

# **Consumer Protection from Unfair Trading Regulations 2007 Guidance**

**Draft Guidance on the UK implementation of the Unfair  
Commercial Practices Directive**

**Consultation document**

**May 2007**

OFT931con

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## INTRODUCTION TO THE CONSULTATION

The Office of Fair Trading (OFT) is conducting a public consultation on a draft Guidance on the Consumer Protection from Unfair Trading Regulations 2007 ('CPRs') which is to be jointly published by the OFT and the Department of Trade and Industry (DTI) ahead of implementation of the CPRs.

The Consumer Protection from Unfair Trading Regulations 2007 ('CPRs') will implement the Unfair Commercial Practices Directive ('UCPD') into UK law. In so doing they will introduce a number of new legal concepts into UK law, and will also replace a number of pieces of UK legislation.

The CPRs will prohibit unfair commercial practices which distort consumers' decisions. They will introduce a general duty not to trade unfairly on businesses dealing with consumers. They will also contain prohibitions against misleading and aggressive practices, as well as 31 specific practices that are always considered unfair.

The draft Guidance lays out the views of the OFT and the DTI on the likely effect of the CPRs. We have sought to give illustrative examples to help businesses, consumers and enforcers understand the prohibitions, but ultimately only the UK (and European) courts will be able to decide whether a practice breaches the CPRs.

We intend to keep this Guidance under review, and will consider adding to it on an ongoing basis in the light of practical experience and case law. In particular, appropriate examples may be added or altered to reflect decisions made by the courts.

The Guidance may also be amended from time to time to take account of relevant developments, including changes to policy and procedures on the enforcement of consumer protection legislation resulting from the Better Regulation Agenda, such as the Regulators' Compliance Code.

This consultation has been published alongside a DTI consultation on the draft CPRs. We strongly recommend that stakeholders look at both consultations as they are interdependent. This consultation seeks views on

the draft Guidance. The separate DTI consultation seeks views on a draft of the CPRs.

This consultation document describes the consultation process and lists the questions on which we would welcome views. We are publishing this consultation on our website, and contacting business stakeholders, enforcers and consumer organisations to invite comments. Hard copies will also be available on request.

Further copies of this consultation document can be obtained from

[www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/consultations/](http://www.offt.gov.uk/advice_and_resources/resource_base/consultations/)

## **The consultation process**

### **Responding to this consultation**

We are inviting comments on the draft guidance. We want to ensure that the Guidance is clear and comprehensive for its intended users and covers all relevant matters. We would therefore like to know how easy you find it to use, whether it meets its aim and what other information, if any, it might be helpful to include.

The Guidance is intended to explain the prohibitions introduced by the CPRs, not to detail the policy approach by enforcers, which will be dealt with separately. Information about enforcement is included to communicate the methods by which the CPRs can be enforced.

The following is a summary of questions to which we would like answers and, where appropriate, preferred alternative approaches or wording. These questions reflect considerations identified as central whilst developing the draft Guidance. However, we do not wish to limit debate and will welcome views and comments on other specific or general issues which this draft Guidance raises.

## Consultation questions

### General questions

- Q1 Is the draft Guidance sufficiently clear?
- Q2 Does it summarise the prohibitions in the CPRs clearly and accurately?
- Q3 Does it provide a helpful summary of the possible enforcement options that may be used by enforcers to prevent unfair practices?
- Q4 Do the examples helpfully illustrate the effect of the prohibitions in practical terms?
- Q5 Are there sufficient cross-references to other material, for example other Guidance, legislation?
- Q6 Does the draft Guidance have any significant omissions?
- Q7 Are there any parts which need amplification or clarification, and if so, in what respect?
- Q8 Are any parts of the draft Guidance not needed?
- Q9 Do you have any other suggestions for improvement to the draft Guidance?
- Q10 Do you have any views on how the final Guidance should be disseminated to those who may need to see it?
- Q11 Do you have any comments on the order of information presented in the Guidance?

### Specific questions

- Q12 Is the flowchart at the end of the chapter entitled 'CPRs – an Overview' helpful in assessing practices against the CPRs?
- Q13 Is the table (conduct and effect) at the end of the chapter entitled 'Scope' helpful in summarising and comparing the details of the prohibitions?

- Q14 Do the examples used to illustrate the 31 banned practices in Chapter 6 of the draft Guidance provide helpful additional information?
- Q15 Do you find the Annexe A examples useful in illustrating how practices could breach multiple prohibitions in the CPRs?
- Q16 Is there sufficient information on the key concepts of 'typical consumer' and 'transactional decision'?

Consultees responding to this consultation are asked to supply a brief summary of the interests or organisations they represent, where appropriate. See Annexe D of this consultation document for the list of consultees. We welcome suggestions for other individuals or organisations who should be consulted.

We ask that any suggested changes or comments on the documents be submitted in writing (by email, or alternatively by letter or fax, as indicated in Next steps).

### **The consultation period**

The consultation period begins on 29 May 2007 and will run until 21 August 2007. This period of 12 weeks is in accordance with the criteria set out in the Cabinet Office's Code of Practice.

### **Next steps**

We will collate responses to the consultation and publish a summary. A final version of the amended Guidance, agreed by OFT and DTI, will be published in advance of the commencement of the Regulations in April 2008, taking into consideration comments made in response to the consultation. All responses and comments should be sent to:

Andrew Hadley  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London  
EC4Y 8JX

Fax: 020 7211 8830

Email: [andrew.hadley@oft.gsi.gov.uk](mailto:andrew.hadley@oft.gsi.gov.uk)

If you have any queries about this consultation please contact Andrew Hadley on 020 7211 8419, or Anne-Marie Tarkowski on 020 7211 8552.

### **Data use statement for responses**

Please note that we may choose to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business ('confidential information'). If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential. All information received is subject to Part 9 of the Enterprise Act 2002.

If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

### **Consultation Guidance**

This consultation follows the criteria set out in the Cabinet Office's Code of Practice on Consultation (available at [www.cabinetoffice.gov.uk/regulation/consultation/consultation\\_guidance/the\\_code\\_and\\_consultation/index.asp](http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/the_code_and_consultation/index.asp)).

## **The six criteria for consultations by public bodies**

Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

Ensure that your consultation is clear, concise and widely accessible.

Give feedback regarding the responses received and how the consultation process influenced the policy.

Monitor your Department's effectiveness at consultation, including through the use of a designated Consultation Co-ordinator.

Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

## **Comments or complaints about the consultation process**

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Catherine Mason  
OFT Consultation Co-ordinator  
Room 5C/O29  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
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EC4Y 8JX

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# 1 USING THE GUIDANCE

## Aim of the Guidance

- 1.1 This Guidance is principally intended to help **traders** to comply with the Consumer Protection from Unfair Trading Regulations 2007 (the 'CPRs'). It will also be of use to enforcers, and to consumer advisors in understanding what actions are prohibited. The Guidance sets out the views of the Office of Fair Trading (OFT) and the Department of Trade and Industry (DTI). It seeks to illustrate how the CPRs may apply in practice. Ultimately, however, only the courts can decide whether or not a **commercial practice** is unfair within the meaning of the CPRs. This Guidance should not be regarded as a substitute for, or definitive interpretation of, the CPRs and should be read in conjunction with them.
- 1.2 The examples used in this Guidance seek to illustrate the possible effect of the CPRs. They do not cover every situation or practice in which a breach of the CPRs may occur.

## How to use the Guidance

- 1.3 This Guidance starts with an introduction, then a short overview, and then moves on to the scope of the CPRs. There is a flowchart to help assess **commercial practices** against the CPRs.
- 1.4 After this it explains the prohibitions in the order which we consider it most helpful to approach them, starting with the specific prohibitions, then covering misleading and aggressive practices and finally the general duty not to trade unfairly.
- 1.5 This is followed by some information on compliance, enforcement, offences, and investigation powers.
- 1.6 A glossary provides definitions and explanations of the **concepts found in bold** throughout the Guidance, including key concepts such as '**transactional decision**'. The glossary discusses the '**typical consumer**' concept in some detail. Where the glossary contains definitions that are

taken directly from the CPRs, these are identified by text in italics and quotation marks.

- 1.7 Illustrative examples can be found throughout the text in italics.
- 1.8 The Annexes contain some examples which show how an assessment against the prohibitions might work in practice, and information about changes to pre CPRs legislation. Finally, there is a list of contacts and references where further information can be found.

## 2 INTRODUCTION

### The Consumer Protection from Unfair Trading Regulations

- 2.1 The Consumer Protection from Unfair Trading Regulations 2007 (the 'CPRs'),<sup>1</sup> come into force on 6 April 2008, and implement the Unfair Commercial Practices Directive (the 'UCPD') into UK law.<sup>2</sup>
- 2.2 The UCPD aims to harmonise the legislation about unfair business to consumer practices across the European Community to support growth of the internal (European) market. Uniform law about unfair **commercial practices** will make it easier for **traders** based in one Member State to market and sell their **products** to **consumers** in other Member States. It will also give **consumers** greater confidence to shop in the UK, and across borders, by providing a high common standard of consumer protection.
- 2.3 The UCPD's broad scope meant that it overlapped with some UK legislation. As a result, some statutes such as the Trade Descriptions Act 1968 and the Consumer Protection Act 1987 are repealed or amended (see Annexe B for further details on changes to existing law).
- 2.4 The CPRs apply to **commercial practices** before, during and after a contract is made. The CPRs contain a general prohibition of unfair **commercial practices** and, in particular, contain prohibitions of misleading and aggressive **commercial practices**. They also prohibit 31 specific **commercial practices** that are listed in chapter 6 on banned practices. These prohibitions are explained in more detail later in the Guidance.

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<sup>1</sup> [Final Guidance to include a reference to the CPRs SI here]

<sup>2</sup> Directive 2005/29/EC.

2.5 Broadly speaking, if **consumers** are treated fairly, then **traders** are likely to comply with the CPRs. This means that fair-dealing businesses should not have to make major changes to their practices. However, if a **trader** misleads, behaves aggressively, or otherwise acts unfairly towards **consumers**, then the **trader** is likely to be in breach of the CPRs and may face action by enforcement authorities. Details of potential enforcement action can be found in chapter 10 of the Guidance on Compliance and Enforcement.

### 3 THE CPRs – AN OVERVIEW

3.1 The CPRs consist of:

- a general prohibition of unfair **commercial practices**
- prohibitions of misleading and aggressive practices, and
- 31 practices prohibited in all circumstances.

These prohibitions, and the scope of the CPRs, are summarised below. Further explanation is in the following chapters and in the glossary.

#### Scope

3.2 The CPRs apply to actions, omissions and other conduct by businesses directly connected to the promotion, sale or supply of **products** to or from **consumers** (whether before, during or after a transaction). They do not apply when only **consumers** are involved in a transaction (that is, in private transactions between two **consumers**). Most **commercial practices** covered by the CPRs will involve a direct relationship between businesses (that is, '**traders**') and **consumers**. However there may be instances where aspects of a business to business transaction could have sufficiently close connection with **consumers** as to fall within the scope of the CPRs.<sup>3</sup>

#### General prohibition

3.3 Regulation 3 contains a general prohibition of unfair **commercial practices**.

3.4 A **commercial practice** is unfair if:

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<sup>3</sup> See chapter 4 on Scope

- it is not professionally diligent, and
- it materially distorts, or is likely to materially distort, the economic behaviour of the **typical consumer**.

Essentially, for a practice to be prohibited the **trader's** practice must be of an unacceptable standard as well as there being an effect (or the likelihood of such) on the economic behaviour of the **typical consumer** (for example the **typical consumer** would buy a **product** they would not otherwise have bought).

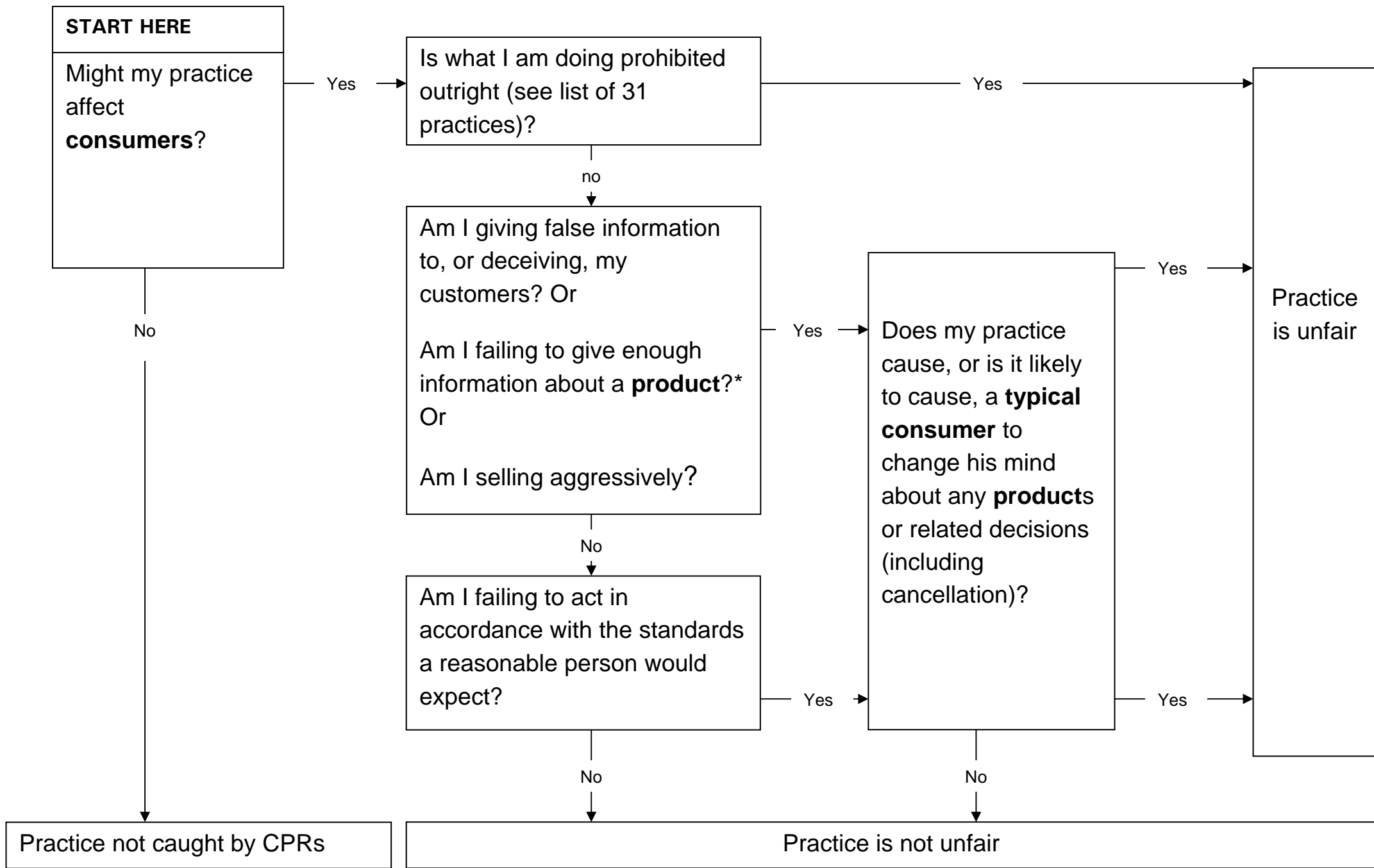
## Misleading and aggressive practices

- 3.5 Regulations 5-7 of the CPRs prohibit **commercial practices** which are misleading (whether by action or omission) or aggressive, and which cause or are likely to cause the **typical consumer** to take a different decision.

## Practices prohibited in all circumstances

- 3.6 Schedule 1 to the CPRs lists 31 **commercial practices** which are unfair in all circumstances and are prohibited.

In the text of the Guidance we use '**typical consumer**' to refer to each of three types of **consumer** ('average', 'average targeted' and 'average vulnerable'). These concepts are explained in the glossary. We use 'take a different decision' as shorthand for 'take a **transactional decision** that he would not have taken otherwise'. See the glossary entry for '**transactional decision**' for more details.



\*In certain situations (that is, where an invitation to purchase is made) certain specified information must always be provided.

## 4 SCOPE

### Practices affecting consumers

- 4.1 Broadly the CPRs apply to practices that may affect **consumers**. The CPRs sit alongside the existing system of contract law which remains unchanged.
- 4.2 The CPRs apply to business to **consumer 'commercial practices'**. These are actions or omissions by a **trader**, directly connected with the promotion, sale or supply of a **product** to or from **consumers**. **Products** include goods and services, rights and obligations, and range from simple **products** like an item of clothing to the services involved in complex processes such as buying a house.
- 4.3 Whilst most **commercial practices** will occur where a **trader** deals directly with **consumers**, for example where a **trader** sells a **product** to a **consumer**, acts or omissions which occur further up the supply chain may also constitute **commercial practices**. Any **commercial practice** that has the potential to affect **consumers** may therefore need to be assessed against the prohibitions in the CPRs.
- 4.4 The CPRs apply to **commercial practices** that occur before, during and after a transaction. Examples of **commercial practices** that occur after a transaction include actions related to debt collection, after sales, and the cancellation of an existing contract. This is because these practices are directly connected with the sale or supply of a **product**.

#### ***Examples:***

##### *1. Business to business practices with no potential to affect **consumers***

*A **trader** sells specialist tractor parts to businesses only. As **consumers** do not buy his products, the **trader** does not need to consider compliance with the CPRs.*

2. *Business practices with the potential to affect both **consumers** and **businesses***

*A **trader** sells spare computer parts over the internet. He sells a range of different **products**. The **trader** needs to consider compliance with the CPRs if **consumers** may buy the **products**.*

3. *Any aspect of a business to business practice that is directly connected to the sale of **products** to **consumers***

*A **trader** makes and sells processed cheese slices to supermarkets. Although the **trader** does not sell directly to **consumers**, any labels he produces must be compliant with the CPRs as they are directly connected with the promotion and sale of the cheese slices to **consumers**<sup>4</sup>.*

4. *Business practices where the **product** is sold by the **consumer** to the **trader***

*A **trader** makes statements about the value of a car he intends to purchase from a **consumer**. These statements would need to comply with the CPRs.*

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<sup>4</sup> Other legislation also applies to the labelling of food products. Traders must comply with all relevant legislation, not just the CPRs.

## 5 ASSESSING UNFAIRNESS

### Conduct and effect

- 5.1 There are 31 **commercial practices** listed in Schedule 1 to the CPRs which, because of their inherently unfair nature, are prohibited in all circumstances. Evidence of their effect, or likely effect, on the **typical consumer** is not required in order to prove a breach of one of these outright prohibitions.
- 5.2 By contrast, for a **commercial practice** to be a breach of any of the other prohibitions in the CPRs the **trader** must exhibit the conduct specified in the prohibition, and the practice must have or be likely to have an effect on the behaviour of the **typical consumer**. To assess the effect, or potential effect, of the conduct it is necessary to consider the concepts of **typical consumer** and **transactional decision**, which are explained in the glossary.
- 5.3 The table summarises the type of conduct to which each of the prohibitions applies, and (where applicable) the effect on **consumers** that will make such conduct unfair. Please see the relevant chapters for explanations of the terms used in this table.

Regulation	Conduct	Effect	
<b>Regulation 3</b>	Contrary to the requirements of <b>professional diligence</b>	<b>AND</b>  (Likely to) appreciably impair the <b>typical consumer's</b> ability to make an informed decision	<b>AND</b>  (Likely to) cause the <b>typical consumer</b> to take a <b>transactional decision</b> they would not have taken otherwise
<b>Regulation 5</b>	False or deceptive statement in relation to a specific list of key factors		
<b>Regulation 6</b>	Omission of material information		
<b>Regulation 7</b>	Aggressive practice by harassment, coercion or <b>undue influence</b>	<b>AND</b>  (Likely to) significantly impair the <b>typical consumer's</b> freedom of choice or conduct	
<b>Schedule 1</b>	One of 31 specified practices	<b>DOES NOT APPLY</b>  (No impairment or <b>transactional decision</b> tests)	

## 6 BANNED PRACTICES (SCHEDULE 1)

### Outright prohibitions

6.1 Schedule 1 to the CPRs lists 31 **commercial practices** which are considered unfair in all circumstances and which are prohibited.<sup>5</sup> There is no need to consider the likely effect on **consumers**. The text that follows lists these banned practices and provides some illustrative examples.

(1) Claiming to be a signatory to a **code of conduct** when the **trader** is not.

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

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

*A member of the (voluntary) Pure Water Code displays the code logo in his shop and on his advertising materials and claims beside the logo that the code is 'approved by the Office of Fair Trading'. The code has not been approved. This would breach the CPRs.*

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

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<sup>5</sup> The prohibition is contained in regulations 3(1) and 3(5)(d) of the CPRs

*A plumber claims that he is a member of the CORGI<sup>6</sup> when he is not. This would breach the CPRs.*

(5) 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 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 (bait advertising).

*A camera firm advertises nationally using the line 'Digital cameras for £3'. They had only ever planned to have a very small number of such cameras available at that price. This would breach the CPRs because the number of cameras actually available for £3 would not be sufficient to meet the likely level of demand arising from the scale of the advertising and the **trader** knew this but failed to make it clear in the advertisement.*

(6) Making an **invitation to purchase products** at a specified price and then:

- (a) refusing to show the advertised item to **consumers**
- (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** (bait and switch).

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<sup>6</sup> Council for Registered Gas Installers

*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 CPRs.*

(7) 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) 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 EEA 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 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 CPRs.*

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

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

*A stationer sells pens. He advertises on the following basis: 'Pens for sale. If they don't work I'll give you your money back or replace them. You won't find this offer elsewhere'. If the pen is faulty at the time of purchase the **consumer** would be entitled to a refund, repair or*

*replacement under contract law. The **trader**'s emphasis on the unique nature of his offer to refund or replace would breach the CPRs.*

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

*A magazine is paid by a holiday company for an advertising feature on their luxury Red Sea diving school. The magazine does not make it obvious that this is a paid-for feature – for example by clearly labelling it 'Advertising Feature' or 'Advertorial'. This would breach the CPRs.*

(12) 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**.

*A **trader** selling video door entry systems tells potential customers 'There have been a lot of doorstep muggings in your street recently. There is clearly a gang at work in this area, and you will probably be mugged on your doorstep too, before very long, unless you purchase one of my door entry systems now'. If the risk of doorstep mugging is materially exaggerated the statement would breach the CPRs.*

(13) 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 CPRs.*

(14) 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**.

*A **trader** operates a holiday club which offers **consumers**, on payment of a membership fee, the opportunity of earning large amounts of money by recruiting new members to the club. The other benefits of club membership are negligible compared to the potential rewards of earning commission for introducing new members. This practice would breach the CPRs.*

(15) Claiming that the **trader** is about to cease trading or move premises when he is not.

*A **trader** runs a clothes shop. He puts up a sign in the shop window stating: 'Closing down sale'. Unless the shop was genuinely closing down this would breach the CPRs.*

(16) 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 CPRs.*

(17) Falsely claiming that a **product** is able to cure illnesses, dysfunction or malformations.

*A **trader** sells orthopaedic beds to the elderly with the advertisement 'Cure your backache once and for all with my special beds'. If untrue, his definitive statement about the curing effects of his **product** would breach the CPRs. The court may order the **trader** to substantiate such a claim in proceedings.*

(18) 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.

*An estate agent tells a **consumer** that he has recently sold several houses in the same area, just like the one the **consumer** is viewing, at a certain price. If this is not true and he is making the claim in order to persuade the **consumer** to buy at an inflated price, the estate agent would breach the CPRs.*

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

*A **trader** operates a scratch-card prize promotion with a top prize of £10,000. In fact, he does not print any cards that win this top prize (or does print the cards but does not make them available). As this would mean that no prizes of £10,000 could be awarded, this would breach the CPRs.*

(20) 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.

*A **trader** advertises a 'free' gift. He then tells **consumers** that in order to receive their 'free' gift they need to pay an extra fee. This would breach the CPRs.*

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

*A **trader** sends letters to **consumers** with his marketing material which are or closely resemble invoices for **products** that have not been ordered. This would breach the CPRs.*

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

*A second-hand car dealership puts a used car on a nearby road and displays a handwritten advert reading 'One careful owner. Good family run-around. £2000 or nearest offer. Call Jack on 01234 56789'. The sign gives the impression that the seller is not selling as a **trader**, and hence this would breach the CPRs.*

(23) Creating the false impression that after-sales service in relation to a **product** is available in an EEA State other than the one in which the **product** is sold.

(24) Creating the impression that the **consumer** cannot leave the premises until a contract is formed.

*A holiday company advertise sales presentations at hotels. During the presentations, intimidating doormen are posted at all the exits, creating the impression that the **consumers** cannot leave before buying. This would breach the CPRs.*

(25) Conducting personal visits to the **consumer's** home ignoring the **consumer's** request to leave or not to return except in circumstances and to the extent justified<sup>7</sup> to enforce a contractual obligation.

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<sup>7</sup> Allowed actions would include legitimate debt collection or asset recovery in line with the rules governing such actions.

*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 CPRs.*

(26) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified<sup>8</sup> to enforce a contractual obligation.

*A direct seller calls **consumers** to sell them **products**, but does not record when **consumers** have explicitly asked to be removed from their contact lists. The **trader** calls back all **consumers** several times, including those who have asked him not to. This would breach the CPRs.*

*Note that a **consumer** who has signed up to the Telephone Preference Service should be regarded as a **consumer** who does not want unsolicited telephone calls (that is this would fulfil the 'unwanted' part of the prohibited practice).*

(27) 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 contractual rights.

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<sup>8</sup> Allowed action would include, for example, debt collection. Collectors must, however, comply with CPRs, as well as the Consumer Credit Act 1974 – on which the Office of Fair Trading has issued guidance: *Debt collection guidance* OFT 664

(28) 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.

*Advertising a comic book for children stating 'read about the adventures of Fluffy the Bunny in this new comic book each week – ask your mum to buy it from your local newsagents'. This would breach the CPRs.*

(29) 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 (inertia selling).<sup>9</sup>

*A **trader** writes to **consumers** informing them of a new grease eradicating dishcloth which he is selling for £2.99. In the letter the **trader** encloses one of the cloths for the **consumer** to inspect and says that if the **consumer** does not return the cloth within 7 days then action will be taken to collect the £2.99. This would breach the CPRs.*

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

(31) 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:

- (a) there is no prize or other equivalent benefit, or

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<sup>9</sup> S.I. 2000/2334

(b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the **consumer** paying money or incurring a cost.

*A **trader** sends letters to **consumers** which, at the top of the letter in large characters, state: 'You have won our top prize of £3,000.' This is false – only the small print on the back of the letter mentions that the **consumer** must spend £100 on their **products** before being entered into a draw for the money. This would breach the CPRs.*

## 7 MISLEADING PRACTICES (REGULATIONS 5 AND 6)

- 7.1 The CPRs prohibit misleading actions and misleading omissions (as detailed in Regulations 5 and 6),<sup>10</sup> which cause or are likely to cause the **typical consumer** to take a different decision.
- 7.2 A practice can mislead by action or omission or both. These prohibitions aim to ensure that **consumers** get from **traders**, in a clear and timely fashion, the information they need to make informed decisions relating to **products**. In addition, in some **commercial practices** (referred to as 'invitations to purchase') certain specific information must be given to **consumers**.

### Misleading Actions (Regulation 5)

#### Giving false information to, or deceiving, customers

- 7.3 A misleading action occurs when a practice misleads through the information it contains, or its deceptive presentation, and causes or is likely to cause the **typical consumer** to take a different decision.
- 7.4 For instance, if a **trader** falsely tells a **consumer** that his boiler cannot be repaired and he will need a new one, he will have committed a misleading action.
- 7.5 The CPRs specify three types of misleading actions:
- misleading information generally
  - creating confusion with competitors' **products**

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<sup>10</sup> The prohibitions are contained in Regulations 3(1), 3(5)(a) and 3(5)(b) of the CPRs.

- failing to honour firm commitments made in a **code of conduct**.

## Misleading information generally

7.6 These are actions that mislead by:

- containing false information OR deceiving or being likely to deceive the **typical consumer** (even if the information they contain is factually correct),<sup>11</sup>

AND

- the false information, or deception, relates to one or more pieces of information in a (wide-ranging) list (see below),

AND

- the **typical consumer** takes, or is likely to take, a different decision as a result.

7.7 The list of information mentioned above includes the main factors **consumers** are likely to take into account in making decisions relating to **products**, for example the main characteristics of the **product** and the price or the way it is calculated. The full list is below:

- (a) the existence or nature of the **product**
- (b) the main characteristics of the **product**
- (c) the extent of the **trader's** commitments

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<sup>11</sup> The deception can occur in any way, including in the overall presentation of the **commercial practice**.

- (d) the motives for the **commercial practice**
- (e) the nature of the sales process
- (f) any statement or symbol relating to direct or indirect sponsorship or approval of the **trader** or the **product**
- (g) the price or the manner in which the price is calculated
- (h) the existence of a specific price advantage
- (i) the need for a service, part, replacement or repair
- (j) the nature, attributes and rights of the trader or his agent
- (k) the **consumer's** rights or the risks he may face.

The 'main characteristics of the **product**' include:

- (a) availability of the **product**
- (b) benefits of the **product**
- (c) risks of the **product**
- (d) execution of the **product**
- (e) composition of the **product**
- (f) accessories of the **product**
- (g) after-sale customer assistance concerning the **product**
- (h) the handling of complaints about the **product**
- (i) the method and date of manufacture of the **product**

- (j) the method and date of provision of the **product**
- (k) delivery of the **product**
- (l) fitness for purpose of the **product**
- (m) usage of the **product**
- (m) quantity of the **product**
- (n) specification of the **product**
- (o) geographical or commercial origin of the **product**
- (p) results to be expected from use of the **product**, and
- (q) results and material features of tests or checks carried out on the **product**.

The 'nature, attributes and rights of the **trader** or his agent' include:

- (a) identity
- (b) assets
- (c) qualifications
- (d) status
- (e) approval
- (f) affiliations or connections
- (g) ownership of industrial, commercial or intellectual property rights, and
- (h) awards and distinctions.

- 7.8 The '**consumer's** rights' include rights the **consumer** may have under Part 5A of the Sale of Goods Act 1979<sup>12</sup> or Part 1B of the Supply of Goods and Services Act 1982.<sup>13</sup>

**Examples:**

*A **trader** tries to sell a **consumer** a satellite television package. The **consumer** is falsely told that the package includes sports channels, which are in fact only available at an additional subscription cost. The **trader** has provided false information about the 'main characteristics of the **product**' (in this case, the contents of the package). As this practice is likely to cause the **typical consumer** to take a different decision about the package – for example to buy it where otherwise he would not - it will breach the CPRs.*

*A **trader** advertises televisions for sale saying the price has been substantially discounted. In fact, they have only been on sale at the non-discounted price in very small numbers for a very short period of time in one of the **trader's** numerous shops. Whilst the **trader's** advertisement may be factually correct, it is likely nonetheless to be deceptive. The **typical consumer** would have been deceived about the existence of a specific price advantage in a way that is likely to cause him to take a different decision about the television – in this case to buy it.*

- 7.9 The Code of Practice for Traders on Price Indications currently provides very prescriptive advice on how not to give a misleading price indication. The code is being re-written to reflect the requirements of the UCPD which will clarify its status as non-statutory guidance. The DTI is aiming

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<sup>12</sup> 1979 c.54.

<sup>13</sup> 1982 c.29.

to consult on the re-written code later in 2007, and publish a revised code before the end of the year.

## Creating confusion with competitors' products

7.10 **Commercial practices** are also prohibited as misleading actions if they:

- market a **product** in a way which creates confusion with any **products**, trade marks, trade names or other distinguishing marks of a competitor,

AND

- the **typical consumer** takes, or is likely to take, a different decision as a result.

### *Example:*

*A **trader** names or brands his new sunglasses so as to very closely resemble the name or brand of a competitor's sunglasses. If the similarity is such as to confuse the **typical consumer** making him more likely to opt for the new sunglasses when he otherwise would not, this would breach the CPRs.*

## Failing to honour firm commitments made in a code of conduct

7.11 The third category of **commercial practices** prohibited as misleading actions is those where:

- the **trader** has undertaken to be bound by a **code of conduct** (or code of practice), and indicates that he is bound by it,

AND

- the **trader** fails to comply with a firm and verifiable commitment in that code,

AND

- the **typical consumer** takes, or is likely to take, a different decision as a result.

**Example**

*A **trader** is a member of a code of practice that promotes the sustainable use of wood and uses the code's logo in an advertising campaign. The code of practice contains a commitment that its members will not use hardwood from unsustainable sources. However, it is found that the **product** advertised by the **trader** contains hardwood from endangered rainforests. This practice is a breach of a firm and verifiable commitment. As the **typical consumer** would expect code members to sell **products** which comply with their code, and is likely to decide to buy them on this basis, this practice would breach the CPRs.*

## Misleading Omissions (Regulation 6)

### Giving insufficient information about the product

7.12 Practices may also mislead by failing to give **consumers** the information they need to make an informed choice (in relation to a **product**). This occurs when practices:

- omit or hide material information, or provide it in an unclear, unintelligible, ambiguous or untimely manner,

AND

- the **typical consumer** takes, or is likely to take, a different decision as a result.

7.13 A misleading omission can also occur where a **trader** fails to identify the commercial intent of a practice, if it is not already apparent from the context. The presence of a price, or of a statement making it clear that

the practice is commercial (for example: 'this is an advertisement'), are examples of how commercial intent could be made clear.

- 7.14 When deciding whether a practice misleads by omission, the courts will take account of the context.<sup>14</sup>

## Material information

- 7.15 Material information is information that the **typical consumer** needs, in the context, to make informed decisions. It includes any information required by European derived (EC) law, such as the Package Travel, Package Holidays and Package Tours Regulations<sup>15</sup> and the Consumer Protection (Distance Selling) Regulations.<sup>16</sup>
- 7.16 What information is required will depend on the circumstances, for example what the **product** concerned is, and where and how it is offered for sale. This may range from a very small amount of information for simple **products**, to more information for complex **products**.
- 7.17 Where the required information is apparent from the context then **traders** do not need to provide it separately. An example of information which is likely to be apparent from the context will be the address of a shop which the **consumer** is already in.

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<sup>14</sup> See the section on 'context' later in this chapter for more information on how this might work in practice.

<sup>15</sup> SI 1992/3288

<sup>16</sup> SI 2000/2334

7.18 Material information can include any information which causes or is likely to cause the **typical consumer** to take a different decision about the **product**.

**Examples:**

*A **trader** omits to mention a minimum contract length or continuing purchase requirements, this would probably be a material omission.*

*A **trader** advertises mobile phones for sale. If the phones were second hand and/or had been reconditioned, this would be material information, which would need to be made clear to **consumers**.*

## **Context**

7.19 There may be some information that is not expressly included in the practice but which is apparent from the context. Its omission would not be regarded as misleading.

7.20 Consideration of the context includes any limitations of the communication medium used (of space or time) that make it impractical to give the necessary information. In such circumstances, if other means have been used by the **trader** to convey this information, these will be relevant.

**Example:**

*A **trader** sells cereal bars. On their wrappers the **trader** advertises a 't-shirt for £1' offer. In fact, various conditions apply (such as restrictions on the availability of the t-shirts). The outside of the wrapper is too small to include all of this information. The **trader** is less likely to commit a misleading omission if he makes clear on the wrapper that terms and conditions apply and provides details of where they can be found.*

## Invitations to purchase

- 7.21 The CPRs make special provision for certain kinds of **commercial practice** known as '**invitations to purchase**'.<sup>17</sup> They specify information that **traders** must provide in **invitations to purchase**. Where information is required but not provided, this will be a misleading omission.
- 7.22 So, where **traders** make **invitations to purchase** they will need to ensure that their **commercial practices** include the information required by the CPRs. They should also be aware that **commercial practices** may still be misleading regardless of whether they are **invitations to purchase** or not.

## Identifying an invitation to purchase

- 7.23 An **invitation to purchase** has the following elements:
- it is a commercial communication, and
  - it indicates characteristics of the **product** concerned and the price, in a way appropriate to the communication medium used, and
  - it thereby enables the **consumer** to make a purchase.
- 7.24 An advertisement which does not, for example, include a price, is not an **invitation to purchase**.
- 7.25 The following will normally be **invitations to purchase** where the **product's** price and characteristics are given:

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<sup>17</sup> The CPRs concept of '**invitation to purchase**' is not the same as the UK concept of 'invitation to treat'.

- *an advert in a newspaper where part of the advert is an order form that can be sent to the **trader***
- *an interactive TV advert through which orders can be directly placed*
- *a page or pages on a web site where **consumers** can place an order*
- *a menu in a restaurant from which **consumers** can place an order*
- *a text message promotion to which **consumers** can directly respond in order to purchase the promoted **product**.*

7.26 By contrast, a billboard showing a car without a price will not be an **invitation to purchase**. In many cases, adverts which promote a **trader's** 'brand' rather than any particular **product(s)** will not be invitations to purchase.

### **Required (material) information**

7.27 The CPRs deem certain information to be 'material' where **traders** make **invitations to purchase**. Subject to the same considerations about the context and the limitations of the communication medium as apply to misleading omissions generally (see paragraphs 7.19 and 7.20), that information must be provided in a clear, unambiguous, intelligible and timely manner.

7.28 Information that is deemed to be material in **invitations to purchase** is set out in Regulation 6(4), which is summarised below:

- the main characteristics of the **product** – for example, what it is and what it does – to the extent appropriate to the medium used by the **invitation to purchase** and the **product**
- the identity (such as any trading name) and geographical address of the **trader** or **traders** (so that the **consumer** can tell who and where the **trader** is)

- the price of the **product** (including taxes) or, where the price cannot be reasonably calculated in advance, the way it will be calculated
- any freight, delivery or postal charges, or, where these cannot reasonably be calculated in advance, the fact that such charges may be payable
- any arrangements for payment, delivery, performance (that is the way in which any work is to be carried out, or a service provided) and complaint handling that differ from **consumers'** reasonable expectations
- the existence of any cancellation rights.

This is in addition to any other information the **typical consumer** needs, in the context, to make informed decisions and any other information required under other Community law provisions.

## Examples of invitations to purchase

7.29 The following are examples of how the information listed in Regulation 6(4) might be provided in differing types of **invitation to purchase**:

### ***Pencil***

*A shop has a number of pencils for sale and displays the price. This is an **invitation to purchase** because the information given in the context of a shop enables the **consumer** to make a purchase (by taking the pencil to the till and paying for it).*

*The material information required is provided on the pricing label or is already apparent from the context. The main characteristics of the **product** – such as the colour or thickness of the lead - are apparent from looking at it. The **trader** trades under his own name and is based in the shop (the address), the price is given, there are no arrangements for payment, delivery, performance or complaint handling that differ from*

those that **consumers** would reasonably expect. There are no omissions of cancellation rights or information requirements under other Community law provisions.

### **Mail order advert**

An advert in a magazine features T-shirts for sale. The prices and sizes of the T-shirts available are given in the advert, and the bottom half of the advert is an order form which can be filled in, with payment enclosed, and sent direct to the retailers. This would be an **invitation to purchase**.

The main characteristics of the **product** are included in the advert – such as the size, material, colour, and washing/cleaning instructions. The **trader's** identity is stated in the advert, as is his geographical address. So, too, are payment and delivery arrangements. The advert also mentions the **consumer's** entitlement to cancel any order and the period for which the advertised price would be valid, given this is a contract concluded by mail order and the Distance Selling Regulations apply.

### **Car**

A car showroom has a used car on display for sale. The price is shown clearly on the car. This (the car and the price) would be an **invitation to purchase**, given the (showroom) context.

The main characteristics of the **product** are included in the sales card or are already apparent from the context, such as the make, model, mileage, colour and other physical characteristics of the car. The **trader's** identity is apparent from information in the showroom, the price is given on a sign on the car and there are no arrangements for payment, delivery, performance or complaint handling, that differ from those **consumers** would reasonably expect. The car can be purchased and taken from the showroom, and returned there if complaints arise. There

*are no omissions of cancellation rights or information requirements under other Community law provisions.*

### **Computer**

*A **trader** sells computers from his website. The site's homepage pictures the range of computers sold by the **trader**. Each picture provides a link to a detailed page which gives the characteristics of the relevant computer and that page also gives its price and has a 'buy now' button (by clicking on which the computer may be purchased). This detailed page is an **invitation to purchase**.*

*On separate pages on the website that can be reached via a clearly-indicated link on the detailed page, are:*

- *the main characteristics of the computer (for example the processor, memory, graphics, software and accessories) including its function (for example 'home multimedia' or 'games package'),*
- *the full price (inclusive of taxes and any freight or delivery charge) if this was not given on the previous page,*
- *the **trader**'s name and geographic address,*
- *the delivery and payment arrangements as well as the complaints/after sales procedures, and*
- *since the computer is being sold over the internet, information required by the E-Commerce Regulations<sup>18</sup> and Distance Selling Regulations, including cancellation rights.*

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<sup>18</sup> SI 2002 No. 2013

## 8 AGGRESSIVE COMMERCIAL PRACTICES (REGULATION 8)

8.1 The CPRs also prohibit aggressive **commercial practices** (as detailed in Regulation 7).<sup>19</sup> These are practices that, in the context of the particular circumstances, 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 **typical consumer** to take a different decision.

### Prohibition on aggressive practices

8.2 The CPRs prohibit **commercial practices** which:

- by harassment, coercion (including physical force) or **undue influence**
- significantly impair, or are likely to significantly impair, the **typical consumer's** freedom of choice or conduct concerning the **product**

AND

- The **typical consumer** takes, or is likely to take, a different decision as a result.

These elements are described below.

### Harassment, coercion and undue influence

8.3 Harassment and coercion are not expressly defined in the CPRs but include both physical and non-physical, (including psychological) pressure.

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<sup>19</sup> The prohibition is contained in Regulations 3(1) and 3(5)(c).

8.4 **Undue influence** is defined in the CPRs as:

*'exploiting a position of power in relation to the **consumer** so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the **consumer**'s ability to make an informed decision'*

*An example of this might be a mechanic who has a **consumer**'s car at his garage and has done more work than agreed, and who refuses to return the car to the **consumer** until he is paid in full for the work. The mechanic did not check with the **consumer** before he went ahead with the extra work. As he has the car, he has power over the **consumer**'s decision to pay for the unauthorised work. He has exploited his position of power, by demanding payment for doing more than was agreed and refusing to return the vehicle until the **consumer** has paid for all the work.*

See the glossary for more information.

### **Significant impairment or limitation**

8.5 The CPRs refer to practices that 'significantly impair' and those that 'significantly limit' decisions (the latter is in the definition of **undue influence**). These are likely to have a very similar meaning and both will depend on the context.

8.6 Significant impairment might occur when, for example, a **trader** stays in a **consumer's** home for so long that they feel compelled to sign a contract for a **product**.<sup>20</sup>

### Freedom of choice or conduct

8.7 The concept of freedom of choice is not limited solely to decisions about whether to purchase a **product** or not. It covers a wide range of choices that are likely to impact on **transactional decisions**.

8.8 For example, coercion might cause **consumers** to purchase the **product** at a much higher price or on disadvantageous terms. Breaches of the CPRs could occur even if:

- **consumers** might still have bought the **product** from the same **trader**, but on different terms
- **consumers** might still have bought the **product**, but from a different **trader**.

### Factors indicating an aggressive practice

8.9 The CPRs list factors which are taken into account when determining whether a **commercial practice** is aggressive. It is not necessary for all or any of these factors to be present for a practice to be aggressive, and therefore unfair (provided that the **commercial practice** uses harassment, coercion or **undue influence**).

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<sup>20</sup> This practice could also breach paragraph 25 of Schedule 1 to the Regulations, the list of practices that will always be unfair – 'Conducting personal visits to the **consumer's** home 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'.

8.10 The factors are:

- (a) Timing, location, nature or persistence
- (b) The use of threatening or abusive language or behaviour
- (c) The exploitation by the **trader** of any specific misfortune, or circumstance, of such gravity as to impair the **consumer's** judgment, of which the **trader** is aware, to influence the **consumer's** decision with regard to the **product**
- (d) Any onerous or disproportionate non-contractual barriers imposed by the **trader** where a **consumer** wishes to exercise rights under the contract, including rights to terminate a contract or switch to another **product** or **trader**
- (e) Any threat to take any action that cannot legally be taken.

### **Possible aggressive practices**

8.11 The examples below assume that the **typical consumer** would or would be likely to take a different decision as a result of the practice(s) described.

*Staff working in a funeral parlour put pressure on a recently bereaved relative, who is deciding on a coffin, to buy a more expensive coffin as a better mark of respect. This could amount to coercion or **undue influence**. (Exploitation of specific misfortune, and timing.)*

*A **trader** takes **consumers** to a holiday club presentation at a distant location, with no apparent return journey unless the **consumers** sign a contract. These practices could amount to coercion and/or **undue influence**. (Nature/location).*

*A doorstep **trader** pressures a **consumer** to pay in cash for home repairs immediately. He insists on giving the **consumer** a lift to the bank to*

*withdraw the money. This could amount to coercion or **undue influence**. (Nature, persistence, location).*

*A debt collector<sup>21</sup> pressurises existing borrowers/debtors to raise further funds via increased borrowing or sale of personal assets by, for example, contacting debtors at unreasonable times (such as late at night) or at unreasonable locations (such as at work when they have been requested not to). This could amount to harassment, coercion or **undue influence**. (Timing, persistence, nature and location, exploitation of circumstances – this might amount to exploitation of the imbalance of power between the creditor and debtor, as well as of the specific circumstances of the debtor).*

*A debt collector threatens **consumers** with recovery of money by bailiffs for unenforceable debts.<sup>22</sup> This could amount to harassment, coercion or **undue influence**. (Exploitation of circumstances and threat to take action which cannot legally be taken).*

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<sup>21</sup> Additional examples of unfair (including aggressive) debt collection practices can be found in the OFT's *Debt Collection Guidance* – OFT 664

<sup>22</sup> This could also breach the prohibitions on misleading actions as well as the prohibition on aggressive practices.

## 9 GENERAL PROHIBITION OF UNFAIR COMMERCIAL PRACTICES (REGULATION 3)

### Failing to act in accordance with reasonable expectations of acceptable trading practice

- 9.1 Regulations 3(1) and 3(3) of the CPRs set out the general prohibition on unfair business to **consumer commercial practices**, also known as the general duty not to trade unfairly. This prohibition allows enforcers to take action against unfair **commercial practices**, including those that do not fall into the more specific prohibitions of misleading and aggressive practices, or into the very specific banned practices. This means it acts as a safety net. It is designed to 'future-proof' the protections in the CPRs, by setting standards against which all existing and new practices can be judged.

#### General prohibition

- 9.2 The general prohibition is made up of two tests. It prohibits practices that:
- contravene the requirements of **professional diligence**
- AND
- materially distort the economic behaviour of the **typical consumer** with regard to the **product** (or are likely to).
- 9.3 The first test is concerned with the conduct itself, that is the standards of the **trader's** practice. The second is concerned with the actual or likely effect the practice has on the **typical consumer's** economic behaviour.

## Test 1: Professional diligence

9.4 **Professional diligence** is defined (in Regulation 2) as:

*'the standard of special skill and care which a **trader** may reasonably be expected to exercise towards **consumers** which is commensurate with either – (a) honest market practice in the **trader's** field of activity, or (b) the general principle of good faith in the **trader's** field of activity, or both.'*

9.5 **Professional diligence** is an objective standard which will vary according to the context. The word 'special' is not intended to require more than would reasonably be expected of a **trader** in their field of activity. However, poor current practice that is widespread in an industry/sector cannot amount to an acceptable objective standard. That is because this is not what a reasonable person would expect from a **trader** who is acting in accordance with honest market practice and/or good faith.

9.6 The CPRs do not define honest market practice or good faith. They are similar and overlapping principles. They require **traders** to approach transactions professionally and fairly as judged by a reasonable person.

9.7 Guidance and codes of practice, including OFT-approved codes, may be drawn upon to help establish whether a **trader** is behaving professionally diligently. However, complying with these codes and Guidance may not be necessary, or, alternatively, sufficient of itself in order for a **trader** to be professionally diligent.

## Test 2: Material distortion

9.8 **Material distortion** is defined (in Regulation 3) as:

*'appreciably to impair the **typical consumer's** ability to make an informed decision thereby causing him to take a **transactional decision** that he*

*would not have taken otherwise'. It applies either when a practice distorts or is likely to distort **typical consumers'** behaviour.*

- 9.9 **'Material distortion'** means that a practice impairs the **typical consumer's** ability to make an informed decision. The impairment must be significant enough to change the decisions the **typical consumer** makes. This means that practices that do not affect, or are unlikely to affect, the economic behaviour of **typical consumers** are unlikely to be unfair under the general prohibition in the CPRs.
- 9.10 The CPRs define '**the typical consumer**' by reference to the concepts of the 'average' **consumer**, the 'average' member of a targeted group of **consumers** and the 'average' member of a vulnerable group of **consumers**. Different groups may react differently to the same practice. These concepts are discussed in the Glossary.

## 10 COMPLIANCE AND ENFORCEMENT

- 10.1 Local Authority Trading Standards Services (TSS), the Department of Enterprise, Trade and Investment in Northern Ireland and the Office of Fair Trading have a duty to enforce the CPRs. This does not mean that formal (civil or criminal) enforcement action must be taken in respect of each and every infringement. Instead, enforcers should promote compliance by the most appropriate means, in line with their enforcement policies, priorities and consistent with available resources.
- 10.2 Enforcers can use a range of tools to ensure that businesses are complying with CPRs. The main options, which are explained below, are:
- informal compliance mechanisms
  - established means
  - **codes of conduct**
  - civil enforcement
  - criminal enforcement.
- 10.3 When considering action under the CPRs enforcers will have regard to the following principles:
- action is necessary and proportionate
  - businesses are given a reasonable opportunity to put things right
  - proceedings are brought by the most appropriate enforcer
  - action is co-ordinated.

## Informal compliance mechanisms

- 10.4 These may include, for example, Guidance and education, as well as such informal mechanisms as advisory letters and discussions.

### 'Established means'

- 10.5 There are alternative well-founded and effective systems of regulation (including self-regulation) in place in the UK. If enforcers are satisfied that complaints and cases are clearly within the scope of these systems and can be adequately dealt with by them, they will be able to refer such complaints and cases to the relevant body (to ensure that businesses comply with the CPRs).
- 10.6 The Advertising Standards Authority (ASA) and the Independent Committee for the Supervision of Standards of the Telephone Information Services (ICSTIS) are considered to be established means in the areas described below, and, appropriate cases falling within their areas of expertise will usually be referred to them for action.
- 10.7 The ASA regulates all TV and radio advertisements under the Broadcast Committee of Advertising Practice (BCAP) TV Advertising Standards Code and the BCAP Radio Advertising Standards Code. The ASA regulates advertisements in non-broadcast media (for example print, posters, cinema, direct marketing and online, such as banner and pop-ups ads) under the Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). All of the Codes can be accessed at [www.cap.org.uk/cap/codes](http://www.cap.org.uk/cap/codes)
- 10.8 ICSTIS is responsible for regulating Premium Rate telephony services in the UK. Premium Rate Services can be defined as those which offer some form of content, product or service that is charged to a user's phone bill. ICSTIS regulates these services in their entirety – that is, content, promotion and overall operation.

## Note for Consultation purposes ONLY:

*The OFT, working with other enforcers will consider how other self-regulatory mechanisms could become established means in future.*

### Codes of conduct

- 10.9 Enforcers may, where appropriate as a means of seeking to prevent or stop breaches of the CPRs, enlist the help of those responsible for self-regulatory **codes of conduct**, or practice, adopted by businesses to govern their dealings with **consumers**. This would include a range of self-regulatory codes, and those approved by the OFT under its Consumer Codes Approval Scheme (CCAS).<sup>23</sup>
- 10.10 The CPRs prohibit **code owners** from using their codes to promote unfair **commercial practices**.
- 10.11 A **trader** who is a member of a self-regulatory **code of conduct** may breach the CPRs if he fails to comply with commitments in the code which are firm, capable of being verified, and not purely aspirational, when he has indicated in a **commercial practice** that he is bound by the code and **consumers' transactional decisions** are (likely to be) affected by this.

### Civil enforcement

- 10.12 Enforcers may take civil enforcement action in respect of any breach of the CPRs as Community Infringements (breaches of EU-derived legislation) under Part 8 of the Enterprise Act 2002. Currently, a number

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<sup>23</sup> More details on the OFT CCAS scheme can be found at:  
<http://www.offt.gov.uk/Codes/default.htm>

of bodies, including the OFT and TSS can take enforcement action in this way.<sup>24</sup>

10.13 Under this procedure, enforcers may apply to a court for an enforcement order to prevent Community or domestic infringements. Breach of an enforcement order could be contempt of court which could lead to up to two years' imprisonment and/or an unlimited fine.

10.14 Enforcers will normally seek to stop an infringement through consultation with the **trader** before applying to the court for an enforcement order. Instead of seeking an order, they may accept an undertaking from the **trader** not to continue or repeat the conduct constituting an infringement.

10.15 Further information on enforcement under Part 8 of the Enterprise Act 2002 is contained in the OFT's published Guidance on this subject.<sup>25</sup>

### **Traders offering credit**

10.16 There is likely to be some overlap of practices prohibited by the CPRs and the provisions relating to 'unfair relationships' introduced by the Consumer Credit Act 2006. Enforcement action in this area of overlap may be taken by reference to either or under both pieces of legislation. The OFT has published Guidance indicating how it expects the unfair

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<sup>24</sup> The full list of enforcers for Part 8 of the Enterprise Act 2002 can be found on the DTI's website, <http://www.dti.gov.uk/consumers/enforcement/orders/index.html> Details can also be found in the OFT's Guidance: *Enforcement of Consumer Protection Legislation – Guidance on Part 8 of the Enterprise Act* – OFT512

<sup>25</sup> This is available on the OFT website: <http://www.of.gov.uk>

relationships provisions to interact with Part 8 of the Enterprise Act 2002.<sup>26</sup>

## Consumer Protection Co-operation Regulation

10.17 The EC Regulation on Consumer Protection Co-operation (2006-2004) (CPC)<sup>27</sup> creates a network of public consumer protection enforcers (competent authorities) throughout the European Community.<sup>28</sup>

10.18 Within the European Community unfair practices should be dealt with by enforcers in the jurisdiction where the **trader** responsible for the practice is situated. The Regulation creates processes for such cases to be referred to the relevant body. Breaches of the CPRs and its equivalents in other Member States could result in cross-border referrals, both to and from the UK.

10.19 In the UK, the OFT is the Single Liaison Office, responsible for co-ordinating initial requests for information and referrals of cases.<sup>29</sup>

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<sup>26</sup> *Unfair relationships – enforcement action under Part 8 of the Enterprise Act* - OFT 854, also available on the OFT website: <http://www.of.gov.uk>

<sup>27</sup> Regulation (EC) No. 2006/2004 of the European Parliament and the Council of 27 October 2004.

<sup>28</sup> See OFT Guidance: *The EU Regulation on Consumer Protection Co-operation (the CPC) – on-site inspection powers OFT858*.

<sup>29</sup> A complete list of UK enforcers for the CPC can be found at:

[http://www.of.gov.uk/news/press/2007/3-07?bcsi\\_scan\\_A2018E0826464712=FXRI3npnhPIQafF5zhqLBwQAAAAjY2IA](http://www.of.gov.uk/news/press/2007/3-07?bcsi_scan_A2018E0826464712=FXRI3npnhPIQafF5zhqLBwQAAAAjY2IA)

## 11 CRIMINAL OFFENCES

11.1 The CPRs also contain criminal offences. These can be prosecuted by:

- the OFT
- TSS
- the Department of Enterprise, Trade and Investment in Northern Ireland.

11.2 The offences are:

- contravention of requirements of the general prohibition - see chapter 9 on the General Prohibition
- misleading actions (except 5(3)(b) – code commitments) - see chapter 7 on misleading Practices
- misleading omissions – see chapter 7 on Misleading Practices
- **invitations to purchase** – see chapter 7 on Misleading Practices
- aggressive practices – see chapter 8 on Aggressive Practices
- specific unfair **commercial practices** (Schedule 1) apart from 11 and 28 – see chapter 6 on Banned Practices.

11.3 The offences above are all strict liability offences, apart from contravention of the general prohibition, which requires *mens rea* (a legal term implying a mental element in the offence).

11.4 For strict liability offences it need only be shown that there has been a prohibited act or omission.

11.5 For a person to be convicted of a contravention of the general prohibition, which is a *mens rea* offence, it must also be shown that he

had a specified state of mind. The specified state of mind will be knowledge or recklessness in engaging in **commercial practices** which fail to comply with the requirement of **professional diligence**.

- 11.6 In the case of a prosecution for contravening the general prohibition, the mental element ('knowingly or recklessly') only needs to be shown in relation to contravention of 'the requirements of **professional diligence**'. It does not need to be shown in relation to the effect on the **typical consumer**, assessed using the **material distortion** and **transactional decision** concepts.

### **Bodies of persons**

- 11.7 Where a body corporate commits an offence with the consent or connivance of an officer of that body, both the officer and the body corporate can be prosecuted and punished. The same applies if the offence is attributable to neglect on the part of the officer. Where a Scottish partnership commits an offence with the consent or connivance of a partner or due to neglect on the part of a partner, both the partner and the partnership can be prosecuted and punished.

### **Act or default of another**

- 11.8 If a person commits an offence (other than a breach of the general prohibition) or would have done but for the defences discussed below, and this is due to the act or default of another person, that other person can also be charged with an offence under the CPRs, regardless of whether action is taken against the original offender. That other person may seek to rely on the defences discussed below.

### **Penalties**

- 11.9 The penalties are:

- on summary conviction, a fine not exceeding the statutory maximum<sup>30</sup>
- on conviction on indictment, a fine or imprisonment not exceeding two years or both.

## **Time limits**

11.10 Time limits for prosecution apply, either within three years of the offence taking place, or within one year of the discovery of the offence by the prosecutor, whichever is earlier.

## **Defences**

11.11 Breach of most of the prohibitions contained in the CPRs<sup>31</sup> means that an offence may have been committed, unless one of the following defences can be shown. The defences available for the strict liability offences are:

## **Due diligence**

11.12 The person accused must prove that the commission of the offence was due to a mistake, reliance on information given by another person, the act or default of another, an accident, or another cause beyond his control, and, in addition, that he took all reasonable precautions and exercised all due diligence to avoid committing the offence or to avoid someone under his control committing it. The enforcer prosecuting the offence must be given written notice of a defence based on the actions

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<sup>30</sup> This is currently (as of 2007) £5000.

<sup>31</sup> See above for the list of prohibitions which are covered by criminal offences.

of a third party seven days in advance of the hearing. It is not sufficient to show that due diligence procedures are in place, it is also necessary to show that they are applied in practice. Courts are likely to expect different standards of due diligence from businesses of different sizes.

- 11.13 The *mens rea* offence of breaching the general prohibition does not have the due diligence defence, because the offence already requires proof of a certain state of mind.

### **Innocent publication of advertisement** (including catalogues, circulars or price lists)

- 11.14 For offences under Regulations 9 (misleading actions), 10 (misleading omissions), 11 (aggressive commercial practices) and 12 (specific unfair commercial practices – that is the practices listed in paragraphs 1-10, 12-27, and 29-31 of Schedule 1 to the Regulations) the person accused must prove that he is a person whose business is to publish or arrange publication of advertisements, he received the advertisement in the ordinary course of business, and that he did not know and had no reason to suspect that the publication would amount to an offence.

- 11.15 The general prohibition does not have this defence.

### **Publication of commercial practices which are not advertisements**

- 11.16 Where a **commercial practice** occurs in a book, newspaper, magazine, film or programme the person accused must prove that the practice was not contained in or connected to an advertisement (including catalogues, circulars or price lists).

## **Examples**

### **Offence and Defence**

*A **trader** sells printer ink cartridges. Some of his cartridges are found to contain blue ink instead of the advertised black ink. This would probably amount to a misleading statement under the CPRs. However, if the **trader** could show he had taken all reasonable steps to ensure that the cartridges only contained black ink (possibly by demonstrating that his processes had high levels of quality assurance and safeguards), and that the blue ink had been a mistake, then he would be able to benefit from the due diligence defence and thus avoid prosecution.*

### **Mens Rea**

*A **trader** breaches the general prohibition by acting contrary to the requirements of **professional diligence** and distorting **consumer** decisions. In order to prosecute, enforcers would need to show that he had done so knowingly or recklessly. If the unfair practice was well known to be unfair, or unprofessional, then it would be easier to demonstrate that the **trader** engaged in it knowingly or recklessly.*

## 12 INVESTIGATIVE POWERS

- 12.1 The CPRs provide investigation powers for use by the OFT, TSS and the Department of Enterprise, Trade and Investment in Northern Ireland. These powers are modelled on those that exist at present for the enforcement of the Trade Descriptions Act 1968, although these have been modernised.<sup>32</sup>

### Testing of products

- 12.2 Enforcement officers have the power to check compliance with the CPRs by purchasing or securing the provision of **products**.

### Entry to premises

- 12.3 Enforcement officers can also enter premises under certain circumstances.
- 12.4 Enforcement officers are able at all reasonable hours and without a warrant:
- (a) To inspect goods, and to enter premises which are not used only as a dwelling, in order to ascertain whether a breach has been committed.
  - (b) To require **traders** to produce any documents relating to their business (including documents held on a computer), and to require that documents be produced in a legible form, if they have reasonable cause to suspect that a breach has been committed in order to ascertain whether this is the case.

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<sup>32</sup> See DTI [Draft] Regulations for more details.

(c) To seize and detain goods if they have reasonable cause to believe that a breach has been committed in order to ascertain, by testing or otherwise, whether this is the case.

12.5 Enforcement officers can also seize and detain goods or documents without a warrant if they have reason to believe these may be required as evidence in proceedings against a person for a breach. This power – along with that in (c) – may include the power to break open containers or require another person to do so.

12.6 Enforcement officers under a warrant are also able to enter premises that are dwelling premises. A warrant to enter premises (whether it be for a dwelling or non-dwelling premise) can only be granted by a justice of the peace who is satisfied that there are reasonable grounds for believing that the following conditions are met:

- there are goods or documents on the premises which an enforcement authority has power to inspect and their inspection is likely to disclose evidence of a breach of the CPRs, or a breach of the CPRs has been, is being, or is about to be committed on any premises, and
- either admission to the premises has been or is likely to be refused and a notice of intention to apply for a warrant has been given; or applying for admission or giving a notice of intention to apply for a warrant would defeat the object of the entry; or the premises are unoccupied; or the occupier is absent and it might defeat the object of the entry to await his return.

12.7 Should an enforcement officer enter premises under a warrant, they are required to produce the warrant to the occupier of the premises.

12.8 In entering any premises either with or without a warrant, an enforcement officer may take with him any persons and equipment that

he deems necessary. For example, the authorised officer may take portable computer equipment and tape recording equipment.

- 12.9 The powers set out above which are available to enforcement authorities relate to a breach of the CPRs and do not determine how the breach will be tackled – which could be either through criminal or civil means. Enforcers using these powers for criminal proceedings must however comply with the Police and Criminal Evidence Act 1984 and the accompanying codes of practice.<sup>33</sup>
- 12.10 Enforcement authorities are also obliged in specified circumstances to notify **traders** of the results of any test conducted on goods purchased or seized and detained pursuant to the inspection powers; and to compensate owners of goods seized who suffer loss because those goods are lost, damaged or deteriorate. The requirement to compensate owners only applies where there is no conviction obtained, injunction awarded or undertaking accepted by the enforcer.
- 12.11 Any intentional obstruction of an officer of an enforcement body, or making false statements to an officer, is a criminal offence.

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<sup>33</sup> See <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/> for more information.

## 13 GLOSSARY

- 13.1 This section provides definitions and explanations of concepts and words used in the CPRs. Most definitions can be found in Regulation 2 of the CPRs.

### Typical consumer

- 13.2 The CPRs define the **typical consumer** by reference to the concepts of the '**average**' consumer, the '**average member**' of a **targeted group of consumers**, and the '**average member**' of a **vulnerable group of consumers**. See the end of this chapter for information on these concepts.

### Commercial practices

- 13.3 The CPRs apply to **commercial practices**. These are defined as meaning 'any act, omission, course of conduct, representation or commercial communication (including advertising and marketing), by a **trader**, which is directly connected with the promotion, sale or supply of a **product** to or from a **consumer**, whether occurring before, during or after a commercial transaction in relation to a **product**'.
- 13.4 **Commercial practices** may include matters such as advertising, sales, supplies and post-contractual matters such as after-sales services and debt collection. They would also include businesses' practices where the business is buying a **product** from a **consumer**. They would include a representation by a **trader** in connection with the purchase of a used car from a **consumer**. The definition of a **product** is very broad – please see '**Product**', below.
- 13.5 A practice is governed by the CPRs if it is directly connected with the promotion, sale or supply of **products** to **consumers**. This means that although a **trader** may not be selling to **consumers** himself, he may still have to take into account the CPRs to the extent that a practice he

engages in is directly connected with the promotion, sale or supply of a **product to consumers**. See chapter 4 on Scope for more details.

## Code of conduct and code owner

- 13.6 The CPRs define a **code of conduct** as '*an agreement or set of rules (which is not imposed by legal or administrative requirements) which governs the behaviour of **traders** who undertake to be bound by it in relation to one or more **commercial practices** or business sectors*'.
- 13.7 A **code owner** is defined as '*a person who is responsible for – (a) the formulation and revision of a **code of conduct**; or (b) monitoring compliance with the code by those who have undertaken to be bound by it*'.
- 13.8 Please refer to the chapter on Compliance and Enforcement for further details of the role of codes in enforcing the CPRs.

## Consumer

- 13.9 The CPRs define a **consumer** as '*any individual who, in relation to **commercial practices** to which these Regulations apply, is acting for purposes which are outside his business*'.
- 13.10 Generally, breaches of the CPRs are assessed by reference to different types of **consumer** that might be affected by unfair practices. These are the 'average' **consumer**, the '**average member**' of a **targeted group** and the '**average member**' of **certain types of vulnerable groups**. See the end of this chapter for more information on these different types.
- 13.11 A sole **trader** or a partner in a firm would only benefit from the protection provided by the CPRs where, and to the extent that, he is acting for purposes unconnected to his trade, business, craft or profession.

## Invitation to purchase

- 13.12 The CPRs define an **invitation to purchase** as '*a commercial communication which indicates characteristics of the **product** and the price in a way appropriate to the means of that commercial communication and thereby enables the **consumer** to make a purchase*'.
- 13.13 These are certain types of commercial communication, including some advertising, where specified information must be given to **consumers**. See the chapter on Misleading Omissions for more detail.

## Material distortion

- 13.14 The CPRs define '*to materially distort the economic behaviour of the **typical consumer***' as '*appreciably to impair the **typical consumer**'s ability to make an informed decision, thereby causing him to take a **transactional decision** that he would not have taken otherwise.*'
- 13.15 This concept is relevant (only) in assessing potential breaches of Regulation 3. As is apparent from the definition, **material distortion** is comprised of an appreciable impairment test and a **transactional decision** test. See the chapter on the general prohibition of unfair **commercial practices** for more detail.

## Product

- 13.16 The CPRs define a **product** as '*any goods or service*' and includes immoveable property, rights and obligations.
- 13.17 This broad definition covers both physical and intangible things. For example: a pencil, a car, music purchased online, a right to use a caravan for a certain period, membership of a club and premium rate phone calls would all fall within the definition. Immoveable property is included, and so the CPRs apply to the practices of **traders** concerned

with the sale or lease of property to **consumers**. The provision of credit to **consumers** is also covered.

## Professional diligence

13.18 The CPRs define **professional diligence** as '*the standard of special skill and care which a **trader** may reasonably be expected to exercise towards **consumers** which is commensurate with either – (a) honest market practice in the **trader**'s field of activity, or (b) the general principle of good faith in the **trader**'s field of activity, or both.*'

13.19 A simple way of understanding **professional diligence** would be to ask: 'Is the **trader** acting to a standard that a reasonable person would expect?'

## Trader

13.20 The CPRs define a **trader** as '*any person who, in a **commercial practice** to which these Regulations apply, is acting for purposes relating to his business, and anyone acting in the name of or on behalf of a **trader***'.

13.21 This includes companies. It could also include individuals who regularly sell goods from their homes on the internet using auction web-sites. The assessment of whether or not the individual is acting as a **trader** will depend on whether or not the relevant activity is done in the course of business. An individual person selling goods on the internet, merely as a means by which to dispose of unwanted goods from time to time, would not be likely to fall within this definition.

13.22 Whether or not a person is a **trader** in any particular circumstance must be assessed on a case by case basis. When determining whether or not a person is acting as a **trader**, the courts are likely to take a number of factors into account, such as whether there is a profit-seeking motive, the number and frequency of transactions, and the time between the purchase and sale of **products**.

## Transactional decision

13.23 The CPRs define a **transactional decision** as '*any decision taken by a **consumer** whether to act or refrain from acting concerning – (a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a **product**, or (b) whether, how and on what terms to exercise a contractual right in relation to a **product***'.

This Guidance uses 'take a different decision' as a short-hand for a **transactional decision** that a **typical consumer** would not have taken otherwise.

13.24 '**Transactional decision**' is an important concept covering a wide range of decisions that have been or may be taken by **consumers** in relation to **products**. This is wide in chronological scope, covering decisions taken before, during and after a contract is formed, for example:

- whether to buy a **product**
- whether to pay a debt
- whether to exercise a cancellation right, a right to a refund or replacement, or a right in relation to an after-sales service.

## Undue influence

13.25 The CPRs define **undue influence** as '*exploiting a position of power in relation to the **consumer** so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the **consumer's** ability to make an informed decision*'.

13.26 When assessing whether a **commercial practice** is aggressive, enforcers will consider whether a **trader** has used harassment, coercion or **undue influence**.

13.27 **Undue influence** occurs when a **trader** exploits a position of power, so as to act in such a way as to significantly limit a **consumer's** ability to make informed choices. A **trader** may be in a position of power because of the particular expertise he has, or as a result of the particular circumstances of **consumers**, for example the **consumer** is indebted to the **trader**, or for some reason in fear of the **trader**. See the chapter on aggressive practices for further information.

## Typical consumers

This Guidance uses '**typical consumer**' elsewhere as a short-hand for each of the three types of consumer described below

13.28 Whether a **commercial practice** breaches the general prohibition and the prohibitions relating to misleading and aggressive practices will be judged by reference to the '**average consumer**', the '**average member**' of a **targeted group of consumers** and the '**average member**' of a **vulnerable group of consumers** (as appropriate). The concepts do not refer to actual **consumers**, and there is no requirement to show evidence of actual **consumers** being affected by an unfair **commercial practice**.

## Average consumer

13.29 It is the notional **average consumer** whom the **commercial practice** reaches or to whom it is addressed that is relevant. The concept of the **average consumer** has been developed in the case law of the European Court of Justice. The Court has indicated that the **average consumer** should generally be assumed to be reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors. 'Average' does not mean a statistically **average consumer**.

13.30 The **average consumer** may in some circumstances be determined by reference to a smaller group than the UK population as a whole, and

accordingly have characteristics that differ from those of an **average consumer** determined by reference to the whole UK population. For example, the **average consumer** of a Welsh language magazine could be expected to read Welsh. This could differ from the **average member of a targeted group** which might be Welsh language students, depending on the circulation and content of the magazine.

### **Average member of a targeted group of consumers**

13.31 The **average targeted consumer** will be relevant where a **commercial practice** is directed to a particular group of **consumers**. If a practice is targeted like this then it is the **average member** of that group and that member's characteristics which are relevant. Indications of whether a group is targeted might be found in the way advertising is placed, the language of a commercial communication, the nature of the **product** and the context. Examples are:

- *television adverts during children's programmes may be directed at children (and/or their parents)*
- *adverts for a particular type of credit **product** may be directed at 'non-status' or 'sub-prime' borrowers.*

### **Average member of a vulnerable group of consumers**

13.32 This is '*the **average member** of a clearly identifiable group of **consumers** who are particularly vulnerable to the **commercial practice** or to the underlying **product** because of their mental or physical infirmity, age or credulity in a way which the **trader** could reasonably be expected to foresee*'. This is provided that they '*are not particularly vulnerable to the **commercial practice** by reason only of that **commercial practice** being the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.*'

13.33 This offers protection to **consumers** who may be particularly vulnerable either to a **commercial practice** or to the underlying **product** and whose economic behaviour may, as a result of the **commercial practice** in question, be distorted. A **commercial practice** will be assessed from the perspective of an **average member** of that group whose vulnerability the **trader** could reasonably be expected to foresee. The test is objective. It is not necessary that the **trader** actually foresees the effect (or likely effect) on vulnerable **consumers**, only that he could reasonably have been expected to do so.

13.34 **Consumers** are only (within the meaning of the CPRs) treated as vulnerable, to a practice or to the underlying **product**, if they are vulnerable because of infirmity, age or credulity:

- *infirmity (mental or physical)*: This covers a range of infirmities including sensory impairment, limited mobility and other disabilities. For example, **consumers** who need to use wheelchairs might be a vulnerable group in relation to advertising claims about ease of access to a holiday destination or entertainment venue, or those with a hearing impairment may be a particularly vulnerable group in relation to advertising claims about 'hearing aid compatibility' in a telephone advert.
- *age*: It may be appropriate to consider a practice from the perspective of an older or younger **consumer**. For example, the elderly might be particularly vulnerable to certain practices connected with burglar alarm sales, or children might be particularly vulnerable to advertisements relating to toys shown on daytime television.
- *credulity*: This covers groups of **consumers** who may more readily believe specific claims.

# ANNEXES

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## A ILLUSTRATIVE EXAMPLES

- A.1 These examples are intended to show how the different prohibitions contained in the CPRs might be applied in practice. They illustrate that prohibitions can overlap and that it may be possible to find breaches of several different CPRs prohibitions within the same set of facts. They also show that the CPRs can be used to tackle key areas of detriment previously handled by other legislation as well as practices that were formerly difficult to take action against.
- A.2 The examples below deliberately show breaches of multiple prohibitions in order to illustrate different issues within each example. Not all the unfair practices mentioned in each example need to be present for there to be a breach of the CPRs. The examples may also constitute a breach of the general prohibition.
- A.3 The courts alone can decide if a practice is unfair, but these are illustrations of practices that are likely to be considered unfair.

### *Examples:*

*(1) A trader selling second hand cars displays for sale, on his forecourt alongside other second hand cars for sale, a second hand car which has been 'clocked' (that is, the odometer has been tampered with to show a reduced mileage). The odometer states that the car has travelled 25,000 miles. The car has actually travelled 125,000 miles.*

- *False information is given to **consumers** about a main characteristic of the **product** - that is the mileage that the car has travelled.*
- *The misleading statement could cause the **typical consumer** to take a different decision. For example to decide to buy the car at the indicated price. The **typical consumer** may be unlikely to buy the car at that price, or even at all, had he known its true mileage, given*

*that the value of a second hand car is generally determined, in part, by its past usage.*

- *Where it can be shown that the false information would cause or be likely to cause the **typical consumer** to take a different transaction decision, there will be a breach of Regulation 5.*
- *Where it can be shown that material information (in the context) was not provided and that this would cause the **typical consumer** to take a different decision, there will be a breach of Regulation 6.*
- *A breach arises even if the **trader** selling the vehicle was not responsible for the car being clocked. The clocking of the car itself is likely to breach Regulation 3, as tampering with the mileage cannot constitute honest market practice, and would almost certainly materially distort the **typical consumer**'s economic behaviour, causing him to take a different decision.*
- *If the **trader** had placed a disclaimer on the car, a breach could still occur if the disclaimer did not alter the impact of the misleading statement or omission sufficiently to stop the **typical consumer** from taking a different decision. Much will depend upon the actual circumstances, the wording of the disclaimer and the context in which it is applied. In any case the **trader** must not mislead the **consumer**, either by false information or by the lack of material information.*

*(2) A trader whose business is carrying out home improvement work 'cold calls' potential customers and attempts to sell his services to them on their doorstep. During the course of his sales pitch, the **trader** refuses to leave when **consumers** ask him to. He also uses threatening language and behaviour in an attempt to intimidate **consumers** into accepting his services or agreeing his terms of service. In addition, the **trader** starts work without the explicit permission of the **consumer** as a means of pressurising them to accept, and pay for, his services. The*

*trader* also tells **consumers** that their roofs are in need of repair when this is not, in fact, the case.

- The **trader's** practice of refusing to leave when requested to do so is a breach of Paragraph 25 of Schedule 1 to the CPRs.
- The **trader's** use of threatening language and behaviour to intimidate **consumers** could be an aggressive practice for the purpose of Regulation 7. It is likely to be regarded as harassment.
- Where the **trader** starts work without the explicit permission of the owner then this could also amount to an aggressive practice and would be likely to be regarded as coercion. Where work is started without consent, **consumers** may be discouraged from shopping around, or from deciding not to have the work done.
- In the second and third bullet points above is also necessary to consider the likely effect on **consumers**. Broadly the practices would have to be likely to significantly impair **consumers'** freedom of choice so as to cause the **typical consumer** to take a different decision.
- Where the **trader** tells **consumers** that repairs are needed when this is not in fact the case, this practice may be a misleading action for the purpose of Regulation 5. False statements about the need for a repair may cause the **typical consumer** to take a different decision (that is to agree to decide to have the work carried out, and/or to engage that **trader** to carry out the work, and/or to pay that price, and/or to agree to have the work done by that **trader** straightaway).

**(3) A trader employs various practices to recover debts owed by consumers.** He sends letters to **consumers** containing demands that state: 'pay now or we'll take criminal proceedings against you in court', when such action cannot legally be taken. Some of the demands that he sends to **consumers** are made to look as if they are court papers, although they do not have such status. The **trader** offers **consumers** an

*opportunity to 'reduce' their debts, and delay the requirement to repay, by signing up to a debt consolidation loan **product** with a 'very advantageous' interest rate. He tells **consumers** who say that they cannot pay their debts that they have no choice but to sign up to the **product** offered by him, and states that it has the lowest interest rate on the market for such a **product**. In fact, the interest rate on the offered **product** is unusually high.*

- *The letters sent to **consumers** by the **trader** could be misleading actions for the purpose of Regulation 5, as they contain false and/or deceptive information, or deceive through their manner of presentation.*
- *These misleading actions could cause the **typical consumer** to take a different decision (for example, to pay the debt sooner than he might otherwise have done, or to sign up to the offered debt consolidation loan **product** more hastily than he might otherwise have done or without first shopping around for alternative and more advantageous means of consolidating his debt).*
- *Several elements of the **trader's** practices could be aggressive practices (that is by threatening court action). All of these practices may cause the **typical consumer** to be frightened or to feel unduly pressurised. This is likely to significantly impair **consumers'** freedom of choice so as to cause the **typical consumer** to make a different decision.*
- *The manner in which the **trader** offers a debt consolidation loan **product** could be a misleading action for the purpose of Regulation 5 through the **trader's** provision of misleading information about the interest rate. It could also be an aggressive practice for the purpose of Regulation 7, as the **trader's** use of his position of power to persuade **consumers** to sign up to the loan **product** is likely to constitute **undue influence** and/or coercion such as to significantly*

*impair **consumers'** choice. Both factors are likely to cause the **typical consumer** to make a different decision.*

*(4) A trader selling household products to consumers includes a prize draw advertisement with his mail-order catalogue of goods. The advertisement creates the impression that the recipient has won a major prize when he has not. In fact, the vast majority of the recipients of the mailing will only receive a low value give-away item which is being distributed by the **trader** as a 'prize'.*

- *The **trader's** practice could breach Paragraphs 19 and 31 of Schedule 1 to the CPRs. Paragraph 19 will be breached if the **trader** claims, in his promotion, to offer a particular prize described in it, but in fact the **trader** has not awarded, and does not have in place any means by which that prize (or a reasonable equivalent) could be awarded. Paragraph 31 will be breached if a **trader** gives a false impression that a **consumer** has won a prize (or that he will win it, or will win it if he takes some particular action) when in fact there is no prize, or the **consumer** must pay money or incur a cost in order to claim the prize.*
- *The advertisement gives the impression that the recipient has won a major prize when this is not the case. This misleading impression is likely to be created by a mixture of false or deceptive representations made in the advertisement, and the omission from the advertisement of certain information. For example, the value of the prize, the terms and conditions attached to the competition or to individual prizes, and the numbers of each available prize that will be awarded, may all be misrepresented and/or omitted from the advertisement. Accordingly there is likely to be a misleading action. The advertisement may also 'hide' information by placing it within sections of extremely small print which it is difficult for **consumers** to read (Regulations 5 and 6). This may have relevance both to misleading actions and misleading omissions.*

- *The misleading actions would be likely to cause the **typical consumer** to take a different decision, for example by placing an order that he would have done were it not for the prize on offer.*

*(5) A trader's business is the sale, or secondary re-sale, of tickets admitting entry to entertainment and other similar events. He sells tickets for 'restricted view' seats without telling **consumers** that the seats in question are subject to a restricted view.*

- *The **trader's** failure to provide **consumers** with the information that the tickets he is selling are for seats with a restricted view is a misleading omission for the purpose of Regulation 6. The information that the seats are subject to a restricted view is material information that the **typical consumer** would need in order to take an informed **transactional decision** (that is, to decide whether or not to buy the tickets at the offered price).*
- *This misleading omission may cause the **typical consumer** to take a different decision. The **typical consumer** may be unlikely to buy the tickets at the price sought had they known that they would have only a restricted view of the event in question.*

## **B EFFECT ON UK LAW<sup>34</sup>**

B.1 Due to the implementation of the UCPD into UK law, the government has proposed that the following pieces of legislation be repealed in whole or part. Please refer to Regulation 3 of, and Schedules 2-4 to, the CPRs for more information on those of the measures below that are repealed or amended by the CPRs:

- Administration of Justice Act 1970, section 40 (its effect), to the extent that it applies to business to consumer practices falling within the CPRs' scope
- Business Advertisements (Disclosure) Order 1977
- Consumer Protection Act 1987, Part III
- Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order 2005
- (and amend) provisions of the Consumer Credit Act 1974 & the Consumer Credit (Advertisements) Regulations 2004
- Consumer Transactions (Restrictions on Statements) Order 1976
- Fraudulent Mediums Act 1951
- relevant provisions of 5 local Acts (County of Cleveland Act 1987, Kent County Council Act 2001, Medway Council Act 2001, North

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<sup>34</sup> Derived from the DTI Government Response to the Consultation the Unfair Commercial Practices Directive, December 2006, <http://www.dti.gov.uk/files/file35750.pdf>

Yorkshire County Council Act 1991, Nottingham City Council Act 2003)

- Mock Auctions Act 1961
- Price Indications (Method of Payment) Regulations 1991
- Price Indications (Resale of Tickets) Regulations 1994
- Price Marking (Food and Drinks Services) Order 2003
- Tourism (Sleeping Accommodation Price Display) Order 1977
- Trade Descriptions Act 1968, with certain savings
- Trade Descriptions Act (Sealskin Goods) (Information) Order 1980
- Trading Representations (Disabled Persons) Act 1958
- Weights & Measures Act 1985, section 29 ceases to have effect.

B.2 The CPRs will provide these protections. They will also give appropriate enforcers access to enforcement powers equivalent to those they currently enjoy, including criminal investigative powers. In order to ensure that business-to-business protections are adequately provided in the new fair trading framework, the Control of Misleading Advertisements Regulations 1988 (as amended) (CMARs) – which will be revoked - will be remade and amended to make misleading advertisements in business to business transactions a criminal offence. These Regulations will be renamed the Business Protection from Misleading Marketing Regulations 2007 (BPMMRs).

## **C LIST OF CONTACTS**

### **Office of Fair Trading**

Enquiries Unit  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London, EC4Y 8JX.

020 7211 8000

[enquiries@oft.gsi.gov.uk](mailto:enquiries@oft.gsi.gov.uk)

### **Department of Trade and Industry**

Department of Trade and Industry  
1 Victoria Street  
London SW1H 0ET

0207 215 5000

[dti.enquiries@dti.gsi.gov.uk](mailto:dti.enquiries@dti.gsi.gov.uk)

### **European Commission**

EUROPEAN COMMISSION  
DG Health and Consumer Protection  
B-1049 BRUSSELS

00 800 678 91011

### **Advertising Standards Authority**

Advertising Standards Authority  
Mid City Place

71 High Holborn  
London WC1V 6QT  
020 7492 2222

[enquiries@asa.org.uk](mailto:enquiries@asa.org.uk)

**Independent Committee for the Supervision of Standards of the Telephone Information Services**

icstis  
Clove Building  
4 Maguire Street  
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020 7940 7474

<mailto:copyadvice@icstis.org.uk>  
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**Local Authority Co-ordinators of Regulatory Services**

LACORS  
Local Government House  
Smith Square  
London SW1P 3HZ

020 7665 3888

[Info@lacors.gov.uk](mailto:Info@lacors.gov.uk)

**Trading Standards Institute**

The Trading Standards Institute  
1 Sylvan Court  
Sylvan Way  
Southfields Business Park

Basildon SS15 6TH  
(Head Office & Registered Office)

0870 872 9000

[institute@tsi.org.uk](mailto:institute@tsi.org.uk)

## **D LIST OF CONSULTEES**

Advertising Association  
The Advertising Standards Authority Limited  
Age Concern  
Agricultural Engineers Association  
Airtours PLC  
Alliance of Independent Retailers & Businesses  
Amazon  
Amway  
Antiquarian Booksellers' Association  
APCO UK  
Argos Limited  
Aromatherapy Trade Council  
Associated News  
Association for Payment & Clearing Services  
Association of Beekeeping Appliance Manufacturers  
Association of British Insurers  
Association of British Introduction Agencies  
Association of British Oil Industries  
Association of British Travel Agents  
Association of Building Hardware Manufacturers  
Association of Convenience Stores  
Association of Cycle Traders  
Association of District Judges  
Association of Electricity Producers  
Association of Independent Business  
The Association of Licensed Multiple Retailers  
Association of Manufacturers of Domestic Appliances  
Association of Master Upholsterers & Soft Furnishers Limited  
Association of Recognised English Language Services  
The Association of Residential Letting Agents  
Association of Translation Companies  
Association of Unit Trusts & Investment Funds

AT UK PLC  
Austin Reed Group PLC  
Baby Products Association  
Bakers Federation  
Barclays PLC  
The Bar Council  
BBC  
Beachcroft Wansbroughs  
BHS Limited  
The Booksellers Association  
The Boots Company  
Bradstock Group PLC  
British Advertising Gift Distributors Association  
British American Business  
British Association of Leisure Parks & Attractions  
British Association of Removers  
British Association of Toy Retailers  
British Audio Dealers Association  
British Bankers Association  
The British Beer & Pub Association  
British Brands Group  
British Casino Association  
British Ceramic Confederation  
The British Chambers of Commerce  
The British Chemical Distributors and Traders Association  
British Consultants Bureau  
British Copyright Council  
British Cutlery & Silverware Association  
British Equestrian Trade Association  
British Essential Oils Association  
British Footwear Association  
British Gas Services  
British Gas Trading Limited  
British Hardware & Housewares Manufacturers Association

British Hat Guild  
British Horological Federation  
British Hospitality Association  
The British Institute of Inn Keeping  
British Insurance Brokers Association  
British Interior Textiles Association  
British Jewellery & Giftware Federation  
British Leather Confederation  
British Luggage & Leather Goods Association  
British Marine Equipment Council  
British Market Research Association  
British Menswear Guild  
British Music Rights Limited  
The British Phonographic Industry Limited  
British Promotional Merchandise Association  
British Property Federation  
British Retail Consortium  
British Shops & Stores Association  
British Telecommunications PLC  
BT Cellnet  
The British Toy & Hobby Association  
British Vehicle Rental & Leasing Association  
British Wood Preserving & Damp Proofing Association  
Broadcast Advertising Clearance Centre  
Building Societies Association  
Business & Accounting Software Developers Association Limited  
Business Europe  
Business Services Association  
Cable & Wireless Global Operations  
Camelot  
Carlton  
Carpet Right  
CBI  
Centre for the Visually Impaired

CGU Insurance  
Charity Commission  
Chartered Institute of Marketing  
The Chartered Institute of Patent Agents  
Chartered Society of Designers  
Chinese Information & Advice Centre  
The Cinema Exhibitors' Association  
Citizens Advice - National Association of Citizens Advice Bureaux  
Clifford Chance  
Cleaning & Hygiene Suppliers Association Limited  
Cleaning & Support Services Association  
Commercial Horticultural Association  
Competition Commission  
Computer Cab PLC  
Computer Software & Services Association  
Computing Suppliers Federation  
Confederation of Paper Industries  
Confederation of Passenger Transport UK  
Consumer Credit Association  
Consumer Credit Trade Association  
Consumers Association  
Consumers International  
Co-operative Retail  
Corporation of Finance Brokers Limited  
Corporation of London  
The Cosmetic Toiletry & Perfumery Association Limited  
Council of Circuit Judges  
Council of Mortgage Lenders  
The Council for Registered Gas Installers  
Courts (UK) Limited  
Creative Industries Association  
Credit Card Research Group  
Credit Services Association  
Crown Prosecution Service

Cutlery & Allied Traders Research Association  
Dairy Industry Federation  
Debenhams PLC  
Dell Products  
Denton Wilde Sapte  
The Digital Content Forum  
Direct Line  
Direct Mail Services Standards Board  
Direct Marketing Association (UK)  
Direct Selling Association  
Dixons Group Limited  
Domestic Appliance Service Association  
Domestic General  
e-centre UK  
Electricity Association  
EMI Music  
English Tourist Board  
The Environmental Industries Commission Limited  
Equifax Limited  
Ericsson Limited  
EURIM - the European Information Society Group  
Europe Analytica  
Eversheds  
Experian Limited  
Faculty of Advocates  
Federation of British Hand Tool Manufacturers  
Federation of Crafts & Commerce  
Federation of Environmental Trade Associations  
The Federation of European Direct Marketing  
Federation of Master Builders  
Federation of Multiple DIY Retailers  
Federation of Petroleum Suppliers Limited  
FSB - Birmingham  
FSB - Blackpool

FSB - Cardiff  
FSB - Glasgow  
FSB - Inverness  
FSB - Lincoln  
FSB - London  
FSB - Newcastle Upon Tyne  
FSB - Newtownabbey  
FSB - Preston  
FSB - Sutton Coldfield  
Field Fisher Waterhouse  
Finance & Leasing Association  
Finance Industry Standards Association  
Financial Ombudsman Service Limited  
Fine Art Trade Guild  
First National Bank PLC  
First National Motors Finance  
Food and Drink Association  
Force Internet Limited  
The Forum of Private Businesses  
FTO  
Gardenex: The Federation of Garden & Leisure Manufacturers  
General Consumer Council for Northern Ireland  
The General Council of the Bar  
Glass and Glazing Federation  
Granada  
Greeting Card Association  
Guernsey Trading Standards  
Guild of Architectural Ironmongers  
The Guild of British Coach Operators  
Gun Trade Association  
Halfords Limited  
Halifax PLC  
Health Food Manufacturers Association  
Help the Aged

Hire Association Europe  
HM Council of Circuit Judges  
Home Office  
Honda (UK)  
Horticultural Traders Association  
Hotel, Catering International Management Association  
House Builders Federation  
HSBC Bank PLC  
IBM UK Limited  
Imperial Tobacco Pension Fund  
Incorporated Society of British Advertisers Limited  
Independent Committee for the Supervision of Standards of Telephone  
Information Services  
Independent Television Commission  
The Independent Food Retailers Confederation  
Independent Footware Retailers Association  
Institute of Consumer Affairs  
Institute of Credit Management  
Institute of Direct Marketing  
Institute of Directors  
Institute of Fundraising  
Institute of Management  
Institute of Practioners in Advertising  
The Institute of Public Relations  
Institute of Sales Promotions  
Institute of Waste Management  
Intellect  
InterForum  
International Consumer Policy Bureau  
International Swaps & Derivatives Association  
Intext Media  
IPC Media  
ITN  
ITV

John English Gifts Limited  
John Lewis Partnership  
Justices' Clerks' Society  
Lakes Hospitality Association  
LAPADA: The Association of Art & Antique Dealers  
Law Centres Federation  
Law Commission  
The Law Society  
The Law Society of Northern Ireland  
The Law Society of Scotland  
Laytons  
Lighting Association  
Lincolnshire Seed Growers Association  
Local Authorities Co-ordinators of Regulatory Services  
London Internet Exchange  
Made in Scotland Limited  
Magistrates' Association  
The Mail Order Traders Association  
Market & Opinion Research International  
The Market Research Society  
Marks & Spencer PLC  
McCann Erickson  
Merit (NW) Limited  
MGM Assurance  
Microsoft PLC  
Motor Cycle Industry Association Limited  
Museums Association  
Music Industries Association  
National Association for Pre-Paid Funeral Plans  
National Association of Balloon Artists & Suppliers  
National Association of Bank & Insurance Customers  
The National Association of Estate Agents  
National Association of Funeral Directors  
National Association of Tool Dealers

National Car Parks  
National Caravan Council Limited  
National Carpet Cleaners Association  
National Consumer Council  
The National Consumer Credit Federation  
National Consumers Federation  
National Council for Voluntary Organisations National Federation of Consumer  
Groups  
National Federation of Retail Newsagents  
National Fireplace Association  
National Lottery Commission  
The National Newspapers Mail Order Protection Scheme Limited  
National Packaging Council  
National Pharmaceutical Association  
National Wool Textile Export Corporation  
The Newspaper Society  
Next Retail Limited  
Northern Ireland Tourist Board  
North Yorkshire County Council  
Nottingham & Derbyshire Clothing & Textile Association  
Office for the Regulation of Electricity & Gas  
Office of Fair Trading  
Office of Gas & Electricity Markets - Leeds  
Office of Gas & Electricity Markets - London  
Office of the Scottish Charity Regulator  
Office of Telecommunications  
Office of the Information Commissioner  
The Ombudsman for Estate Agents  
Oppenheimer Wolff & Donnelly LLP  
Orange PLC  
Organisation for Time Share in Europe  
Osborne Clarke  
Outdoor Advertising Association  
Outdoor Industries Association

Oxfam Publishing  
Pearl Assurance PLC (MP35)  
Periodical Publishers Association  
Pet Care Trust  
Petrol Retailers Foundation  
Philatelic Traders Society Limited  
Philips Electronics UK Limited  
Photo Marketing Association International  
Pine Manufacturers Association  
The Post Office  
Poundland PLC  
PowerGen  
Prince's Trust  
PRM  
Provident Financial  
Provident Personal Credit  
Provision Trade Federation  
QVC  
The Radio Advertising Bureau  
The Radio Advertising Clearance Centre  
Radio Authority  
Radio, Electrical & Television Retailers Association Limited  
Readers Digest  
The Restaurant Association  
Retail Motor Industry Federation  
Reuters  
The Reward Group  
Royal & Sun Alliance Insurance  
Royal Faculty of Procurators  
Royal Institute of British Architects  
Royal National Institute for the Blind  
Rural Shops Alliance  
Sainsburys  
Scotch Whisky Association

SCBG  
Scottish & Southern Energy PLC  
Scottish Consumer Council  
Scottish Grocers Federation  
Scottish Law Commission  
Scottish Motor Trade Association  
Scottish Software Federation  
Scottish Textiles Network  
Scottish Tourist Board  
Scuba Industries Trade Association  
SITA  
Small Business Europe  
Small Electrical Appliance Marketing Association  
Society of London Theatre  
Society of Motor Manufacturers & Traders Limited  
Software Industry Federation  
Somersfield  
Sports Industries Federation  
Strategic Rail Authority  
Tesco Home Shopping  
Textile Services Association  
Thermal Insulation Manufacturers & Suppliers Association  
Time Group Limited  
Tobacco Manufacturers Association  
Toshiba UK Limited  
Tower Records  
Trade Marks Patents & Designs Federation  
Trading Standards Institute  
UK Fashion Export  
Unilever PLC  
Union of Independent Companies  
United Kingdom Offshore Operators Association  
Virgin.biz.net  
VISA International Service Association

Vodafone Airtouch Group Services Limited  
Waitrose  
Welsh Consumer Council  
Welsh Tourist Board  
West Sussex Trading Standards  
Which? Legal Services  
Willans  
Wine & Spirit Association of Great Britain & Northern Ireland  
Zurich UK