businesscompanion
trading standards law explained

Part 3. Sales, marketing and entry into contracts

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Putting it into practice

In this third part of the guidance, we will look in more practical terms at how the law affects your business activities. Prospective owners will need clear information to make an informed decision whether to buy a holiday caravan / lodge from you. The information that you provide must neither mislead them by what you say, nor by what you don't say, nor by how it is presented. Prospective owners must not be subject to pressure selling, which can force them to take a decision that they may not have taken if they had been given time to think through their options properly.

As you will have seen in part 2, the Digital Markets, Competition and Consumers Act 2024 (DMCCA) will be the principal piece of legislation that we will refer to. Remember that breaching the DMCCA is a criminal offence.

If a new owner has been subject to a misleading or aggressive practice it could give them the right, within 90 days of purchase, to unwind their contract with you. This particular right applies under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), rather than the DMCCA. As explained in part 2, the DMCCA replaces the CPRs, but is not yet fully in force.

The DMCCA prohibits six types of unfair commercial practices:

- Trading with a lack of professional diligence
- Misleading action
- Misleading omission
- Aggressive practices
- Omission of material information from an invitation to purchase
- Banned practices

We will apply the DMCCA to your sales and marketing information and also to the process of signing a

contract with a new owner. Matters that may arise during the lifetime of your dealings with your owner will be covered in part 4.

Sales and marketing information

Your sales and marketing information may take many forms:

- What your staff say to owners or prospective owners
- Brochures and printed material
- Information on websites and social media
- Signage in your park and in the wider local area
- Attendance at national and local events

All of these are covered by the DMCCA, and this will include images as well as words. Remember you can also mislead by what you don't say, so avoiding key facts about your contract during a sales presentation (for example, regarding the prohibition on residential use) could also lead to a potential breach of the DMCCA.

Information about what you are selling

What you say about the holiday caravans / lodges that you are selling must not mislead. Therefore, the following practices may be more likely to lead to a breach of the DMCCA:

- Inaccurate information about the holiday caravan / lodge - for example:
    - Its age (if pre-owned)
    - Its facilities
    - Whether it is made to the residential Standard (BS 3632:2023 *Residential park homes. Specification*) or to the Standard for holiday caravans for seasonal use (BS EN 1647:2018+A1:2021 *Leisure accommodation vehicles. Caravan holiday homes. Habitation requirements relating to health and safety*)
- Using photographs of the inside or outside of a holiday caravan / lodge that do not represent the unit on sale
- Using photographs of pitches, or views from pitches, that do not fairly represent those available to owners
- Using representative images that have not been labelled as such and are not genuinely representative of what is on sale
- Making unsubstantiated claims that the holiday caravan / lodge is a good financial investment or a good way to make income. If these types of claims are not accurate, clear and fully explained they may be misleading
- Falsely claiming that there is only one unit available or that other buyers are interested
- Telling a prospective owner, at the point of sale, that you would make an offer to buy back from them by reference to the Glass's Guide price, without explaining that this would not include any additional amenity value (such as a sea view) that has been included in the sales price but may not be included in your buy-back price
- The use of certain types of so-called 'loyalty discounts'. For example, offering new owners a discount on their pitch fees, which will not apply for a subsequent owner following a private sale, and not making this clear to the new owner. This has the potential to mislead in two ways:
    - The discounted price may not be a genuine price advantage if all new owners pay the lower amount; therefore, the Chartered Trading Standards Institute's (CTSI) *Guidance for Traders on Pricing Practices* should be considered if using this approach (see table below)
    - The seller and new owner may believe, from a statement in the licence agreement, that subsequent owners will be given no less favourable terms and would not expect an increase in pitch fees

Use of loyalty fees for pitch fees

More likely to comply	Less likely to comply
Discount only offered for a limited period; pitch fees return to original price at the end of this period	Discount offered to all new owners without limitation
Discount only offered for a limited time during main selling season	Discount offered throughout main selling season

The unavailability of the discounted price to a buyer from the new owner could mean that you are competing unfairly with the owner for the buyer and preventing the owner from exercising their right under the agreement to make a private sale at a market price. For example, if you choose to offer the discounted pitch fee to the buyer only if they agree to buy a holiday caravan / lodge directly from you, you would be undercutting the owner. It is unlikely that the owner would, at the time they are buying their holiday caravan / lodge, fully understand this risk to their rights if they decide to sell.

Information regarding prices

Price information regarding the holiday caravan / lodge must be displayed. This information must be clear and intelligible. Any fees that the potential owner must pay when they purchase a holiday caravan / lodge must be displayed prominently and be clearly labelled as being part of the initial purchase price. Where the level of pitch fees will depend upon the pitch chosen, this must be made clear, and the potential owner must have information regarding what that actual fee will be before they commit to making a purchase. All prices should be VAT inclusive.

CTSI's *Guidance for Traders on Pricing Practices* can be used as a source of information when planning price promotions. We will use the approach taken in the CTSI guidance to consider typical promotions that you may use.

Use of price promotions

Price promotion	More likely to comply	Less likely to comply
Price information on display in a holiday caravan	Display makes clear that additional costs such as pitch fees will be required to be paid. Representative examples of the pitch fees are included	No information regarding pitch fees provided
'Holiday caravans from £25,000'	Price quoted includes other compulsory charges such as pitch fees	Price does not include, or refer to, other compulsory charges such as pitch fees
'Holiday caravans from £25,000'	A significant proportion of the caravans on sale are available for this price, or close to it	There are no other caravans available at the stated price and others available all have prices in excess of £75,000

Price promotion	More likely to comply	Less likely to comply
'Holiday lodge £125,000, including next two years' pitch fees'	Information is also available regarding the level of pitch fees for the next two years, enabling the owner to understand their ongoing future commitment	No information regarding the actual pitch fee is provided
'Holiday lodge £125,000, including free pitch fees for the next two years'	Actual selling price of holiday lodge has not been inflated to cover the pitch fee costs promotion	Lodge selling price has been inflated to cover the cost of the 'free' pitch fees. Despite the offer, a charge for pitch fees is made when the new pitch fee year starts
'Was £85,000, now our end of season sale price £60,000'	Both prices relate to the cost of the unit, and all other compulsory charges are included in the headline price. The unit was previously genuinely offered for sale for £85,000, in accordance with CTSI's *Guidance for Traders on Pricing Practices*	'Was' price included a pitch fee promotion. 'Now' price does not include pitch fees

Use of 'was' / 'now' prices

You should consider, amongst other things, the following factors when planning a was / now promotion:

- How long was the unit on sale at the higher price compared to the period for which the price comparison was made?
- How many units were on sale at the higher price and, if you have more than one park, was the unit on sale in the park where the promotion is being run?
- How recently was the higher price offered compared to the price promotion?
- Is the price a genuine selling price; have you made sales at the higher price?

After-promotion prices or introductory prices

Although you can use these types of promotions, they are likely to be considered to be misleading if the price is not increased at the end of the promotion period. You should, therefore, have a clear end date for the promotion and stick to it.

Price drops

Price drops can, potentially, be aggressive practices if they put undue pressure on a prospective owner to make an immediate decision. If a price drop is to be offered, it is less likely to be aggressive if a prospective owner has time to walk away and consider whether or not to commit. As an example, a lower price could be held open for seven days.

Avoid any form of pressure selling.

Assessing your price promotions

When you have prepared your price promotion material, take a step back and ask yourself:

- Will the person it is aimed at understand what it actually means?
- Is any information that I have given false?
- Even if the information is factually correct, is it likely to mislead?
- Have I missed out any information that the person reading it needs to know or is required to be provided? Has this information been given in a way that is unclear or untimely?

Entering into contracts with owners

It is likely that a prospective owner will enter into two contracts with you:

- Sales contract for the purchase of the holiday caravan / lodge
- Pitch licence agreement

Quite often these are placed into a single document and accompanied by other relevant information, such as park rules and your improvements policy. It is essential that prospective owners are not overwhelmed by the information that they receive, and are encouraged to read through both contracts carefully and ask questions if they are not sure. They might also wish to seek legal advice before committing to their agreements with you.

As described in part 1, your documentation must be user-friendly, clear and written in plain language. Its appearance (for example, very small closely spaced print) should not put prospective owners off from reading it properly, and it must not contain any unfair terms.

Your sales staff should have a clear and comprehensive understanding of the contract documentation and be able to answer any questions, but also refer to senior staff when they are not able to do so or are not sure.

As we indicated at the start of this part of the guidance, the DMCCA will also apply to the actual sales process. This is a point where a prospective owner makes a 'transactional decision' whether to deal with your business. Your sales staff must not mislead them, miss out key information or put them under pressure to make a purchase.

The following practices may be more likely to lead to a breach of the DMCCA:

- Giving unclear or incorrect information to prospective owners regarding any aspect of the agreements that they will sign
- Not being clear over the rules regarding the prohibition of permanent residency, with prospective owners being given the impression that simply going on holiday for a while, whilst otherwise using

their holiday caravan / lodge as their permanent residence, would suffice. Sales staff 'glossing over' these rules during their sales presentation, including by not asking to check documentation proving that the owner has a permanent residential address, may also be misleading

Trading fairly

The DMCCA prohibits traders from trading with a lack of professional diligence. Your conduct would be assessed with reference to honest market practices and the general principle of good faith. Industry codes of practice, in particular those that have been approved by CTSI's Approved Code Scheme, could be a source of reference for assessing what would amount to professional diligence.

In order to trade fairly, a due diligence system (see part 2) should form part of your business operation. This could include:

- Regular reviewing of contract documentation to ensure that you are not using unfair terms or misleading owners or prospective owners
- A process for reviewing and approving marketing material with clear protocols set out for your parks regarding local advertising and its approval, and how website and social media content is managed
- Regular staff training on the law and the details of your contract
- Re-training of staff where you have information (such as a complaint from an owner) that suggests they have not understood your contracts or their legal obligations
- Keeping staff training records
- A complaints process that includes keeping records of complaints received and any actions you have taken to improve your systems and ensure compliance with your legal obligations

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> Part 4. Dealing with holiday caravan / lodge owners

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Source URL:
https://www.businesscompanion.info/focus/holiday-parks/part-3-sales-marketing-and-entry-into-contracts