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trading standards law explained

Consumer protection from unfair trading

In the guide

This guidance is for England, Scotland & Wales

The Consumer Protection from Unfair Trading Regulations 2008 (known as the CPRs) control unfair practices used by traders when dealing with consumers, and create criminal offences for traders that breach them.

The Regulations prohibit 31 specific practices that are always considered to be unfair, and create further offences for aggressive practices. They prohibit 'misleading actions' and 'misleading omissions' that cause, or are likely to cause, the average consumer to take a 'transactional decision' they would not have taken otherwise. They apply to commercial practices relating to products (which includes goods, services and digital content) before, during and after a contract is made.

They provide consumers with rights to redress in respect of misleading and aggressive commercial practices and set out the remedies available to them.

What is prohibited?

Effectively the CPRs prohibit trading practices that are unfair to consumers. There are four different types of practices to consider:

- practices prohibited in all circumstances
- 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 has an effect (or is likely to have an effect) on the actions of the consumer. The test looks at the effect (or likely effect) on the **average** consumer, which mean there is no need for evidence about how any particular individual was affected.

The Regulations recognise that different types of consumers may react to a practice in different ways, and identify three different types of consumer:

- 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 their mental or physical disability or age)

Practices prohibited in all circumstances

Schedule 1 to the CPRs introduces 31 practices that are always considered to be unfair and therefore are banned in all circumstances. These include:

False endorsements / authorisations

- false claims of membership of trade associations
- claiming a product has been approved by a public or private body when it has not

Misleading availability

- bait advertising (or 'bait and switch') where a trader lures a consumer into believing they can buy a product at a low price when the trader is aware they do not have reasonable stock available or are not able to supply at that price; this is also when the trader attempts to 'up-sell' to a higher priced product
- falsely stating that a product is only available for a very limited time in order to make the consumer make an immediate decision

Misleading context / effect

- claiming a trader is going to cease trading or move premises when they are not - for example, bogus closing down sales

- falsely claiming a product has curative properties
- 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
- including an invoice or similar in marketing material, implying a consumer has ordered the product when they have not
- failing to make it clear that a person is actually a trader or creating the impression they are a consumer - for example, failing to indicate trade status when selling a second-hand car
- creating the impression that a product can legally be sold when in fact it cannot

Pyramid schemes

- operating or promoting such schemes is specifically prohibited, provided they fit within the definition of a pyramid 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 the prize is subject to the consumer paying money or incurring a cost

Aggressive sales

- creating the impression a consumer can't 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 phone, fax or email (except when a trader has a legal right to enforce a contractual obligation)
- making a direct appeal to children to buy a product or to persuade their parents to buy a product for them (pester power)
- telling a consumer a trader's job 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

- demanding payment for products sent to the consumer that they did not ask for

- demanding that such unsolicited products are returned

Misleading actions & omissions

The CPRs prohibit 'misleading actions' and 'misleading omissions' that cause, or are likely to cause, the average consumer to take a different transactional decision - that is, any decision taken by the consumer concerning the purchasing of the product or whether to exercise a contractual right in relation to the product, including decisions not to act. This does not only relate to pre-shopping but includes after-sales and continues for the lifetime of the product.

Misleading actions

Regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008 prohibits 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 causes, or is likely to cause, the average consumer to take a different transactional decision.

There are three different types of misleading actions:

- misleading information generally
- creating confusion with competitors' products
- failing to honour commitments made in a code of conduct

The information that may be considered as misleading is very wide and is listed in the legislation itself, including such things as:

- the existence or nature of the product - for example, advertising goods that don't exist
- the main characteristics of the product - for example, the availability, benefits, fitness for purpose or the geographical origin of the product
- 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 qualifications

Misleading omissions

Regulation 6 prohibits giving insufficient information about a product. It is a breach of the CPRs to fail to give consumers the information they need to make an informed choice in relation to a product if this would cause, or be likely to cause, the average consumer to take a different transactional decision - for example, in order to make an informed decision about whether to buy or how much to pay, the average consumer buying a 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 timely manner. It should be provided to assist the consumer in making an informed choice. Supplying information too late could constitute an omission.

It is a breach of the CPRs to:

- omit material information
- hide material information

- provide material information in a manner that is unclear, unintelligible, ambiguous or untimely
- fail to identify the commercial intent (unless this is apparent from the context)

'Material information' means information that the consumer needs to make an informed transactional decision and generally any information required to be given by law.

Aggressive practices

Regulation 7 of the CPRs prohibits aggressive commercial practices that intimidate or exploit consumers, restricting their ability to make free or informed choices. In order for an aggressive practice to be unfair it must cause, or be likely to cause, the average consumer to take a different transactional decision.

A commercial practice is aggressive if it:

- significantly impairs, or is likely to significantly impair, the average consumer's freedom of choice or conduct in relation to the product through the use of harassment, coercion or undue influence
... and
- thereby causes them to take a different transactional decision

To decide whether a practice breaches this regulation, the following will be taken into account:

- timing, location, nature or persistence
- use of threatening or abusive language or behaviour
- exploitation by the trader of any specific misfortune or circumstance that impairs the consumer's judgement in order to influence their decision with regard to the product
- any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract (for example, rights to terminate the contract or switch to another product or trader)
- any threat to take action that cannot legally be taken

Note: 'coercion' includes the use of physical force, and 'undue influence' means exploiting a position of power in relation to the consumer so as to apply pressure - even without the use of (or threatening to use) physical force - in a way that significantly limits the consumer's ability to make an informed decision.

General duty not to trade unfairly

Regulation 3 is called "*Prohibition of unfair commercial practices*", which effectively means failing to act in accordance with reasonable expectations of acceptable trading practice.

The regulation prohibits practices that:

- contravene the requirements of professional diligence (defined as the standard of special 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)
- materially distort the economic behaviour of the average consumer (or are likely to) with regard to the product - that is, appreciably to impair the average consumer's ability to make an informed decision, thereby causing them to take a transactional decision that they would not have taken otherwise

Consumers' right to redress

In addition to the criminal offences created by a breach of the provisions described above, the Regulations also provide consumers with rights of redress enforceable through the civil courts. For a consumer to have these rights to redress certain conditions must be met.

The first condition is that the consumer does one of the following:

- enters into a contract to buy a product (goods, services, digital content, etc) from a trader (a business-to-consumer contract)
- enters into a contract to sell goods to a trader (a consumer-to-business contract)
- makes a payment to a trader for supply of a product (consumer-payment contract)

The second condition is that the trader has engaged in a prohibited practice. A prohibited practice means a misleading action or an aggressive practice (see above).

Furthermore, the trader will be liable for misleading actions or aggressive practices carried out by the producers of goods or digital content they supply if the trader could reasonably have known of the prohibited practice. An example of this would be where a manufacturer's television advertisements for a product are misleading.

The final condition is that the prohibited practice was a significant factor in the consumer's decision to enter into the contract.

What remedies are available to a consumer?

There are three main remedies available to a consumer: the right to unwind, the right to a discount, and the right to damages.

Right to unwind:

The right to unwind allows the consumer to undo the contract and be put back into the position they were in before it was made. There are restrictions to this:

- the consumer must reject the goods within 90 days. In general this 90-day period begins either when the goods are delivered or the service begins
- the right to unwind only applies where it is still possible to undo the transaction. If the goods or digital content have been fully consumed or the service fully completed this would not be possible. However, if it is still possible to return some element of the goods or reject an element of the service this would be enough. Consumers are entitled to a full refund even though they may have received some benefit from it
- consumers cannot unwind a contract if they have already claimed a discount with respect to that contract and the same prohibited practice (see below regarding discounts)

The consumer's right to a full refund is reduced in the case of continuous-supply products (such as utility contracts).

Right to a discount:

This right applies where the right to unwind has been lost. This may be because of a delay in complaining or because the goods have been fully consumed. For goods and services costing less than £5,000 there is a fixed-percentage discount ranging from 25% for more than minor issues to 100% for very serious cases.

Above £5,000, if the misleading or aggressive practice led the consumer to pay more than the market price for the product, the price is reduced to the market price. Otherwise, the fixed-percentage discounts will still apply. A consumer may also claim a discount instead of unwinding a contract where the right to unwind still exists but the consumer does not wish to end the contract.

Damages:

Consumers can claim damages if they have suffered reasonably foreseeable losses that exceed the price paid for goods, digital content and services. These damages can cover alarm, distress, physical inconvenience or discomfort as well as economic losses suffered as a result of the prohibited practice. Damages may be claimed in addition to unwinding the contract or claiming a discount. Damages are not payable if the trader can establish that the prohibited practice occurred due to a mistake, reliance on information supplied to the trader by another person, the act or default of another person, an accident or some other cause beyond the trader's control and the trader had taken all reasonable precautions and exercised all due diligence to avoid the prohibited practice occurring.

Further information

Guidance on the CPRs is available on the GOV.UK website.

Also, the Department for Business, Energy and Industrial Strategy (which was known as the Department for Business, Innovation and Skills at the time) has produced specific guidance on consumers' right to redress under the Regulations: *Misleading and aggressive commercial practices: New private rights for consumers*.

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

Enterprise Act 2002

Consumer Protection from Unfair Trading Regulations 2008

Consumer Protection (Amendment) Regulations 2014

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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 UK legislation can be found on each link's 'More Resources' tab; amendments to EU legislation are usually incorporated into the text.