

## DMCC Briefing Series – Part 3: Consumer Protection Reforms – What could future enforcement look like for consumer-facing businesses and for those in regulated sectors?

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In this latest instalment of our briefing series on the Digital Markets, Competition and Consumers Act 2024 (**DMCC Act**), we take a closer look at the consumer protection reforms within it, what the future consumer enforcement landscape could look like for consumer-facing businesses operating in the UK and what we can learn from the enforcement of bespoke consumer protection measures that are embedded within sectoral regulation regimes. We conclude with thoughts on the likely impact of the DMCC Act for regulated businesses.

What the CMA's consumer enforcement approach to date can tell us about future areas of focus

In anticipation of the DMCC Act, the CMA has become increasingly active in the consumer space and has opened a number of investigations in the past couple of years spanning both a range of sectors (from grocery retailing to housing and from mattresses to green heating) and a range of practices (from misleading green claims to urgency claims and from mis-selling and unfair contract terms to misleading pricing). While the CMA is unlikely to have the appetite to use its new powers to cover old ground, it may nevertheless look to utilise its new fining powers for repeated infringements in areas where it has already made its expectations clear. For example, its investigation into misleading green claims by fashion retailers resulted in the publishing of [undertakings](#) which also act as guidance to others in the industry. Any missteps in this regard by fashion retailers are therefore unlikely to be looked upon kindly and the same is true for grocery retailers that fail to clearly and accurately display prices following the [CMA's warning](#) to them earlier this year. For more information on the CMA's recent consumer enforcement activity, see our April 2024 briefing [here](#).

Consumer facing businesses should therefore ensure they are aware of the CMA's work to date and that their compliance is in line with the standards communicated by the CMA. However, we expect more broadly that the CMA's focus will turn to using its new powers to tackle previously uncharted territory (e.g. new commercial practices or new sectors) as well as broadening its work in online choice architecture and misleading pricing as signalled in its 2024 annual report. It is therefore incumbent upon consumer facing businesses to ensure their practices are fully compliant with consumer protection laws and, at a minimum, a review of how pricing, terms and conditions and marketing claims are presented to customers would be sensible at this stage. While it is of course impossible to foresee exactly where the CMA will focus its attention, sectoral regulators' recent areas of consumer protection focus may provide

some insight into the types of practices that the CMA might look to tackle when its new powers come into force.

What can the more established but targeted consumer protection regimes in regulated sectors tell us about possible additional areas of focus?

Sectoral regulators' recent annual plans and consumer enforcement caseload highlight an interest in the following areas:

- **the provision of information to enable consumers to make fully informed decisions** – for example:
  - Ofcom's [investigation](#) into failures to provide contract summaries and information documents before entering into a binding contract, which led to a £2.8m fine in 2024;
  - the Financial Conduct Authority (**FCA**)'s [investigation](#) relating to misleading claims to investors regarding its risk weighted assets which led to a fine in excess of £10m in 2022;
  - separately, the FCA's new anti-greenwashing rule came into force on 31 May 2024, with accompanying [guidance](#) to ensure better practices in relation to sustainability-related claims about firms' products and services;
- **the handling of data, including consumers' personal data and record-keeping processes** – for example:
  - the FCA's [investigation](#) against Equifax in relation to the outsourcing of data processing to an intragroup entity which experienced a data breach. Among other things, the FCA found failings in relation to treating customers fairly and communicating information in a way which is clear, fair and not misleading following a data breach, and issued a fine exceeding £11m in 2023;
  - fines and public censure decisions from [Ofgem](#), the [Prudential Regulation Authority](#) and the [FCA](#) in relation to (inter alia) failures to record/ retain so-called "off-channel" electronic communications such as those taking place via WhatsApp and on private phones. For more detail on Ofgem's decision, see AG's Global Investigation team's recent briefing [here](#); and
- **the fairness of charges imposed on consumers in the broader context of the ongoing cost-of-living crisis, including various types of fees** – for example:
  - Ofcom's current [investigation](#) into contract termination rules;
  - Ofcom's ongoing [enforcement programme](#) into in-contract telecoms prices rises;
  - Ofgem's [requirement on EP SHB Ltd](#) in December 2023 to pay in excess of £23m for breaching its generation licence in a way that unfairly raised consumers' energy bills;
  - the PSR's [2022 fine](#) exceeding £1.8m against a retail bank for wrongly charging higher interchange fees on payment cards that were incorrectly categorised as out of scope of the regulatory capping obligations, to the detriment of merchants and, ultimately, consumers; and
  - the FCA's [investigation](#) against TFS Loans Ltd which found in 2022 that the lender had, among other things, charged arrears management fees to its customers contrary to its own policy.

The examples above reveal obvious overlaps between issues the sectoral regulators have recently sought to address via their bespoke regulatory powers and consumer protection provisions within the DMCC Act (e.g. pre-contract information requirements, misleading claims), providing another reason why

these are likely to be areas of focus for the CMA when utilising its new administrative consumer protection powers.

What can businesses operating in regulated sectors expect in terms of future consumer protection enforcement?

To some extent, businesses operating within regulated sectors will be ahead of the curve, in the sense that at least in areas that are already targeted for enhanced consumer protection measures under sectoral regulation regimes, processes will be in place to ensure compliance, in alignment with a significant level of risk.

By way of example:

- postal services operators are subject to a number of Consumer Protection Conditions pursuant to the Postal Services Act 2011, which include complaints handling, redress and compensation rules;
- civil aviation operators must follow certain consumer protection rules including in relation to flight delays and cancellations; and
- water companies' licences include a number of customer care principles.

Notwithstanding this, we expect the DMCC reforms to increase the existing risk profile of conducting consumer-facing business given the broader scope of application of the general consumer protection regime, the CMA's new direct enforcement powers mentioned above, as well as the enhanced powers of public and private designated enforcers (which include the sectoral regulators) under the DMCC Act.

In practice, we anticipate that:

- sectoral regulators will continue to rely on their regulatory powers first;
- they may use general consumer protection powers under the DMCC Act where they can anticipate securing undertakings from businesses under investigation; and
- they may refer cases to the CMA where they anticipate little prospect of conciliation, so that the CMA can use their direct enforcement powers to secure a more effective resolution of the issue.