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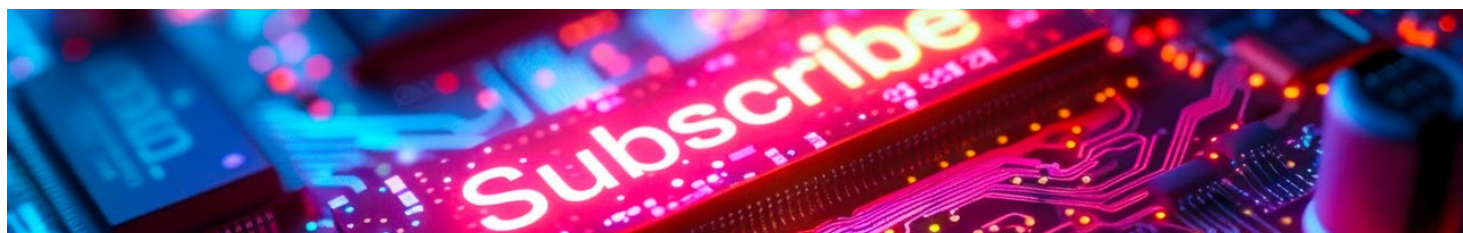
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Changes to subscription contracts under the Digital Markets, Competition and Consumers Act 2024 usher in a new era for consumer law and fairness within the digital market. **Katrina Anderson**, principal associate at Mills & Reeve, looks at what this means for healthcare and wellness businesses



What does the new digital markets law mean for health and wellness businesses?



The Digital Markets, Competition and Consumers Act 2024 (the DMCCA) was passed by parliament on 24 May 2024. This new legislation significantly impacts consumer protection law in a number of ways and will therefore affect businesses that sell to UK consumers, including those operating within the healthcare sector.

Key changes to subscription contracts

One key area which is now specifically covered under the DMCCA is subscription contracts, with the aim of reducing the number of consumers paying for unwanted subscriptions.

A subscription contract is defined as a contract for the ongoing supply of goods, services and/or digital content for an indefinite or fixed period in exchange for recurring payment, where the consumer has a right to cancel that contract. This definition also catches contracts that include a free or discounted trial period before the consumer becomes liable for full payment.

When these changes come into effect, currently anticipated for spring 2026, businesses will need to provide consumers with certain information about the subscription before the contract is concluded. Renewal reminders will need to be sent to subscribers at the end of any free or discounted trial period and at certain other intervals, to remind them of any upcoming auto-renewal and what they have to do to leave. Once any

free or discounted trial period ends, consumers will also have a legal right to cancel during a 14 day 'cooling-off period', in addition to their existing rights at the start of the contract. Methods for cancelling subscriptions will also need to be straightforward.

Are healthcare subscription contracts exempt?

Although there is no general exemption, the DMCCA does exclude certain types of healthcare contracts. For example, subscription contracts related to the prevention, diagnosis or treatment of illness (physical or mental), or otherwise relating to a person's physical or mental health, will not be subject to the requirements set out above, at least where the supply is connected to a prescription or directions given by someone with the legal authority to issue them, or to administer that medicinal product.

Similarly, subscription contracts for the provision of goods, services and/or digital content by a regulated healthcare professional or pharmacist, where this is provided 'under arrangements' for the supply of services as part of the NHS and they are supplied at least occasionally on prescription or as a free service (even if it is subject to conditions), are also exempt.

The exact application of these exemptions in healthcare will be very fact specific and there is room for interpretation. It will be interesting to see how widely

these exclusions are interpreted. For example, when considering the first exclusion above, the extent to which products and/or treatments – for example, those targeting stress reduction, or fitness and nutrition contracts – can benefit from this exemption, notwithstanding that they may be considered 'wellness' issues as opposed to purely healthcare-related, may be one area where uncertainty remains. Similarly, the definition of 'medicinal products' includes any substance that can prevent or treat disease in people, so it may also be broad enough to cover some 'wellness' related-areas.

Navigating the 'grey areas'

For any such 'grey areas', guidance from the Competition and Markets Authority (the CMA) is likely to be of significant importance. Such guidance is expected to be forthcoming in the coming months. However, in the meantime businesses operating in healthcare that are taking multiple recurring payments from consumers would be well advised to start considering whether the DMCCA obligations and/or exemptions are likely to apply to them. If a subscription contract is caught by the DMCCA, it will be necessary to consider how to ensure it complies with the new regime or whether it is possible to redesign the service so that it is not a subscription contract, especially given the CMA's new powers to issue fines of up to 10% of annual global turnover directly for breaches of the legislation.