

Discount and reference pricing principles: selling mattresses online

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Who these principles are for

These principles are targeted at traders active in the online mattress sector who use reference pricing (a form of price reduction claim, for example: 'was £100, now £50').

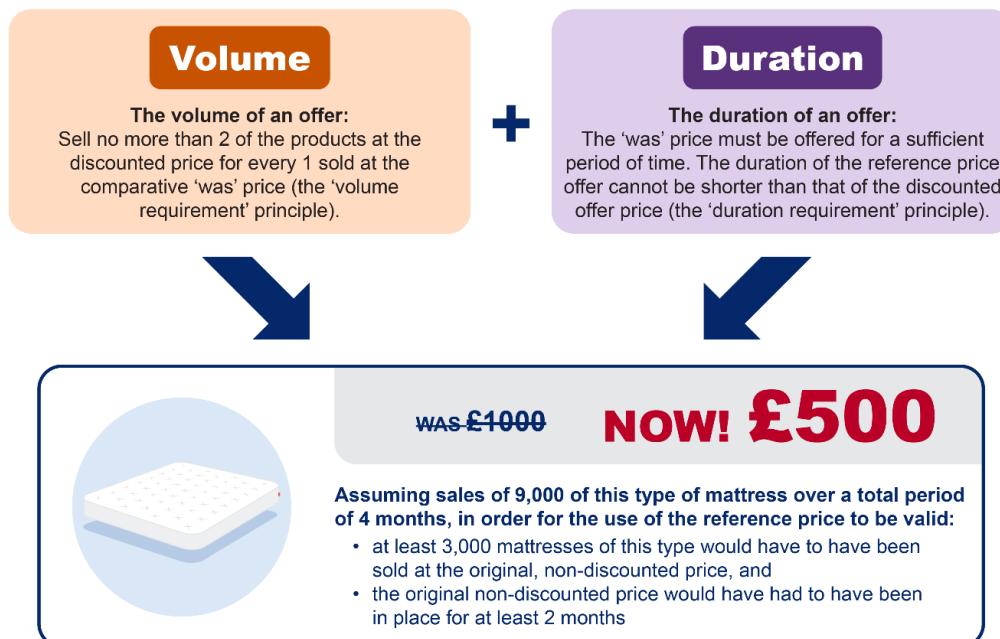
These principles are focussed on helping traders active in the online mattress sector comply with the legal framework, but they may also be relevant to reference pricing more generally. The Competition and Markets Authority (the **CMA**) will have regard to these principles when considering enforcement action in relation to the use of reference pricing in other sectors of the economy, while also taking into account the specific characteristics of those sectors.

If you are a business that sells to customers online you must be careful when using reference pricing and discounted offers

Whether a price comparison is genuine depends on:

- **The duration of an offer:** the 'was' price must be offered for a sufficient period of time on the same website,¹ immediately before the discount begins. The duration of the 'was' price offer cannot be shorter than that of the discounted offer price (the 'duration requirement' principle).
- **The volume of an offer:** a sufficient number of sales should have been made at that 'was' price. At least 1 product should have been sold at the 'was' price for every 2 products sold at the discounted price (the 'volume requirement' principle).

Figure – worked example of the principles outlined above



¹ For the avoidance of doubt, references to websites include any online selling channels such as online platforms, social media channels and online marketplaces.

What happens if you fail to comply with consumer protection law

- The CMA and other enforcers may take enforcement action to prevent such practices. This could include criminal prosecution, civil enforcement, and soon fines of up to 10% of worldwide turnover under new CMA enforcement powers.
- Reputational harm to your business if named publicly as part of an enforcement case.
- Customers may make claims against you in court.

Why this matters

Online sales represent a significant proportion of consumer spend – it is important, especially in the context of cost-of-living pressures, that people can have confidence in pricing information when shopping online, and that buying decisions are not influenced by misleading, illegal practices.

Mattresses are an important consumer purchase, and online sales represent a significant proportion of total sales. The CMA identified concerns about the use of urgency and price reduction claims online that led to the following action:

- The issuing of a CMA open letter on urgency claims and price reduction claims (the [Open Letter](#)) identifying problematic practices, with advice for businesses on how to comply with the law when making urgency or price reduction claims.
- CMA investigations in the online mattress sector regarding urgency and price reduction claims ([Emma Group](#) and [Simba Sleep](#)).

CMA concerns in the online mattress sector include consumers potentially being misled by:

- Extensive use of potentially misleading price reduction claims, countdown clocks and other urgency claims.
- Discount periods which lasted much longer than the time the product was offered at the original 'was' price.
- Certain companies selling only very small percentages of mattresses at or above the reference 'was' price.

For example, across various periods sampled in 2021 to 2023, based on evidence gathered from 4 companies, the CMA found that Company A sold only 7.7%, Company B sold 1.6%, Company C sold 5.5%, and Company D sold just 0.9% of their mattresses at or above the quoted reference prices.

The CMA view is that using a reference price based on sales at such low comparative volumes is likely to be misleading.

Principles to help businesses comply with the law

These principles do not introduce new law, they are intended to be consistent with the Chartered Trading Standards Institute Guidance on Pricing Practices, and the position of the Advertising Standards Authority

Below, we provide:

- A more detailed explanation of the principles that the CMA expects traders in the online mattress sector to comply with.
- Information about interpreting the principles.
- Links to other sources of advice on compliance with consumer protection law.

Misleading use of reference pricing

- Reference pricing refers to a price promotion where the current selling price of a product or bundle of products is compared favourably with a different, higher price. For example, we have seen comparisons with a price that is said to have previously been charged or that will be charged in the future, or that is described as a recommended retail price (**RRP**).
- This higher price in a price promotion might be viewed by consumers as a basis for assessing the quality of a product.
- Reference pricing can increase consumers' valuations of products, increase their willingness to purchase and the amount they are prepared to pay, and reduce the amount of time they might otherwise have spent looking elsewhere.
- Where reference prices are genuine they can give helpful information to consumers, but where they are misleading, they are likely to distort consumer behaviour, causing consumers to take a decision, for example, purchasing a product, that they otherwise would not have taken.²

What the CMA expects traders in the Online Mattress Sector to do

- Any price advantage claimed by a trader must not be misleading or unfair. If traders choose to use a reference price it must reflect a genuine price and any comparison between the reference price and the discounted price must reflect a genuine price advantage. If they cannot be sure that any reference price is genuine, they should not use it in their advertising.
- The CMA has already set out in some detail how traders might infringe the law when using misleading price reduction claims in the Open Letter.³ These

² CMA (2022) [Evidence review of Online Choice Architecture and consumer and competition harm](#).

³ Parts B and C. Of particular relevance to these principles are Examples 10 to 15.

principles build on the Open Letter by giving clear metrics to help traders comply with the law when making a discount claim, such as 'was/now' pricing.

- In addition, the [Chartered Trading Standards Institute \(the CTSI\) Guidance for Traders on Pricing Practices](#) (the **CTSI Guidance**) provides 'a non-exhaustive list of issues that should be considered when determining whether a price reduction is genuine'⁴ including:
 - How long was the product on sale at the higher price compared to the period for which the price comparison is made?
 - Were significant sales made at the higher price prior to the price comparison being made?
- Accordingly, in order to ensure a reference price reflects the genuine price of the product, traders must ensure that any products, including bundles of products, that are offered for sale using a 'was/now' price, **have actually been sold in sufficient volume, over a sufficient duration, at or above that reference price**. These sales should be made on the same website as that used for the promotion and immediately before the discount begins.
- This requires a comparison to be made between the sales made at the higher price and the sales made at the lower price, and there will come a point where the reference price is no longer a genuine reference price. Where traders choose to advertise using a reference price, they must only use the reference price for as long as it remains genuine.
- Both the volume and duration requirements must be met; it is not sufficient for a trader to meet one requirement only.
- The same considerations apply when traders offer prices or discounts for products that traders say will increase to the higher reference price in the future. Sales of the product in the future must be made in sufficient volume and over a sufficient duration, at or above that reference price.
- Traders must also ensure their promotion otherwise complies with the law - for example, they must consider the other factors listed in the CTSI Guidance as well.

⁴ [CTSI Guidance](#), page 15. The full list of issues is: 1. How long was the product on sale at the higher price compared to the period for which the price comparison is made? 2. How many, where and what type of outlets will the price comparison be used in compared to those at which the product was on sale at the higher price? 3. How recently was the higher price offered compared to when the price comparison is being made? 4. Where products are only in demand for short periods each year, are you making price comparisons with out-of-season reference prices? 5. Were significant sales made at the higher price prior to the price comparison being made or was there any reasonable expectation that consumers would purchase the product at the higher price?

The Principles

The duration requirement

- Traders who wish to use a reference price, must offer the product, or bundle of products, for sale at or above that price for a sufficient period (the **Price Establishment Period**). Generally speaking, compliance is more likely to be achieved if this period is at least 30 days⁵ - however, depending on how the promotion is structured, a shorter period may be sufficient.⁶
- The period of time when any price may be used as the reference price should not be longer than the Price Establishment Period, and the discount period must follow on immediately from the Price Establishment Period.
- This represents a ratio of at least 1:1. In other words, when the durations of the Price Establishment Period and the discount period are added up, the discount period should be no more than 50% of the total time.

Example: Where a trader offers a product for sale for £1,000 for 3 months, it may go on to offer that product for sale using £1,000 as a reference price for up to 3 months (assuming the volume requirement is also met). After 3 months has expired, the trader must not use a reference price until the trader has established another reference price in accordance with these principles.

⁵ Traders may wish to bear in mind that if they offer promotions in any other EU state, such as the Republic of Ireland, EU legislation requires the reference price generally to be no higher than the lowest price offered in the 30 days preceding the application of the price reduction, and that the reference price is the price without the price reduction before the first application of the price reduction - see Directive 98/6/EC, Article 6a.

⁶ The CMA accepted undertakings from Simba Sleep to operate a price establishment period of 21 days, in a context where the subsequent discount period would be no longer than 10 days.

The volume requirement

- In addition to the duration requirement, the trader must keep in mind whether they have sold a sufficient volume at the reference price during the Price Establishment Period. As set out in the CTSI Guidance referred to above, whether there were significant sales achieved at the higher price will be a relevant factor in determining whether a reference price is the genuine selling price.
- The CMA considers that the volume of sales during the Price Establishment Period should not be less than half of the volume of sales during the discount period that uses that reference price.
- This represents a ratio of 1:2, so that for every one product sold at or above the reference price during the Price Establishment Period, the retailer may sell two units during the discount period (whether they are offered individually or as part of a bundle). In other words, if the total number of units sold during both the Price Establishment Period and the discount period are added up, the number sold at the higher price during the Price Establishment Period should be at least 33% (one third) of the total.

Example: Where a trader sells 1,000 units of a product for £1,000 during the Price Establishment Period, it may go on to sell no more than 2,000 units of that product during the discount period using £1,000 as a reference price (assuming they also comply with the duration requirement). Once the trader has sold 2,000 units of that product at the discounted price, the trader should not use a reference price that is higher than the discounted price until the trader has established another reference price in accordance with these principles - unless the retailer wishes to use the discounted price as a reference price to offer a further discount.

Interplay between the duration and volume requirements

- Both the duration and volume requirements should be met if a trader wishes to use a reference price. In practice, this means that a trader may permit a discount to be applied to a product until **the earlier** of:
 - The duration of the sale equals the duration of the Price Establishment Period; **OR**
 - The volume of units sold at the discount price reaches double the number of units sold at the reference price during the Price Establishment Period.
- **Example:** Where a trader sells a mattress online for £1,000 for 3 months, and sells 1,000 units of that mattress in that time, it may go on to offer that mattress for sale using £1,000 as a reference price until **the earlier** of:
 - 3 months duration since the Price Establishment Period; **OR**
 - 2,000 units of the mattress have been sold.
- Immediately after, the trader must not use a reference price until the trader has established another reference price in accordance with these principles -

unless the retailer wishes to use the discounted price as a reference price to offer a further discount.

Interpreting the principles

- These principles set out the CMA's view on how traders can seek to avoid using misleading reference pricing under the existing law. The principles do not create new law or rules. Further, the principles only address one aspect of advertising, so traders must ensure their practices otherwise comply with the law. This means that even if the duration and volume requirements are being adhered to, the use of reference pricing may be misleading in other ways. Accordingly, traders should take account of the CTSI Guidance and the CMA's broader advice in the Open Letter.
- These principles are not intended to interfere with how traders price their products when establishing a reference price or deciding what genuine discounts to make. They are designed to tackle the misleading use of reference pricing, which is an optional marketing practice.
- These principles apply when traders use a reference price, against which they promote a lower promotional price. They are not applicable to traders who wish simply to reduce the price of their products without the use of a reference price.
- The metrics are intended to give traders guidance on the threshold above which a trader would be considered more likely to comply with consumer protection law, or above which the CMA would be less likely to consider enforcement action for breaches of consumer protection law. Accordingly, traders should consider the metrics within these principles as a minimum standard, below which they are at risk of breaching consumer protection law, rather than as a target to aim for.
- Each of the principles apply wherever and in whatever format an online mattress trader offers or advertises products for sale.
- For the avoidance of doubt, the principles set out above are not intended to be exhaustive and are not a substitute for legal advice. Traders should regularly review their practices to ensure they comply with the law.

Conclusion

- The CMA expects all online traders to comply with consumer protection law. These principles should help traders in the online mattress sector to comply with the law and help avoid concerns regarding the misleading use of reference pricing.
- The use of reference pricing is complex. The CMA will continue to look into traders' practices and to take action to tackle harmful practices where required in the future. This may include issuing further principles or guidance.
- To the extent there is any conflict in wording or interpretation between this document and any signed undertakings, court order or CMA direct

enforcement decision taken after the CMA's relevant powers under the Digital Markets, Competition and Consumers Act 2024 commence, the undertakings, order or decision would prevail. At present, only a court can determine whether there has been a breach of consumer protection law.

Further sources of guidance on consumer law compliance

The following documents will also be relevant when reviewing your practices:

- Office of Fair Trading (adopted by the CMA) [Guidance on the Consumer Protection from Unfair Trading Regulations 2008](#)
- CTSI [Guidance for Traders on Pricing Practices](#)
- [CMA Open Letter: Urgency and price reduction claims: compliance advice for online businesses](#)
- [CMA Research and Analysis: Online Choice Architecture: how digital design can harm competition and consumers and Evidence review of Online Choice Architecture and consumer and competition Harm](#)
- CMA [Investigations into the use of misleading reference pricing by certain furniture and carpet businesses](#)
- Advertising Standards Authority (the **ASA**) [The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#)
- ASA [Make sure the price is right: using reference pricing in ads](#)
- ASA [Promotional savings claims](#)
- ASA [Rulings](#)