



Consumer prepayments on retailer insolvency

Response form

This optional response form is provided for consultees' convenience in responding to the Consultation Paper.

In some cases, we make proposals and ask questions, while in others we only ask questions. This form is structured in the same way.

We are happy to receive simple yes/no answers but more detailed comments would also be helpful. You do not have to respond to every question or proposal. Answers are not limited in length (the box should expand, if necessary, as you type).

We invite responses by **17 September 2015**.

Please send your completed form:

- by email to: prepayments@lawcommission.gsi.gov.uk or
- by post to: Laura Burgoyne, Law Commission, 1st Floor, Tower, Post Point 1.53, 52 Queen Anne's Gate, London SW1H 9AG.

If you send your comments by post, it would be helpful if, wherever possible, you could also send them electronically (for example, by email to the above address, in any commonly used format).

Freedom of information statement

We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Commission.

The Commission will process your personal data in accordance with the Data Protection Act 1998.

How to complete this form

Please fill in the fields below in Adobe Reader or Adobe Acrobat Pro. Once you have completed your response, please save a copy of the document and email it to prepayments@lawcommission.gsi.gov.uk.

If you prefer to fill in a Microsoft Word version of this document, please click [here](#) to download the document.

Your details

Name	
Organisation	
Type of response	<input type="checkbox"/> Personal response <input type="checkbox"/> Response on behalf of the above-named organisation
Email address	
Postal address	
Telephone number	
<p>If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. As explained above, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.</p>	

Chapter 8: Assessment

Q1 Do consultees agree that the protection given to some types of consumer prepayments on retailer insolvency should be reformed?

Yes

No

Other

Q2 In this paper, we identify two particular sectors where consumers risk losses on retailer insolvency: gift vouchers and deposits in the furniture and home improvement sectors. Are there other sectors in which consumer prepayments are particularly problematic in the event of retailer insolvency?

Chapter 9: Chargeback

Proposal 1 Insolvency practitioners should give information to consumer creditors about chargeback claims and make available on the retailer's website a confirmation that the company is in administration or liquidation.

Q3a Do consultees agree with this proposal?

Yes No Other

Proposal 2 All card issuers should give consumers a brief explanation of how to raise a chargeback. This should include:

- (1) Contact details (including a phone number and website address);
- (2) Details of situations in which consumers may raise a chargeback, including when a retailer enters administration, and what documentation needs to be provided to the bank;
- (3) A statement that consumers who think they have met with an unreasonable refusal may complain to the Financial Ombudsman Service.

Q3b Do consultees agree with this proposal?

Yes No Other

Proposal 3 Card schemes such as Visa and MasterCard should provide a publicly available authoritative guide on how chargeback works.

Q3c Do consultees agree with this proposal?

Yes

No

Other

Q4 Do you have any comments on how Proposals 1 to 3 should be implemented?

Q5 Our provisional view is that chargeback should not be required by legislation. We seek views for and against legislating for new legal duties to be imposed on card issuers to refund payments in circumstances currently covered by chargeback.

Chapter 10: Possible Means of Protection

Q6 Would trusts designed to protect some rather than all prepayments (either where funds could be drawn-down, or where only some prepayments were put into trust), be an acceptable compromise in situations where ring-fencing all prepayments is not practical or affordable for the business?

Yes

No

Other

Q7 Would it be useful to develop a series of standard trust deeds which businesses could use to protect consumer prepayments?

Yes

No

Other

Q8 Do consultees have any experience of prepayment insurance? If so, we would be interested to learn more about:

- (1) Cost of insurance and who bears this;
- (2) Extent of insurance coverage and any limitations or exclusions which may apply;
- (3) Claims procedure for consumers including documentation to be supplied;
- (4) Interaction between insurance and section 75 claims (for example, whether consumers must first pursue a section 75 claim where available before making a claim under the insurance policy).

If applicable, we would also be grateful for sample policy documents.

Q9 What can be done to overcome barriers to consumer prepayment insurance?

Q10 Is there merit in developing a new statutory “consumer charge” to be registered at Companies House, which businesses could use on a voluntary basis to give priority to some specified classes of consumer claims?

Yes

No

Other

Chapter 11: A need for regulation?

Proposal 4 Rather than introducing mandatory prepayment protection for all gift vouchers, retailers should be encouraged to take more voluntary steps to protect consumers.

Q11 Do consultees agree?

Yes

No

Other

Proposal 5 Providers of vouchers should state in the terms and conditions of the voucher whether or not the value of the voucher is subject to any protection in the event of insolvency.

Q12 Do consultees agree? Could this be introduced voluntarily, or would it require regulation?

Yes

No

Other

Proposal 6 It should be unlawful to market a scheme in a way which suggests that it can be used as a savings vehicle without putting some form of protection in place to protect the funds.

Q13 Do consultees agree?

We welcome additional comments on this proposal. In particular:

- (1) Is our definition correctly targeted?
- (2) What additional costs would our proposal impose?

Yes

No

Other

Proposal 7 Legislation should provide the Government with reserve powers to regulate high-risk voucher intermediaries which hold significant funds over a long period and which may use those funds for other purposes without providing consumers with alternative protection.

Q14 Do consultees agree?

Yes

No

Other

Q15 What would the risks and potential costs be for any voucher intermediary (whether “high-risk” or not) if they were required to introduce protection mechanisms such as trusts, insurance or bonding?

Q16 Do consultees agree that sector-specific regulation is not a suitable means of protecting consumer prepayments in the furniture and home improvement sectors?

Yes

No

Other

Chapter 12: Limited preferential status for consumers

Proposal 8 A limited category of consumer claims should be given preferential status, to rank behind employees but in front of floating charge holders. The preferential status would apply where the consumer provided a significant sum of new money to the business in the run-up to the insolvency, using a payment method which did not offer a chargeback remedy.

Q17 Do consultees agree with the policy behind this proposal?

Yes No Other

--

Q18 Do consultees agree that the preferential status should apply to money paid within a set period before the date of entering administration/liquidation? We seek views on whether that set period should be three months.

Yes No Other

--

Q19 Do consultees agree that preferential status should be limited to claims where the consumer has paid more than a certain amount, either in a single transaction or in a series of linked transactions? We seek views on whether that amount should be £100.

Yes No Other

--

Q20 We seek views on the impact of this proposal generally. We are also interested in the following issues:

- (1) Are retailers able to keep records of prepayments of (say) £100 or more made by cash or cheque, so as to present a running total of such sums to their floating charge holders?
- (2) Would floating charge holders be able to monitor these sums?
- (3) Do many businesses rely on these prepayments to a significant degree?

Q21 We are interested in hearing about examples of businesses:

- (1) which rely on these prepayments but do not have secured creditors; and/or
- (2) which successfully traded their way out of financial difficulties by relying on consumer deposits by cash or cheque.

Chapter 13: Transfer of ownership

Proposal 9 For specific goods, which are identified at the time of the contract, ownership should be transferred at the time the contract is made. This should apply even if the retailer has agreed to alter the goods in some way before the consumer takes possession.

Proposal 10 For unascertained or future goods, which are not identified at the time of the contract, ownership should be transferred when goods are identified for fulfilment of the contract.

Q22 Do consultees agree with these proposals? In particular:

- (1) Would they assist administrators in determining whether to fulfil consumer orders?
- (2) What impact would they have on other creditors?

Yes No Other

--

Q23 Should these rules be mandatory, so that they apply by law to all contracts?

Alternatively, should the parties be able to agree alternative provisions?

Mandatory Parties can agree alternative provisions Other

--

Q24 Are there any arguments for ownership of goods to be transferred immediately to consumers upon conclusion of the contract?

--