

The Consumer Protection from Unfair Trading Regulations

A basic guide for business

Introduction

The Department of Business, Enterprise and Regulatory Reform are planning to introduce new regulations to clamp down on unfair sales and marketing practices. They are designed to protect consumers and honest businesses. Everyone who deals with consumers will be affected including retailers, builders and second-hand motor traders.

Many detailed rules around trade descriptions and misleading price indications, will be replaced with a general ban on unfair trading. This broadly means traders will have to act in a manner consistent with the reasonable expectations of the average consumer, enabling such consumers to make free and informed purchasing decisions.

In addition, they will also put a stop to aggressive selling techniques and misinforming and misleading people about products or services. You'll find these, the practices they cover and some examples at the end of this booklet.

What are the benefits for business?

Businesses will no longer have to face unfair competition from traders who use underhand practices. The changes will also simplify consumer protection in the UK and across the EU, making it clear which commercial practices are – and are not – allowed.

What do I need to do?

Businesses that deal fairly and honestly with their customers may not need to change the way they work at all. But to make sure you're treating your customers properly, you and your staff must read and understand these new regulations.

What happens if I don't follow them?

If you don't comply with these regulations, your company may well be investigated by Trading Standards and other bodies. These lengthy investigations could take up a lot of your business time and you could also be prosecuted and fined. You could also lose your customers.

What do the new regulations cover?

The new regulations ban traders in all sectors from using unfair commercial practices towards consumers. They set out broad rules for determining when commercial practices are unfair. These fall into four main categories:

- A general ban on conduct below a level which may be expected towards consumers (honest market practice/good faith). This is intended to act as a 'safety net' protection for all consumers.
- Misleading practices, like false or deceptive messages, or leaving out important information
- Aggressive sales techniques that use harassment, coercion or undue influence.

For a practice to be unfair under the above rules, they must not harm, or be likely to harm, the economic interests of the average consumer. For example, when a shopper make a purchasing decision he or she would not have made had he been given accurate information or not put under unfair pressure to do so.

- In addition, the regulations ban 31 specific practices outright. These practices are set out below.

The following practices are banned outright:

(Please note the definitions used in this section are taken from the Consumer Protection from Unfair Trading Guidance document, published in May 2007)

Falsely claiming accreditation

1. Faking credentials

Claiming to be a signatory to a code of conduct when the trader is not.

2. You're not who you say you are.

Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

3. Your endorsement is not real

Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

4. Not being true to the terms of the endorsement

Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.

A builder claims that he is registered under the 'TrustMark' scheme when he is not. This would breach the regulations

Pricing and product/service information

5. Unbelievable price, literally

Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he/she will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered. This is known as bait advertising.

6. Luring people in with a product you don't have

Making an invitation to purchase products at a specified price and then:

(a) Refusing to show the advertised item to consumers;

Or

(b) Refusing to take orders for it or deliver it within a reasonable time;

Or

(c) Demonstrating a defective sample of it, with the intention of promoting a different product (known as bait and switch)

A trader advertises a television in his shop window for £300. When consumers ask him about it, he shows them a model which does not work properly, and then refers them to a different model of television. If the trader intentionally used this practice to promote a different model, it would breach the regulations.

7. Limited time only

Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

8. Illegally selling goods

Stating or otherwise creating the impression that a product can legally be sold when it cannot.

9. It's not right

Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

10. Scare tactics

Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.

11. Over promise, under deliver

Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

12. Creating extra paperwork

Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his/her contractual rights.

Promotional activities

13. Being honest about advertorials

Using editorial content in the media to promote a product where a trader has paid for the promotion (advertorial) without making that clear in the content or by images or sounds clearly identifiable by the consumer.

14. Faking goods

Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

*A **trader** designs the packaging of shampoo A so that it very closely resembles that of shampoo B, an established brand of a competitor. If the similarity was introduced to deliberately mislead **consumers** into believing that shampoo A is made by the competitor (who owns shampoo B) – this would breach the regulations.*

15. Closing down sale?

Claiming that the trader is about to cease trading or move premises when he/she is not.

16. Pulling the wool over their eyes

Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

17. Forcing the deal

Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he/she has already ordered the marketed product when he/she has not.

18. A wolf in sheep's clothing

Falsely claiming or creating the impression that the trader is not acting for purposes relating to his/her trade, business, craft or profession, or falsely representing oneself as a consumer.

19. Advertising to children

Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

Competitions and Prize Draws

20. Pyramid schemes

Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

21. You can't promise a win

Claiming that products are able to facilitate winning in games of chance.

A trader sells a book with the claim: 'This will help you win the national lottery'. This would breach the regulations.

22. Winner takes nothing

Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

23. Is it truly free?

Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

24. No win situations

Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:

– There is no prize or other equivalent benefit,

Or

– Taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Sales and after sales service

25. Forcing the sale

Creating the impression that the consumer cannot leave the premises until a contract is formed.

26. Overstaying your welcome

Conducting personal visits to the consumer's home and ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.

*A door to door salesman visits a **consumer** to sell her some cleaning **products**. She tells him she is not interested and asks him to leave. He is determined to try and get her to change her mind and continues his sales pitch on her doorstep. This would breach the regulations*

27. Pestering the consumer

Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation.

28. Using guilt to make sales

Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

29. Asking for payment when they didn't ask for the product

Demanding immediate or deferred payment for, or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in accordance with regulation 19(7) of the Consumer Protection (Distance Selling) Regulations 2000 (this is known as inertia selling).

30. Misleading after sales information

Creating the false impression that after-sales service in relation to a product is available in a European Member State other than the one in which the product is sold.

31. Talking the same language

Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the European Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

*A **trader** based in the UK agrees to provide after sales service to a **consumer** he/she has been communicating with in German. The **trader** then provides after sales services only in English, without warning the **consumer** pre-contract that that would be the case. This would breach the regulations.*

Where can I go for further information?

For practical business advice, please visit one of the following websites:

www.businesslink.gov.uk/unfairtrading (England)

www.bgateway.com/unfairtrading (Scotland)

www.hiebusiness.co.uk/unfairtrading (Scottish Highlands & Islands)

www.busesseye.org.uk (Wales)

www.nibusinessinfo.co.uk/unfairtrading (Northern Ireland)

You can also contact your local authority trading standards service for further advice on the regulations.

More about BERR

The Department for Business, Enterprise and Regulatory Reform (BERR) was created on the 28th June 2007, bringing together many functions of the former Department of Trade and Industry (DTI) with the Better Regulation Executive. BERR works with business, employees and consumers to help ensure business success in an increasingly competitive world.

Providing consumers with better protection from rogue practices and disreputable traders and firms are central to these aims. Whether shopping on the high street or online, consumers have a right to be sold to fairly and honestly. The Consumer Protection Regulations will make life a lot tougher for the rogues while creating a level, competitive playing field where honest business can thrive and prosper in the global marketplace. For further information on BERR, visit www.berr.gov.uk

More about OFT

The Office of Fair Trading is the independent agency that acts as the UK's consumer and competition authority. It works to change the behaviour of consumers, business and government to make markets work better; this is achieved through influence and leadership as well as active enforcement.

Produced by BERR
February 2008