

## Fingleton Insights

# Consumer satisfaction: getting ahead of the proposed changes to UK consumer law

November 2023



The Digital Markets, Competition and Consumer Bill, expected to achieve royal assent in early 2024, represents a major regulatory expansion. This Bill enhances the Competition and Markets Authority's (CMA) powers, allowing it to enforce consumer law directly and issue fines up to 10% of global turnover.

### Key Elements of the Bill:

- **Administrative enforcement:** The CMA will be able to independently determine a firm's breach of the Bill and impose fines up to 10% of worldwide turnover. This shifts from the current injunctive approach requiring court intervention, as well as introducing punitive fines.
- **Legal test expansion:** The Bill broadens the scope of protection for vulnerable consumers, expands on the application of consumer law to subscription services, and gives greater clarity on key concepts such as how to consider who the 'average consumer' is, and what constitutes a 'transactional decision'.
- **Due diligence defence:** Businesses that demonstrate due diligence in avoiding unfair practices can use this as a defence against offences.

### What can businesses expect from the CMA?

The well-resourced CMA team has advocated for expanded consumer powers since 2017. They will likely use any new administrative powers to test the expanded scope of the law. Activities that businesses may have considered low risk will need to be reassessed. Based on the CMA's strategic plan and recent activity, expect vigorous enforcement, focusing on:

1. Fair digital market operations, with a focus on how consumers' choices are influenced by website and app design.
2. Goods and services that make a real difference to people's lives.
3. Environmental sustainability, targeting practices like green-washing.

Businesses operating in these focus areas are more likely to face CMA intervention.

### What can businesses do now to minimise risk?

- **Risk management review:** Businesses should reassess their consumer law compliance strategies, evaluating consumer contracts and practices. This especially applies to subscription service providers who should understand the changes they are required to make.
- **Consumer journey research:** By evaluating the consumer journey, businesses will get a deeper understanding of risks, compliance, and opportunities.
- **Build a due diligence defence:** Acting on any risk management review will substantiate a due diligence defence were the business to need to call on it to protect against intervention and fines.

### Conclusion

The Bill brings significant changes, which is likely to lead to a bolder enforcement style. Businesses may have to take proactive steps to plan for these changes and ensure sustainable growth by aligning commercial success with customer satisfaction.

Find out more about what the Bill could mean for your business and how we can help assess and mitigate risk.

### Get in touch:



**David Stallibrass**  
**Director**  
david@fingleton.com  
+44 7479 513160



**Geoffrey Gray**  
**Director**  
geoffrey@fingleton.com  
+44 7901 333659



**Sarah Newton**  
**Principal**  
sarah@fingleton.com  
+44 7787 458048