

The Consumer Protection from Unfair Trading Regulations 2008

Background

The Consumer Protection from Unfair Trading Regulations 2008 (CPR's), came into force on 26th May 2008, and implemented the Unfair Commercial Practices Directives (UCPD) into UK law. The implementation of this legislation represents the biggest change in UK consumer protection framework for forty years.

The UCPD aims to harmonise the legislation across the European Community preventing business practices that are unfair to consumers, so as to support growth of the internal European market.

The CPR's broad scope means that it tackles many issues already covered by existing laws. In order to avoid duplication the CPR's replaced a large number of existing pieces of legislation including the Consumer Protection (Northern Ireland) Order 1987 and the Trade Descriptions Act 1968. The CPR's provide similar or greater protection to these laws.

The CPR's apply to commercial practices before, during and after a contract is made. The CPR's 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. These prohibitions will be explained in more detail.

Broadly speaking, if consumers are treated fairly, then traders are likely to be complying with the CPR's. 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 CPR's.

What do these Regulations do?

The CPR's create a modern simplified consumer framework. They provide several tiers of protection which consist of:

1. a **general prohibition** of unfair commercial practices
2. prohibition of **misleading actions**
3. prohibition of **misleading omissions**
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4. prohibitions of **aggressive practices**
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5. **31 specific practices** which are prohibited in all circumstances.

1. General Prohibition – general duty not to trade unfairly

A commercial practice is unfair if:

- it is not professionally diligent; and
- it materially distorts, or is likely to materially distort, the economic behavior of the average consumer.

Essentially, for the general prohibition to apply, the trader's practice must be unacceptable when measured against an objective standard. The practice must also have an effect on the economic behaviour of the consumer, i.e., because of the practice, the consumer would buy a product they would not otherwise have bought.

2. Misleading actions

Giving false information to consumers, or deceiving consumers

A commercial practice is a misleading action if:

- It contains false information relating to a list of specified matters, or if it's overall presentation is likely to deceive consumers.

Examples of misleading actions

- Describing a 2002 car when in fact it is 2001.
- Odometer reading on a car reading 80,000 miles when in fact it has travelled 150,000 miles.
- Hand sewn wedding dress when in fact it is not.
- 4 star hotel when in fact it is a 2 star hotel.
- Goods priced at £10 but charged £20 at till.
- Goods stating "save £50, was £150, now £100" when in fact goods had never been sold at higher price.
- Falsely stating "approved by Trading Standards".
- Falsely claiming that a vehicle requires a new part, service or repair.
- Falsely stating "100% leather" when goods are made from pvc.

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3. Misleading Omissions

Giving insufficient information about the product – things that the trader omits to tell consumers about a product

A commercial practice is a misleading omission if:

- It omits or hides material information or provides it in a manner which is unclear, unintelligible, ambiguous or untimely.

Examples of misleading omissions

- Not displaying prices of food outside a restaurant.
- Not displaying prices of car parking before entering the car park.
- A car trader not stating that a vehicle has been in an accident.
- Not stating that an additional charge applies e.g. additional delivery charges, taxes.

4. Aggressive Practices

A commercial practice is aggressive if:

- It significantly impairs consumers' freedom of choice in relation to the product through the use of harassment, coercion or undue influence.

Examples of aggressive practices

- Car mechanic who has done more work than agreed and who refuses to return the car to the consumer until he is paid in full.
- Doorstep trader who pressures a consumer to pay in cash for home repairs immediately and brings them to the bank to withdraw cash.
- Debt collector who contacts debtors at unreasonable times or at unreasonable locations (such as work).

5. 31 Specific banned practices

There are 31 practices which are banned in all circumstances. The following are a range of these banned practices;

1. Faking credentials – 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.

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3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader or a product has been approved, endorsed or authorised by a public or private body when the trader or product have not.
5. Special offer, not in stock – 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 those products at that price (bait advertising).
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).
7. Falsely stating that a product will only be available 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 services to consumers with whom a trader has communicated prior to a transaction in a language which is not an official language of the European Economic State where the trader is located, and then making such a service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or creating the impression that a product can be legally sold when it cannot.
10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
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 (advertorial).
12. Scare tactics - making an inaccurate claim concerning the nature and extent of the risk to personal security of the consumer or his family if the consumer does not purchase the product.
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.
14. Establishing, operating or promoting a pyramid selling scheme.
15. Claiming that the trader is about to cease trading or move premises when he is not.
16. Claiming that products are able to facilitate winning in games of chance.
17. Falsely claiming that a product is able to cure illness, dysfunction or malformations.
18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the

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consumer to acquire the product at conditions less favourable than normal market conditions.

19. Offering a competition or prize promotion without awarding the prizes described or reasonable equivalent.
20. Describing a product as 'free' if the consumer has to pay anything other than the unavoidable cost of responding to the promotion and paying for delivery of the item.
21. Including in marketing material an invoice seeking payment which gives the consumer the impression that he has already ordered the product when he has not.
22. Hidden trader - falsely claiming or creating the impression that the trader is not acting for the purposes of his trade or falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to a product is available in a European Economic Area State other than the one in which the product was sold.
24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail.
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.
28. Advertising to children – 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.
29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader but not solicited by the consumer.
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 or will win a prize when there is no prize or the consumer must pay money or incur a cost in order to claim the prize.

Enforcement

- It is the duty of the Trading Standards Service (TSS) and the Office of Fair Trading to enforce this legislation.
- TSS have powers to enter premises and inspect goods, require a trader to produce documents, seize and detain goods.

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Penalties

- The penalties are;
 - on summary conviction (Magistrate's Court) a fine up to £5,000
 - on conviction on indictment (Crown Court), a fine or imprisonment not exceeding two years or both.

Further information relating to these Regulations

www.offt.gov.uk

www.isitfair.eu

Trading Standards Contact Information

- Consumerline 0845 600 6262
- www.consumerline.org