business companion

trading standards law explained

Protection from unfair trading (criminal law)

In the guide

In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

This guidance is for England, Scotland and Wales

From 2008 until 2025, the Consumer Protection from Unfair Trading Regulations 2008 (known as the CPRs) controlled unfair practices used by traders when dealing with consumers, and created criminal offences for traders that breach them. As of 6 April 2025, controls over unfair practices are to be found in Part 4, Chapter 1 of the Digital Markets, Competition and Consumers Act 2024 (DMCCA).

The Act prohibits 32 specific practices that are always considered to be unfair. It also prohibits 'misleading actions', 'misleading omissions', 'aggressive practices' and 'contraventions of the requirements of professional diligence' that are likely to cause an average consumer to take a 'transactional decision' that they would not have taken otherwise. Omitting specified material from an 'invitation to purchase' is also an unfair practice. The DMCCA applies to commercial practices relating to 'products' (which includes goods, services and digital content) before, during and after a contract is made.

The Act will, in due course, provide consumers with rights of redress in respect of misleading and aggressive commercial practices, and set out the remedies available to them. (These provisions are still to be found in the CPRs, until new regulations are made under the DMCCA.)

Note: the DMCCA uses terminology that previously appeared in the CPRs, but in some cases, the meaning is slightly different; please read the new requirements carefully, even if you are familiar with the CPRs.

Transactional decision

A 'transactional decision' is a very important concept in the DMCCA.

It means any decision taken by the consumer concerning the purchase or supply of a product; whether to retain, dispose of or withdraw a product*; or whether to exercise a contractual right in relation to a product, including decisions not to act. This does not only relate to pre-shopping, but includes after-sales and continues for the lifetime of a product.

[*The term 'withdrawal of a product' refers to, for example, the consumer withdrawing from or terminating a service, exercising their legal cancellation rights, or withdrawing their decision to meet a demand for a payment by a trader. It could also refer to the consumer withdrawing their offer to supply their product to the trader, such as offering their car in part-exchange.]

It includes, for example:

- decisions such as whether to purchase an item and, if so, by what method - for example, online or from a shop
- payment of deposits
- obtaining credit
- whether to repair a product or scrap it
- what remedy to seek for a defective item: rejection, repair, replacement or refund
- whether to have a motor vehicle serviced by a particular garage
- whether to purchase a mobile phone app

Prohibitions

Effectively, the DMCCA prohibits trading practices that are unfair to consumers. There are five different types of practices to consider:

- practices prohibited in all circumstances
- omitting material information from an invitation to purchase
- misleading actions and omissions

- aggressive practices
- general duty not to trade unfairly

For the last three practice types above, it is necessary to show that the action of the trader is likely to have an effect on the actions of the consumer. The test looks at the likely effect on the 'average' consumer, which means there is no need for evidence about how any particular individual was affected.

The DMCCA recognises that different types of consumers may react to a practice in different ways. It identifies three different types of consumers:

- average consumer (reasonably well informed, reasonably observant and circumspect)
- targeted consumer (where the practice is directed to a particular group of consumers)
- vulnerable consumer (where a group of consumers is particularly vulnerable to the practice or product because of, amongst other things, their age, mental or physical health, their credulity or their circumstances)

Banned practices

Schedule 20 to the DMCCA covers 32 practices that are always considered to be unfair and, therefore, are prohibited in all circumstances. 29 of the 32 banned practices give rise to criminal liability. These can be summarised as follows:

False endorsements / authorisations

- false claims that the trader has signed up to a code of conduct
- false claims that a code of conduct has been endorsed by a public or private body
- unauthorised use of trust marks, quality marks, etc
- claiming that a commercial practice or product has been approved, endorsed or authorised by a public or private body when the claim is false or there has not been compliance with the terms of approval etc

Misleading availability

- luring a consumer into believing that they can buy a product at a low price when the trader is aware that they will not have stock available in reasonable quantities or for a reasonable period of time to supply at that price (often referred to as 'bait advertising')
- advertising a product at a specific price, but then trying to up-sell a different product by refusing to show or take orders for the advertised product, delaying delivery of it or showing a defective sample (known as 'bait and switch')
- falsely stating that a product is only available for a very limited time in order to make the consumer make an immediate decision

After-sales service

- agreeing, using one language, to provide an after-sales service, but then providing it in a different language without warning the consumer of this before they are committed - for example, discussing a purchase in Welsh but then providing the after-sales service in English
- falsely indicating that after-sales service is available in, or accessible from, any particular country or

location - for example, suggesting an after-sales repair service is available throughout the British Isles when it is not available on Orkney

Misleading context / effect

- creating the impression that a product can legally be sold, when in fact it cannot
- presenting consumers' legal rights as a special feature of the trader's offer
- making materially inaccurate claims concerning the nature and extent of risks regarding the personal security or safety of the consumer's household by failing to purchase a product, such as a burglar alarm
- promoting copycat versions of recognised products to mislead as to who has made it
- claiming that a trader is going to cease trading or move premises when they are not - for example, bogus closing-down sales
- claiming that a product can help a person win in games of chance
- falsely claiming that a product has curative or restorative properties, or can modify a person's appearance
- providing materially inaccurate information about market conditions or a product's availability to persuade consumers to buy when they could get a better deal - for example, the inaccurate information may convince consumers to pay more than the market price
- describing a product as 'free', 'gratis', 'without charge' or similar if a consumer is going to have to pay more than the cost of responding to the advertisement and collecting or paying for delivery of the item
- failing to make it clear that a person is actually a trader or creating the impression that they are a consumer - for example, failing to indicate trade status when advertising a second-hand car for sale

Pyramid schemes

- establishing, operating or promoting such schemes is specifically prohibited, provided they fit within the definition of a pyramid promotional scheme - that is, a scheme where a consumer pays for the opportunity to receive a greater payment that is derived primarily from the introduction of other consumers into the scheme, rather than from the sale or consumption of products

Prize draws

- competitions where the prizes described (or equivalent) are not awarded
- creating the false impression that a consumer has won, or will win, a prize when there is no prize; or claiming that the prize is subject to the consumer paying money or incurring a cost

Aggressive sales

- creating the impression that a consumer cannot leave the premises until a contract is formed
- visiting a consumer at home and refusing to leave when asked to (except when the trader has a legal right to enforce a contractual obligation)
- making persistent and unwanted approaches by any means, apart from visiting the consumer's home, such as phone, text or email (except when a trader has a legal right to enforce a contractual obligation)
- telling a consumer that a trader's job or livelihood will be in jeopardy if the consumer does not buy

the product

Unreasonable demands

- requiring a consumer who wishes to claim on an insurance policy to produce irrelevant documents or failing to respond to correspondence in order to dissuade the consumer from exercising their contractual rights

Inertia selling

- using an invoice or similar documents to demand payment for products sent to the consumer that they did not order
- demanding that such unsolicited products are paid for, returned or safely stored

Banned practices that are not 'criminal'

The following banned practices do not give rise to criminal liability. If breached then measures can be taken by, for example, the Advertising Standards Authority, and by administrative measures taken by Trading Standards (see the 'Trading Standards' section below).

The practices are:

- disguising paid-for promotions as editorial content
- submitting or commissioning another person to submit or write a fake consumer review or a review that does not reveal that it has been 'paid for'. It also, amongst other things, prohibits publishing consumer reviews or consumer review information in a misleading way. This is a new banned practice under the DMCCA; it did not previously appear in the CPRs' list of banned practices and covers a number of different activities. For more information on it, please see 'Reviews and endorsements'
- making a direct appeal to children to buy a product or to persuade their parents or other adults to buy a product for them (pester power)

Omitting material information from invitations to purchase

Section 230 of the DMCCA concerns 'invitations to purchase' where 'material information' is omitted. It requires certain specified information to be included whenever there is an invitation to purchase, unless that information is already apparent (such as the address of the business, when standing in a shop).

Invitation to purchase

For an invitation to purchase, first, there must be both an indication of the characteristics of a product and the price of the product. (General advertising of products without any prices provided will not amount to an invitation to purchase.) Second, the practice must enable or intend to enable consumers to decide whether to go ahead and purchase the product or take some other transactional decision in relation to the product, such as whether to visit a shop to see an example of the product.

Examples of invitations to purchase where product details and prices are indicated include:

- a menu in a restaurant
- television or newspaper advertisements showing a car, together with a starting price for the model shown
- items listed on the website of an online marketplace
- goods on display in shops

Material information

The following information (if applicable) must be provided where there is an invitation to purchase:

- the main characteristics of the product, such as what it is and what it does. The detail required will depend on the nature of the product and the method used to communicate the information - for example, a text message or a short radio advertisement
- the total price of the product (including mandatory fees, taxes and charges) or, if this cannot be calculated in advance, how the total price will be calculated (the aim is to prevent an initial price being shown, which is then increased by the addition of non-optional charges; this is often referred to as 'drip pricing')
- the trader's identity and the identity of any other person who the trader is acting on behalf of
- the trader's contact information and the contact information for any other person that the trader is acting on behalf of. The contact information must include the business's:
  - address and, if different, the address for serving documents
  - email address (if applicable)
- any optional freight, delivery or postal charges, including any taxes, not already included as part of the total price of the product. If these cannot reasonably be calculated in advance, then the fact that they may be payable must be indicated
- if there is a right of withdrawal or cancellation, the existence of such a right
- if the trader is using any arrangements for payment, delivery, performance or complaint handling that are different from the trader's published practice, information about these alternative arrangements
- any information that the trader is required, under any other legislation, to give to a consumer as part of an invitation to purchase - for example, under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

See also the requirements regarding misleading omissions, below.

Misleading actions and omissions

The DMCCA prohibits 'misleading actions' and 'misleading omissions' that are likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

Misleading actions

Section 226 of the DMCCA concerns giving false information to, or deceiving, consumers. A misleading action occurs when a practice misleads through the information it contains or its deceptive presentation (even if the information is factually correct) and is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

There are four different types of misleading action:

- providing false or misleading information (including information that is true but is presented in a misleading way)
- where the overall presentation is deceptive (even if the information it contains is true)
- marketing that creates, or is likely to create, confusion with competitors' products
- failing to honour commitments made in a code of conduct that are not discretionary and are capable of verification

The information that may be considered as misleading can relate to the product, a trader and any other matters relevant to the transaction. This can include:

- the main characteristics of the product - for example, its composition, availability, benefits, fitness for purpose or where it was made
- the price or the manner in which it is calculated
- the need for a service, part, replacement or repair
- the nature, attributes and rights of the trader, such as their qualifications

Misleading omissions

Section 227 of the DMCCA concerns giving insufficient information about a product. It is an offence under the Act to fail to give consumers the information they need to make an informed decision in relation to a product if this would be likely to cause the average consumer to take a transactional decision they that would not have taken otherwise. For example, in order to make an informed decision about whether to buy or how much to pay, the average consumer buying a second-hand car needs to know whether the car has previously been an insurance write-off; the trader therefore has to disclose this information, whether or not the consumer asks for it.

Traders must give information to consumers in a clear and timely manner. The consumer may need the information in order to make an informed choice. Supplying information too late could constitute an omission.

It is a breach of the Act to do any of the following:

- omit material information. This includes providing material information in a manner that is unclear, untimely or that the consumer is unlikely to see
- omit information that is required to be provided under other legislation (for example, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013)
- fail to identify the commercial intent (unless this is apparent from the context)

'Material information' here means any information that the consumer needs to make an informed transactional decision.

In deciding whether or not there is a misleading omission, account is taken of any limitations arising from the means of communication that is used (for example, a 30-second radio advertisement or online video will not allow much information to be given) and the steps that the trader has taken to overcome these limitations by providing access to the information elsewhere (such as by linking to a website or brochure).

Aggressive practices

Section 228 of the DMCCA concerns aggressive commercial practices that intimidate, exploit or place unreasonable burdens on consumers.

A commercial practice is aggressive if it uses any of the following and, thereby, is likely to cause a consumer to take a transactional decision that they would not have taken otherwise:

- harassment
- coercion
- undue influence

To decide whether a practice uses harassment, coercion or undue influence, the following must be taken into account:

- the nature of the practice
- the timing and location of the practice
- whether there is any use of threatening or abusive language or behaviour
- whether there is exploitation of any vulnerability of the consumer (including due to age, physical or mental health, credulity or their circumstances)
- any threat to take action that cannot legally be taken
- any onerous or disproportionate action required when a consumer wishes to exercise rights that they have in relation to the product - for example, rights to terminate the contract or switch to another product or trader

Note: 'coercion' includes the threat of or use of physical force, and 'undue influence' means exploiting a position of power in relation to the consumer so as to apply pressure in a way that significantly limits the consumer's ability to make an informed decision.

General duty not to trade unfairly

Section 229 of the DMCCA is concerned with 'contravention of the requirements of professional diligence', which effectively means failing to act in accordance with reasonable expectations of acceptable trading practice.

The section prohibits traders from knowingly or recklessly engaging in practices that contravene the requirements of professional diligence. This is where the practice does not meet the standard of skill and care that a trader may reasonably be expected to exercise towards consumers, which is commensurate with either:

- honest market practice in the trader's field of activity
  or
- the general principle of good faith in the trader's field of activity

In addition, the practice must be likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

Consumers' rights of redress

In addition to the criminal offences created by a breach of the provisions described above, the DMCCA will also provide consumers with rights of redress, enforceable through the civil courts. These provisions have not yet been brought into force.

Consumers wishing to claim redress for misleading or aggressive practices need to use the provisions contained in the Consumer Protection from Unfair Trading Regulations 2008, information on which can be found in 'Protection from unfair trading (consumers' rights of redress)'.

Further information

The Competition and Markets Authority (CMA) has published *Unfair Commercial Practices: Guidance on the Protection from Unfair Trading Provisions in the Digital Markets, Competition and Consumers Act 2024*. The CMA has also published a short guide on unfair commercial practices.

It is recommended that businesses making environmental claims in the UK refer to 'Environmental ('green') claims'. This guide contains information about the Competition and Markets Authority's 'Green Claims Code'.

Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see 'Trading Standards: powers, enforcement and penalties'.

In this update

Changes made to reflect the coming into force of the Digital Markets, Competition and Consumers Act 2024 (Part 4, Chapter 1: 'Protection from unfair trading').

Last reviewed / updated: April 2025

Key legislation

- Digital Markets, Competition and Consumers Act 2024

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on changes to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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