

Antiques and antiquities

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This guidance is for England, Scotland & Wales

If you trade in fine art, antiques, antiquities, antiquarian books, manuscripts or other collectibles, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) apply to your business. This guide mainly covers the requirements of the CPRs but please be aware that other legislation - both national and local - may apply to your business.

You should be aware that the CPRs apply whether you are selling to consumers or buying from them.

Unfair commercial practices

The CPRs prohibit commercial practices that are unfair. They prohibit a trader from misleading consumers about a number of specified matters, either through providing information that is false, or through information that is misleading (a 'misleading action'). It is also a breach of the CPRs to omit information that a consumer needs in order to make an informed purchase (a 'misleading omission').

The specified matters in relation to goods (and parts of goods) include the following:

- the existence or nature of the item (in other words, what it actually is)
- the main characteristics of the item, which includes:
 - the composition of the item (what it is made from)
 - the geographical origin of the item ('English', for example)
 - the method and date of manufacture (such as describing an item as 'Regency')
 - usage of the product (which could include its history)
- the price or the manner in which the price is calculated
- the existence of a specific price advantage

For a practice to be a misleading action or omission it must cause, or be likely to cause, the average consumer to take a different transactional decision. In practice, this means that the consumer is influenced to make a purchase, or decides not to purchase, based upon that misleading action or omission. This does not only relate to pre-shopping but includes after-sales.

In addition, giving the consumer inaccurate information about market conditions, or how easy it might be to find the item elsewhere, in order to get the consumer to buy (or sell) at unfavourable conditions is specifically banned, regardless of the effect on the consumer.

The CPRs also cover the situation where a trader purchases from a consumer. The trader must not mislead the consumer by giving false or misleading information or omitting material information that would affect or be likely to affect their transactional decision.

See 'Consumer protection from unfair trading' for more information.

What is an 'antique'?

There is no uniformly accepted definition of the term 'antique', although many people use the measure that anything over 100 years old is an antique. The key consideration in applying any description is that it should not be misleading. Terms such as 'collectible' or 'vintage' may be more appropriate than 'antique' for more recent pieces.

Special cases:

- 'antique' firearms. Only certain firearms may be sold as antique, with restrictions not being purely age-related. You should seek advice from your local police if selling such items. Useful guidance can also be found in chapter 8 of the Home Office *Guide on Firearms Licensing Law*, available on the GOV.UK website
- sales of 'antique' knives are generally exempt from offensive weapons controls but care should be exercised when describing such items and advice should be sought from your local police
- 'cultural items' are subject to special controls under the 1970 UNESCO convention. You should obtain guidance from the Department for Digital, Culture, Media and Sport (DCMS)
- in relation to the Hallmarking Act 1973, any item made pre-1950 can be described and sold as precious metal as long as the seller can prove it is of minimum fineness and was manufactured before 1950

What you can do

To avoid breaching the CPRs (and possibly committing a criminal offence) you should set up a system of checks on items you buy and sell, and ensure that these checks are effectively carried out. This is known as taking all reasonable precautions and exercising all due diligence, and it is a defence within the CPRs.

The following points are **recommended** for inclusion in such a system:

- obtain a receipt for all purchases, identifying the name and address of the seller
- ask for written provenance or other written information that establishes the item's descriptions; verbal information is not sufficient
- if an object has been repaired or restored, establish to what extent and pass on this information to any prospective purchaser (preferably in writing)
- keep records of all items you buy and sell, the description you applied to each, and any supporting information for this description (such as the auction catalogue)

- any item that is sold with a guarantee of authenticity must be supported by proof that the object has been examined and is genuine
- set up procedures to ensure that each item on display or being advertised has been recorded properly, as mentioned above. If you have members of staff who act as experts they should see all items and the description you intend to apply prior to them going into the shop or being advertised. All staff should be aware of the procedures. No member of staff without sufficient expertise should be adding descriptions to items
- the CPRs prohibit commercial practices that contravene the requirements of 'professional diligence' (this means the special care and skill expected with honest market practice and the general principle of good faith). If you have any reason to doubt the authenticity of a product (such as a manufacturer's mark), particularly where there is known historical abuse, then you should disclose this doubt. This would not apply where you have added a description of manufacture or origin yourself

Also, to avoid common problems associated with dealing in antiques, you should:

- specifically ask if the property being offered to you is free of any legal claim and that the seller is authorised to sell it
- be suspicious of any item with an asking price that does not equate to its market value
- pay by cheque or other method that provides an audit trail
- notify the police if you suspect that an item is stolen or from excavations, architectural monuments, public institutions or private property
- refuse to buy, sell or value objects if you are concerned about their history

If you are examining items and applying descriptions to them yourself, you should be extremely careful. Customers are likely to view your opinion as that of an expert and rely on your description.

The CPRs apply to persons selling items as agents for another person as well as the actual owner of the item being sold.

Auction houses

An auction house is similarly within the scope of the CPRs and can commit an offence of applying misleading information to or omitting information about an item.

Auction houses should not rely on a general disclaimer in a catalogue in an attempt to avoid liability for the descriptions being applied to the items that are being auctioned. An auction house should ensure that the owner of the item verifies the description to be applied to it or that an expert is employed to advise on descriptions.

Claims by consumers under the CPRs

Under the CPRs, in addition to possible criminal offences arising where misleading information has been given (a misleading action), consumers may also have a claim for compensation and/or a reduction in price, or be able to cancel the contract completely. This can arise both where items are being sold to a consumer and where items are being bought from a consumer.

For guidance on consumers' right to redress under the CPRs see *Misleading and Aggressive Commercial Practices: New Private Rights for Consumers* on the GOV.UK website.

Where do you sell?

If you sell 'at a distance', such as over the internet, you will need to comply with the requirements in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. If a distance contract is made then the consumer must be provided with additional information and a 14-day cancellation period (starting the day after delivery of the goods). If you sell on business premises, such as a shop, trade fair or market stall, you need to comply with certain basic information requirements within the Regulations.

See 'Consumer contracts: distance sales' and 'Consumer contracts: on-premises sales' for further information.

Consumer rights

The Consumer Rights Act 2015 states that goods should be of satisfactory quality, fit for a particular purpose and as described. For example, if you were to sell an antique table that would be likely to actually be used as a table then it should be:

- of satisfactory quality, taking into account the description, price (if relevant) and all other relevant circumstances
- fit to be used as a table
- described accurately

If you were selling an antique as a display item then it only needs to be fit for that intended purpose.

Where there has been a breach of the Act the consumer may be entitled to a repair, replacement or a refund.

See 'The sale & supply of goods' for further information.

Selling to businesses

This guide is primarily aimed at businesses selling to consumers. If you are selling to businesses the Business Protection from Misleading Marketing Regulations 2008 (BPMRs) will apply. This legislation prohibits advertising that misleads businesses by deceiving or being likely to deceive them (or others) and affecting their economic behaviour. It also prohibits businesses giving misleading advertising that injures, or is likely to injure, a competitor.

See 'Business-to-business marketing'.

Penalties

Failure to comply with trading standards law can lead to enforcement action and to sanctions, which may include a fine and/or imprisonment. For more information please see 'Trading standards: powers, enforcement & penalties'.

Key legislation

Hallmarking Act 1973

Business Protection from Misleading Marketing Regulations 2008

Consumer Protection from Unfair Trading Regulations 2008

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Consumer Rights Act 2015

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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 amendments to legislation can be found on each link's 'More Resources' tab.

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