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Insights

NO MORE GHOSTS OF CHRISTMAS PAST: PROTECTING CONSUMERS UNDER THE DIGITAL MARKETS, COMPETITION AND CONSUMERS ACT 2024 ('DMCCA')

Dec 15, 2025

Charles Dickens observed in 'A Christmas Carol' that "*Christmas is a time….when want is keenly felt and abundance rejoices.*"

As we approach the festive season, families across the UK will have put their hard-earned money aside in savings schemes for items like Christmas hampers, food vouchers and gift cards for loved ones. For many, these savings schemes represent months of careful budgeting rather than a luxurious option. Yet, some of these savings schemes have not resulted in Christmas cheer for depositors but, instead, misery and loss at the hands of a few unscrupulous traders.

FAREPAK: THE GHOST OF CHRISTMAS PAST

The financial collapse of Farepak in 2006 left around 116,000 consumers without Christmas hampers, gift vouchers and goods they had diligently saved for throughout the year. Nearly £37 million of prepaid consumer funds were lost. Farepak had no ring-fencing, trust protections, or regulatory oversight to stop customers' weekly savings from being used to support its cash flow requirements.

The Farepak collapse was met with widespread public anger, parliamentary scrutiny and an enduring reputational chill of a corporate failure that haunted the retail sector like The Ghost of Christmas Past.

Further upset was caused when, on 20 June 2012, The Insolvency Service discontinued its action against Farepak's directors, costing taxpayers £millions in legal fees, and the directors avoided disqualification, though some faced public backlash. In the end, an £8 million compensation fund was set up for Farepak's victims.

The Farepak episode was widely acknowledged – judicially, politically, and publicly – as a scandal demanding reform.

THE DMCCA: THE GHOST OF CHRISTMAS PRESENT

Almost two decades on, the government has finally introduced statutory protection aimed at ensuring such a failure cannot happen again. The DMCCA, passed in May 2024, overhauled the UK consumer protection regime (see our articles: Digital Markets, Competition and Consumer Act – What can we expect from the CMA?; New UK consumer protection regime to go live 6 April 2025; The CMA's new consumer protection enforcement powers deployed: what does this mean for businesses?) including by placing new obligations on traders who operate consumer savings schemes, particularly those that provide goods or services at Christmas or other seasonal points in the calendar. The Competition and Markets Authority ('CMA') has since published guidance for businesses that run consumer savings schemes, which includes a number of practical case studies as well as guidance on the scope of the exemptions.

This blog looks at the scope of the new rules (which are in force from 1 January 2026), the savings schemes they cover, key exclusions, the insolvency protections required and sanctions for non-compliance. Along the way, it reflects a little of Dickens' spirit by asking whether this reform can answer the pleas of Tiny Tim: "*God bless us, every one!"*.

WHAT ARE 'CONSUMER SAVING SCHEMES'?

The DMCC introduces a new regulatory category: consumer saving schemes. These are arrangements where:

i. a consumer pays money to a trader (usually in instalments over time),

ii. for the purpose of acquiring goods, services or digital content at a later date, and

iii. often tied to a fixed seasonal event – most commonly being at Christmas.

They include:

i. Christmas hamper payment clubs.

ii. Voucher or gift-card based savings clubs.

iii. Prepaid seasonal food or toy packages.

iv. Birthday or back-to-school plans.

v. Other 'pay-now-for-later-delivery' instalment schemes.

The central policy rationale is that consumers are depositing value, not merely buying goods at the time of payment. This makes them vulnerable if the trader becomes insolvent.

WHY THESE SCHEMES MATTER AT CHRISTMAS

For many households, budgeting for Christmas is an annual exercise in careful planning at a very expensive time of year. Instalment savings schemes allow families to spread the cost of food, toys and gifts throughout the year. For decades, savings schemes have been marketed as low risk arrangements that promote financial discipline to avoid disappointment.

Farepak showed how fragile consumer trust can be when savings are not protected. As Dickens wrote in 'Little Dorrit': "*credit is a system whereby a person who cannot pay gets another person who cannot pay to guarantee that he can pay".*

Farepak turned out to be a perfect example of this irony: consumers' savings were being used as unsecured credit by a company in financial difficulty. The DMCCA aims to put an end to this.

WHICH SAVING SCHEMES ARE COVERED?

The DMCCA applies to schemes that:

i. involve the prepayment of money;

ii. are operated by a business (a trader);

iii. are directed at consumers; and

iv. the goods or services will only be delivered at a later date, typically based on seasonal timing.

A key feature is that consumer payments must be made ahead of delivery, and delivery must occur on a fixed or reasonably predictable future date.

WHAT SCHEMES ARE EXCLUDED?

These include:

i. FCA regulated financial products are excluded from the new regime such as bank accounts, e-money wallets, regulated savings accounts, insurance products, payment services and direct debit arrangements.

ii. Arrangements where the consumer receives the goods or services at the time of payment (i.e. immediate delivery transactions).

iii. Pure gift cards or vouchers with immediate issuance (unless the consumer is paying instalments in advance to receive them later).

iv. Credit card agreements and hire purchase (governed by a different statutory regime).

v. Close circle schemes (i.e. workplace clubs where all participants share control).

INSOLVENCY PROTECTION REQUIREMENTS

The central reform is the introduction of mandatory insolvency protection, requiring any trader operating a consumer savings scheme to protect consumer funds by one of three methods:

i. Establishing a consumer trust whereby funds must be held on trust for consumers, segregated from the trader's assets and not available to creditors on the insolvency of the trader. This mirrors the voluntary Farepak Response Fund adopted by some schemes.

ii. Taking out insurance cover to protect consumer prepayments which must respond to trader insolvency and comply with statutory conditions and payout terms.

iii. Providing a third-party guarantee to repay consumers if the trader fails due to insolvency.

These mechanisms are designed to ensure that consumers are protected in an insolvency scenario and do not find themselves at the bottom of the insolvency payment waterfall.

INFORMATION PROVISION

As with the other consumer law reforms in the DMCCA, empowering the consumer by providing clear and accessible information about the workings of the scheme is key. Consumers must therefore be told about the protection in place within 30 days of making their first payment. They must also be told of any changes to the information and provided with a copy of it on request. The DMCCA requires that information must be in clear and plain language and, if in writing, in a legible form. Reflecting the fact that many people will be engaging online with savings club providers, the way in which a consumer is presented with the relevant information will depend on how the contract is formed, with differing requirements for in-person and online contract formation.

OTHER OBLIGATIONS

Savings club providers must also ensure that their offers to participate in a savings club do not constitute unfair commercial practices under the DMCCA, which are prohibited. These cover the whole lifecycle of the offering, from advertising and sales to post-contractual matters. Unfair commercial practices are those which are likely to cause the average consumer to take a transactional decision that they would not otherwise have taken as a result of a misleading action, misleading omission, aggressive practice or a breach of the requirements of professional diligence. Recognising that some products or services may be aimed at consumers who are particularly vulnerable to a commercial practice (which may be the case for some users of Christmas savings schemes), traders need to be mindful of the needs of these consumers, and consider their commercial practices through that lens.

In addition, the DMCCA mandates a series of commercial practices which are in all circumstances automatically unfair (listed in Schedule 20 of the DMCCA), which savings clubs providers will need to avoid in their marketing of a savings club product. Selling practices should therefore be scrutinised as part of the offering, to ensure a provider does not fall foul of the DMCCA's unfair commercial practices rules.

SANCTIONS FOR NON-COMPLIANCE

The DMCCA creates a range of robust enforcement remedies including civil penalties and compliance orders. Under the DMCCA, the CMA, for the first time, has the power to enforce consumer protection laws directly through administrative proceedings (rather than enforcing consumer rights in a court process) and can impose fines of up to £300,000 or 10% of global turnover (whichever is higher) for breaches of the new regime. The CMA can also require traders to cease trading until protections are in place. In aggravated cases, such as deliberate misuse of protected funds, criminal liability may arise. The DMCCA also contains personal liability provisions for directors who consent to or neglect failures to comply.

The combined effect of these sanctions ought to ensure that Christmas savings schemes cannot operate on a 'trust us, your money is safe' basis without legal safeguards.

FINAL REFLECTIONS – A MORE HOPEFUL CHRISTMAS FUTURE?

"*I will live in the Past, the Present, and the Future. The Spirits of all Three shall strive within me". -* Dickens, A Christmas Carol

Dickens tells us that the true spirit of Christmas "*was always about kindness, justice, charity and goodwill"*. The new law on savings schemes may not amount to charity, but it does represent a kind of social justice for consumers (whilst taking nothing away from the vast majority of traders who operate such schemes responsibly): a recognition that those who save modest weekly sums for their families deserve legal protection worthy of the season of goodwill to others.

Bringing this together, one hopes that, unlike Scrooge at the start of 'A Christmas Carol', traders will never need supernatural intervention to do the right thing; but, in the rare instances when they do, the DMCCA should ensure that serious consequences will follow.

For further information about how the new rules operate for consumer savings schemes, with useful case studies, see the Guidance issued by the Department for Business & Trade.

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Our Restructuring & Insolvency team is recognised internationally for its deep technical expertise, commercial insight and ability to deliver pragmatic solutions in complex, high-stakes situations. We act for insolvency practitioners, corporates, credit funds, lending institutions and sponsors across multiple jurisdictions, combining market-leading contentious and non-contentious capabilities. With a strong cross-border platform and collaboration across the firm's specialist groups, we are trusted to advise on some of the most challenging restructurings, turnarounds, distressed M&A transactions and formal insolvency appointments in the market.

BCLP CONSUMER TEAM

As a fully integrated global team, our cross-office consumer practice comprises dedicated lawyers from diverse disciplines, including commercial law, technology, competition and regulatory compliance. Our team regularly conducts compliance reviews and audits for clients in a range of sectors and advises on CMA investigations and enforcement action. We follow CMA enforcement activity to proactively identify key areas of focus and likely risks for clients. We have considerable experience advising clients in relation to various consumer law issues, including in relation to investigations by the CMA, the ASA, Trading Standards and other consumer bodies. With the CMA now taking on the mantle for consumer protection enforcement, we are well placed to work with clients to ensure they are meeting their obligations under the new consumer protection regime.

The author is grateful to Marieke Datema, Counsel in BCLP's Antitrust, Competition and Trade Team and Anna Blest, Knowledge Counsel for BCLP's Technology and Commercial Group, for their assistance in relation to this article.

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MEET THE TEAM

Richard Obank

Partner, London

richard.obank@bclplaw.com
+44 (0) 20 3400 2207

Marieke Datema

Counsel, London

marieke.datema@bclplaw.com
+44 (0) 20 3400 2132

Anna Blest

Knowledge Counsel, London

anna.blest@bclplaw.com
+44 (0) 20 3400 4475