Unfair commercial practices

CMA207

Guidance on the protection from unfair trading provisions in the Digital Markets, Competition and Consumers Act 2024

4 April 2025

www.gov.uk/cma

Contents

Page

1. Overview

1.1 The Digital Markets, Competition and Consumers Act 2024 (DMCC Act) contains provisions to protect consumers from unfair trading.[1] These provisions replace and update the existing Consumer Protection from Unfair Trading Regulations 2008 (CPUTRs),[2] with some changes.[3]

1.2 These provisions of the DMCC Act apply to commercial practices which happen from 6 April 2025 onwards. They maintain much of the scope and effect of the previous law. Traders can generally expect the same or similar requirements and prohibitions to apply to their commercial practices as under the previous regulations and consumers can expect a similar level of protection. The DMCC Act also includes some new or more detailed prohibitions of practices relating to fake consumer reviews[4] and 'drip pricing'.[5]

1.3 This Guidance aims to help traders to comply with the unfair commercial practices provisions in the DMCC Act.[6] It will also be of use to legal advisers, enforcers and consumer advisers in understanding what actions are prohibited.[7]

1.4 This Guidance updates and replaces Consumer Protection from Unfair Trading Regulations: OFT1008.

[1] Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024.
[2] Statutory Instrument 2008/1277.
[3] A summary of the changes that the DMCC Act makes to the CPUTRs can be found in the technical note that can be accessed here.
[4] Guidance on the banned practice in relation to fake consumer reviews, introduced by the DMCC Act, and the steps that traders need to take to comply can be found here.
[5] 'Drip pricing' occurs when consumers are shown an initial price for a product and additional fees are introduced (or 'dripped') as consumers proceed with a purchase or transaction. More information can be found in Chapter 4.
[6] This Guidance uses 'unfair commercial practices provisions' or 'UCP provisions' as a shorthand for the provisions contained in Chapter 1 of Part 4 of the DMCC Act.
[7] This Guidance illustrates how the law may apply in practice. The examples used in this Guidance are non-exhaustive. This Guidance is not a substitute for, or definitive interpretation of, the law and should be read in conjunction with it. This Guidance may be revised from time to time, including to reflect changes in the interpretation of the law as a result of enforcement action taken by the Competition and Markets Authority (CMA) or others.

Who do the UCP provisions apply to and what do they prohibit?

1.5 The UCP provisions apply to the commercial dealings that businesses, referred to in the UCP provisions as 'traders', have with consumers. Such dealings are called 'commercial practices'. They include anything traders do that could in some way affect consumers and the decisions they take. Chapter 2 of this Guidance explains core concepts of the UCP provisions – 'trader', 'commercial practices', 'consumer', 'average consumer' and 'transactional decisions'.

1.6 A person is a 'trader' if they conduct activities relating to their business or on behalf of another person's business. The UCP provisions apply to traders' commercial practices if they (for example):

- supply their own products to consumers,
- promote or supply another trader's products to consumers,
- buy products from consumers,
- help consumers to sell products to others, including to other consumers.

1.7 The UCP provisions prohibit unfair commercial practices. These are practices which involve a trader misleading consumers, behaving aggressively, or otherwise acting unfairly towards consumers. Table 1 below summarises the behaviour prohibited under each UCP provision.

Table 1 – Overview of the prohibitions contained in the UCP provisions

Provision in the DMCC Act	Summary of prohibited conduct	More details
Schedule 20	32 specified practices which are in all circumstances considered unfair	Chapter 3
Section 230	Omission of any information that must be contained in an invitation to purchase[8]	Chapter 4
Section 226	• Provision of false or misleading information • Deceptive overall presentation • Creating confusion with competitors' products • Failing to comply with requirements in a code of conduct	Chapter 5
Section 227	• Omission (or unclear/ untimely/ obscure provision) of material information • Omission of legally required information • Failing to identify the commercial intent of a practice	Chapter 6
Section 228	Aggressive practice using harassment, coercion or undue influence	Chapter 7
Section 229	Falling short of the requirements of professional diligence	Chapter 8
Section 225	Promotion of unfair commercial practices in a code of conduct by anyone responsible for the content of, or for monitoring compliance with, a code of conduct	Chapter 9

[8] Invitation to purchase is a commercial practice as part of which the consumer is given an indication of the characteristics of a product and the price of the product. A full definition and explanation can be found in Chapter 4.

What makes a commercial practice unfair?

1.8 There are two main types of unfair commercial practice:

- practices that are always considered to be unfair; and
- practices that are only unfair if they are likely to cause the 'average consumer' to take a 'transactional decision' they would not have otherwise taken.[9]

Practices that are always unfair

1.9 There are 32 commercial practices listed in the DMCC Act[10] which are unfair in all circumstances. These include fake reviews, misuse of trust marks, pressure selling and sales of illegal products. These are covered in Chapter 3.

1.10 The omission of any information that must be contained in an invitation to purchase is also always considered unfair. This is covered in Chapter 4.

1.11 Promoting unfair commercial practices in a code of conduct is also prohibited. This is dealt with in Chapter 9.

1.12 If a trader engages in any of these practices they are acting unlawfully.

Prohibited regardless of impact on consumers' transactional decisions		
32 banned practices	**Omission of material information from an invitation to purchase**	**Promotion of unfair commercial practices in a code of conduct**

[9] The concepts of 'average consumer' and 'transactional decision' are explained further in Chapter 2 (Core concepts).

[10] Schedule 20 to the DMCC Act.

Practices that may be unfair if they impact on consumer decisions

1.13 Other commercial practices are only unlawful if they are likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise.

1.14 For a commercial practice to be a breach of the prohibitions on misleading and aggressive practices, or of the requirements of professional diligence, it must involve the conduct specified in the prohibition and the practice must be likely to cause the average consumer to take a different decision.

Unfair if they are likely to cause consumers to take a different transactional decision			
Misleading practices		Aggressive practices	Contravention of the requirements of professional diligence
Actions	Omissions		

When do the UCP provisions start to apply?

1.15 The UCP provisions apply to practices that take place from 6 April 2025.[11]

[11] Consumers currently have private rights of redress for certain infringements of the CPUTRs. The DMCC Act provides for these to be replaced by new arrangements that will be detailed in a new statutory instrument. Until that new statutory instrument becomes law, consumers will continue to have the rights of redress set out in the CPUTRs, notwithstanding the coming into force of the UCP provisions in the DMCC Act.

2. Core concepts: trader, commercial practice, consumer, transactional decision

Summary at a glance

- The UCP provisions use the following core concepts, namely:
  - trader;
  - commercial practice;
  - consumer;
  - transactional decision; and
  - average consumer, vulnerable consumer and targeted consumer.
- The meaning of each of these is discussed below with examples.

2.1 The concepts discussed in this chapter are defined in the DMCC Act. They set out what and whose activities are in scope of the UCP provisions.[12]

Who counts as a trader?

2.2 The UCP provisions define a trader as:

- **a person ('P') acting for purposes relating to P's business; or**
- **a person acting in the name of, or on behalf of, P for purposes relating to P's business.**[13]

2.3 'Business' in turn includes a trade, craft or profession (whether or not they are carried on for gain or reward), the activities of public bodies and the activities of others carried on for gain or reward.[14]

[12] Note that the UCP provisions sit alongside other protections for consumers, in particular, the existing system of contract law, including the law on unfair contract terms.
[13] Section 225(3) DMCC Act.
[14] Section 249 DMCC Act.

2.4 ‘Gain or reward’ is a broader concept than simply money paid for a product. It includes things like offering free gifts to consumers (for example to obtain goodwill or reputational advantage) or providing services in exchange for personal data.

2.5 The broad definition of trader can therefore capture:

- agents, subcontractors, representatives or other associates of the trader acting on behalf of the trader. It does not matter whether someone is carrying out their own business activities or also acting in the name of, or on behalf of, another business in relation to the same act or omission.[15]

- individuals who regularly sell goods from their homes through online marketplaces. Whether someone is acting as a trader depends on whether the relevant activity is done in the course of business. Someone who purchases items in order to resell them would be likely to fall within the definition. An individual person selling unwanted goods on the internet from time to time, would not be likely to fall within this definition.

- organisations which have charitable or ethical goals when they engage in commercial activities towards consumers. This could include things like selling clothes in a charity shop or asking for donations.

- public bodies when they engage in commercial transactions with consumers, for example charging a fee to get a passport or renew a driving licence.

2.6 Whether or not a person is a trader is assessed on a case-by-case basis. When deciding if a person is acting as a trader, a number of factors are likely to be relevant. These include whether the activity is being carried out for profit, the number and frequency of transactions, and the time between the purchase and sale of products. A person may be a trader in some transactions and a consumer in other transactions.

---

[15] Paragraph 1345 DMCC Act explanatory notes.

What is a commercial practice?

2.7 A commercial practice is **an act or omission by a trader relating to the promotion or supply of—**

- **the trader's product to a consumer;**
- **another trader's product to a consumer; or**
- **a consumer's product to the trader or another person.**[16]

The definition of **product** covers both physical and intangible things, including goods (including immovable property, rights and obligations), services and digital content. The concept of product includes:

- physical items, such as a pencil or a car;
- digital content, such as music purchased online;
- services, such as a right to use a caravan for a certain period;
- immovable property, such as the sale or lease of land to consumers;
- intangible rights such as cancellation or cashback options;
- credit rights, such as debt collection and payment demands, such as payments demanded from a consumer by a trader in settlement of actual or purported liabilities; and
- membership rights, such as membership of a club.

2.8 Any act or omission by a trader relating to the promotion or supply of a product to or by consumers could be a commercial practice. A commercial practice is each single act or omission, whether or not these are repeated or form part of a course of conduct. It does not matter whether the acts or omissions happen before, during or after the promotion or supply in

[16] Section 225(3) DMCC Act.

question.[17] Therefore, commercial practices include advertising, the sale and supply of products and post-contractual matters, such as after-sales services and debt collection.

2.9 The act or omission must 'relate to' the promotion or supply of a product to or by a consumer. As a general rule of thumb, if a trader supplies products or promotes them, for example by providing information about them on a website, they will need to check they are complying with the UCP provisions. This is the case even if they are not selling directly to consumers themselves.

2.10 A commercial practice includes any act or omission by a trader relating to the promotion or supply of another trader's product to a consumer. For example, the activities of online platforms that facilitate traders to promote or supply products to or by consumers amount to commercial practices. They are within the scope of the UCP provisions.

2.11 Commercial practices include practices by a trader that enable private individuals (namely, consumers) to provide products to that trader, for example where a trader purchases a used car or an antique from a consumer, or asks the consumer to make a donation of unwanted clothes. They also include cases where a trader enables consumers to provide their products to another person, for example, where an online marketplace is used for consumer-to-consumer transactions.

2.12 There can be several traders involved in the promotion or supply of a product to and from consumers, such as manufacturers, retailers, marketing professionals, brand representatives etc. The practices of each of these traders would be covered by the UCP provisions. When deciding whether or not to investigate a suspected breach of the UCP provisions, it will be relevant to consider which is the appropriate party to investigate as well as which party is best placed to remedy the issue.

---

[17] Section 225(5) DMCC Act.

What commercial practices fall in and out of scope of the UCP provisions?

Examples of practices not covered by the UCP provisions

1. **Business-to-business practices with no potential to affect consumers**

- A trader sells specialist tractor parts to businesses only. As consumers do not buy the trader's products, the trader does not need to consider compliance with the UCP provisions. The trader should however consider the Business Protection from Misleading Marketing Regulations 2008.[18]

- A trader sells mattresses to hotels which make no specific claims on their websites in respect of the mattresses. As the trader is selling to another business, and provided no claims are made to consumers about the mattress product, the trader does not need to consider compliance with the UCP provisions. The trader should consider the Business Protection from Misleading Marketing Regulations 2008. The hotels must comply with the UCP provisions in their dealings with consumers.

Examples of practices covered by the UCP provisions

1. **Practices with the potential to affect both consumers and traders**

- A trader sells spare computer parts over the internet. They sell a range of different products. The trader needs to consider compliance with the UCP provisions, if consumers may buy the products.

- A trader supplies waterproof clothing to retailers which market themselves to consumers as suppliers of sustainable 'eco-friendly' fashion products. The trader tells retailers that all its products are comprised of a specified minimum percentage of recycled material. Although the trader does not sell directly to consumers, the trader must ensure that any claims, statements or representations they make to retailers are truthful and accurate because they relate to the ultimate promotion or supply of the product to consumers.

[18] Statutory Instrument 2008/1276.

2. **Practices by a trader where they purchase a product from the consumer**

   - A trader makes statements about the value of a car they might purchase from a consumer. These statements would need to comply with the UCP provisions.

3. **Practices by a trader where they enable consumers to sell products to other persons (including other consumers)**

   - An online marketplace designs their website to highlight featured deals, including listings from consumers who wish to sell their unwanted and used household appliances. The online marketplace's own practices must comply with the UCP provisions. For example, they may be carrying out a banned practice if they falsely state that a particular featured appliance is available for a limited time only when in fact the consumer has not listed it as such.

Who counts as a consumer?

2.13 The UCP provisions define a consumer as **an individual acting for purposes that are wholly or mainly outside the individual's business.**[19]

2.14 The words 'wholly or mainly' in the definition of consumer mean that an individual is still a consumer when acting for dual purposes (a consumer purpose and a business purpose) as long as the consumer purpose is the main purpose.[20] Likewise, where a person engages in profit making activities, they may still be a consumer if the main purpose of the activity is not part of their main business. This means, for example, that:

- a person who buys a kettle for their home, works from home one day a week and uses it on the days when working from home would still be a consumer;[21]
- an individual who occasionally sells their unwanted and used clothes on an online marketplace or sells their personal vinyl record collection to a second-hand record shop is also likely to be a consumer;[22]

[19] Section 225(3) DMCC Act.
[20] Paragraph 1343(a) DMCC Act explanatory notes.
[21] Paragraph 1343(a) DMCC Act explanatory notes.
[22] Paragraph 1343(a) and (b) DMCC Act explanatory notes.

- an individual who invests some of their spare money in shares or property could still be a consumer where making such investments is not part of their main business.

2.15 Conversely, a sole trader or a partner in a firm would only benefit from the protection provided by the UCP provisions where, and to the extent that, they are acting for purposes outside of their business. For example, a sole trader who operates from a private dwelling and buys a printer of which 95% of the intended use is for the purposes of their business, is unlikely to be a consumer for the purposes of this purchase.[23]

What is a transactional decision?

2.16 'Transactional decision' is an important concept covering a wide range of decisions that have been or may be taken by consumers in relation to products.[24] This concept should be considered in parallel with the concept of 'average consumer' discussed below.

2.17 The UCP provisions define a transactional decision as **any decision made by a consumer relating to—**

- **the purchase or supply of a product (including whether, how or on what terms to make the purchase or supply);**
- **the retention, disposal or withdrawal of a product (including whether, how or on what terms to retain or dispose of it);**
- **the exercise of contractual rights in relation to a product (including whether, how or on what terms to exercise such rights).**[25]

2.18 There does not need to be an actual transaction between the consumer and trader for there to be a transactional decision. The concept is broader and includes decisions on whether to do something or not to do something.[26] The wording makes clear that transactional decisions may occur before a consumer has taken any in-principle decision whether to purchase a product.

[23] Paragraph 1343(a) DMCC Act explanatory notes.
[24] This Guidance uses 'take a different decision' as a shorthand for a transactional decision that an average consumer would not have taken otherwise.
[25] Section 245 DMCC Act.
[26] Paragraph 1429 DMCC Act explanatory notes.

It covers decisions taken before, during and after a contract is made or a transaction takes place.[27]

2.19 Non-exhaustive examples of transactional decisions include:

- whether to visit a shop;
- whether to click through on a website;
- whether to agree to a sales presentation or view a property;
- whether to buy a product;
- whether to sell a product (to a trader or another consumer);
- whether to enter a contract;
- whether to exercise a cancellation right, a right to a refund or replacement, or a right in relation to an after-sales service;
- whether to pay a debt.[28]

The average consumer

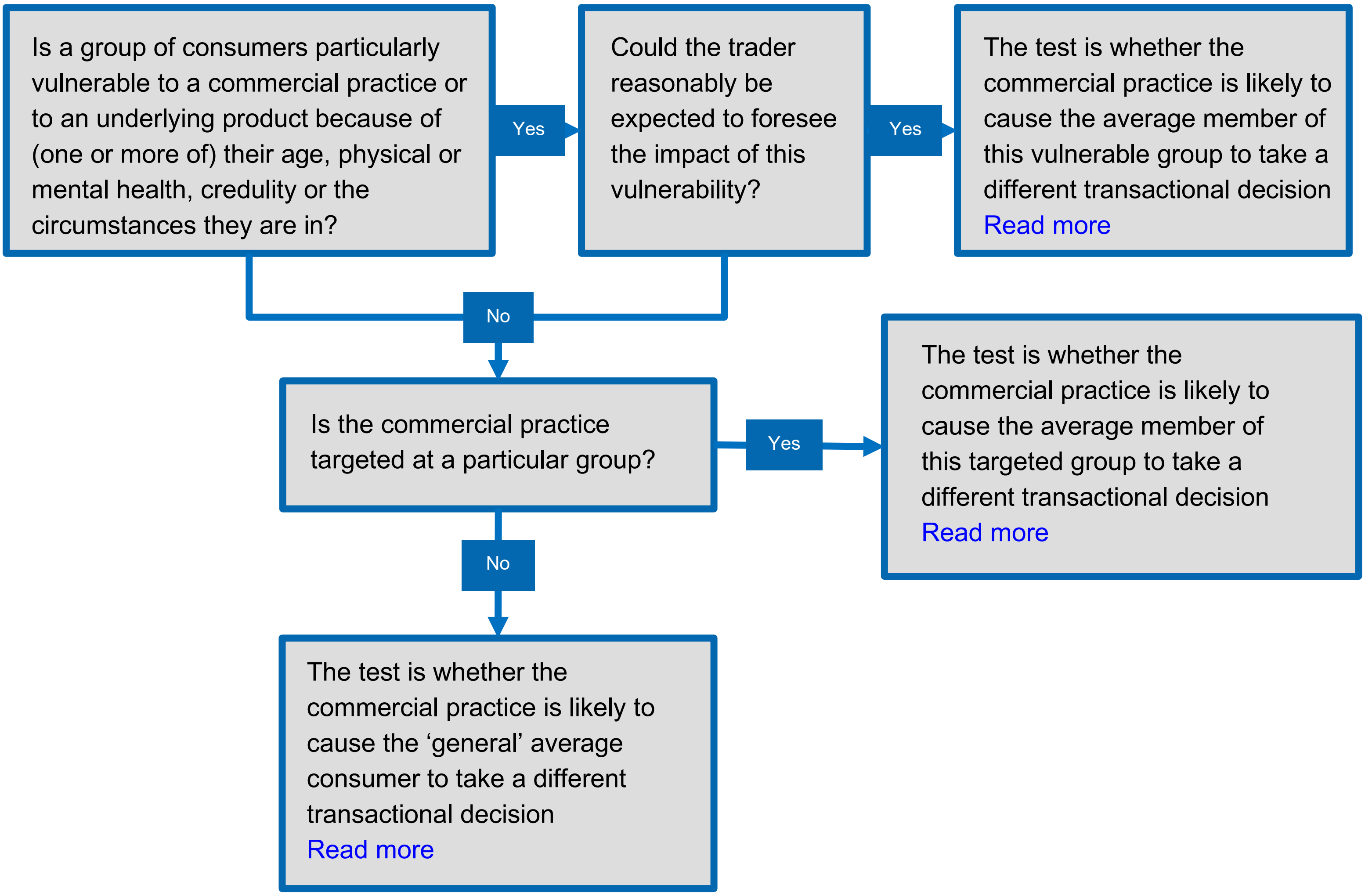
2.20 Whether a commercial practice breaches the requirements of professional diligence or the prohibitions of misleading and aggressive practices will be judged by reference (as appropriate) to:

- the 'average consumer';
- the 'average member' of a targeted group of consumers; and
- the 'average member' of a vulnerable group of consumers.[29]

2.21 The diagram below demonstrates how the effects of a commercial practice on each of these three types of consumers have to be assessed to determine if the practice may be unfair.

---

[27] Paragraph 1430 DMCC Act explanatory notes.
[28] Although it is important to note that whilst the way in which debts are enforced or collected may lead to unfair commercial practices by the trader or their agents, this does not of itself enable consumers to refuse to pay legitimate debts.
[29] Sections 246 and 247 DMCC Act. This Guidance uses 'average consumer' as a shorthand for each of these three types of consumers.



2.22 Where a practice is directed to a particular group of consumers, the ‘average consumer’ refers to the average member of that group. This type of average consumer is referred to in this Guidance as the ‘average targeted consumer’.

2.23 Where a group of consumers is vulnerable to a commercial practice in a way that the trader could reasonably be expected to foresee, the ‘average consumer’ refers to the average member of that group. Different practices, and even the same practices in different circumstances, may have different effects depending on the type of consumer they reach or affect. The provisions concerning vulnerable consumers are there to ensure that traders do not unfairly affect vulnerable people, even if their practices may not change non-vulnerable consumers' decisions.

2.24 The average consumer is a notional construct. There is no requirement to show evidence of actual consumers being affected by an unfair commercial practice. The concepts are intended to help the court and the CMA (as the case may be) decide if a practice is prohibited due to its potential impact on relevant consumers.

Average member of a vulnerable group of consumers

2.25 Where:

- there is a group of consumers;
- the group is particularly vulnerable to a commercial practice; and
- the trader could reasonably be expected to foresee that the group of consumers is vulnerable to the commercial practice;

then the relevant average consumer is the average member of that group.[30]

2.26 In relation to the breaches mentioned in paragraph 2.20, whether a commercial practice is unfair hinges on whether that vulnerability is likely to cause an average member of the group to take a transactional decision that they would not have taken otherwise.

2.27 This protects consumers who may be particularly vulnerable either to a commercial practice (for example, to a particular selling technique or techniques) or because of the underlying product (namely, where the product may be only or mainly of interest to the vulnerable group).[31]

2.28 A commercial practice will be assessed from the perspective of an average member of that group whose vulnerability the trader could reasonably be expected to foresee. The test is objective. It is not necessary that the trader actually foresees the effect (or likely effect) on vulnerable consumers, only that they could reasonably have been expected to do so.

2.29 Consumers are treated as vulnerable to a practice or because of the underlying product within the meaning of the UCP provisions, if (among other things) they are vulnerable because of age, physical or mental health, credulity or the circumstances they are in.[32]

- **Age:** it may be appropriate to consider a practice from the perspective of an older or younger consumer. For example, the elderly might be particularly vulnerable to certain practices connected with burglar alarm sales. Children might be particularly vulnerable to advertisements relating to toys shown on daytime television or within apps that they use.

---

[30] Section 247(1) and (2) and section 246(5) DMCC Act.
[31] Section 247(1) and (3) DMCC Act.
[32] Section 247(4) DMCC Act.

- **Mental or physical health:** this covers a range of health issues or conditions including sensory impairment, mobility limitations, psychological difficulties or distress, and other disabilities. For example, consumers who need to use wheelchairs might be a vulnerable group in relation to advertising claims about ease of access to a holiday destination or entertainment venue. Consumers with hearing difficulties may be a particularly vulnerable group in relation to advertising claims about 'hearing aid compatibility' in a telephone advertisement. Consumers who cannot see may need additional assistance to read the terms and conditions of a contract. Consumers who experience eating disorders might be particularly vulnerable in relation to claims on social media about the weight management benefits of a product.

- **Credulity:** this covers groups of consumers who may more readily believe specific claims. The term is neutral, so the effect is to protect members of a group who are, for any reason, open to be influenced by certain claims. An instance might be members of a group who, because of a particular belief system they have, might believe certain claims more readily than others. For example, consumers who are particularly concerned about the environment, may be more susceptible to misleading environmental claims,[33] than those who have no interest in environmental issues.

- **Circumstances:** vulnerability can also be context dependent and is not limited to factors that are intrinsic to the person. This may include, among other things, being in mourning, going through a divorce, or losing a job. For example, the advertising of training opportunities for people who have recently been made redundant is likely to be assessed from the perspective of a consumer who is vulnerable because of the circumstances of having lost their job.

2.30 These categories are non-exhaustive and are not mutually exclusive. Some groups of consumers might be vulnerable as a result of a combination of personal characteristics, including ones not specified in the categories above (for example, neurodiversity), and/or external circumstances.

2.31 Traders that have processes in place to consider whether their practices are more likely to impact negatively on different groups of vulnerable consumers, and that can evidence those processes, will put themselves in a better

[33] Misleading environmental claims are defined in the Green claims code: making environmental claims - GOV.UK

position to comply with the UCP provisions. Separately, traders must also consider the requirements of the Equality Act 2010.

Average targeted consumer

2.32 The average targeted consumer will be relevant where a commercial practice is directed to a particular group of consumers. If a practice is targeted, then it is the average member of that group and that member's characteristics which are primarily relevant. The average targeted consumer is assumed to be reasonably well informed and reasonably observant and circumspect, subject to the characteristics of that group.[34]

2.33 Indications of whether a group is targeted might be found in the way advertising is placed, the language used in a commercial practice, the nature of the product and the context. Examples include:

- television advertisements during children’s programmes or adverts displayed within online games that children play, which would be directed at children (and/or their parents).
- advertisements for a particular type of credit product directed at ‘non-status’ or ‘sub-prime’ borrowers.

Average consumer

2.34 When a group of consumers is not particularly vulnerable to a commercial practice in a way that the trader could reasonably be expected to foresee, and the commercial practice is not directed at a particular group, the ‘general’ average consumer is the relevant average consumer. The average consumer is defined as ‘reasonably well informed, reasonably observant and reasonably circumspect’.[35] The average consumer cannot be expected to do their own research to find out any relevant information if the trader hides it.[36]

2.35 While the standard is objective in character, it recognises that an average consumer is likely to not be a technical expert, nor does ‘average’ mean a statistically average consumer. The definition is not a statistical test or statistical average.[37]

---

[34] Section 246(2) and (4) DMCC Act.
[35] Section 246(2) DMCC Act.
[36] Section 246(3) DMCC Act.
[37] Paragraph 1434 DMCC Act explanatory notes.

3. Banned practices

Summary at a glance

- There are 32 commercial practices which are unfair in all circumstances.
- There is no need to consider the likely effect of these practices on consumers to prove an infringement of the law.

3.1 Schedule 20 to the DMCC Act lists 32 banned commercial practices.[38] Breaches of these provisions may also breach the other prohibitions in the UCP provisions.[39]

3.2 The text that follows lists the banned practices and provides some illustrative examples.

Banned practice 1

Claiming to be a signatory to a code of conduct when the trader is not.

Example

- A heating engineer displays the logo of an industry code of professional standards on their website and in the letterhead in their correspondence. They are not in fact a signatory to the code of conduct.

[38] The prohibition is contained in section 225(4)(c) of the DMCC Act. Note that the list contained in the predecessor Schedule 1 to the CPUTRs has been rearranged and therefore the numbers of the banned practices differ.

[39] Breaches of all banned practices can attract civil action by enforcement authorities, which can result in the imposition of compliance directions and/or monetary penalties of up to the higher of £300,000 or 10% or worldwide turnover. Most banned practices (except those listed in paragraphs 12, 13 and 30 of Schedule 20 to the DMCC Act) amount to criminal offences, which can lead to fines and/or imprisonment. More information about the enforcement of the UCP provisions, including the banned practices covered in this chapter, can be found in Chapter 10 and in CMA58 and CMA200.

Banned practice 2

Claiming that a code of conduct has an endorsement from a public or private body which it does not have.

> ***Example***
>
> - A member of the (fictional) voluntary Quality House Sales Code displays the code logo in its shop front and on its advertising materials. It claims beside the logo that the code is 'approved by the Chartered Trading Standards Institute'. The code has not been approved by the Chartered Trading Standards Institute.

Banned practice 3

Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

> ***Example***
>
> - A trader puts a kitemark logo, which certifies the safety and quality of an item, on a safety helmet they are selling. In fact, their product does not qualify for it as the safety helmet has not undergone the necessary repeat testing to renew its certification.

Banned practice 4

Claiming that a trader, a trader's commercial practice, or a product has been approved, endorsed or authorised by a public or private body when—

(a) the claim is false; or

(b) the terms of the approval, endorsement or authorisation have not been, or are not being, complied with.

> ***Example***
>
> - A plumber claims that they are registered and approved by a well-known trader recommendation platform when they are not.

Banned practice 5

Making an invitation to purchase products at a specified price where—

(a) the trader has reasonable grounds for believing that it will not be possible for the trader to offer those products, or equivalent products, for supply at that price, in reasonable quantities, for a reasonable period of time (or to procure another trader to do so); and

(b) the trader does not disclose that fact.[40]

Example

- An electronics firm advertises nationally using the line 'wireless headphones for £9'. They have planned to make only 10 sets of headphones available at that price. The number of headphones actually available for £9 would not be sufficient to meet the likely level of demand arising from the scale of the advertising. The trader knew this but failed to make clear in the advertisement that only limited numbers were available.

Banned practice 6

Making an invitation to purchase products at a specified price and then—

(a) refusing to show the advertised item to consumers;

(b) refusing to take orders for it or deliver it within a reasonable time; or

(c) demonstrating a defective sample of it;

with the intention of promoting a different product.

[40] References to reasonable quantities and a reasonable period of time are references to what is reasonable having regard to—
(a) the nature of the product;
(b) the extent of advertising for the product; and
(c) the price offered for the product

Example

- A trader advertises a television for £300 in a sponsored post on social media. When consumers click through to the trader's website, it shows them a range of television models which are different to and more expensive than the one advertised on social media. The trader intentionally uses this practice to promote a different television model.

Banned practice 7

Falsely stating that a product will only be available for a limited time, or that it will only be available on particular terms for a limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

Example

- A trader falsely tells a consumer that an offer will end when a countdown clock runs out in order to pressure them into making an immediate decision to buy. When the time runs down, the offer does not in fact end, but continues and the countdown clock restarts. If the trader's statement that the offer will end is true (and is not otherwise misleading, for example, because a substantially similar offer appears within a short period) then this is unlikely to be problematic.[41]

- An app-based game offers 'skins' to change the appearance of the player's avatar in the in-game store. A new skin is offered for £1.99 with the message 'exclusive opportunity – only available for 5 days'. However, 10 days later, the same skin is offered in the store again.

Banned practice 8

Undertaking to provide an after-sales service to consumers and then making such service available only in a language which is different to the language used in communication with the consumer for, or prior to, the transaction without clearly disclosing this to the consumer before the consumer committed to the transaction.

---

[41] See also CMA Urgency and price reduction claims online open letter and examples of non-compliance.

Example

- A trader selling luxury footwear communicates with, and takes orders from, customers in English. It includes on its website information about its after-sales service to consumers. It does not warn English-speaking customers that the after-sales services are only provided in French.

Banned practice 9

Falsely claiming or creating the false impression that an after-sales service is available, including falsely claiming that it is available in, or accessible from, any particular country or location.

Example

- A trader sells washing machines on its website. It states that it delivers to all parts of the UK. Its FAQs describe how to call out an engineer in the event of a problem. In fact, the trader only services products on the mainland of the UK and not in the Outer Hebrides.

Banned practice 10

Stating or otherwise creating the impression that a product can be legally sold when it cannot.

Example

- Sellers operating on a large online marketplace offer so called ‘zombie knives’ for sale to consumers. The sale of such knives is illegal in the UK.

Banned practice 11

Presenting rights given to consumers by law as a distinctive feature of the trader’s offer.

Example

- A retailer of men's suits advertises its clothing for sale online with the following statement: 'We don't care what the reason is, if you aren't happy with your purchase, you can return it to us within 14 days and we'll refund you your money no questions asked – you won't find this offer elsewhere!' Even where there is nothing wrong with the suit, the consumer will ordinarily have 14 days to cancel and withdraw from the contract pursuant to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

Banned practice 12

Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer.

Example

- An online influencer is gifted a free holiday with the expectation they will post content about it on their social media account. Their content does not make it clear that this is a paid-for feature – for example by clearly labelling it #Ad.

Banned practice 13

Submitting, or commissioning another person to submit or write—

(a) a fake consumer review; or

(b) a consumer review that conceals the fact it has been incentivised.

Publishing consumer reviews, or consumer review information, in a misleading way.

Publishing consumer reviews, or consumer review information, without taking such reasonable and proportionate steps as are necessary for the purposes of—

(a) preventing the publication of—

(i) fake consumer reviews;

(ii) consumer reviews that conceal the fact they have been incentivised; or

(iii) consumer review information that is false or misleading; and

(b) removing any such reviews or information from publication.

Offering services to traders to:

(a) submit or commission fake reviews or reviews which hide the fact that they are incentivised; or

(b) publish consumer reviews or consumer review information in a misleading way;

or which facilitate any of those things.

The full text of the banned practice can be found in paragraph 13 of Schedule 20 to the DMCC Act. Explanation and illustrative examples in relation to banned practice 13 are provided in separate guidance.

Banned practice 14

Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security or safety of the consumer, a member of the consumer's family or anyone living in the consumer's home, if the consumer does not purchase the product.

Example

- A trader selling video door entry systems makes exaggerated statements of the risk of doorstep mugging to potential customers such as: 'There have been a lot of doorstep muggings in your street recently. There is clearly a gang at work in this area'.

Banned practice 15

Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

Example

- A trader designs the packaging of shampoo A so that it very closely resembles that of shampoo B, an established brand of a competitor. The similarity was introduced deliberately to mislead consumers into believing that shampoo A is made by the manufacturer of shampoo B.

Banned practice 16

Establishing, operating or promoting a pyramid promotional scheme.[42]

Example

- A trader sets up a rewards scheme, under which it invites consumers to join if they pay a £3,000 fee. Each new joiner tries to recruit others. When a certain number have joined, the person at the top of the pyramid receives £23,000. The pyramid is then split, so that the two people below now head their own pyramid. They have the chance to gain £23,000 when enough new people join. The other benefits of the scheme are negligible compared to the potential rewards of introducing new members and having the chance to receive the £23,000 payout.

Banned practice 17

Claiming that the trader is about to cease trading or move premises when the trader is not.

Example

- A trader runs a clothes shop. They put up a sign in the shop window stating: 'Closing down sale' when the shop is not actually closing down.

[42] A pyramid promotional scheme means a scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the supply or consumption of products.

Banned practice 18

Claiming that products can facilitate winning in games of chance.

Example

- A trader advertises an app with the claim: 'This will help you win money on scratchcard lotteries'.

Banned practice 19

Falsely claiming that a product can—

(a) prevent or treat disease[43] or a malformation;

(b) restore, correct or modify a physiological function; or

(c) modify a person's appearance.

Example

- A trader sells orthopaedic beds which it offers for sale on an online marketplace with the description: 'Ward off backache with these special beds'. There is no proof that the bed prevents backaches.
- A trader sells an 'antiviral misting spray', advertising it via social media with the description: 'Prevent COVID-19 with one spray a day' when in fact there are no medicines licensed specifically for the prevention of COVID-19.

Banned practice 20

Providing (including passing on) materially inaccurate information about market conditions or about the availability of the product with the intention of inducing the consumer to acquire the product under conditions that are less favourable than normal market conditions.

[43] 'Disease' is defined to include any injury, ailment or adverse condition, whether of body or mind.

Example

- An estate agent tells a consumer that they have recently sold several houses in the same area, just like the one the consumer is viewing, at a certain price. This is not true and the trader is making the claim in order to persuade the consumer to buy at an inflated price.

Banned practice 21

Claiming to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

Example

- A trader operates a scratch-card prize promotion with a top prize of £10,000. In fact, it does not print any cards that win this top prize or prints the cards but do not make them available, meaning that no prizes of £10,000 could be awarded.

Banned practice 22

Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either—

(a) there is no prize or other equivalent benefit; or

(b) taking any action in relation to claiming the prize or other equivalent benefit requires the consumer to pay money or incur a cost.

Example

- A trader sends letters to consumers which state the consumer has won a prize. In fact, the consumer can only collect the prize by making a purchase from the trader, phoning a premium rate number to obtain a special code, or sending a stamped addressed envelope by post.

Banned practice 23

Describing a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

Example

- A trader advertises a ‘free’ gift. It then tells consumers that to receive their ‘free’ gift they need to pay an extra fee.

Banned practice 24

Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that the consumer has already ordered the marketed product when the consumer has not.

Example

- A trader sends emails to consumers with marketing material which are or closely resemble invoices for a product that has not been ordered.

Banned practice 25

Falsely claiming or creating the false impression that the trader is not acting for purposes relating to the trader’s business or falsely representing oneself as a consumer.

Example

- A second-hand car dealership puts a used car on a nearby road and displays a handwritten advertisement reading ‘One careful owner. Good family run-around. £2000 or nearest offer. Call Jack on 01234 56789’. The sign gives the impression that the seller is not a trader.

Banned practice 26

Creating the impression that the consumer cannot leave the premises until a contract is formed.

Example

- A holiday company advertise sales presentations at hotels. During the presentations, intimidating doormen are posted at all the exits, creating the impression that the consumers cannot leave before buying.

Banned practice 27

Ignoring a request from a consumer to leave or not return to the consumer's home, except in circumstances and to the extent justified to enforce a contractual obligation.

Example

- A door-to-door salesman visits a consumer to sell them some cleaning products. The consumer tells the trader that they are not interested and asks them to leave. The trader is determined to try and get the consumer to change their mind and continues the sales pitch on the consumer's doorstep.

Banned practice 28

Making persistent and unwanted solicitations by any means, other than by attending at the consumer's home, except in circumstances and to the extent justified[44] to enforce a contractual obligation.

Example

- A direct seller telephones consumers to sell them products. It does not record when consumers have asked to be removed from its contact lists. The trader calls back consumers several times,

[44] Allowed action would include, for example, legitimate debt collection. Collectors must, however, comply with the UCP provisions, as well as the Consumer Credit Act 1974.

who have asked the trader not to call. Note that a consumer who has signed up to the Telephone Preference Service would be regarded as a consumer who does not want unsolicited telephone calls.

Banned practice 29

Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to correspondence, to dissuade a consumer from exercising the consumer's contractual rights.

Example

- A trader sells electrical goods. When consumers complain about a problem with a purchase, the trader ignores the complaints or fails to respond for many weeks. Many consumers give up trying to resolve their complaints.
- A trader dealing with a consumer's insurance claim insists on the consumer providing records of the consumer's entire criminal record history despite spent convictions being irrelevant to the claim.

Banned practice 30

Including in an advertisement a direct appeal to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

Example

- A trader advertises a comic book for children called 'The adventures of Fluffy the Bunny' stating 'read about the adventures of Fluffy the Bunny in this new comic book each week – ask your mum to buy it from your local newsagents!'
- A trader operates a mobile phone game which features a popular children's television character and is clearly designed for children. An ad banner in the game directly encourages children to make purchases, using real money, in the in-game shop.

Banned practice 31

Supplying products to a consumer that have not been requested by the consumer and demanding that the consumer—

(a) pays for the products;

(b) returns the products; or

(c) safely stores the products.

Example

- A trader writes to consumers informing them of a new grease eradicating dishcloth which the trader is selling for £2.99. The trader encloses one of the cloths for the consumer to inspect and says that if the consumer does not return the cloth within 7 days then action will be taken to collect the £2.99.

Banned practice 32

Explicitly telling a consumer that if the consumer does not buy the product, the trader's job or livelihood will be at risk.

Example

- A doorstep sales representative tells a consumer that if the consumer does not buy the product, the sales rep will be sacked by their employer for failing to hit their targets.

4. Omission of material information from an invitation to purchase

Summary at a glance

- Invitations to purchase give information to consumers which indicates the characteristics of a product and its price, enabling them to take a transactional decision in relation to the product.
- There are several categories of 'material information' that must be included within an invitation to purchase (unless already apparent from the context). This includes information about the main characteristics and total price of the product; information about the trader, such as their identify and business address; applicable cancellation rights; and information required to be given to consumers under other legislation.
- Failure to give the required material information clearly, in a timely manner, in a way that the consumer is likely to see it is unlawful regardless of whether that is likely to affect consumers' decisions.
- The practice of showing consumers an initial headline price for a product and subsequently introducing additional mandatory charges as consumers proceed with a purchase or transaction – sometimes called 'drip pricing' – is prohibited.

4.1 The UCP provisions regulate certain kinds of commercial practice known as 'invitations to purchase'.[45] They specify information that is automatically regarded as material information.

4.2 The omission of material information from an invitation to purchase is an unfair practice regardless of whether it is likely to impact a consumer's transactional decision.[46] This contrasts with the misleading omissions prohibition described in Chapter 6 (Misleading omissions).

---

[45] The UCP provisions concept of 'invitation to purchase' is not the same as the English concept of 'invitation to treat'. An 'invitation to treat' is used in English contract law to describe an invitation to negotiate which contains no intention to be bound at that particular moment.

[46] The prohibition is contained in section 225(4)(b) and section 230 of the DMCC Act.

4.3 Where traders make invitations to purchase, they will need to ensure that they include the information required by the UCP provisions, or that such information is apparent from the context.

What is an invitation to purchase?

4.4 The UCP provisions define an invitation to purchase as

> **a commercial practice involving the provision of information to a consumer—**
>
> - **which indicates the characteristics of a product and its price; and**
> - **which enables, or purports to enable, the consumer to decide whether to purchase the product or take another transactional decision in relation to the product.**[47]

4.5 The idea behind this concept is that the consumer should be given the key information they need to make an informed transactional decision.

4.6 An invitation to purchase can exist even where the information indicating the price and characteristics of a product is minimal. This includes, for example, where the lowest price for which the advertised product can be bought is indicated or where a single visual reference is used to describe a product that is available in a variety of forms.[48]

4.7 An invitation to purchase can exist before the consumer makes an in-principle decision to purchase a product[49] and before it is possible to make a purchase. It can occur even where the information given is far from complete. For example, an advertisement that shows the monthly price of a subscription will still be an invitation to purchase, even though it omits other important pricing information such as a one-off sign-up fee.

4.8 Further, an invitation to purchase does not need to include an actual opportunity to enable the consumer to purchase the product.[50] For example, a poster above the seats in a train carriage which advertises a product and its

[47] Section 230(10) DMCC Act.
[48] Paragraph 1374 DMCC Act explanatory notes.
[49] See 'Transactional decision' section in Chapter 2 (Core concepts).
[50] Paragraph 1375 DMCC Act explanatory notes.

price will still be an invitation to purchase even if the poster does not explain where to buy the product.

4.9 The following are examples of invitations to purchase where the product's price and characteristics are given:

- a price on a product in a shop;
- an item listing on the website of an online marketplace;
- a menu (including a physical menu card or a digital menu that can be accessed through the scanning of a QR code) in a restaurant;
- an advertisement of a product on TV or in a social media post;
- a text message promotion;
- an advertisement in a newspaper displaying a car with a ‘drive away from’ price;
- a banner that appears within a mobile application advertising an ad-free version of the app or in-app purchases.

When are commercial practices not invitations to purchase?

4.10 A commercial practice which does not include a price is not an invitation to purchase. Where a commercial practice does not indicate the characteristics of a specific product, through text, image or otherwise, it will not be an invitation to purchase.

4.11 In many cases, advertisements which promote a trader's ‘brand’ rather than any particular product(s) will not be invitations to purchase.

4.12 It is important to note that if a commercial practice is not an invitation to purchase a trader may still be required to provide certain information if consumers need it to make an informed decision. Failure to do so may constitute a misleading omission, subject to meeting the transactional decision test.[51]

[51] See Chapter 6 (Misleading omissions).

What information must be included in an invitation to purchase?

4.13 The UCP provisions deem certain information to be 'material' where traders make invitations to purchase. To comply with the law, this 'material information' must be included in the invitation to purchase. A list of the categories of information that the consumer must be given is set out in section 230(2) of the DMCC Act and is summarised below:

- The **main characteristics of the product** – for example, what it is and what it does – to the extent appropriate to the means used to communicate the invitation to purchase and the nature of the product.[52] The main characteristics described should correspond to the price indicated – for example, where the price given is for a basic model, the main characteristics should make clear the product is a basic model.

- Either the **total price of the product** (including any mandatory fees, taxes, charges or other payments that the consumer must pay if they purchase the product);[53] or

- where the total price cannot be reasonably calculated in advance, because of the nature of the product, **the way the total price will be calculated**, to enable the consumer to calculate the price.[54]

- Any **optional freight, delivery or postal charges**, including any taxes, not included in the total price of the product (or where these cannot reasonably be calculated in advance, the fact that such charges may be payable).[55]

- The identity of the trader, such as their personal or trading name, and the identity of any other person on whose behalf the trader is acting.[56]

- The contact information of the trader, namely:

  (i) the address of their place of business;

[52] Section 230(2(a) of the DMCC Act
[53] Section 230(2)(b) of the DMCC Act
[54] Section 230(2)(c) and section 230(5) of the DMCC Act. Information about how a mandatory charge (that cannot be calculated in advance) will be calculated must be set out with as much prominence as the pricing information given under s.230(2)(b) – see section 230(5) of the DMCC Act. See also the 'Material pricing information' section in this chapter for further details.
[55] Section 230(2)(g) of the DMCC Act
[56] Section 230(2)(d) of the DMCC Act

(ii) if different from the above, the address at which they will accept service of documents;

(iii) any existing email address used by the trader for conducting business.[57]

- If the trader is acting on behalf of another person (for example, as an agent, subcontractor or representative), that other person's contact information.[58]

- For products involving a right of withdrawal or cancellation, the existence of such rights.[59]

- If the trader is using any arrangements for payment, delivery, performance[60] or complaint handling that are different from the trader's published practice, information about these alternative arrangements.[61]

- Any information which the trader is required under any other legislative provision to give to a consumer as part of an invitation to purchase.[62]

4.14 When deciding whether a practice involves a misleading omission, consideration should be given to any limitations of the means of communication used that make it impractical to give the necessary information.[63] This includes limitations of space or time, such as the size of packaging or the duration of a radio advertisement, that cannot practicably convey the terms and conditions that apply in relation to that product.

4.15 In such circumstances, steps taken by the trader to overcome those limitations by providing information by other means need to be considered.[64] Such other means could include providing a hyperlink or QR code, or

---

[57] Section 230(2)(e) of the DMCC Act
[58] Section 230(2)(f) of the DMCC Act
[59] Section 230(2)(h) of the DMCC Act
[60] That is the way in which any work is to be carried out, or a service provided.
[61] Section 230(2)(i) of the DMCC Act
[62] Section 230(2)(j) of the DMCC Act. This includes requirements to provide information in a broad range of primary and secondary legislation. This requirement is not restricted to where other legislation describes the obligation to provide information to consumers by using the term 'invitation to purchase'. For example, it includes the information that must be provided to consumers before entering a subscription contract under Chapter 2 of Part 4 of the DMCC Act or before making on-premises, off-premises and distance contracts under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (Statutory instrument 2013/3134). It could also include information which is required by section 227 of the DMCC Act as material information.
[63] Section 230(8)(a) DMCC Act.
[64] Section 230(8)(b) DMCC Act.

encouraging consumers to visit a website for more information. When considering whether those other means overcome the limitations of the means of communication, it will be necessary to assess their effectiveness in ensuring consumers have access to the information in a clear and timely way and that they are likely to see it.

4.16 Where the required information is apparent from the context, traders do not need to provide it separately. An example of information which is likely to be apparent from the context will be the address of a shop which the consumer is already in. Similarly, if a consumer views a clearly branded advert for a streaming service provided by a well-known streaming platform, the identity of the trader will be apparent from the context.

4.17 The invitation to purchase must provide all the material information[65] clearly, in a timely way and in a way that the consumer is likely to see it. A trader that fails to do so will be considered to have omitted that information, even though it has been provided in some form.[66]

Material pricing information (including prohibition of drip pricing)

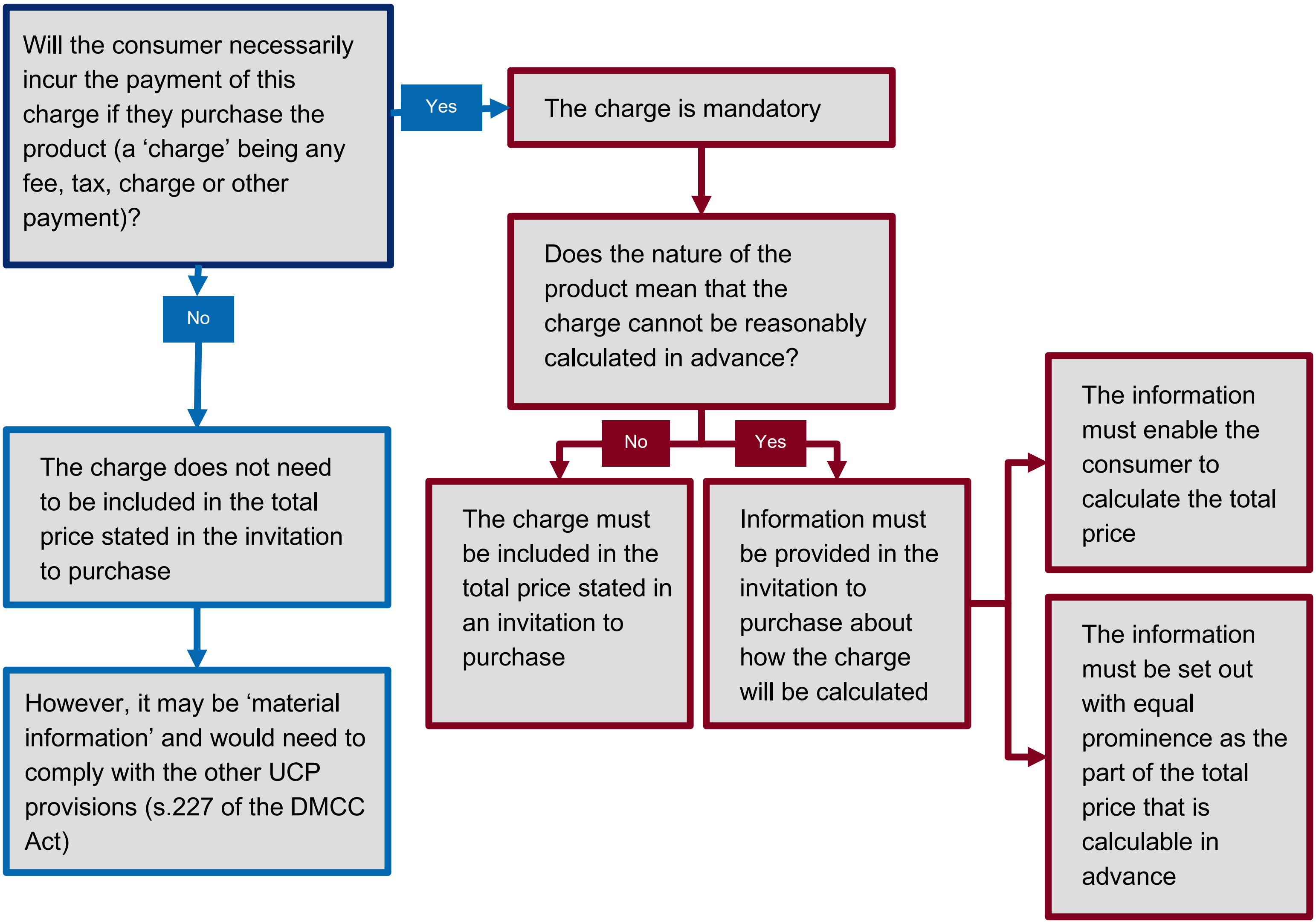
4.18 As set out above,[67] traders must tell consumers in an invitation to purchase **the total price of the product**[68] which **includes any fees, taxes, charges or other payments that the consumer will necessarily incur if the consumer purchases the product.**[69]

4.19 Failure to give the total price could breach the prohibition of omission of material information from an invitation to purchase.[70]

4.20 The diagram below shows what the UCP provisions require, including what pricing information must be included in the price stated in the invitation to purchase (the headline price).

---

[65] The information listed in section 230(2) of the DMCC Act.
[66] Section 230(9) DMCC Act.
[67] See paragraph 4.13.
[68] Section 230(2)(b) DMCC Act.
[69] Section 230(4) DMCC Act.
[70] The prohibition is contained in section 225(4)(b) and section 230(1) and (2)(b) of the DMCC Act. Section 230(2)(b) of the DMCC Act is subject to section 230(2)(c) which concerns the provision of information about mandatory charges where, owing to the nature of the product, the whole or any part of the total price cannot reasonably be calculated in advance.



4.21 This provision makes sure that consumers know up front what they will end up paying, that they have accurate and timely pricing information and that they are not faced with unexpected mandatory charges only later in a purchasing journey. This is important, because businesses compete for consumers on headline prices. This requirement is in addition to compliance with the other UCP provisions, including in relation to misleading actions and omissions.

4.22 A consumer may be presented with an invitation to purchase at multiple points during the process of deciding whether to purchase or take another transactional decision about a product. Each commercial practice that is an invitation to purchase, even if taking place early on in the consumer journey has to be lawful.

4.23 The sections below explain the requirement to present the total price of a product to ensure that the consumer is not faced with genuinely unexpected and untrailed mandatory charges revealed at the end of the purchasing journey. The CMA will update this section as soon as possible to include further details on other areas raised during the consultation of this Guidance, including fixed term periodic contracts charges.

When are charges mandatory versus optional?

4.24 If, in addition to paying the price stated in the invitation to purchase (the headline price), the consumer cannot purchase a product without the payment of any fee, tax, charge or other payment (‘charge’ in short), then that charge is mandatory. Mandatory charges should be included in the headline price.

4.25 In some cases, a trader may wish to offer an optional service in addition to the product they are selling. This does not have to be included in the headline price if it is genuinely optional. However, merely presenting a charge separately to the headline price or describing it as a service does not make it optional.

Examples of lawfully provided mandatory charges

- A hotel provides the price of a room for a three night stay as £250. This price includes the cost of the room being cleaned, as well as the use of Wi-Fi and a safe within the room. As the room cleaning, use of Wi-Fi and safe are not optional they are included within the total price displayed for the room and the cost of £250 is a fully inclusive price.

- The total price of a second-hand car is provided as £2000. This total price includes an admin fee and the cost of valeting the car. As the admin fee and car valeting are not optional, they are included within the total price displayed for the car and the cost of £2000 is a fully inclusive price.

- A bike retailer provides the cost of second-hand bike as £100. This total price includes full servicing of the bike. As the full service is not optional, it is included within the total price displayed for the bike. The £100 is therefore a fully inclusive price.

Examples of lawfully provided optional charges

- A hotel displays the price of a ‘room only’ for one night as £80. This price does not include breakfast as guests can stay overnight at the hotel for the headline price and decide whether they want to pay for breakfast based on their individual preference. As the additional service, of breakfast, is genuinely optional it does not have to be included within the headline price.

- An electronics retailer displays the price of a television for £350. This price does not include an extended warranty. Consumers can purchase the television for the headline price and decide whether they want to pay for the extended warranty. As the additional service, of an extended warranty, is genuinely optional it does not have to be included within the headline price.

What is drip pricing and what is prohibited in practice?

4.26 A consumer may be presented with an invitation to purchase at multiple points during the process of deciding whether to purchase or take another decision about a product. Each commercial practice that is an invitation to purchase must be lawful, even if it takes place early in the consumer journey (for example, at the advertising stage).

4.27 All information in invitations to purchase, including pricing information, must be provided clearly, in a timely manner and in a way that the consumer is likely to see it.[71] Where, owing to the nature of the product, the price (or a part of it) cannot be reasonably calculated in advance, the invitation to purchase must include information that enables the consumer to calculate the non-calculable (parts of the) price. That information must be provided with as much prominence as the part of the total price that is calculable in advance.[72]

4.28 The format for displaying such information is likely to vary depending on the means used for the invitation to purchase. However, the practice of showing consumers an initial headline price for a product and subsequently introducing additional mandatory charges as consumers proceed with a purchase or transaction – sometimes called 'drip pricing' – is prohibited under the UCP provisions.

Examples of prohibited drip pricing practices

- A hotel provides a price of £100 per room, per night, on their website. The consumer inputs the dates of their two-night weekend stay into the hotel's website and is provided with a total price of £200 for the entirety of their stay. The consumer navigates through several webpages of optional extras, such as upgrading the room to one of a bigger size and adding a bunch of flowers to the room. The consumer does not choose to add any additional extras to their stay. After the consumer completes their choices, the consumer is

[71] Section 230(9) DMCC Act.
[72] Section 230(5)(b) DMCC Act.

informed of a ‘weekend surcharge’ of £25 per night. The total price of the stay is therefore £250. The consumer was initially provided a total price for the stay as £200. The ‘weekend surcharge’ was not presented to the consumer until the very last stages of the purchase.

- A company offers an online learning course in a specific subject area for £100. When the consumer prepares to pay the £100 total, they are informed of an additional mandatory £40 ‘enrolment fee’ to access the course content. The consumer was initially provided a headline price for the course of £100 while the total price of the course is actually £140.

- A hairdresser displays a pricing list, within a hairdressing salon, which lists the cost of several different services. A consumer chooses a haircut which is shown as £50 on the pricing list. When the consumer pays for the haircut, they are charged an additional £25, ‘long hair’ fee. The total price of the haircut is therefore £75. The pricing list does not display any details regarding differential pricing for different lengths of hair. The higher price was not presented to the consumer until the very last stages of the purchase.

- A car hire company website displays the cost of hiring a car as £60 for 24 hours. The consumer pays the £60 total cost online to hire the car. When the consumer goes to pick up the car, the consumer is told there is an additional mandatory ‘pick-up fee’ of £40. The consumer was not informed of the ‘pick-up fee’ at any point prior to arrival at the collection point and was initially provided a headline price for the car hire of £60 while the total price to hire the car is actually £100. As the ‘pick-up’ fee is mandatory, the website should have displayed the cost of hiring the car as £100 rather than £60.

5. Misleading actions

Summary at a glance

- Four types of misleading action are prohibited if the average consumer is likely to take a different decision as a result:
    - providing false or misleading information;
    - an overall presentation that is likely to deceive the average consumer;
    - marketing which creates or is likely to create confusion with another trader, or their product or distinguishing mark;
    - failing to comply with a requirement in a code of conduct which a trader purports to be complying with.

Misleading action type 1: False or misleading information

5.1 Traders should not give consumers information which is objectively false. Any factual claims made by a trader about a product should be supported by evidence. If a trader is not able to produce such evidence, the CMA or the courts may find the claim to be false on this basis.[73]

5.2 Traders should not provide misleading information relating to a product, a trader or any other matter relevant to a transactional decision.[74] This includes information which, although true, is presented in a misleading way and, is likely to cause the average consumer to take a different decision.[75]

5.3 Generally, the more important a piece of information is, the more likely it is to cause the average consumer to take a different decision. For example, in most cases, a typo in an email or a trader's address might be unlikely to cause the average consumer to take a different decision, even if it means the information was false.

[73] Sections 178 and 195 DMCC Act.
[74] Section 226(1)(a) DMCC Act.
[75] Section 226(2) and section 225(4)(a)(i) DMCC Act.[76] The list largely mirrors the list in regulation 5(4) of the CPUTRs, the UCP predecessor regulations.

5.4 The UCP provisions do not expressly set out the types of information that are relevant to a transactional decision. Generally, however, the types of information which may impact on a consumer's decision if it is false include:[76]

- the main characteristics of the product, including:
    - its availability, quantity and specification;
    - its benefits or risks;[77]
    - fitness for purpose of the product;
    - usage or results to be expected from use of the product;
    - execution,[78] composition or accessories of the product;
    - origin of the product;
    - the method and date of manufacture or provision of the product;
    - results and material features of tests or checks carried out on the product;
    - delivery of the product;[79]
    - after-sale customer assistance concerning the product;
    - the handling of complaints about the product;
- the extent of the trader's commitments;
- the motives for the commercial practice;[80]
- the nature of the sales process;
- any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product;

[76] The list largely mirrors the list in regulation 5(4) of the CPUTRs, the UCP predecessor regulations.
[77] This could include, for example, the environmental impact of a product.
[78] This could include, for example, information about the format through which the product is made available, such as online or in store, in instalments or one-off, etc.
[79] This could include, for example, information about the speed of delivery of the product, any applicable delivery restrictions, any rights which consumers have that are intrinsically linked to the date of delivery of the product etc.
[80] This could include, for example, any statements that the trader might make about their intention for the proceeds of their commercial practice, such as stating that they intend to donate some profits to charity.

- the price or the manner in which the price is calculated;
- the existence of a specific price advantage;
- the need for a service, part, replacement or repair;
- the nature, attributes and rights of the trader or their agent, including their identity, assets, qualifications, status, approval, affiliations or connections, awards and distinctions, ownership of industrial, commercial or intellectual property rights etc.
- the consumer's rights or the risks they may face.

5.5 The ‘consumer's rights’ could include, for example, rights the consumer may have under core consumer protection law such as Parts 1 and 2, Chapter 5 of Part 3 and Schedules 2 and 3 to the Consumer Rights Act 2015, and under various sector-specific legislation such as The Package Travel and Linked Travel Arrangements Regulations 2018.

Examples of providing false or misleading information

- A trader advertises a ‘premium’ package for an online television streaming service. The consumer is falsely told that the package includes certain key channels, which are in fact only available at an additional subscription cost. The trader has provided false or misleading information relating to the product (in this case, the contents of the ‘premium’ package). If the average consumer would take a different decision about the package, for example to buy it where they would not do so if they knew the channels were not included, then this would be unfair.
- A trader advertises a house as having 3 bedrooms, when in fact it has 2 bedrooms and a box room too small for a bed. Given that the number of bedrooms is generally important to those looking for a house, this is likely to cause the average consumer to take a different decision in relation to the house as a result (for example whether to view the house).

Misleading action type 2: Overall deceptive presentation

5.6 A commercial practice involves a misleading action if its:

- overall presentation is likely to deceive the average consumer about a matter relating to a product, a trader or any matter relevant to a transactional decision;[81] and

- as a result, it is likely to cause the average consumer to take a different decision.[82]

5.7 This includes a situation where the information that consumers receive is not actually false, but is arranged, displayed or otherwise presented in a way that is likely to deceive the average consumer.[83]

5.8 The non-exhaustive list of matters in paragraph 5.4 above is also relevant to this type of misleading action.

Examples of overall deceptive presentation

- A trader advertises televisions for sale saying the price has been substantially discounted. However, a footnote in very small font explains that only a very small number of the televisions are on sale and only for a very short period of time in only one of the trader's numerous shops. The trader's advertisement may be factually correct. However, if the average consumer would not notice the footnote and would then take a different decision about whether to go into the shop than if they had that information, then they will have been deceived by the overall presentation and misled.

- A trader uses attention-grabbing pop-up messages on their website to tell consumers of interest in or demand for a product and urging them to act quickly. One message states 'Be quick! We've sold 10 in the last 5 mins.' While it is literally true that the stated number of people have just bought the product, the trader's stock levels are high and there is no need for consumers to hurry.

- A trader highlights just one of several charges for a product on their website and provides less conspicuous information about the other charge(s). The information provided may be misleading by creating the impression that the product is cheaper than it really is. A practice like this could also amount to a

[81] Section 226(1)(b) DMCC Act.
[82] Section 225(4)(a)(i) DMCC Act.
[83] Section 226(3) DMCC Act.

misleading omission (see Chapter 6) and/or omission of material information from an invitation to purchase (see Chapter 4).

Misleading action type 3: Creating confusion with competitors' products

5.9 Commercial practices are also prohibited as misleading actions if:

- they market a product in a way which creates, or is likely to create, confusion with any products, trade marks, trade names or other distinguishing marks of another trader;[84] and
- this is likely to cause the average consumer to take a different decision as a result.[85]

Examples of creating confusion with competitors' products

- A major sunglasses retailer is selling 'Sunspex', a highly successful brand with a signature pink colour. A competing trader launches 'Sunspeks' in a slightly different shade of pink. This will be illegal if the average consumer is likely to be confused and more likely to take a different decision, such as to buy Sunspeks, than they otherwise would be.
- A trader pays for search results to be shown to consumers who search for a competitor's product. The listing leads to a website with a domain name that suggests it is operated by that competitor when in fact it is not. As a result, consumers purchase products from that website, believing it to be the competitor's site.

Misleading action type 4: Failing to comply with requirements in a code of conduct

5.10 The fourth category of commercial practices prohibited as misleading actions is where:

- the trader indicates that it acts in compliance with a code of conduct;[86] and

[84] Section 226(1)(c) DMCC Act.
[85] Section 225(4)(a)(i) DMCC Act.
[86] Section 226(1)(d) DMCC Act.

- the trader fails to comply with a requirement in the code in circumstances where the trader is required to comply and where compliance with the requirement in the code can be verified;[87] and
- as a result, it is likely to cause the average consumer to take a different decision.[88]

Example of failing to comply with requirements in a code of conduct

- A trader has agreed to be bound by a code of practice that promotes the sustainable use of wood. It displays the code's logo in an advertising campaign. The code of practice contains a clear requirement that its members will not use hardwood from unsustainable sources. There is no discretion afforded to the trader in relation to the requirement, which is capable of being verified. It is found that the product advertised by the trader contains hardwood from endangered rainforests. Assuming the average consumer would expect code members to sell products which comply with their code and that the provision of the code matters enough to them, this is likely to cause the consumer to take a different decision, for example to buy the hardwood product when they otherwise would not.

[87] Section 226(5) DMCC Act.
[88] Section 225(4)(a)(i) DMCC Act. In general, membership of a code of conduct is likely to enhance consumer trust in traders which are members, and accordingly in the CMA’s view failing to comply with the requirements of a code is highly likely to impact consumer decision making.

6. Misleading omissions

Summary at a glance

- Three types of misleading omission are prohibited if the average consumer is likely to take a different decision as a result:
    - omitting material information;
    - omitting information which the trader is required under any legislation to give to a consumer as part of the practice;
    - failing to identify their trader's commercial intent unless it is already apparent from the context.
- Omitting information includes not giving it at all as well as giving it in a way that is unclear, untimely or such that the consumer is unlikely to see it.

6.1 The UCP provisions prohibit misleading omissions which are likely to cause the average consumer to take a different decision.[89]

What information must be included?

Material information

6.2 Material information is **information that the average consumer needs to take an informed transactional decision.**[90] What information is required will depend on the circumstances, for example what the product is, and where and how it is offered for sale. This may range from a very small amount of information for simple products, to more information for complex products.

6.3 The price of a product is usually material information. Failing to provide the price in a timely fashion before a transactional decision is made is likely to amount to a misleading omission. For example, in restaurants, the prices of the food and drink available will need to be displayed to consumers before they order, and in many cases before they enter the restaurant. See also

[89] The prohibition is contained in section 225(4)(a)(ii) and section 227 of the DMCC Act.
[90] Section 227(2) DMCC Act.

Chapter 4 (Omission of material information from an invitation to purchase) in relation to pricing information and other types of information that are likely to be material in the context of invitations to purchase.

Examples of material information

- That a contract runs for a minimum period or that the consumer must make purchases in future under that contract.
- That a product is second-hand and/or has been reconditioned where that is the case.
- The basis on which a trader makes a claim that a product is 'greener', including what is meant by the term 'greener' and what the product is 'greener' than (for example, the trader's other products or those sold by a competitor).
- That a second-hand car advertised as with '1 previous owner' was used as a rental car, given that ex-rental cars may have sustained more wear and tear than comparable cars used solely by the individual owner.

Information required by legislation

6.4 Various pieces of legislation impose requirements on traders to provide consumers with specific information about matters ranging from product features to the consumer protection rights that apply (for example, cancellation rights).

6.5 The omission of such information may also constitute an infringement under those other pieces of legislation, which may carry a variety of civil and/or criminal sanctions. For example, the Package Travel and Linked Travel Arrangements Regulations 2018[91] require that travellers must be provided with information about whether a trip is generally suitable for persons with reduced mobility before the conclusion of the package travel contract.[92] Failure to do so is an offence punishable by a fine.[93]

---

[91] Statutory instrument 2018/634.
[92] Regulation 5(1) and Schedule 1, paragraph 10 to the Package Travel and Linked Travel Arrangements Regulations 2018.
[93] Regulation 5(5) of the Package Travel and Linked Travel Arrangements Regulations 2018.

6.6 In addition to being a breach of the underlying legislation, a failure to provide consumers with the required information may also amount to a misleading omission under the UCP provisions (if that omission is likely to cause the average consumer to take a different decision).[94]

Commercial intent

6.7 A commercial practice involves a misleading omission if it fails to identify its commercial intent, unless this is already apparent from the context.[95] A situation where the context may make clear that the intent is commercial includes, for example, information on a billboard that is obviously intended to advertise a product.[96]

6.8 A failure to identify the commercial intent of a practice could include giving consumers the impression that there is no commercial aim, as well as failing to identify the specific commercial intent.

Examples of failing to identify commercial intent

- A trader contacts consumers by telephone and asks them to take part in a survey about their views on personal security in the area. However, during the call the trader asks consumers if they want to purchase a burglar alarm system. The commercial practice did not identify its commercial intent at the outset of the call.

- An online influencer posts a video of them using a makeup brush. In fact, they have been paid to post the video and during the video, they encourage viewers to buy the makeup brush. The commercial intent of the video was not made clear at the outset. [97]

---

[94] Section 227(1)(b) DMCC Act.
[95] Section 227(1)(c) DMCC Act.
[96] Paragraph 1361 DMCC Act explanatory notes.
[97] Depending on the facts, those who do not identify the commercial intent of their practices may also infringe banned practice 12 (using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer), banned practice 13 (publishing a consumer review that conceals the fact that it has been incentivised) or banned practice 25 (falsely claiming or creating the false impression that the trader is not acting for purposes relating to the trader's business or falsely representing oneself as a consumer). The UCP provisions are not mutually exclusive.

What does omitting information mean?

6.9 Information is omitted when it is not included. However, information may also be considered omitted where it is provided to a consumer, but it is provided in a way:

- that is unclear or untimely; or
- that the consumer is unlikely to see it.[98]

6.10 Therefore, consideration also needs to be given to how the information is displayed, such as the font size used, the positioning and colour of text, the use of click-through windows, and whether material information is sufficiently prominent.

6.11 Where information is concealed by the trader in some way, the average consumer is taken as not knowing it, even if they might know it from some other source, for example by conducting some research.[99]

Examples of omitting information

- A trader operates a car park. They fail to display the price(s) of parking clearly at a point before the consumer enters the car park and incurs a charge.
- A trader lists a biomass boiler for sale on a webpage on their website. The webpage contains an image and a brief description of the boiler, alongside a claim 'cut your bills by £1700 each year with a pellet boiler'. A separate hyperlink is given to find out important qualifying information, including that the running costs would depend on the size of the property the boiler is installed in. The consumer does not open the link as it is placed at the bottom of the webpage in a font that makes it difficult to pick out.

Consideration of context for omitting information

6.12 When deciding whether a practice involves a misleading omission, consideration should be given to any limitations of the means of communication used that make it impractical to give the necessary

[98] Section 227(4) DMCC Act.
[99] Section 246(3) DMCC Act.

information.[100] This includes limitations of space or time, such as the size of packaging or the duration of a radio advertisement, that cannot practicably convey the terms and conditions that apply in relation to that product.

6.13 In such circumstances, steps taken by the trader to overcome those limitations by providing information by other means need to be considered.[101] Such other means could include providing a hyperlink or QR code, or encouraging consumers to visit a website for more information. When considering whether those other means overcome the limitations of the means of communication, it will be necessary to assess their effectiveness in ensuring consumers have access to the information in a clear and timely way and that they are likely to see it.

[100] Section 227(3)(a) DMCC Act.

[101] Section 227(3)(b) DMCC Act.

7. Aggressive practices

Summary at a glance

- Three types of aggressive practices are prohibited:
  - harassment
  - coercion
  - undue influence
- Harassment, coercion or undue influence are techniques that intimidate, exploit or otherwise pressure consumers. These are not mutually exclusive concepts.
- Multiple factors are taken into account when considering whether a commercial practice uses harassment, coercion or undue influence.

7.1 The UCP provisions prohibit commercial practices which use harassment, coercion or undue influence and are likely to cause the average consumer to take a different decision.[102]

What constitutes harassment, coercion and undue influence?

7.2 'Harassment' is not defined in the UCP provisions. 'Coercion' includes **the use or threat of physical force**.[103]

7.3 'Undue influence' means **exploiting a position of power in relation to a consumer so as to apply pressure in a way which significantly limits the consumer's ability to make an informed decision**.[104]

7.4 There are various circumstances where a trader may be in a position of power. For example, this may arise because of the trader's expertise regarding a product, the consumer's unfamiliarity with technology, or because of the particular circumstances of the consumer, such as if the consumer is indebted to the trader or is otherwise in a vulnerable position.

[102] The prohibition is contained in section 225(4)(a)(iii) and section 228 of the DMCC Act.
[103] Section 228(3)(a) DMCC Act.
[104] Section 228(3)(b) DMCC Act

7.5 Harassment, coercion or undue influence are techniques that intimidate, exploit or otherwise pressure consumers. Each may involve or threaten physical or non-physical (including psychological) pressure.

7.6 Such techniques may be likely to cause consumers, for example, to purchase a product at a much higher price or on disadvantageous terms. This could happen even if:

- consumers might still have bought the product from the same trader, but on different terms; or
- consumers might still have bought the product, but from a different trader.

7.7 The examples below illustrate what harassment, coercion and undue influence may entail in practice. These are not mutually exclusive concepts. It is possible for certain practices to amount to more than one of these techniques.

Examples of harassment, coercion and undue influence

- A debt collector pressures borrowers to repay a debt by contacting them at unreasonable times (such as late at night) or at unreasonable locations (such as the debtor's workplace unless the consumer has specifically requested this).
- A doorstep trader pressures a consumer to pay in cash for home repairs immediately. The trader insists on giving the consumer a lift to the bank to withdraw the money.
- A mechanic has a consumer's car at their garage and has done more work than agreed. The mechanic refuses to return the car to the consumer until the work is paid for in full. The mechanic did not check with the consumer before doing the extra work. As the mechanic has the car, they have power over the consumer's decision to pay for the unauthorised work. They have exploited their position of power, by demanding payment for doing more than was agreed and refusing to return the vehicle until the consumer has paid for all the work.

What are the factors indicating an aggressive practice?

7.8 When considering whether a commercial practice uses either harassment, coercion or undue influence, the following factors must be taken into account.[105] It is not necessary for all of these factors to be problematic for a practice to be aggressive and therefore unfair.

7.9 The factors are:

- the nature of the practice;
- the timing and location of the practice;
- whether the practice involves the use of any threatening or abusive language or behaviour;
- whether the practice exploits any vulnerability of a consumer (which includes factors such as the consumer's age, health, credulity and the circumstances they are in);
- whether the practice involves a threat to take action which cannot legally be taken;
- whether the practice requires a consumer to take onerous or disproportionate action in order to exercise rights that the consumer has in relation to a product.

Examples

- A trader takes consumers to a timeshare presentation at a distant location, with no return transport unless the consumers sign a contract. (Nature / location of the practice; exploitation of a consumer's vulnerability)
- A debt collector threatens consumers with recovery of money by bailiffs for unenforceable debts. (Threatening behaviour and threat to take action which cannot legally be taken)[106]
- Staff working in a funeral director put pressure on a recently bereaved relative, who is deciding on a coffin, to buy a more expensive coffin to avoid bringing 'shame' on the family. (Exploitation of a consumer's vulnerability)
- A consumer contacts a car retailer about a fault on a vehicle they have purchased recently. The retailer ignores this communication for several weeks. Eventually they inform the consumer they will need to book the car in

[105] Section 228(2) DMCC Act.

[106] This may also amount to a misleading action (see Chapter 5).

for a check by phoning a special number, but no one answers when the consumer tries to call. (Requiring a consumer to take onerous action to exercise their rights)

- An online retailer builds a contract termination process that requires customers to click multiple times to confirm their decision to terminate and enter additional details about their reasons for termination. The retailer also provides unnecessary messages about the risks of terminating. (Requiring a consumer to take onerous action to exercise their rights)

8. Contravention of the requirements of professional diligence

Summary at a glance

- Professional diligence is:

  the standard of skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either—

  - **honest market practice in the trader's field of activity; or**
  - **the general principle of good faith in the trader's field of activity.**[107]

- Contravening the requirements of professional diligence is prohibited if the average consumer is likely to take a different decision as a result.
- Complying with guidance or a code of practice may not be sufficient for a trader to be professionally diligent.

8.1 The UCP provisions prohibit contraventions of the requirements of professional diligence which are likely to cause the average consumer to take a different decision.[108]

8.2 This prohibition may apply to a wide range of commercial practices, including those that do not fall into the more specific prohibitions of misleading and aggressive practices, or banned practices. This means it acts as a safety net and as a general prohibition on unfair business-to-consumer commercial practices. It sets a standard against which new as well as existing practices can be judged.[109]

8.3 Professional diligence is an objective standard applying both to the skill that a trader uses and the care with which they treat consumers.

8.4 Acting in a professionally diligent manner includes having regard to the consumer's legitimate interests or expectations and taking steps to protect

[107] Section 229 DMCC Act.
[108] Section 225(4)(a)(iv) DMCC Act.
[109] This is consistent with the corresponding provision in the CPUTRs and the EU's Unfair Commercial Practices Directive.

these. For example, a trader should not take advantage of the consumer's lack of experience or unfamiliarity with a product.[110]

8.5 The practices that are prevalent in the trader's field of business are relevant. However, where dishonest and bad faith practices are commonplace in a trader's field these practices may be contrary to professional diligence even though there are few or no examples of good practice in that field.[111]

8.6 Guidance and codes of practice may be drawn upon to help establish whether a trader is behaving in a professionally diligent manner. However, complying with these codes and guidance may not always be sufficient in itself for a trader to be professionally diligent.

Examples of contravening the requirements of professional diligence

- An online trader supplies a dog walking service. Sometimes customers want to complain about the service they received, but the trader ignores their emails and takes a long time to answer phone calls. When the trader's staff do answer the phone, they are dismissive and have been trained to say that no compensation is available. The complaint handling is not carried out with the standard of care that should be expected. As a result, consumers are hindered from securing redress in a timely manner.

- A builder carries out work on a consumer's roof. After the builder finishes the job, the roof leaks. The task has not been carried out with the standard of skill that should be expected. As a result, the customer needs to instruct a different builder to repair the work.

- An online platform enables consumers to find sellers of collectable items. Many of the sellers claim to be private individuals, and so not bound by consumer law. The platform could tell from the sales history of those sellers that they sell sufficient volumes of products with sufficient regularity that they are clearly acting for business purposes. It continues to allow the sellers to claim to be private individuals. This is contrary to the standard of care and skill to be expected of the platform. As a result, consumers buying collectable items are hindered from exercising their contractual rights against sellers if things go wrong.

---

[110] Paragraphs 1371 and 1372 DMCC Act explanatory notes.

[111] Paragraph 1371 DMCC Act explanatory notes.

9. Promoting unfair commercial practices in codes of conduct

Summary at a glance

- Any person who is responsible for the content of, or for monitoring compliance with, a code of conduct must not promote unfair commercial practices.
- A code of conduct is an agreement or set of rules which defines the behaviour of traders who choose to be bound by it.
- This prohibition will be infringed where a person responsible for a code of conduct promotes a practice that is unfair as determined by one (or more) of the other UCP prohibitions.

9.1 The UCP provisions prohibit the promotion of unfair commercial practices by any person who is responsible for the content of, or for monitoring compliance with, a code of conduct.[112] The UCP provisions define a code of conduct as **an agreement or set of rules which defines the behaviour of traders who choose to be bound by it**.[113]

9.2 This prohibition will be infringed where a person responsible for a code of conduct promotes a practice that is unfair as determined by one (or more) of the other prohibitions contained in the UCP provisions. The code of conduct might, for example, include a provision which tells traders not to provide certain information, which is in fact material. As a result, code members may infringe the misleading omission prohibition. Alternatively, the code might advise traders that a commercial practice is legitimate, when in fact it would be a misleading action.

9.3 Engaging in the promotion of unfair practices would be a breach regardless of whether the promotion itself would be likely to cause the average consumer to take a different decision. Whether a practice that is being promoted in a code of conduct is unfair needs to be assessed separately and may depend on whether it is likely to impact on consumer decision making.

[112] The prohibition is contained in section 225(2) of the DMCC Act.
[113] Section 249 DMCC Act.

9.4 Enforcers might rely on this prohibition, in particular, where taking action in respect of the code of conduct is likely to be a more effective method of dealing with the unfair practice than taking action against any individual trader or traders who are engaging in the practice.

Example

- A person is responsible for the content of a code of conduct relating to the online sale of personal computers. The code states that there is no need for member businesses to provide their identity and business address when advertising in any circumstances. As this is a material omission in certain circumstances, promotion of the resulting commercial practice via this statement would be prohibited.

10. Offences relating to unfair commercial practices

Summary at a glance

- Breaching certain UCP provisions can be a criminal offence.
- Officers of a company may also commit an offence if they consent or connive in that breach.
- The penalties for a person convicted of these offences can include a fine and up to two years imprisonment.

10.1 The UCP provisions contain criminal offences.[114] This chapter sets out when unfair commercial practices can be criminal offences. Further information about the use of criminal enforcement powers by enforcement authorities can be found in the CMA's Consumer protection enforcement guidance (CMA58). CMA58 and the CMA's Direct consumer enforcement guidance (CMA200) also detail a range of other tools, such as education and advice, civil enforcement and, for the CMA only, direct enforcement, that may be used to secure compliance with the UCP provisions.

Offences

10.2 It is an offence to engage in a commercial practice which involves:

- banned practices listed in Schedule 20 to the DMCC Act[115]– see Chapter 3;
- omission of material information from an invitation to purchase – see Chapter 4;
- most misleading actions[116]– see Chapter 5;
- misleading omissions – see Chapter 6;

[114] Section 237 DMCC Act.
[115] It is not a criminal offence to infringe paragraphs 12, 13 or 30 of Schedule 20.
[116] It is not a criminal offence to fail to comply with a requirement in a code of conduct, contrary to section 226(1)(d) of the DMCC Act.

- aggressive practices – see Chapter 7;
- contraventions of the requirements of professional diligence – see Chapter 8.

10.3 The offences above are all strict liability offences, apart from contravention of the requirements of professional diligence.[117] For strict liability offences, it only needs to be shown that there has been a prohibited act or omission. There is no need to prove the intent of the trader. Further, a person may be convicted if their act or omission caused another person to commit an offence.[118]

10.4 Section 238 of the DMCC Act makes provision for defences of due diligence[119] and innocent publication,[120] which it will be for the person relying on the defence to prove. These defences are not available where the prosecution is for a contravention of the requirements of professional diligence.

10.5 Where a body corporate commits an offence with the 'consent or connivance' of an officer of that body, both the officer and the body corporate can be prosecuted and punished.[121] The same applies if the offence is attributable to neglect on the part of the officer.[122] Similar rules apply for Limited Liability Partnerships and Scottish partnerships.

---

[117] To be convicted of the offence of infringing professional diligence, it must be proven that the trader either knew or was reckless as to whether the commercial practice contravened the requirements of professional diligence.

[118] If a person commits an offence (other than the contravention of the requirements of professional diligence) or would have done had they not been able to rely on a relevant defence, and this is due to the act or default of another person, that other person can also be charged with an offence under the UCP provisions, regardless of whether action is taken against the original offender. See section 239(1) to (3) DMCC Act.

[119] To be able to rely on the defence of due diligence, the defendant must prove that the commission of the offence was due to a mistake or accident, reliance on information given by another person, the act or omission of another, or another cause beyond their control. In addition, they must prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence or to avoid someone under their control committing it.

[120] To be able to rely on the defence of innocent publication, the defendant must prove that they are a person whose business is to publish or arrange the publication of advertisements, that they received the advertisement in the ordinary course of business, and that they did not know and had no reason to suspect that the publication would amount to an offence.

[121] Section 239(5) DMCC Act.

[122] See section 239(6) and (7) DMCC Act and paragraph 1416 DMCC Act explanatory notes.

Penalties

10.6 The penalties for a person convicted of these offences are:[123]

- on summary conviction in England and Wales, a fine;
- on summary conviction in Scotland[124] or Northern Ireland,[125] a fine not exceeding the statutory maximum;
- on conviction on indictment, a fine or imprisonment not exceeding two years or both.

Time limits

10.7 Time limits apply to the prosecution of offences.[126] No prosecution may be commenced after three years of the offence taking place or after one year of the discovery of the offence by the prosecutor,[127] whichever is earlier.

---

[123] Section 240 DMCC Act.
[124] The statutory maximum in Scotland is set out in section 225 of the Criminal Procedure (Scotland) Act 1995 (as amended).
[125] The statutory maximum in Northern Ireland is set out in section 5 of the Fines and Penalties (Northern Ireland) Order 1984 (as amended).
[126] Section 241 DMCC Act.
[127] In England, Wales and Northern Ireland prosecutions will generally be conducted by the CMA, local weights and measures authorities (also known as Trading Standards Services) or the Department for the Economy in Northern Ireland. In Scotland, prosecutions are conducted by the Crown Office and Procurator Fiscal Service on behalf of the Lord Advocate.