

We would like to submit some brief comments in response to the consultation on the CMA draft guidance on Unfair Commercial Practices on behalf of the Tourism Alliance.

Our comments relate to the 'Drip Pricing' provisions (chapter 9)

Mandatory vs additional services

Section 9.18-9.22 inclusive

We support the clear division between the handling of mandatory versus additional goods and services in the draft guidance. It is vital that businesses providing tourism goods and services are able to provide those additional goods and services during the booking/purchasing journey. We believe that balance is struck in the guidance.

However, it is vital that this clear division is not diluted as a result of this consultation.

We are aware that there are some actors who would promote the idea of a grey area where some goods and services are treated as optional for some consumers, and mandatory for others, based on personal circumstances or other factors. This would be a recipe for complete confusion and an enforcement nightmare. Businesses need clarity which we believe is provided in this regard.

Complex mandatory fees

Sections 9.23-9.30 inclusive

We are concerned about the implementation of this part of the guidance. We accept that Sections 230(2)(c) and 230(5) set down the provision that traders must provide enough information so as to allow the consumer to calculate the full price themselves. However, how this will work in practice is still not entirely clear in the guidance, as so much will depend on the specific circumstances. It would be preferable if there were an ability for traders to provide a range of mandatory charges that may apply and information about how they will apply.

For instance it should be possible to use the following wording:

“Plus an additional charge between £X and £Y depending on Z”

Z in this case could be, for instance, whether consumers choose to purchase additional services which could reduce or increase delivery charges.

It should also be explicitly possible to state an 'up-to' amount for variable mandatory fees.

Given the often complex nature of holiday bookings which can bring in many genuine options and many different elements, the implementation of these provisions could prove very difficult indeed.

Given this, we would urge the CMA to adopt a suitably permissive posture on enforcement, especially around this provision of the Act, and ensure there is a review of the guidance and the implementation of the Act say a year following its being brought into force so there is a good understanding of any problems arising from the guidance.

Disclosure of Owner Contact Details

Context and Concerns The draft CMA guidance proposes requiring agencies to disclose full contact details of property owners at the "invitation to purchase" stage. This raises serious issues regarding privacy, security, and the functioning of the agency model within the self-catering accommodation industry.

Specifically, the disclosure of owner details could:

- **Increase fraud risks:** Exposing owners to phishing and scams, undermining trust.
- **Compromise property security:** Public disclosure of property addresses tied to booking calendars creates opportunities for burglary.
- **Undermine the agency model:** Encourages direct bookings, bypassing agents who invest in marketing and guest management, leading to revenue losses and reduced market participation.

It is important to understand that in the tourism and hospitality space agencies are vital intermediaries, offering services such as guest screening, dispute resolution, and fraud prevention, which benefit both consumers and property owners. They serve an extremely important role in the functioning of the tourism ecosystem. The proposed disclosure requirement threatens these protections and disrupts a well-established market practice.

Legal Implications

Interpretation of s.230 of the DMCC Act The guidance relies on s.230, which mandates disclosure of material information, including the identity and contact details of those on whose behalf the trader is acting. However, practical application remains ambiguous. While acknowledging contextual limitations (e.g., 9.11 and Annex C), the draft lacks clarity on situations where disclosure may not be feasible or appropriate.

Impact on Agencies The guidance's broad definition of "trader" (3.14) includes agents, who may then be required to disclose owner details. This is problematic because:

- Owners specifically hire agents to handle bookings and queries, avoiding direct consumer interactions.
- Mandatory disclosure could expose owners to spam and scam emails, undermining confidence in the industry.
- Requiring owner details at the "invitation to purchase" stage could lead to direct bookings, cutting agents out of the process and eroding their revenue.

Practical and Industry-Specific Challenges

1. **Owner Privacy and Security:** Publicising email addresses risks spam and phishing. Revealing property addresses enables criminal targeting.
2. **Consumer Confidence:** Fraudulent activity, such as spoofed emails from malicious actors, would undermine trust in the market.
3. **Agency Viability:** Agents invest in generating enquiries and facilitating bookings. Disclosure requirements could lead to financial losses, reduced marketing investment, and withdrawal of properties from the market.

To address these concerns, we urge the CMA to amend its guidance by:

- Recognising the unique and important role of agents in this context and allowing them to act as intermediaries without disclosing owner contact details at the "invitation to purchase" stage.
- Clarifying that s.230(8) applies in cases where agencies provide adequate information through alternative channels, such as customer service teams.
- Providing explicit examples in the guidance where disclosure is not practical or required, ensuring consistent application and enforcement.

We stand ready to support the CMA further in the implementation of these provisions.

We hope that is helpful feedback.

Tourism Alliance

