



Briefing

Commercial

BIS consults on the Consumer Protection from Unfair Trading Regulations

The Department for Business, Innovation & Skills (BIS) has published amendments to the Consumer Protection from Unfair Trading Regulations 2008 (Regulations) for consultation. These will bring two key recommendations proposed by the Law Commission and Scottish Law Commission in 2012 into force:

- (a) a direct consumer remedy against a business for misleading and aggressive commercial practices; and
- (b) an extension to the scope of the Regulations to cover misleading and aggressive demands for payment.

Businesses should be alive to these changes, as they will introduce new rights for consumers. These will include a right to unwind a transaction, or in certain circumstances, a right to a discount. The Regulations as they stand can only be enforced by Trading Standards and the Office of Fair Trading (OFT).

Recently, there have been a number of high profile examples where major retailers' pricing practices fell short of the requirements of the Regulations. In August, Tesco was fined £300,000 for misleading customers over the price of strawberries. That same week, the OFT began to investigate 6 of the prominent furniture suppliers for exaggerating price cuts.

With increased publicity over pricing policies, staying compliant with the law is crucial. Keeping on top of pricing can be difficult in a market where consumers want, and expect, to 'get a deal' on the goods they buy.

The Regulations

The Regulations ban unfair commercial practices that seek to influence consumer decisions. These include misleading consumers over the price of goods and aggressive sales tactics, for example:

- A trader advertises a discount in season when sales volumes are expected to be higher, having sold the product out of season at a higher price, when demand is low.
- A trader sells a product on special offer for a prolonged period, having charged a higher price for a short period.

- A salesman uses pressure by offering a "today only" price promotion to make a consumer buy a product or service without allowing the consumer time to make an informed decision.
- A salesman offers a free trial of a service and doesn't tell the consumer that there is a set-up fee, or that payments will automatically be deducted from their account if they fail to cancel the service by a certain date.

A commercial practice will only be unfair if it would influence the average consumer, who is reasonably well informed and observant, to take a different transactional decision towards a product. The meaning of transactional decision is wide and would include buying or refraining from buying a product, or cancelling an order or service.

Staying compliant

BIS has published guidance for businesses on the Regulations to highlight the sorts of commercial practices that should be promoted. These include:

- Making price comparisons against like for like products only, unless you clearly highlight differences between the products compared.
- Using clear language in your promotions and only using well known abbreviations, such as "RRP" when making a price comparison.
- Ensuring a promotional period does not last longer than the period where there are no promotions.
- Promptly amending a price comparison, where the basis for that comparison ceases to be genuine.
- Not using general phrases such as "up to 50% off" or "half-price sale", unless the maximum reduction is applied to at least 10% of the range of products offered in the promotion at the beginning of the promotion.

For the full text of the guidance, go to <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/p/10-1312-pricing-practices-guidance-for-traders.pdf>

continued overleaf

Burges Salmon comment

Much of the guidance requires a common sense approach to pricing and discounting. The persons making pricing decisions within a business should always evaluate what they are proposing from the perspective of their own customer base. If there is an element of ambiguity, or if further information might reasonably be required to allow a customer to make an informed decision on whether to buy a product, then this should always be provided.

A business cannot simply rely on list or other recommended prices to make comparisons to their own price. With increases in technological capabilities and independent electronic price comparison tools which are often available on mobile devices, consumers are becoming increasingly sophisticated. Being simple and coherent in pricing policies may therefore not only help your business comply with the law, but may help build consumer confidence and in turn loyalty in your brand and the products your business offers for sale.

Contacts

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