

12 April 2011



Dear Consultee,

**JOINT CONSULTATION PAPER: REFORMING CONSUMER REDRESS FOR MISLEADING AND AGGRESSIVE PRACTICES (DISCUSSION PAPER NO 149)**

We invite comment on the above mentioned joint Consultation Paper which has been published today. A summary is also available.

The paper puts forward options for reforming the law relating to misleading and aggressive commercial practices. We propose a new scheme of remedies which would apply if consumers proved that the aggressive or misleading commercial practice was likely to cause the average consumer to enter a contract or make a payment which would not otherwise have been made and that it was a significant factor in their own decision. In our proposals, the remedies are set out in two tiers; tier 1 remedies would be provided where the consumer establishes a misleading or aggressive practice, and the focus would be on returning consumers to the position in which they would have been had the misleading or aggressive practice not happened. Tier 2 remedies resemble traditional damages, and would be awarded if consumers could prove they had suffered actual loss over and above the tier 1 recovery. For further details please see the Consultation Paper or Summary.

The Commission's function is to recommend ways of simplifying, updating and improving the law. In order to ensure that our recommendations, if implemented, would result in law which is just, principled, responsive and easy to understand, it is critical for the Commission to engage in a thorough and open process of consultation. We therefore welcome the views of as many people as possible, whether from an academic perspective or based on a day-to-day practical experience of the area under review.

Our usual approach to consultation – and to a law reform project in general – involves the preparation of an initial discussion or consultation paper. This sets out the current law on the topic in question, describes and analyses any problems with it, details possible options for change and seeks to elicit views from consultees on the preliminary proposals made. Discussion or consultation papers are circulated to those identified as having an interest in the topic and are also published on our website ([www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)). Once the deadline for responding has passed, a careful analysis of all responses is carried out. The proposals in the paper are measured against the public response and this can lead to a period of further thought and research before final decisions are made and the report published.



Currently, with the Law Commission for England and Wales, we are examining consumer redress for misleading and aggressive practices.

We invite your views on any or all of the proposals in this joint Consultation Paper. Even if you agree with our proposals but do not wish to make any further comments, a brief note to that effect would also be most helpful as an indication that our proposals are on the right lines.

As the Law Commission for England and Wales is leading the gathering of responses for this project, please send your comments to that Commission at the address shown at the front of the paper. It would be helpful if, where possible, comments were sent electronically. An electronic response form is available on the Law Commission's website at <http://www.lawcom.gov.uk>. The Freedom of Information Act 2000 will apply and all responses will be treated as public documents. Anyone wishing to submit a confidential response should contact the Law Commission before sending the response. Automatic confidentiality disclaimers generated by an IT system will be disregarded. Please note that the consultation process for this project will conclude on **12 JULY 2011**; accordingly, we would be grateful if comments were submitted by then.

Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours faithfully,

MALCOLM McMILLAN  
Chief Executive