



Department for
Business, Energy
& Industrial Strategy

Rachel Reeves MP
Chair
Business, Energy and Industrial Strategy Committee
House of Commons
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The Rt Hon Greg Clark MP
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Dear Rachel,

I am writing to inform you that we will be publishing our response to the Law Commission's report on prepayments in retailer insolvency today.

In preparing its report, the Law Commission considered a variety of prepayments made by consumers in advance of goods and services being provided, including the use of Christmas savings schemes, customer deposits for goods or services, and the purchase of gift vouchers. It made a series of recommendations for improvements, which represent varying degrees of change for the industry and can be implemented in whole or in part. However, the Commission recognised that consumers could not be fully protected against losses when companies become insolvent.

The recommendations included the provision of early guidance on chargeback facilities which my Department completed in June 2017. Administrators of insolvencies since then have been able to readily point consumers towards the process most likely to see them reimbursed for their prepayments when insolvency means they do not receive the products they have paid for.

The remaining recommendations require primary legislation and have therefore required further consideration alongside analysis of the options included in and responses to the Consumer Green Paper. We are now setting out in the Government response to the report our approach in response to these recommendations, and will be pursuing legislation subject to the identification of a suitable legislative vehicle in future Parliamentary sessions.

In particular, following the Law Commission's recommendations we intend to seek legislation to provide

- a) **Powers to require protection of consumer prepayments in sectors which present particular risk;** and
- b) **That any consumer payment scheme marketed as a savings mechanism should adequately protect customer payments** (e.g. by trust, insurance or bond).
- c) **Clarification of the stage in a transaction in which a buyer acquires ownership of goods:** Recent insolvencies have continued to provide evidence for the need for greater clarity on this issue as it is particularly difficult for the consumer to make the

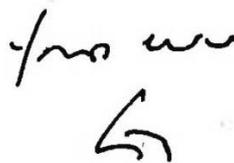
case for ownership in an insolvency. This is a technical on matter on which we propose to continue to work with the Law Commission and other interested parties.

These proposals would enable us to introduce protection for Christmas Savings Clubs users. Members of these savings clubs are often on low incomes and as the schemes do not come within the remit of the FCA or the Financial Services Compensation Scheme, money in these schemes is relatively unprotected. This would need new primary legislation but we believe it necessary to protect a vulnerable groups of consumers. Further consultation may be needed to ensure it is properly targeted.

Acting on the transfer of ownership will allow us to simplify an area of law that has had no substantive update since the Sale of Goods Act 1893. As internet sales rise so the question of timing regarding the transfer of ownership becomes more important for insolvency practitioners and consumers, so we intend to follow the Law Commission advice in this area.

The Law Commission also suggested options for changing the hierarchy of creditors when an insolvency occurs. My Department recently committed to increasing the "prescribed part" in insolvencies that is to be reserved for unsecured creditors (including prepayment customers) from £600,000 to £800,000. I have therefore concluded that I do not want to disturb the existing hierarchy of insolvency creditors at this time and the above measure is sufficient, alongside the advice being delivered via insolvency practitioners. We will also consider using guidance to steer consumers towards better protected prepayments.

I hope your Committee will welcome these proposals and I have deposited a copy of the Government response in the Libraries of the House.

A handwritten signature in black ink, appearing to read 'Greg Clark', with a stylized flourish below it.

THE RT HON GREG CLARK MP
Secretary of State for Business, Energy & Industrial Strategy