



Misleading and aggressive commercial practices – A new private right for consumers.

The draft regulations would give consumers a new private right to seek redress from businesses and where appropriate compensation when they have been the victim of a misleading or aggressive commercial practice.

The new rights would apply where the consumer has:

- entered into a contract with the trader; or
- made a payment to the trader.

We are asking for comments on the detail of the proposals by 11 October.

Frequently asked questions

How many consumers are victims of these practices?

Research by Consumer Focus found that over 60% of the population had been the target of an unfair commercial practice. In 7% of cases, the consumer suffered more than £500 worth of loss, and in 3% the consumer suffered more than £1,000 worth of loss. Consumer Focus calculated that the total detriment suffered by consumers in 2009 as a result of misleading and aggressive practices was around £3.3 billion.

What are the benefits for business?

Legitimate businesses can be more confident that traders who use misleading or aggressive practices to trap consumers into buying their products will have action taken against them by the consumer.

What are the benefits for consumers?

All consumers will have access to the new right. Misleading and aggressive practices are a particular problem for elderly and vulnerable consumers, for example, when they fall victim to misleading or aggressive door step sales techniques. The new right will make it clearer and simpler for consumers to take their own action in the civil courts.

How are the rights being introduced?

The new rights are being introduced via secondary legislation. The draft regulations will amend the Consumer Protection from Unfair Trading

Regulations (CPRs) which already make it a criminal offence to carry out a misleading or aggressive commercial practice. We have followed many of the existing concepts in the CPRs to make it easier to understand for those already familiar with them.

Will the new rights apply to the whole of the UK?

Yes it is intended that the new right will be available to all consumers in the UK.

As a trader do I need to be concerned?

Many businesses will already be aware of the type of behaviours contained in the CPRs which could now lead to action by a consumer. Only those businesses that engage in misleading or aggressive commercial practices are likely to be subject to an action brought under these proposed reforms.

What sectors are covered by the new right?

The new rights cover all sectors except financial services (other than consumer credit agreements and debt collection) and land transactions (other than residential lettings). These are excluded as they may involve large sums of money and are less suited to the standard remedies provided for in the new rights. In addition, existing ombudsman services already provide sufficient routes to redress for consumers in these areas.

When will consumers have a right to seek redress?

A right to seek redress will only be available against a trader who has misled or bullied a consumer into entering a contract or making a payment for a product. The misleading or aggressive practice must have been a significant factor in the consumer's decision to enter the contract or make the payment and it must have been likely to cause the 'average consumer' to have done the same.

What is an average consumer?

The average consumer test follows the existing test in the CPRs so an average consumer is one who is considered to be reasonably well informed, observant and circumspect. The test also includes the same provision in the CPRs relating to vulnerable consumers so the average consumer test is relaxed if the commercial practice was "directed to a particular group" of consumers or a "clearly identifiable group of consumers is particularly vulnerable because of their mental or physical infirmity, age or credulity" and the trader could be reasonably expected to foresee this.

Does the consumer have to take the trader to court to get their money back?

If at all possible we would encourage consumers and traders to settle their differences out of court and the aim of the draft regulations is to facilitate that. However, we know that many of these rogues refuse to engage with their victims so in some cases consumers may have to go to court to get their money back.

What sort of behaviour counts as misleading?

The CPRs set out in detail what constitutes a misleading practice, but it might include false claims made by traders, for example that they are members of well respected and trusted trade associations when they are not, misleading product descriptions or being deliberately vague about the actual price of a product and hiding additional costs and charges from the consumers. Misleading behaviour would also include providing false information or deceiving consumers by virtue of the way the product is presented.

What sort of behaviour counts as aggressive?

The existing CPRs set out in detail aggressive practices but in summary it would be likely to cover any behaviour that significantly impairs the average consumer's freedom of choice.

What about existing common law or contractual remedies?

The draft regulations do not change existing common law or contractual remedies. However, consumers will not be able to take action twice against a business for the same misleading or aggressive practice.

How will consumers know if they can take their own action?

The Consumer Protection from Unfair Trading Regulations set out what constitutes a misleading or aggressive practice. If a consumer thinks they have been the victim of such a practice then they should in the first instance complain to the company. If that does not resolve the problem then they should seek advice, for example, from a consumer organisation.

Are misleading or aggressive demands for payment covered?

Yes.

The Standard Remedies

What are the standard remedies?

The standard remedies will make the process clearer and simpler for consumers and business. The remedies are designed to put the consumer back in the situation they were in before the misleading or aggressive practice took place.

The primary remedy is the right to unwind from the contract or payment and get a full refund. Consumers will have 90 days to unwind the contract or payment but beyond that they will still be entitled to seek a discount on the price paid. In addition, consumers will be able to claim damages for any additional losses or harm they have suffered as a result of the misleading or aggressive practice.

When does the 90 day period start?

Consumers will have 90 days to unwind a contract for products that have been entered into as a result of a misleading or aggressive practice. The 90 day period starts on the latest of the following:

- When the consumer enters the contract;
- When the goods are delivered

How do consumers assert their right to unwind?

The right to unwind is asserted by a consumer making a complaint indicating their desire to reject the product.

What about after 90 days?

Where the 90 day right to unwind has expired a consumer will still have the right to a discount on the price paid where they have been the victims of a misleading or aggressive practice.

How much discount will consumers get?

The level of discount depends on a number of factors including the trader's behaviour, the impact of that behaviour on the consumer and the amount of time that has passed. The levels of discount available are set out in the draft regulations and range from 25% of the value of the product for minor detriment up to 100% for very serious consumer detriment. The Government believes that the bands offer a clear and simple means of determining what amount a consumer should be entitled to following a misleading or aggressive practice.

Do consumers have to return goods sold as a result of a misleading or aggressive practice?

To claim the right to unwind, consumers will have to make the goods available for collection by the business.

What about when consumers have been misled or bullied into selling a good to a trader?

Consumers will have the right to seek redress against a trader when they have sold goods to that trader as a result of a misleading or aggressive practice. Where it is possible to return the goods in the same condition then they should be returned to the consumer. Where it is not possible to return the goods in the same condition then the consumer will receive the greater of the price paid by the trader or their market value.

What if the consumer has used the good or the service has been partly performed?

The right to unwind remains even if the consumer has used the goods and can only return some of it or if part of the service has been carried out. If they have complained within the 90 days then they can seek a full refund. If they complain outside the 90 days then they have the right to seek a discount on the price paid.

What damages can consumers claim when they have been the victim of a misleading or aggressive practice?

Consumers will be entitled to seek damages if they can show that they have incurred additional losses or harm due to the misleading or aggressive practice. Damages would be available for two types of loss, consequential

economic losses; and/or distress and inconvenience. The level of damages will be a decision of the court but they should be restrained and modest.

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is also available on our website at www.gov.uk/bis
Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

BIS/13/1114