



Department for
Business, Energy
& Industrial Strategy

MISLEADING AND AGGRESSIVE COMMERCIAL PRACTICES: NEW PRIVATE RIGHTS FOR CONSUMERS

Guidance on the Consumer Protection
(Amendment) Regulations 2014



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This document provides guidance only and does not substitute reading the legislation. The guidance seeks to explain the government's intentions in making the legislation but interpretation of the legislation is for the courts. This guidance does not provide legal or other advice and, if in doubt as to your obligations, you are strongly recommended to obtain legal advice.

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Consumer remedies for misleading and aggressive commercial practices

The Consumer Protection (Amendment) Regulations 2014 give consumers new private remedies where a trader lies or uses aggressive commercial practices.

Background

1. Lies and pressure selling are common problems for consumers and come at a high cost to the UK economy. In 2009, Consumer Focus estimated that misleading and aggressive practices cost £3.3 billion. Legitimate traders are penalised, and vulnerable consumers are particularly at risk.
2. The Consumer Protection from Unfair Trading Regulations 2008 (the 2008 Regulations) replaced many important consumer protection measures, including the Trade Descriptions Act 1968 and parts of the Misrepresentation Act 1967. The 2008 Regulations made it a criminal offence to use misleading or aggressive commercial practices. However, consumers had no private right of redress against the trader. This was a problem because it left some victims with no remedy, while others needed to rely on complex civil law.
3. In 2010, the Department for Business, Innovation and Skills asked the Law Commission and Scottish Law Commission to conduct a review to simplify redress and to fill gaps in consumer protection for serious breaches of the 2008 Regulations. The Law Commissions published their final report in March 2012 recommending significant targeted reform. Government accepted most of the Law Commissions' recommendations and made the Consumer Protection (Amendment) Regulations 2014.
4. Further information about the Law Commissions' review, and the full report are available at <http://lawcommission.justice.gov.uk/areas/misrepresentation-and-unfair-commercial-practices.htm>. In this guidance, references to the Regulations are to the Consumer Protection (Amendment) Regulations 2014.

Overview

5. The Regulations give consumers important new rights. These rights only apply if the trader has committed a misleading or aggressive practice under the 2008 Regulations. This guidance is therefore split into two parts: what triggers the new rights (Part 1), and what the new rights are (Part 2).

Part 1: Liability for misleading and aggressive practices

Misleading actions

6. The 2008 Regulations make misleading actions unlawful (see regulation 5). An action by a trader is misleading if it contains false information or if it is likely to mislead the average consumer in its overall presentation.
7. For example, the information could be about the main characteristics of the product (like its benefits or composition), the price or the manner in which the price is calculated, and the consumer's rights or the risks he or she might face. Regulation 5(4) of the 2008 Regulations includes a list of the matters covered.

Examples

Misleading broadband speed advertisements

A consumer takes out an expensive 18 month broadband package advertised with speeds of “up to 24 MB”. In fact, it was never possible for any customer to achieve this and average speeds were less than half.

Bogus double-glazing firms

A double-glazing firm held itself out as a member of the Glass and Glazing Federation when it was not. The consumer did not have access to the trade body's free conciliation scheme.

Misleading omissions

8. Omissions are more uncertain in scope than actions, and English law has never provided redress in these circumstances. The new Regulations do not change current law in this respect, and they do not provide any remedy for consumers in respect of “pure” omissions.
9. This limitation is, however, relatively narrow. This is because it only applies where the trader has omitted material information but the overall presentation of the product or service is not misleading. In most situations, omitting material information would create a misleading overall presentation, and therefore count as a misleading action.
10. Misleading omissions remain a criminal offence under regulation 6 of the 2008 Regulations, enforceable by Trading Standards, but consumers have no private remedy against the trader.

Aggressive commercial practices

11. The 2008 Regulations make aggressive practices unlawful (see regulation 7). Whether a trader has behaved aggressively is a question of fact, and depends on whether it significantly impairs or is likely to significantly impair the average consumer's freedom of choice. It covers the use of harassment, coercion or undue influence. Pressure selling and doorstep salespersons overstaying their welcome are examples of aggressive practices.

Example

Aggressive debt collection

Debt collection agents harass and threaten a teenager demanding a standard fixed sum settlements for alleged illegal downloads. The teenager's mother pays the amount requested.

The banned practices

12. The 2008 Regulations list 31 commercial practices which are in all circumstances considered unfair, and lead to criminal liability (see Schedule 1). The new Regulations do not provide automatic remedies to consumers affected by banned practices but such practices will, in many circumstances, be in fact either misleading actions or aggressive practices. If so, the new rights would apply to these practices also.
13. In short a misleading practice might include false claims made by traders, for example that the trader is a member of a well-respected and trusted trade association when it is not, misleading product descriptions, such as false claims on the actual mileage of a second hand car, or being deliberately vague about the actual price of a good or service or hiding additional costs and charges from consumers.
14. Aggressive practices would be behaviour by the trader that significantly impairs the average consumer's freedom of choice or conduct. For example, a consumer takes their car to a mechanic and the mechanic does lots of extra work which the consumer had not requested. The mechanic then acts aggressively and refuses to return the car until the consumer pays for the extra work.

What types of transactions are covered?

15. Only consumers who took a relevant "transactional decision" following an aggressive or misleading practice can get private redress under the new Regulations. There are three types of transactions which can qualify:
 - a. the consumer enters into a contract with a trader to buy goods or services from the trader (a business to consumer contract);
 - b. the consumer enters into a contract with a trader to sell goods to the trader (a consumer to business contract); and
 - c. consumer payments (see reg 27A(2) of the Regulations).

Examples

A business to consumer contract

A trader lies to a consumer, stating that the television they are selling is high definition when it is not. The consumer is convinced and buys the television.

A consumer to business contract

A trader offers money for gold. The trader tells the consumer the gold is low quality when in fact it is not. The consumer sells their gold to the trader for a much below market price.

Consumer payments

A consumer found their car being clamped before they had even left the car park. They were immediately charged £250, which also covered towing away. There were no obvious signs about parking, the clampers did not have any identification, and the consumer's receipt did not contain any details of the clampers or private parking company.

Consumer payments and “civil recovery”

16. The Regulations amend the definition of a “transactional decision” to expressly cover demands for payment from a consumer in full or partial settlement of the consumer’s liabilities or purported liabilities to the trader (see reg 2(1A) of the 2008 Regulations). This means that misleading and aggressive practices in respect of such demands would now clearly lead to both criminal sanctions (under the 2008 Regulations), as well as private redress (under the Regulations).
17. For example, so-called “civil recovery” where a consumer is accused of shoplifting, and is asked to pay a standard fixed fee to avoid prosecution, can fall in this category, is now clearly covered. The amended definition would also cover consumer payments associated with wheel-clamping, or demands for payment in respect of purported illegal downloads of digital content.

A “significant factor” in the consumer’s decision

18. A consumer must show that he or she made the decision to enter the contract, or make the payment to the trader because of the misleading or aggressive practice. It is not necessary to show that the prohibited behaviour was the only, or even the main cause, to enter into the contract. It must, however, at least be a “significant factor” in the consumer’s decision. This is a question of fact.

Example

Misleading door to door builder

A builder knocks at a consumer's door and tells them that he has noticed some tiles missing from their roof and as he is working nearby he can fix it for a reduced fee. The consumer agrees and pays the builder. There are no missing tiles and the consumer would not have paid any money if the builder had not misled them that their roof was damaged.

Exclusions

19. The new Regulations do not cover certain important sectors.

Real estate

20. The new Regulations do not generally cover contracts in respect of immovable property, such as selling houses or land. Social housing provided by local authorities, housing associations or private landlords is not covered.

21. There are however two types of tenancy which are covered:

- (1) assured tenancies within the meaning of Part 1 of the Housing Act 1988; and
- (2) leases under which accommodation is let as holiday accommodation.

22. The above are referred to as “relevant leases” (see reg 27C(2) of the Regulations), and consumers are therefore protected against misleading or aggressive practices in respect of these.

Financial services

23. The new rights do not apply to financial services, defined as a regulated activity within section 22 of the Financial Services and Markets Act 2000. Therefore pensions, mortgages, insurance and banking are also not covered by the new Regulations. These areas are already highly regulated, and applying the new rights could lead to confusion and inconsistency.

Credit agreements

24. The new rights do not generally apply to credit agreements. Consumer credit is already highly regulated, and applying the new rights could lead to confusion and inconsistency.

25. There is one important exception. The new Regulations do apply where the consumer has been misled or unfairly pressured into entering a “restricted-use credit agreement” (see regulation 27D). A restricted-use credit agreement means that the borrower is not free to use the credit as he or she chooses – the credit must be used to finance a particular transaction (e.g. with the person lending the money or a third party).

Example

Doorstep Sales involving credit

A doorstep salesperson arrives uninvited at a consumer's house. They bully the consumer into buying an expensive mattress they don't need and can't afford. To pay for the mattress the salesperson persuades the consumer to sign a credit agreement to pay for it in instalments. The new Regulations apply to both the purchase of the mattress and the related credit agreement.

The “average consumer” test

26. Where a trader has committed a misleading action, or acted aggressively, the Regulations only apply if the “average consumer” would have entered the contract or made the payment. It is not enough that the consumer subjectively felt intimidated, or misled. An objective test applies.
27. The average consumer is “reasonably well informed, reasonably observant and circumspect”. With the exception of “vulnerable consumers” discussed below, a particularly gullible consumer, or one that is easily influenced, would not have any remedy if the same practice would not have affected an “average consumer”.

Example

Online scam

An online retailer based abroad advertises brand new ipads for only £10. The advert asks the consumer to send cash to a post office box number. An average consumer would know that this ‘deal’ is likely to be too good to be true and would not be taken in by what is an obvious scam.

Vulnerable consumers

28. The objective test of the “average consumer” would be unfair and cause hardship if applied in all cases. Particularly unscrupulous traders may specifically target especially vulnerable groups or individuals. The 2008 Regulations therefore apply a different test in the following circumstances:
 - (1) where the commercial practice is directed to a particular group of consumers; or
 - (2) a clearly identifiable group of consumers is particularly vulnerable to the practice because of “their mental or physical infirmity, age or credulity” in a way which the trader could reasonably be expected to foresee.
29. For example, misleading statements about the healing qualities of a nutritional supplement for cancer patients; or adverts targeted at the elderly for example, would clearly fall within this category. Vulnerable consumers in the relevant group would be protected.

Who is “the trader”

30. Claims under the Regulations can be made against the “trader”. This is the other party to the contract with the consumer, or the person who received the consumer payment. If an agent acting on behalf of a trader, for example an agent selling double glazing door to door on commission, acts in a misleading or aggressive way, then the consumer has the right to bring a claim against the trader who employed the agent.

Producers

31. The consumer has no rights against people further up in the supply chain. Instead, the rights are against the trader with whom the consumer entered the contract or made the payment.
32. However, the Regulations do provide that if a “producer” (which includes manufacturers of digital content for example, and importers) has engaged in a prohibited practice, the consumer can have a remedy against the trader, but only if the trader was, or could reasonably be expected to be aware of the prohibited practice. This could be the case for example if the producer undertook a high profile advertising campaign claiming its products had features which they in fact did not have. If the retailer was aware of this, then the consumer would have recourse against the retailer.

Unfair payment collection

33. The Regulations expressly cover all commercial demands for payment. Debt collectors acting aggressively and receive the consumer payment on their own behalf would be covered as “traders”. If the debt collectors are acting as agents of a trader, the claim would instead be against the trader. Businesses undertaking so-called “civil recovery” which receive payment from consumers accused of shoplifting could count as “traders” under the Regulations. In such cases the “product” purchased by the consumer is the settlement of actual or purported liabilities.

Part 2: Consumer remedies

Overview

34. The Regulations give consumers new simple, standardised remedies against traders that have breached the requirements discussed in part 1 of this guidance.
35. If a consumer is misled or intimidated into entering a contract or making a payment, consumers have three types of remedies available, set out in the table below:

	Consumer rights to:	Regulation
Standard remedies	Unwind a contract and get their money back	Regulation 27F/G/H
	Discount on the price paid	Regulation 27I/H
Damages	Damages for detriment caused	Regulation 27J

The standard remedies

36. Standard remedies allow consumer who have been victims of a misleading or aggressive practice to recover the full price paid for the goods or services, or a percentage thereof.
37. Importantly, there is no need to demonstrate any loss. Nor does the consumer have to show the trader acted dishonestly, recklessly or even negligently. The standard remedies apply on a strict liability basis: if the trader’s actions were misleading or aggressive, then the remedies apply.
38. If a consumer exercises their right to unwind, and return the goods or reject the service, they are also entitled to terminate the contract (see reg 27F(1)(a)). Alternatively, they may choose to keep the goods or service, but request a discount instead.
39. If a consumer opts to unwind, they can avoid incurring any new obligations under that contract. By contrast, the right to a discount does not give the consumer the ability to walk away from the contract. The obligations remain in place, however the discount can apply in respect of past payments, as well as future ones.

Damages

40. The remedies for damages apply where the consumer's losses exceed the price paid for the goods or services in question. They cover damages for distress and inconvenience, as well as consequential financial losses. Unlike the standard remedies, consumers have to give evidence of actual loss to get damages. Traders also have a due diligence defence. This means that if a trader took reasonable care to avoid committing a misleading or aggressive practice, they are not liable for damages.

Standard remedy A: the right to unwind

41. The right to unwind allows the consumer to undo the transaction they entered into, restoring the consumer to the position he or she was in before entering the contract or making the payment. There are two important limits to this right, discussed below.

The consumer must complain within 90 days

42. The 90 day period starts running from the latest of the following alternatives:
- (1) when the goods or digital content are first delivered;
 - (2) when the performance of the service begins;
 - (3) when the lease begins; or
 - (4) the right is first exercisable (see reg 27E(4) of the Regulations).
43. It is best practice for consumers to complain in writing, but there are no formal requirements. If a consumer complaint shows a clear desire to reject the goods or services, that is sufficient (see reg 27E(2) of the Regulations).

It must be possible to return the goods, or to have rejected the service

44. The right to unwind can only apply if it is possible to undo the transaction. If the goods have been fully consumed, or the service was fully performed, it is no-longer possible to restore the parties to the position they were in before the misleading or aggressive practice, and the right to unwind cannot apply.
45. This is not an all-or-nothing requirement: it is enough that it is possible to return some element of the product. In respect of services (which unlike goods, cannot be returned in a meaningful way) it is enough that the consumer rejected some element of the service before it is fully performed.
46. Where consumers have sold goods to a trader as a result of misleading or aggressive practices, the trader should return the goods in exchange for the price paid; or provide a monetary equivalent.
47. With the exception of continuous supply contracts (discussed below), consumers remain entitled to a full refund notwithstanding having received some benefit under the contract. In general, there is no allowance for use.

An allowance for use only for continuous supply contracts

48. The consumer's right to a full refund is reduced if:
- (1) the contract was for the continuous or regular supply of goods or services; and
 - (2) the consumer has consumed the goods or services for more than one month (see reg 27F(7) of the Regulations).
49. In such cases, the consumer has to allow for the benefit they have consumed. The market price of what the consumer has used is therefore deducted from the price paid for the product or service. A consumer who has paid less than the market price would receive no refund.
50. Examples of continuous supply contracts include utility contracts for gas and electricity.

The right to recover a consumer payment only applies if the money was not owed

51. The right to unwind applies where a consumer makes a payment which was not owed, as a result of a misleading or aggressive practice, and gives the consumer a new statutory right to the return of the payment.
52. If the payment was owed the consumer is not entitled to return of the payment, for example, if the consumer has not paid for goods that were delivered, and the trader pursued the payment in an aggressive manner. To unwind the payment in these circumstances would be inconsistent with other legal rules. However, damages remedies can still apply provided the consumer can show evidence of distress or other financial loss as a result of the misleading or aggressive practice.

Standard remedy B: the right to a discount

53. The right to a discount applies where the right to unwind has been lost, whether due to delay (with a claim made more than 90 days after the relevant day), or because the goods or services have been fully consumed.
54. For goods or services that cost £5,000 or less, consumers have a right to a fixed percentage discount on the price. There are four pre-set bands of discount which can apply, depending on the severity of the misleading or aggressive practice:
- (1) 25% if it is more than minor;
 - (2) 50% if it is significant;
 - (3) 75% if it is serious; and
 - (4) 100% (full price) if it is very serious.
55. The seriousness of the prohibited practice is a question of fact, assessed by reference to the behaviour of the trader, its impact on the consumer, and the amount of delay.

56. The pre-set discount bands do not apply where the customer has paid or agreed to pay more than £5,000 and there is, in addition clear evidence that that amount is greater than the market price of the product in question (as it stood at the time of the transaction). In that case, the discount is calculated using the difference between the market price of the product at the time of the contract, and the price paid/payable. In all other cases, however, the discount bands apply.

Examples

Double glazing

A trader installs double glazing in the consumer's house. Indicative factors are set out below that might justify discounts from least to most serious, as well as what would happen if the cost exceeds £5,000 and has to be calculated expressly.

More than minor

The consumer does not use the house that winter as she visits her daughters abroad. A defect only emerges the following year. The double-glazing works, but is not very effective.

Significant

The consumer discovers a defect three months after the double-glazing was installed. The workmanship of the double-glazing is significantly poor but still functional. The price quoted for the job was misleading, a third less than the final price.

Serious

The double-glazing is so ineffective that the consumer needs to get another provider to fix it. The price quoted for the job was misleading, less than half of the final price. The trader used a door-step seller that targeted an elderly person, and which used aggressive pressure-selling tactics.

Very serious

The double-glazing is so ineffective that the work has to be redone completely. The trader used a door-step seller that targeted an elderly person, used very aggressive pressure-selling tactics, and misrepresented that the work was required by local council regulations.

Price exceeding £5,000

The discount would be the difference between that price, and the market value of the double-glazing at the time the consumer purchased it. Evidence of the market price could be obtained using quotes from competing traders for the same work.

Damages

57. Consumers can claim damages if they have suffered losses that exceed the price paid for the relevant goods or service. Damages can cover distress and inconvenience, as well as losses suffered by the consumer because of the contractor payment they made as a result of the misleading or aggressive practice.
58. Unlike the standard remedies, damages can only be claimed upon proof of actual loss, or distress and inconvenience. In accordance with general principles, only reasonably foreseeable losses are covered.

Damages for economic loss

59. If the consumer suffered economic losses greater than the discount awarded on the price, the consumer could claim this amount as economic damages. In the double-glazing examples above, this could be relevant if for example the remedial work cost more than the original price.

Damages for distress and inconvenience

60. The Regulations expressly provide that consumers have a right to damages if the consumer has suffered alarm, distress or physical inconvenience or discomfort caused by the misleading or aggressive practice.
61. The amounts awarded for distress and inconvenience should be restrained and modest, in accordance with the general law in England and Wales and Scotland. Only in exceptional circumstances would these exceed £1,000, and in most cases, a nominal award, or an amount below £1,000 would be appropriate.
62. Damages for distress are most likely to be appropriate in respect of aggressive practices.

The “due diligence” defence for traders

63. Under the Regulations it is a defence to a claim for damages for traders to show that the misleading or aggressive practice happened as a result of a mistake or other cause beyond the trader’s control, and that they took all reasonable precautions to avoid the misleading or aggressive practice from occurring.
64. The due diligence defence does not apply to standard remedies. This means that if a trader takes all reasonable precautions to avoid committing misleading and aggressive practices, the maximum extent of its liability to the consumer is the price paid.

Worked examples

Pressure selling to the elderly

A door step seller says she works for the council and enters an elderly consumer's home.

The consumer is house bound. He asks the seller to leave but she refuses, and stays for one hour until the consumer agrees to buy a £2,000 mobility aid. The consumer pays £200 cash, and signs up to a credit agreement for the balance.

The consumer's son comes to visit two months later, and finds out what happened and complains to the mobility aid company.

Did the trader commit a misleading or aggressive practice?

- The salesperson lied about working for the council – that is a misleading action (reg 5 of the 2008 Regulations)
- By refusing to leave, the salesperson has acted aggressively – it is an example of a banned practice, and qualifies as an aggressive action (reg 7 and Schedule 1 para 25 of the 2008 Regulations)
- The question is whether the trader's actions would be a significant factor in an "average consumer's" decision to enter into the contract.
- The consumer is elderly and has mobility difficulties – the "vulnerable average consumer" test applies, such that the impact of the trader's actions is measured depending on how it would affect consumers that are elderly and have mobility difficulties (reg 2(4) and (5) of the 2008 Regulations).
- The consumer also entered into a "business to consumer contract" to buy the mobility aid (reg 27A(2)(a) of the Regulations). The consumer also entered into a credit agreement to pay for the mobility aid. Although credit agreements are generally excluded from the Regulations, credit agreements to purchase specific items are covered (reg 27D(2) of the Regulations).

What remedies does the consumer have?

- The consumer's son complained on his behalf less than 90 days from the sale. The consumer can return the mobility aid and "unwind" the contract and credit agreements (reg 27E of the Regulations). This is a standard remedy under the Regulations which allows the consumer to get the £200 cash back, to recover any payments made under the credit agreement, as well as being released from the credit agreement going forward, so that no future payments need to be made. The trader is strictly liable (no due diligence defence can apply to standard remedies), nor does the consumer have to provide any allowance for using the mobility aid for 2 months.

- Alternatively the consumer could choose to keep the mobility aid and seek a discount on the price paid.
- The consumer may also be entitled to damages for distress due to the trader's behaviour (Reg 27J(1)(b)). Such awards should be restrained and modest, and only exceptionally above £1,000. The amount in each case is a question of fact and would depend on how the trader behaved, and the impact of their behaviour on the consumer. The facts discussed would appear to justify an award in the mid to high range. The inconvenience to the son in making a claim, and taking time off work for example, would by contrast, not be covered. The distress and inconvenience must relate directly to the aggressive or misleading action, rather than the consequences of making a claim.

Misleading advertising

A leading mobile phone provider has an advertising campaign that promises very fast 4G internet speeds. In fact, the mobile internet speeds are very slow. The consumer visits an independent local mobile phone store to switch providers on her phone, and takes out a two year contract with the mobile phone provider. The consumer is a student, who is moving to Newcastle for university, the shop assistant says the phone has great coverage in the north of England.

In fact, phone coverage is very poor there.

The student moves to Newcastle four months later and finds the phone cannot make or receive calls most of the time.

The student complains two months later.

Did a trader commit a misleading action?

- There are two misleading actions. The first is by the mobile phone provider, about the internet speed. The mobile phone company is a “producer” under the Regulations, and if the local mobile phone store could reasonably be expected to be aware of the advertising campaign about mobile internet speeds, then the store can be responsible if the advertising was misleading (reg 27A(4) and (5) of the Regulations). The claims about internet speeds were false, as the internet speed could never achieve the advertised speeds, so the advert is misleading (reg 5 of the 2008 regulations). The second misrepresentation, by the shop assistant, is also actionable, as made directly by the trader with whom the consumer entered a contract (reg 5 of the 2008 Regulations, and reg 27A(2) of the Regulations).
- The “average consumer” test applies, and the question is whether the statements about coverage and internet speed would be a significant factor in an “average consumer’s” decision to enter the mobile phone contract. The average consumer is “reasonably well informed, reasonably observant and circumspect” (reg 2(2) of the 2008 Regulations). Both the misrepresented features are key aspects of mobile usage, so this requirement would appear easily satisfied.

What remedies does the consumer have?

- As the consumer waited six months before complaining, the main standard remedy, the right to unwind, cannot apply. This is because it expires after three months. However, the consumer has a right to a discount (reg 271).
- The student has the right to get a discount on the payments already made to the mobile phone provider and, depending on the seriousness of the actions of the trader, a discount on outstanding payments. The amount of the discount depends on the seriousness of the trader's behaviour, the impact on the student and how much time has passed.
- In this case, the internet speed was very slow all along, but the consumer waited a long time before complaining. This suggests the seriousness of the misrepresentation is likely minor.
- As regards the phone coverage, the problem did not impact the consumer until after 4 months into the contract, but thereafter, the impact was very serious. This suggests that for two thirds of the payments already made the impact of the misrepresentation was nil (reg 271(2) of the Regulations). However, for one third of these payments, and all the outstanding ones, it is very serious (reg 271(3) of the Regulations).
- Overall, a 25% discount could apply for two thirds of past payments, as the misrepresentation had only a minor impact. For the last third of the payments, the effect was very serious, and could justify a 100% discount, equivalent to a refund. For all outstanding payments, a 100% discount could apply. The consumer would not need to make any further payments. No damages would appear to apply in this case.

Civil recovery

A young mother with two small children was shopping, when one of the children took a drink from a shelf and opened it. The mother paid for the drink.

She later received a letter from a "civil recovery" company, claiming (falsely) that under a scheme endorsed by the Home Office, they were entitled to £90 for staff and management time, administration costs, and security costs. The letter threatened court action if she did not pay.

The mother received harassing calls every day for two weeks. The mother paid the full amount after one month.

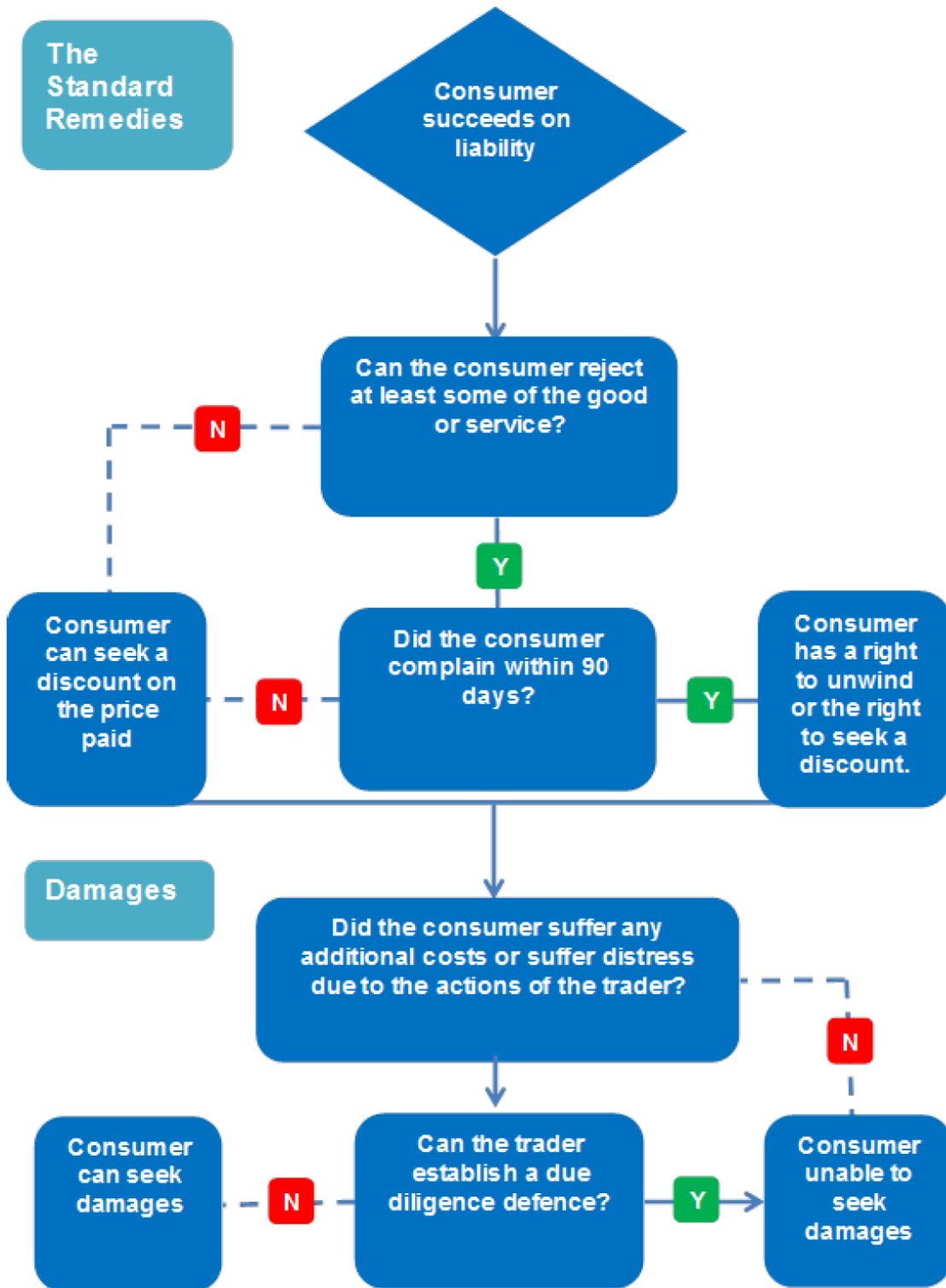
Did the trader commit a misleading action?

- The civil recovery company lied about being endorsed by the Home Office, and has committed a misleading action (reg 5 of the 2008 Regulations). The fact of endorsement would be a "significant factor" in the "average consumer's" decision to pay (reg 27A(6) of the Regulations).
- The civil recovery company received a "consumer payment" from the young mother (reg 27A(2)(c) of the Regulations). The mother's decision to pay was a "transactional decision" as it was in full settlement of her purported liabilities to the civil recovery company (reg 2(1A) and (1B) of the 2008 Regulations).

What remedies does the consumer have?

- As the mother had paid for the drink, the civil recovery' company's claim was bogus, and no payment was owed. She therefore has a right to unwind the payment (reg 27H(1) of the Regulations), as she acted within three months.
- The mother may also be able to claim damages remedy for distress and inconvenience due to the harassing and threatening calls. The amount could be at the mid to high end of the scale of restrained and modest payments.

Flowchart: Consumer remedies



Help and advice

For consumers

Citizens Advice England

www.adviceguide.org.uk/england.htm

Citizens Advice Scotland

www.adviceguide.org.uk/scotland.htm

Citizens Advice Wales

www.adviceguide.org.uk/wales.htm

Citizens Advice Northern Ireland

www.adviceguide.org.uk/nireland.htm

For business

Trading Standards Institute Business Companion

www.businesscompanion.info/en



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