. The EHU reports that consumers have complained to them about the Ombudsman complaints process, particularly a lack of transparency in their decision-making and difficulties when trying to challenge their decision.
- ADR is in a way about putting consumers back to where they started, while the EHU is a consumer advocate, so considers personal circumstances, detriment, and impact on the individual. This often leads to better outcomes for the consumer.
- Overall, the EHU provides the tailored and flexible support required for (vulnerable) consumers and has a history of achieving strong outcomes and financial redress by advocating strongly for the consumer and working closely with energy suppliers.

Even though Schedule 23, part 1, criterion 5 of the Bill mentions that ADR parties should be entitled to representation or assistance, as it currently stands the accreditation criteria set out in Schedule 23, part 1 do not explicitly make provisions accounting for vulnerability/vulnerable consumers. CAS considers this an issue that should be addressed through the Bill or associated guidance.

We would therefore welcome the inclusion of explicit references to vulnerable consumers in the accreditation criteria in the Bill and/or in guidance that would accompany the Bill when enacted. For instance, accredited ADR providers should publish details of how they will work with vulnerable consumers to ensure they are adequately supported and outline how those accessing these services are or will be provided with a variety of communications channels to engage with such processes along with adequately funded support if needed.

## **Consumer choice and accessibility of ADR**

CAS believes that, more generally, consumers should be able to access ADR services locally and in a way that meets their individual needs. This may include, for example, being able to exercise choice regarding preferred communication channels or being able to access support from other organisations to help with pursuing ADR options. It would be helpful to understand how the Bill may support this going forward.

As it stands, Schedule 23, part 1, Criterion 4 specifies ADR providers have to provide “accessible means” for consumers to refer disputes to it and for parties to participate in ADR. We would like to see more explicit reference to channel choice for consumers in the Bill and/or in associated guidance, in order to avoid, for example, ADR providers offering online-only access to ADR.

CAS also believes that consumer ADR should be free at the point of access to consumers, as charges would otherwise result in those who cannot afford them being excluded from these vital options to enforce their consumer rights. Even a nominal charge as suggested in clause 286(2) of the Bill has the potential to deter people who are financially vulnerable from making complaints – even if the business itself has produced this vulnerability or led to (further) consumer debt as recently seen in the many cases of forced installation of prepayment meters by some energy providers - and risks leaving those who are financially vulnerable open to exploitation by traders. We would urge considering removing this paragraph altogether, so that no exception is introduced to the general prohibition of fees for customers as set out in clause 286 (1).

Lastly, questions remain about the interplay, potential overlaps or frictions between the provisions on ADR in the Bill which will apply to the whole of the UK and potentially divergent Scottish law (for instance, rules on confidentiality in arbitration procedures as set out in the Arbitration (Scotland) Act 2010) and consumer advice being a devolved issue while consumer protection and legislation issues are reserved.

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