

Wellies & Windbreaks response to the CMA's consultation on the draft unfair commercial practices guidance
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To whom it may concern

I am a small holiday rentals agent with a portfolio of approximately 40-45 holiday homes under management. This fluctuates but as a sole trader, operating in one distinct area, with just one assistant, I am never going to be a huge operator. I set up my business almost 10 years ago and I have to say that the regulatory changes in the industry over the past couple of years have been overwhelming. Trying to keep up to speed and be in a position to inform the homeowners of the properties that I manage is a challenge. Thankfully I am an agency member of PASC who do a fantastic job of highlighting consultations and changes to its members.

I do welcome positive change and recognise the need for it in some places where it is sensibly considered. Making the STL market a safe and fair space is important for agents, homeowners and guests.

I have read the Unfair Commercial Practices Guidance and as invited to do so, have some comments to make:

**Q1. Do you have any comments on the structure or clarity of the Draft Guidance?**

As stated above, whilst I welcome the broad intentions of the legislation, particularly relating to drip pricing and fake reviews, I have concerns that some points in the guidance may compromise established practices in the self-catering tourism industry and could have unintended consequences, particularly for agencies. Whilst consumer protection is important, some of the proposed measures could undermine the fundamental structure of agency operations, increase security risks, property owner privacy, and the integrity of the industry.

As a PASC member we would welcome further engagement with the Competition and Markets Authority to help clarify the legislation and guidance as this applies to our sector.

**Q2. Do you have any comments on the illustrative examples of commercial practices applying the prohibitions? Are there any areas where you think additional examples could usefully be reflected in the Draft Guidance?**

**Application of tourist levies**

The CMA guidance is clear that 'local taxes and other fees that become payable on arrival at hotels', are a mandatory charge.

The Welsh tourism levy is an example of local taxes that will affect the tourism industry when implemented. We interpret the legislation to include these sorts of tourism levies in the total/headline price as part of the invitation to purchase.

Our concerns are as follows

Using the Welsh tourism levy as the example, this will be charged per person per night. Properties will advertise as sleeping a certain number of people. However, booking parties may not bring the total number of people to meet the capacity of the property. Whilst this will not impact the price of the property, it will impact the amount payable in respect of tourism levy (where it is calculated on a per person basis).

We would appreciate guidance, which could be an additional example, confirming that this is an example of where the total price cannot be calculated in advance and instead the trader needs to provide consumers with the information regarding how it is calculated (i.e., the per person per night rate). The alternative of including the tourism levy for the maximum number of people that could occupy the property in the headline price and then reducing the price if the guest then amends the number of people who will attend the property to lower than the maximum capacity, feels far less transparent and will disproportionately impact the advertised “headline” price of larger properties that may be booked by smaller parties.

**Mandatory versus optional charges within the tourism industry**

In respect of mandatory versus optional charges, at 9.20, the guidance states:

*In addition, charges should not be excluded from the headline price if consumers could in theory avoid them but doing so is not viable in practice. This includes, for example, delivery fees where a collection option is notionally available, but a product cannot be feasibly collected by other means, for example because a trader has a very limited number of physical stores located only in certain parts of the country yet advertises products to consumers across the UK.*

Interpretation in the tourism context:

There are industry specific examples which we are concerned may, but should not, fall within the ‘viable in practice’ bracket – including:

1. Holiday homes (and agents) that advertise as dog friendly (with this feature being their marketing focus) however there is an additional fee for bringing dogs.
2. Holiday homes that have an optional extra charge for linen. Guests may bring their own, however if they want provided linen, there is an additional charge.

Both fees are optional, however we are concerned that due to the context, and the consumer expectation, there needs to be clarity that the position in 9.20 of the guidance does not apply.

Our concerns are as follows:

We would be grateful for further guidance and tourism-specific examples confirming the argument of viability (treating an optional charge as a mandatory charge) does not include situations such as the above where the consumer may be likely to select the optional extra due to the nature of the product/service but that is not a certainty (particularly if, for example, they do not have a dog or have fewer dogs than the maximum number permitted).

**Other examples relating to the tourism industry**

The draft guidance would benefit from illustrative examples that relate to the tourism industry, specifically as this applies to online booking of holiday accommodation. It would be useful to confirm:

1. Where the invitation to purchase stage occurs
2. What is required where the headline price cannot be calculated without variable information from the consumer (noting the example above relating to visitor levies)
3. What fees are mandatory (noting our specific concerns above, as well as our questions about the treatment of damage deposits that is given later).
4. The correct use of headline price breakdowns.
5. Further examples regarding the 'context' and 'limitations from the means of communication' (Section 230(8)), for typical transactions in our industry, particularly around the limitations of a booking website used to drive enquiries for owners.

**Q3. Do you have any comments on the Draft Guidance on the 'drip pricing' provisions in the DMCC Act (found in the 'Material pricing information' section of Chapter 9 of the Draft Guidance), including the illustrative examples? In particular, are there any specific pricing practices that have not been included in the 'drip pricing' illustrative examples which you think it would be helpful to include, and if so, what should such further guidance specifically cover?**

I welcome the principle of avoiding 'drip pricing' that omits mandatory costs from the headline price offered to customers. I have always strived to be 100% transparent with my guests. However, I have concerns about how one common pricing feature of our industry will be handled by any legislation. This relates to the practice of requiring a damage deposit from guests who book short-term holiday let accommodation. As an example, a holiday cottage might have a headline cost of £1,000. However, to cover potential damage that would require further payment under the terms of any rental agreement, the accommodation provider might require a deposit of (say) £200. Providing no damage occurs, this deposit would be refunded in full, and it is only exceptional cases that would need to draw on these funds. The requirement for a

damage deposit is widespread within the furnished holiday let sector and is due to the high potential costs of such damage and the difficulty in obtaining reimbursement once guests have departed.

There are three broad ways that furnished holiday let owners mitigate possible damage.

1. Offering an optional payment of a non-refundable charge to provide a damage waiver. This situation is covered by the drip pricing legislation as it is an optional fee and we consider, therefore, it does not need to be included in the headline price
2. Requiring a mandatory damage deposit at the time of making the booking, which is refunded if there is no damage (or refunded in part where there are deductions for damage). This does involve additional upfront payment but one that, in the majority of circumstances, will be refunded in full. It is designed to protect against a contractual promise to pay for any damage they cause and does not form part of the price of a holiday.
3. Holding a damage deposit amount against the guest's card, typically when the guest checks in. This money is only taken (in whole or in part) if there is damage during the stay. This does not involve additional upfront costs.

Where an amount is held against the guest's card, which is what I do with my clients, and only taken if there is damage, the guest is not making the payment in order to complete their booking (purchase). However, it is mandatory that I hold an amount against their card—this is not optional. It is therefore unclear whether this would be deemed a mandatory fee?

*Our concerns are as follows*

If a refundable damage deposit, whether paid upfront or held against a card, is deemed a mandatory fee, and therefore need to be included in the headline price, we are concerned that this will mislead the guest (customer) into thinking that the booking is more expensive than it is. The guest will only make payment permanent in the event of damage.

We do not believe it would be the spirit of the legislation that this charge should be included in the headline cost as only in extreme circumstances will it be paid. It should, however, be fully described to consumers in the booking process.

We request further guidance on these scenarios and strongly believe that the guidance needs to explicitly account for the charging of damage deposits that are 100% refundable and confirm they are not within the drip pricing requirements.

**Q4. Do you have any comments on the Draft Guidance on the banned practice relating to fake consumer reviews (found in Annex B to the Draft Guidance)?**

I 100% welcome the steps being taken to avoid fake consumer reviews. This is essential to create a fair and level playing field and will encourage high standards in the industry. I do think guests ought to be encouraged to write fair and informative reviews though and agents ought to have the ability to set guidance for reviews.

**Q5. Do you have any other comments on topics not covered by the specific questions above? If so, the CMA requests that respondents structure their responses to separate out their views in relation to each of the Draft Guidance's chapters.**

One of the most significant issues is the proposed requirement for agencies to disclose the full contact details of property owners at the invitation to purchase stage. This requirement raises serious concerns about privacy, security, and the viability of the agency model.

Requiring disclosure of owner contact details would:

- Increase the risk of fraud and phishing attacks.
- Undermine the role of agencies as intermediaries who provide essential services such as guest screening and dispute resolution.
- Disrupt the traditional business model of agencies, removing the value add that the agency has added in marketing, and operating the business and potentially allowing a direct booking to be made leading to revenue losses and potential withdrawal of properties from the short-term rental market as a whole.

We urge the CMA to recognise the role of agencies in protecting both owners and consumers and to amend the guidance to allow agencies to continue acting as intermediaries without being forced to disclose owner details.

I know that PASC UK has written to you about this subject too and whilst it supports fair trading practices and consumer protection we all urge the CMA to ensure that regulation does not disrupt a well-functioning market. The agency model provides vital security, guest support, and fraud prevention—protecting both consumers and property owners.

The proposed requirement to disclose owner details and redefine pricing structures threatens to erode these protections.

Within the self-catering tourist industry there is a pivotal role for holiday booking agencies, who act on behalf of individual providers to market and promote their properties. These agencies range from the size of Airbnb, Booking.com and VRBO down to operators who market a few tens of properties.

3.14 of the guidance does include 'agents' within the broad definition of traders, though there is no explicit definition of this term. And part g of 9.11 explicitly says that where agents act on behalf of another person then that other person's contact details need to be provided (subject of course to the principles of context and limitations of the means of communication).

This means that s.230 of the DMCC Act could require the information of the owner (including the owner's contact details) to be presented at the invitation to purchase stage on the agency booking website.

This leads to the following practical issues:

1. Owners who instruct agencies to market their property do so because they do not wish to have consumer facing engagement. They have specifically appointed the agent to answer queries on their behalf and manage the booking process, has been common practice in the travel industry and is also expected by the consumer.
2. Making contact details of owners accessible, including email addresses, would result in each individual owner's email becoming the target of harvesting bots and result in:
  - a. A large increase in spam for the owners undermining their confidence in the industry which is vital for the UK economy (particularly in rural and coastal communities); and
  - b. The increased risk of scam holidays with malicious actors claiming to be the owners of the properties through spoofed email addresses.
3. If agents are required to disclose the exact address of the property on the public facing website, this would provide criminals with both the exact property address and the days and nights when it is not occupied as the calendar will also be available.
4. Furthermore, if owner details are provided at the invitation to purchase stage, a consumer may contact the owner to make a direct booking. This would damage the integrity of the agent/owner relationship and goes against the owner's wishes to utilise agency services to market their property. The agent will have invested significant sums of money in generating the enquiry yet will not be paid any commission if the guest contacts the owner direct.

These concerns above are not hypothetical and I know of people who have had direct experience of these practices happening in the past. The use of an agent in booking a holiday, particularly a self-catering cottage, is a well-established commercial practice in the UK. Therefore, it is very clear from the **context** of the website and process, that the guest is booking a property via an agent.

Reviews refer to “the owners/the hosts”, the Terms and Conditions are always clear that bookings are taken as agent. Consumers know they can contact the agent with queries, and it has been an established practice that is well understood by consumers and by property owners for decades.

There are also significant **limitations** to displaying the owners’ details on each and every booking website their properties are marketed on, as referred to above, namely:

- 1) The online security of the consumer being exposed to scam holidays
- 2) The online security of the owner being exposed to unsolicited spam emails
- 3) The physical security of the property and the owner’s belongings
- 4) The commercial injustice of agents investing in generating enquiries to be cut out of the booking process.

And finally, agents will already have processes in place to overcome those limitations by providing information by other means, for example through their owner customer service teams with more widely monitored emails and telephone numbers.

We ask that the guidance is updated to confirm that, in these circumstances, the context of the situation, the limitations of marketing a property on multiple websites and the measures in place to provide information via customer service teams is an example whereby s230(8) would apply and the agent would not be required to provide the contact details of the owner at the invitation to purchase. Requiring agency suppliers to provide full contact information about their property owners at the stage of invitation to purchase is contrary to the interests of agents, owners, and ultimately consumers themselves.

I do hope that this feedback is helpful.

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