

Response to the proposed Consumer Rights Bill 2015 in Ireland dated 19 August 2015

This response is made on behalf of the members of the UK Gift Card and Voucher Association (UKGCVA).

The UKGCVA is a UK trade association representing businesses involved in issuing or distributing gift vouchers and gift cards. The Association represents the key players in the gift voucher and gift card markets, which is worth over £5bn per year in the UK.

Membership of the UKGCVA is open to any company selling gift vouchers or gift cards and to companies that offer support services. As well as leading high street retailers, members include hotels, experience companies and incentive agencies along with service providers such as gift card processors and vouchers printers.

The UKGCVA has been operating since 1991 and is run by members for its members.

The Association promotes best practice within the industry and works with government agencies on industry legislation. Most recently it has been working with the Department for Business Innovation and Skills and the Law Commission on their enquiries into consumer protection for prepayments made in the retail sector. The UKGCVA participated in discussions with HM Treasury and the Financial Conduct Authority's predecessor, Financial Services Authority on the implementation of the second Electronic Money Directive and the Payment Services Directive into national law.

A key role of the Association is to keep members up to date with trends within the marketplace and to develop opportunities for business development amongst members. All members issuing gift cards and gift vouchers are required to submit their total sales to enable the Association to be the authoritative voice industry.

The UKGCVA does not aim to influence individual members to adopt a majority or general view in any aspect of business practice. The integrity of each member company is a basic premise and remains the responsibility of each participating representative who engages with Association.

The objectives of the UKGCVA are:

- To represent the interests of the gift card & voucher industry;
- To promote the concept of gift cards & vouchers;
- To enhance the standing and raise the profile of the gift card & voucher industry;
- To maintain and promote communication between members;
- To improve awareness of market developments within the gift card & voucher business;

- To address consumer and legal issues relating to the gift card & voucher industry;
- To enhance members' knowledge of issues relating to the production, distribution and redemption of gift cards & vouchers, and to establish standards of best practice;
- To provide consolidated industry market data to full members;
- To promote the UKGCVA as the representative body in areas where the Association has an interest;
- To communicate the views and opinions of UKGCVA to any relevant government department, public authority or other body; and
- To co-operate with any other organised body or company in furtherance of the general interests of the gift card & voucher industry.

Whilst the UKGCVA is based in the UK, some of our members carry on business in Ireland and will be directly affected by the proposals set out in the Consumer Rights Bill. It is in this respect that we are responding to the proposals set out in this Bill. Please note our response is limited to Part 5, Chapter 2 (Contracts for the supply of a gift voucher) only.

Please see our comments below.

1. Head 80 Interpretation: Definitions

The definition of “gift voucher” is too wide

(i) The definition proposed is wide, therefore captures any type of voucher, card or certificate or electronic credit that entitles a customer to use it to purchase (in full or part payment) goods, digital content or services. Consequently, this definition will apply equally to gift cards or similar products that are already regulated by financial service regulations e.g. European Communities (Electronic Money) Regulations 2011 and (Payment Services) Regulations 2009 and those that are not. The terms under which a regulated product may be issued, used and funds redeemed are set out in these financial service regulations. The application of the requirements in this Bill add another layer of regulation but do not, in our view, provide better protection for, or, improve the information disclosure obligations to the consumer. It is our view that where regulation overlaps with another, there is a risk that the interpretation of or guidance issued under one may conflict with the other, leading to confusion.

(ii) The drafting denotes a presumption that all vouchers represent money. The term voucher is a generic term which covers a wide variety of products, be it, an IOU, coupon or prepayment. They may be given in return for cash, or they may be issued as part of a promotion or reward. In our view it is important to distinguish them from each other simply because they are provided for a particular purpose and are not intended to be

offered under the general terms proposed in the Bill. Examples are: meal vouchers, vouchers issued for use at a particular place or event for a finite period (such as a event, sales promotion or pop up retail outlet. A voucher or coupon may also be issued to allow the holder to use it for a particular purpose only, so in this case it could be considered a down payment for the relevant experience or product, an example would be vouchers offered by Red Letter Days which entitles the holder to, for example, a hot air balloon ride or to drive a supercar.

It is our view that the definition be narrowed to only include those products that can be commercially operated under the terms proposed by this Bill and exclude those products that are already subject to financial service regulations. The reasons for this are drawn out in our comments below.

2. Head 81 No expiry dates for gift vouchers

The removal of expiry dates on vouchers is not a commercially viable option for every gift card and voucher provider.

(i) Expiry dates are included on cards and vouchers for a reason. If the voucher issued, is for a particular good or service, the provider may only be offering the goods/services in exchange for the voucher for a finite period. It may be the price of the particular good or service is fixed a limited time, or, the contract to provide the good or service with the issuer is in place only for a limited time – which is the case for an issuer of experience vouchers such as Red Letter Days. Vouchers may also be offered for promotional purposes, to raise public awareness and/or increase visits to a website or retail outlet. It would be commercially unreasonable and ultimately unviable for a business to be required to accept vouchers for an indefinite period. If expiry dates were to be prohibited there is a risk that the costs incurred by the retailer in meeting this requirement will be ultimately passed on to the consumer, for example by charging a fee. Alternatively, the gift card or voucher may be withdrawn from the marketplace.

(ii) Businesses need to operate with certainty; in particular to know their assets and liabilities and operate their business accordingly. The use of expiry dates helps a business to quantify their liability at any given time. Also, in the case of providers of experience vouchers, one of our members pointed out that some customers decide not to take their balloon ride or even exchange it for another experience (an option available to customers) due to lack of interest generally. In this circumstance, these vouchers are treated like a gift (not money), which the holder chooses not to use.

(iii) Business need to be able to manage risk: Vouchers can be targeted by counterfeiters. An expiry date is a necessary security feature for a voucher product which is sold by a company. One of our members introduced an expiry date to its vouchers after a professional criminal forged its vouchers. The use of an expiry date is one factor in deterring criminals and mitigating the risk of criminal gangs forging large volumes of vouchers. UKGCVA members have in recent years experienced a number of such incidents and the expiry date is an essential component in helping control the problem.

(iv) The application of expiry dates is also advocated by administrators in an insolvency situation. They enable the administrator to quantify the liability risk attributed to vouchers and this can be a significant factor for an administrator when deciding whether to honour those vouchers in circulation that apply to an insolvent business. The Law Commission's recently published report into Consumer Prepayments on Retailer Insolvency Consultation sets out sensible commentary on the pros and cons of expiry dates on gift cards and vouchers in Chapter 7 paragraphs 7.51 – 7.55 (see <http://www.lawcom.gov.uk/project/consumer-prepayments-on-retailer-insolvency/#consumer-prepayments-on-retailer-insolvency-consultation>). We would urge you to take into consideration their learnings from the research they have carried out on this matter.

(v) Businesses are aware how quickly customers redeem vouchers in store. The time period varies from business to business and depends very much on the nature of the goods / services offered in exchange. Experience shows that after a particular period, the likelihood of a customer using their voucher drops significantly. Contrary to journalistic belief, the purpose of an expiry date is not for a business to collect as much money as possible from a customer without parting with its goods or services, but because after a particular time, the likelihood of the voucher being spent is very low. Thereafter, the business can only incur costs in servicing/maintaining for a finite period before it becomes uneconomical to do so. There are valid reasons as to why a voucher may not be used; there is very little value left remaining on it, it may be damaged, lost, stolen or forgotten or simply, the user does not like or wish to purchase goods / services for which the voucher is intended.

(vi) Some of our members have first-hand experience that consumers are confused/concerned about the absence of expiry dates on gift cards and vouchers. A member removed expiry dates from its gift voucher during the period 2003 to 2012. Throughout this time, the member continued to receive many enquiries (and experience confusion from customers) about exactly when the vouchers must be used by. By 2012 the business was receiving approximately 50 enquiries a week on this point, which amounted to 50% of the total customer enquiries. Consequently the business reinstated expiry dates in 2013 and customer enquiries on this subject have now dropped to virtually zero.

Rather than banning the use of expiry dates, we would advocate transparency of terms so, where there is an expiry date, the gift card or voucher issuer must make it clear this is the case to the user.

3. Head 82 Fees for gift vouchers

We have no comments to make on the disclosure of fees to a consumer prior to them being bound by the voucher contract. In particular, for regulated products, this is a regulatory obligation already. However, we do ask that there is clarity on the unfairness assessment. What will be taken into account when assessing whether the application of, or amount of a particular fee is fair. How would this assessment compare to any undertaken in the (Payment Services) Regulations 2009?

4. Head 83 Restrictions on use of gift vouchers

We support your proposal to require all restrictions on the use of a gift card and voucher to be disclosed to the consumer. Following our comments made in respect of Head 81 (no expiry dates) we request that where an expiry date is applied to a voucher it is disclosed to the consumer pursuant to the provision under this Head 83 rather than as currently proposed.

If you have any queries or comments on our submission please contact info@ukgcva.co.uk

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