

# **BUSINESS GUIDANCE NOTES**

## **GUIDE TO TRADING FAIRLY**

### **The Consumer Protection from Unfair Trading Regulations (2008)**

This law makes it a criminal offence to carry out an unfair commercial practice. Put simply, it is an offence to mislead or otherwise act unfairly towards consumers. This includes omitting to tell them something likely to be important.

Whilst the above offences are deliberately described imprecisely, included in this law are 31 'commercial practices' that have been banned outright.

#### In more detail

Effectively the law prohibits businesses being unfair to consumers. There are four ways the law does this:

#### **1. It prohibits misleading actions and omissions.**

- *For example – doing something that deceives a consumer; or not informing them of something that they should be told.*

#### **2. It prescribes a general duty not to trade unfairly.**

- *For example - failing to act in accordance with reasonable expectations of acceptable trading practice*

#### **3. It prohibits aggressive practices.**

- *For example – using harassment, coercion or undue influence on a consumer*

#### **4. It prescribes 31 specific practices that are always considered to be unfair. Including:**

- *False endorsements / authorisation, for example:*
  - *Falsely claiming to be a member of a trade association*
  - *Claiming that a product has been approved by a public or private body when it has not.*
- *Misleading availability, for example:*
  - *Bait advertising where a trader lures a consumer to buy a product at a low price when he does not have a reasonable stock available at that price, or he is not able to supply the advertised goods at that price.*
  - *Falsely stating that a product is only available for a very limited time in order to force the consumer into making an immediate decision.*

- *Misleading context /effect, for example:*
  - *Falsely claiming that a trader is going to cease trading or to move premises.*
  - *Falsely claiming that a product has curative properties.*
  - *Describing a product as 'free', if a consumer is going to have to pay more than the cost of responding to the advertisement and collecting or paying for delivery of the item.*
  - *Failing to make it clear that a person is actually a trader or creating the impression that he is a consumer (e.g. failing to indicate trader when selling a second hand car.*
  
- *Aggressive sales, for example:*
  - *Creating the impression that a consumer cannot leave the premises until a contract is formed.*
  - *Visiting a consumer at home and refusing to leave when so requested.*
  - *Making persistent and unwanted telephone calls, faxes or emails.*
  - *Targeting children to buy a product or to persuade their parents to buy a product for them.*
  - *Telling a consumer that a trader's job will be in jeopardy if the consumer does not buy the product/service.*
  
- *Unreasonable demands, for example:*
  - *Failing to respond to correspondence in order to dissuade the consumer from exercising his contractual rights.*
  - *Requiring a consumer who wishes to claim on an insurance policy to produce irrelevant documents.*

Be aware that there is not always a need for a consumer to actually have been misled for you to commit offences, some of this law also covers how consumers are likely to be affected.

#### If you do not comply with the law

You can be prosecuted for not complying with this law if you are deemed to be in business or could be described as a 'trader'. This means any person whom, in relation to a commercial practice, is acting for purposes relating to his business and anyone acting in the name of or on behalf of a trader. This would include directors, managers and all levels of employees, any of who could commit criminal offences.

#### If you are found guilty

The maximum penalty on conviction at a magistrate's court is a fine of £5000 per offence. At crown court, the maximum penalty is an unlimited fine and/or two years imprisonment.

**This leaflet is intended only for guidance, it is not an authoritative nor complete interpretation of the law. Further guidance on the Regulations is available from the Department for Business Enterprise and Regulatory Reform at [www.berr.gov.uk](http://www.berr.gov.uk).**