Financial adverts exposed

Dubious financial adverts can cause big problems for anyone caught out. So why do we still see so many of them?

Financial adverts are regulated, so you should be protected from promotions which could mislead you into buying an unsuitable product. But Which? has discovered what we think are widespread consumer law breaches across the financial sector. We found numerous examples of what we believe are misleading adverts – six of which you will see on the following pages.

In all these cases we think that the companies are not acting with professional diligence – a major requirement of the Consumer Protection from Unfair Trading Regulations (CPRs). The adverts also include statements that we believe are misleading – by what they include or fail to include.

OUT TO TRICK YOU?

You don't need to scour the media to see financial ads that, on reflection, you think are misleading. When we surveyed 2,583 Which? members, a third told us they had seen dubious ads. The most common ones mentioned featured terms and conditions that were hard to read, had unrealistic estimates of possible returns, or small print that limited the offer.

In 2010, 1,519 financial adverts were reported to the Advertising Standards Authority (ASA). If anything, the problem appears to be getting worse – in 2009, the Financial Services Authority (FSA) ordered 170 financial adverts to be withdrawn or promotions to be amended. The following year, this had risen to 262. Although the FSA has the power to ask for adverts to be altered or removed, frustratingly it only names and shames the companies it fines, and this is a rare occurence. Just one fine was imposed in 2011 for a misleading advert, none in 2010 and three in 2009.

The FSA doesn't publish the names of the firms whose adverts it has found to be misleading, and does not provide Which? with any details of its investigations when we report a company to the regulator. This means you can't know if you have responded to an advert which is later found to be misleading. We think this is wrong and needs to change (see 'Watchdog, not Lapdog' on p25).

The ASA does not have any powers to fine a company for producing a dubious advert, but it can require its removal or amendment, or pass it on to the FSA or the Office of Fair Trading (OFT). Again, there's very little incentive for companies to abide by the rules, as the chances of them being publicly named and shamed (let alone fined) are small.

TELL US WHAT YOU THINK When it comes to financial products, have you seen something questionable in a TV ad, heard something strange on the radio or read a claim that seems too good to be true? If so, visit www.which.co.uk/financialads to tell us about it.

Dubious adverts

The following adverts all appeared in the first few weeks of 2012. We asked a barrister specialising in consumer law to review them. In his opinion they all breach Consumer Protection from Unfair Trading Regulations (CPRs) by falling short of the requirement for professional diligence – among other regulations

50plus Insurance Services
Car insurance

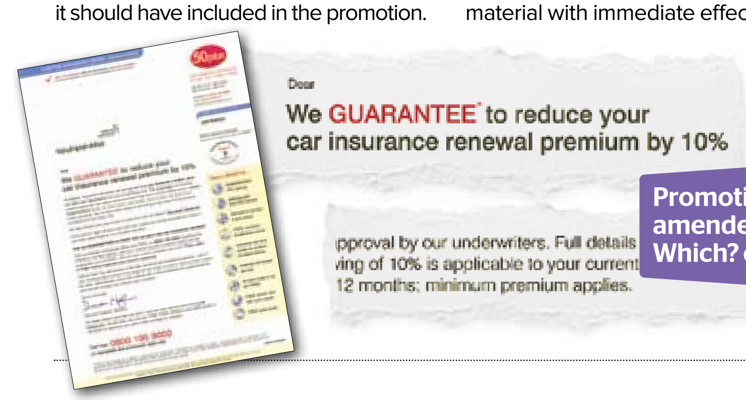
When is a 'guarantee' not a guarantee? This promotional letter, which was sent to existing customers of 50plus car insurance, guarantees in its opening line to reduce their premium by 10%. An asterisk links to small print at the bottom of the page, stating that a 'minimum premium applies'.

We don't think customers would necessarily know what the term 'minimum premium applies' means for them, as no amount is given and there is nothing to check against. In fact, 50plus has told us that the minimum premium is £150 – information we think it should have included in the promotion.

Not enough prominence is given to 'minimum premium' in the small print, especially when compared with the numerous references to the 'guarantee' in the body of the letter. We think this could constitute a breach of regulations as it omits material information.

Which? works for you

We took our findings to 50plus, and it agreed to change the promotion. It told us: 'All promotional material detailing insurance offers from 50plus is designed to be clear, fair and not misleading. We are happy to make the amends to the material with immediate effect.'



Promotion amended after Which? complaint

Ethical Forestry
Timber investments

Reported by Which? to the FSA and the OFT

This magazine advert for timber investments features two quotes from national newspapers, both of which appear to endorse the investment. Reassuring?

In fact, the newspapers told us the quotes attributed to them were actually lifted from adverts that Ethical Forestry placed in their publications. We believe using quotes from an advert, without the source being mentioned, is misleading.

Ethical Forestry should state who provided the quote and under what circumstances. In this case, including quotes that appear to endorse the product may breach regulatory rules on the promotion of unfair commercial practices.

Ethical Forestry attempted to absolve itself of responsibility for any errors in the advert by including an all-embracing disclaimer in the small print at the bottom of the page. But it's not possible to escape liability 'under any circumstances' – as the ad claims. Ethical Forestry was given the opportunity to comment on our findings, but it didn't respond. We have reported its advert to the FSA and the OFT.

Claim 2 Gain Payment Protection Insurance (PPI) compensation

You don't have to pay someone else to get compensation if you have been missold PPI. This TV advert promotes a claims management service for PPI victims, and we were concerned by the lack of information about the fee you would have to pay it if any claim was successful. It ends with the line: 'Get back what you're owed now.'

While some people watching the ad may understand that a fee could be charged, it's unlikely they'd expect to pay Claim 2 Gain 25% plus VAT of any amount recovered. The emphasis on getting back 'what you're owed' suggests that no fee is charged, or if one was applied, you might reasonably conclude that this would be minimal.

We think the omission of any fee information – bar the use of the 'no win, no fee' slogan – distorts the advert, as it ignores the sizeable charge that is applicable. We believe the overall impression given by this advert is misleading for consumers.

Claim 2 Gain was given the opportunity to comment on our findings, but it did not respond. We have reported its advert to the FSA and the OFT.

Reported by Which? to the FSA and the OFT

We were concerned by the lack of information about the fee you may have to pay

Churchill Home insurance

Reported by Which? to the FSA and the OFT

The no-claims discount is only available to those who qualify for it anyway

Can you trust the Churchill dog? This TV advert (right) features Martin Clunes telling the dog that the insurer is offering 50% off home insurance policies. A message appears on screen stating: 'Includes a 25% introductory discount, and a 5 year No Claims discount. Minimum premiums apply.'

We are concerned that the five-year no-claims discount is promoted as a free element of the cover, yet it's only available to customers who qualify for it anyway, rather than being a bonus (as we think the advert suggests). And the 50% discount is only available 'if you haven't claimed in the last five years'. The inclusion of the statement 'minimum premiums apply' could also potentially limit the extent of the discount.

Our legal expert thinks that this advert includes a potentially misleading action. We consider this a clear example of a lack of professional diligence.

Churchill told us: 'The '50% off home insurance' TV advert does not break any of the rules or regulations. We always ensure that we are fully compliant. Churchill has received no consumer complaints about this offer.'

We have reported its advert to the FSA and the OFT.

Reported by Which? to the FSA and the OFT

It is not possible to earn the 3.25% rate during the term that money is in this account

NatWest One-year, fixed-rate Isa

NatWest's advert for a one-year, fixed-rate Isa appeared in several national newspapers in December 2011. It offered an interest rate of 3.25% AER – a market-leading rate at the time. But the fixed-rate period did not start until 1 February 2012.

Until then, the deposit would attract the variable cash Isa rate, which was as low as 0.5% for deposits of less than £9,000. We think that many consumers may believe then their money would not be transferred until 1 February.

We believe the advert is misleading as it is not possible to earn the 3.25% rate during the term that money is in this account. Depending on when they responded to the promotion, consumers could find that their deposit instead earns between 2.8% and 3.0%.

We feel that undue prominence is given to the headline rate, which customers could never achieve over the course of the Isa term – the variable rate is only referred to in the small print.

NatWest told us: 'Full details of the applicable variable cash rate is clearly stated on our literature that is provided to our customers before they complete their application.'

We have reported its advert to the FSA and the OFT.

Santander Preferred Current Account

Reported by Which? to the FSA and the OFT

The overdraft rate change will affect anyone opening this account

Did Santander move the goalposts unfairly here? Its Preferred Current Account includes a free arranged overdraft for 12 months. The promotion we checked in January and February showed an example in which there was no charge for an arranged overdraft for one year. It stated that a daily charge of 50p was imposed thereafter for up to 10 days each month.

But elsewhere on Santander's website, we discovered that as of 16 March, the daily overdraft fee would double to £1 a day, for up to 10 days a month. Which, of course, meant that anyone taking out a Santander Preferred Current Account in January or February would not have been able to benefit from the lower fee, as it would be increased long before the 12-month period elapsed. We think the bank's advert omits this information.

Santander told us: 'We have notified impacted existing customers, and have been transparent in communicating the changes to new customers. Customers enquiring or opening a new Santander current account online are notified of the intended changes within the pre-application and at point of sale.'

We have reported this promotion to the FSA and the OFT.

Confusing adverts

Not all adverts will fall foul of the various regulations, but this does not mean they are fair. If an advert seems too good to be true, in our experience it probably is.

Not all financial adverts appear to breach the various regulations, but that's not to say that they are all whiter than white.

Some financial providers have promotions that are downright unclear, and until the regulators take tougher action, providers will be able to promote products and services in a way that misleads consumers.

For instance, payday loan provider Wonga.com has a poster ad that states: 'Borrow what you need, not what suits your bank.' It also says: 'At Wonga we don't do fixed minimum loans. You can decide how much to borrow and for how long and if you pay back early, you pay even less.' We think this ad is confusing, as comparing bank loans and payday loans is unrealistic.

Bank loans are generally offered for a fixed term over a longer period, while payday loans are short-term solutions. The suggestion that you can 'pay even less' is also potentially misleading – it could lead the consumer to believe their repayment will be lower than what they'd be liable for in paying off a loan from another provider. Again, this appears to draw comparison with banks.

Wonga told us: 'Traditional bank loans usually begin at £1,000 and one-year minimum, which doesn't suit everyone's needs. The point of this advert was therefore to highlight the very different way our loans are designed.'

Green Flag's print ad for its Rapid Breakdown Cover is another example of what we believe is an unclear ad. The ad boasts that cover costs from just £20 online. However, in far smaller print, just below this bold statement, it states: '10% of online rescue cover customers achieve this price or lower.'

Advertising an offer for insurance that applies to just 10% of the customer base is allowed, but we think that this rule is unfair, and are asking the regulators to rethink this to prevent people from applying for a product based on a deal that they only have a small chance of benefitting from.

Where to complain

If you have a complaint about an advert for a financial product or service, you can take it to the regulators:

The Financial Services Authority (FSA)
020 7066 1000
www.fsa.gov.uk
The FSA (and, when it is disbanded, the new Financial Conduct Authority) covers complaints about savings, banking, insurance, investments, mortgage and pensions advertising. It can impose fines and require companies to amend or withdraw offending ads. Unlike the current FSA set-up, the FCA will name and shame advertisers if changes to the law allow it to do so. This will make it easier for people to spot dubious marketing material.

The Advertising Standards Authority (ASA)
020 7492 2222
www.asa.gov.uk
The ASA covers all manner of adverts, but predominantly broadcast and online promotions where the issue centres on taste or decency – technical issues are passed to the FSA. Where an advert is deemed to breach the Consumer Protection from Unfair Trading Regulations (CPRs) – for example if it is considered to include misleading information, or omit important data – the ASA will hand the matter to the Office of Fair Trading or to Trading Standards officers.

The Office of Fair Trading/ Trading Standards
0845 404 0506 (calls diverted to Consumer Direct)
www.direct.gov.uk/consumer
Complaints about credit cards, store cards, loans, overdrafts and some second charge mortgage adverts can be made to the OFT or Trading Standards through Consumer Direct.

Ministry of Justice
020 3334 3555
www.justice.gov.uk
Complaints against solicitors, such as in relation to claims management, can be made with the OFT or Ministry of Justice.

WATCHDOG NOT LAPDOG

The various laws and regulations governing financial advertising are complex. This doesn't mean that providers are off the hook if they fall foul of a legal or regulatory requirement, but it does explain why there is a pressing need for a thorough, proactive watchdog to oversee this sector.

Our investigation has found that there is no shortage of what we think are dubious ads. A strong regulator would be well placed to scrutinise the financial sector, ensuring that it abides by the CPRs and advertising rules and regulations which were established to protect consumers from misleading statements and omissions. Fortunately the Financial Conduct Authority (FCA) – set to replace the FSA – will name and shame errant companies.

Which? can monitor any complaints we receive from members, or pass on any concerns we have to the regulators. But it's for the regulators to take action and report its findings. We've long campaigned for this, and hope the FCA won't let us down.

If you want a financial regulator that is a watchdog, not a lapdog, scan this QR code with your smartphone and pledge your support, or you can visit www.which.co.uk/fca