

Competition and Consumer Policy Division
Department of Business, Enterprise and Innovation
Earlsfield Centre
Lower Hatch Street
Dublin 2
31 August 2018

Dear Sir / Madam

Response to Consultation on Gift Voucher Fees

We write in response to the Consultation on Gift Voucher Fees and Expiry dates, which is being run in relation to the Unfair Contract Terms (Gift Vouchers) Bill 2018 (the "Bill").

1. About the UKGCVA

The UKGCVA is a UK trade association representing businesses involved in issuing or distributing gift vouchers and gift cards. The UKGCVA represents the key players in the gift voucher and gift card markets, which is worth over £5 billion per year in the UK. The UKGCVA has a number of members who carry on business in Ireland and will be directly affected by Bill.

Membership of the UKGCVA is open to any company selling gift vouchers and gift cards (in paper, plastic and/or electronic form) and to companies that offer support services to these businesses. 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 voucher printers.

The UKGCVA has been operating since 1991 and is run by members for its members. The UKGCVA promotes best practice within the industry and works with government agencies on industry legislation. It has been working with the Department for Business Innovation and Skills ("BEIS") and the Law Commission on their enquiries into consumer protection for prepayments made in the retail sector and continues to meet BEIS on a regular basis to share initiatives that the UKGCVA runs from time to time. The UKGCVA continues to participate in discussions with HM Treasury and the Financial Conduct Authority on the implementation of the second Payment Services Directive into English national law (which came into force on 13 January 2018) and its related guidance and the European Voucher Directive which is due to come into force on 1 January 2019. A key role of the UKGCVA 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 UKGCVA 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 the UKGCVA.

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 UKGCVA 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.

3. UKGCVA Response

Our responses to the Consultation are set out below. Note our response is limited to those questions that are relevant to generally to the members of the UKGCVA.

Part 1 Questions for Consumers

UKGCVA Response: No comment

Part 2 Questions for Businesses

Section I: Questions 1 – 24

UKGCVA Response: No comment as they are business specific.

Section II Questions 25 – 30 and 32

UKGCVA Response: No comment as they are business specific.

Question 31: What impact do you think that the introduction of a 5 year expiry period will have on the level of redemption of gift vouchers? UKGCVA Response:

We believe there will be no impact.

Section III Question for gift voucher issuers on impact of proposed minimum 5 year term for gift vouchers

Question 33: Please indicate any concerns that you have about the impact of the proposed 5-year minimum term for gift vouchers on the gift voucher offered by your business and in particular the impact on specific types of gift voucher.

UKGCVA Response:

We do not support the imposition of a 5 year minimum term for gift vouchers. We advocate that expiry dates must always be clearly marked for the gift voucher user. However, requiring a minimum period before a gift voucher may expire is not a commercially viable option for every gift voucher provider. Whilst the UKGCVA recommends a 2 year expiry period for gift vouchers, it does not believe any minimum expiry period should be a legal requirement because gift vouchers have such wide application in industry. Depending on the purpose for which the voucher is used, a 5 year period (or any other prescribed period) may not be practicable or viable in the situation. Particular points are flagged below.

(a) Expiry dates should be included for a reason

If the gift voucher issued is for a particular good or service, the provider may only be offering the goods/services in exchange for the gift voucher for a finite period. It may be the price of the particular good or service is fixed for 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. Gift 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 gift vouchers for a 5 year period in such circumstances. If a minimum expiry period were to be introduced there is a risk that the costs incurred by the issuer in meeting this requirement will be ultimately passed on to the consumer, for example by charging a fee. Alternatively, gift vouchers like these may be withdrawn from the marketplace.

(b) Business need to be able to manage risk

Gift vouchers can be targeted by counterfeiters. An expiry date is a necessary security feature for a gift voucher product which is sold by a company. Use of expiry dates (appropriate to the goods and services that can be purchased with the gift voucher) are used by issuers to reduce risk to forgery. The use of an expiry date is one factor in deterring criminals and mitigating the risk of criminal gangs forging large volumes of gift vouchers and introducing them into the marketplace. The use of an expiry period that is appropriate to the good or service available through is an essential component in helping control the problem. The 5 year period proposed in the Bill would not be appropriate to every gift voucher available in the market place.

(c) Expiry dates provide certainty

The application of expiry dates is 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 honor those vouchers in circulation that apply to an insolvent business. In the UK, the Law Commission published a report into Consumer Prepayments on Retailer Insolvency. It 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 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/07/56284-Law-Comm-HC-543-Web-pdf.pdf> We would urge you to take into consideration their learnings from the research they have carried out on this matter.

Again, the use of expiry periods appropriate to nature of the business offering the gift voucher and the good or services purchased with it is supported by us but we question whether the 5 year period should be applied to every gift voucher issued.

(d) 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 or services offered in exchange. Experience shows that after a particular period, the likelihood of a customer using their voucher drops significantly. Recent research carried out by the UKGCVA (<http://www.ukgcva.co.uk/downloads/research/top-ten-takeaways.pdf>) showed that 98.5% of consumers redeem gift cards within 12 months.

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 gift voucher being spent is very low. After such period, the business incurs costs in servicing/maintaining the gift voucher knowing that it is unlikely to be used. Over a period of time, the gift voucher becomes uneconomical to maintain. There are valid reasons as to why a gift 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 or services for which the gift voucher is intended.

(e) Overlapping of existing regulations causing confusion particularly for gift vouchers classified as electronic money.

We are concerned about this Bill's application to gift vouchers that are already regulated by financial service regulations e.g. European Communities (Electronic Money) Regulations 2011 ("EMR") and European Union (Payment Services) Regulations 2018 ("PSR"). The terms under which a regulated product may be issued, used and funds redeemed are set out in these financial service regulations. Such terms include an obligation to make available the terms and conditions of use and all relevant fees that apply to the products use. 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 user. 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 and conflict with existing law. By way of example, electronic money gift vouchers are prohibited from applying an expiry period at all (as required by the EMR). There is also potential for the Bill to conflict with the EU Directives which are implemented into national law through the EMR and PSR. Both EU Directives are full harmonisation directives, so unless there are permitted

derogations in these Directives (none of which apply here), Member States are not permitted to maintain or introduce provisions in national law other than those laid down by the Directive.

In summary, we do not support the imposition of a minimum expiry period. Instead, we support transparency of terms so, where there is an expiry date, the gift voucher issuer must make it clear to the user. We believe these requirements already exist in the financial services regulations applicable to gift vouchers that are classified as electronic money products (in the PSR) and for those gift vouchers that are not electronic money, we believe the transparency provisions are already covered by the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013.

If you would like to discuss this response, please contact Gail Cohen, Director General, UKGCVA on gcohen@ukgcva.co.uk or +44 (0)207 692 0636.

Yours faithfully

Gail Cohen, Director General
For and on behalf of the UKGCVA