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Consumer protection: Unfair Trading Regulations



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Summary

Following consultation in May 2007, and the publication of draft regulations in March 2008, the [Consumer Protection from Unfair Trading regulations 2008](#) (SI 2008/1277), known as the ‘Unfair Trading Regulations’, came into force on 26 May 2008 and were later amended by the [Consumer Protection \(Amendment\) Regulations 2014](#) (SI 2014/870). The Regulations have significant importance in the marketing and selling of consumer goods and services.

The Unfair Trading Regulations apply to “business to consumer” practices. They impose a general prohibition on traders in all sectors from engaging in unfair commercial practices with consumers. Specifically, they protect consumers from unfair or misleading trading practices and ban misleading omissions and aggressive sales tactics. There is an obligation to trade fairly and honestly with consumers. Consumers have rights of redress if they have been the victim of misleading actions or aggressive selling. Crucially, the Unfair Trading Regulations apply before, during and after a consumer contract is made.

This briefing paper provides an overview of the Regulations and their usefulness to consumers.

1 Background

When the Unfair Trading Regulations came into force on 26 May 2008, Gareth Thomas, then Consumer Affairs Minister, said:

“This law is good news for consumers, honest businesses and Trading Standards and the OFT, which will enforce it. It delivers better protections for consumers, cuts red tape and puts in place a simpler and clearer consumer law that will be easier to interpret and enforce.”¹

The Unfair Trading Regulations were made to implement in the UK the [Unfair Commercial Practices Directive 2005/29/EC](#) (UCPD).² The Directive is concerned with unfair business-to-consumer commercial practices and imposes common rules, to give consumers the same protection against unfair practices and rogue traders wherever they are buying. Now that the UK has left the EU and the transition period has ended, the Unfair Trading Regulations remain in force as part of retained EU law. However, the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (SI 2018/1326) have amended several EU references in the Unfair Trading Regulations.

The Competition and Markets Authority (CMA) has adopted [guidance](#) on the Unfair Trading Regulations, which was originally published by the Office of Fair Trading (now disbanded).³ This guidance includes a flowchart to help assess commercial practices against the Unfair Trading Regulations, explains the prohibitions and gives information on compliance, enforcement, offences and investigation powers. There is also government [guidance on the 2014 Regulations](#),⁴ which outlines the acts and omissions that trigger consumers’ private rights of redress. It includes worked examples and a flowchart summarising consumer remedies.

¹ [Unfair selling rules laid in Parliament](#), Department for Business Enterprise and Regulatory Reform press notice 2008/048 [not online], 3 March 2008

² [O.J No L149, 11.6.2005, p.22](#)

³ Office of Fair Trading, [Consumer protection from unfair trading: Guidance on the Consumer Protection from Unfair Trading Regulations 2008](#), May 2008

⁴ Department for Business, Energy and Industrial Strategy, [Misleading and aggressive commercial practices: New private rights for consumers](#), July 2018

2 The Regulations in detail

The Unfair Trading Regulations deal primarily with business-to-consumer practices but can also catch:

- Business-to-business practices that could affect consumers; and
- A trader purchasing a product from a consumer.

Importantly, the **Regulations apply to commercial practices during the whole lifetime of a consumer to trader transaction**. It covers advertising, marketing, entry into the contract, performance, and enforcement.

There are three main sections to the Unfair Trading Regulations, each with a separate objective. The three objectives are to:

- impose a general ban on unfair commercial practices;
- ban misleading and aggressive practices (commercial practices to be assessed on the effect they have, or are likely to have, on the average consumer); and
- impose a list of those practices which are unfair and thus banned in all circumstances (as set-out in Schedule 1).

Detailed information on each objective is provided below.

2.1 Unfair commercial practices are prohibited

First and foremost, the Unfair Trading Regulations prohibit all unfair commercial practices.⁵ A commercial practice is unfair if:

(a) it contravenes the requirements of professional diligence; and

(b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.⁶

In addition, a commercial practice is unfair if it is a misleading action, it is a misleading omission, it is aggressive, or it is listed in Schedule 1.⁷

Duty to trade fairly

In effect, the Unfair Trading Regulations impose on traders a general statutory duty to behave honestly and in good faith with consumers. They prohibit traders from engaging in unfair commercial practices which harm

⁵ [Regulation 3\(1\)](#)

⁶ [Regulation 3\(3\)](#)

⁷ [Regulation 3\(4\)](#)

consumers' economic interests. For this general prohibition to apply, the commercial practice must be unacceptable when measured against an "objective standard" **and** must also have (or be likely to have) an effect on the economic behaviour of the "average consumer".

In other words, a commercial practice may be "unfair" if it (or the way it is presented) is likely to deceive the average consumer. For example, if the average consumer does not exercise cancellation rights when otherwise they would have done so.

2.2 Misleading and aggressive practices

The general prohibition on the use of unfair commercial practices is supplemented with more detailed rules on misleading actions,⁸ misleading omissions,⁹ and aggressive practices,¹⁰ where any of these would cause or be likely to cause the 'average' consumer to take a different transactional decision. **For a commercial practice to be unfair it must harm, or be likely to harm, the economic interests of the average consumer.**

Misleading action (regulation 5)

Under the Regulations, traders are not allowed to use **misleading actions** (i.e., tactics) to entice consumers to buy their goods or services. An example of a misleading action might be a trader advertising goods at an attractive price to draw in consumers, knowing full well that the goods are not in stock.

Misleading omission (regulation 6)

A **misleading omission** is where a trader deliberately misses out key information that the consumer might need to make an 'informed' decision about the purchase of a good or service. All consumer information must be displayed clearly. For the purposes of the Regulations, it is considered misleading if a trader does any of the following:

- omits material information that the average consumer needs (according to the context) to make an informed transactional decision;
- hides or provides material information in an unclear, unintelligible, ambiguous or untimely manner; or
- fails to identify the commercial intent of the commercial practice if not already apparent from the context.

In effect, the obscure presentation of consumer information will be treated as a misleading omission.

Aggressive practice (regulation 7)

A commercial practice may be considered **aggressive** if the average consumer's freedom of choice or conduct is significantly impaired. Aggressive sales techniques might include the use of harassment, coercion, or undue influence. For the purposes of the Regulations, 'coercion' includes the use of

⁸ [Regulation 5](#)

⁹ [Regulation 6](#)

¹⁰ [Regulation 7](#)

physical force.¹¹ ‘Undue influence’ means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer’s ability to make an informed decision.¹²

In determining whether a commercial practice uses harassment, coercion or undue influence, [Regulation 7\(2\)](#) requires that consideration is given to the following:

- (a) its timing, location, nature or persistence;
- (b) the use of threatening or abusive language or behaviour;
- (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer’s judgment, of which the trader is aware, to influence the consumer’s decision with regard to the product;
- (d) any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader; and
- (e) any threat to take any action which cannot legally be taken.

To sum up, if a trader is accused of misleading consumers or acting aggressively, it’s not enough to simply demonstrate the activity. It must also be shown that the practice influenced the consumer’s decision. This does not mean that the consumer must have entered into a contract, just that their actions were influenced in some way. For example, depending on the exact circumstances, it could be enough that as a consequence of the commercial practice the consumer contacted the trader or decided to visit the trader’s shop.

2.3

Schedule 1: blacklisted unfair practices

The banned list

[Schedule 1](#) to the Regulations lists commercial practices which, because of their inherently unfair nature, are prohibited in all circumstances. This is sometimes known as the banned list.

The aim of this banned list is for traders to be clear about what type of commercial behaviour is always unfair and prohibited. Evidence of their effect, or likely effect, on the “average” consumer is not required to prove a breach of one of these outright banned practices. By way of example, the list of banned practices includes the following:

¹¹ [Regulation 7\(3\)\(a\)](#)

¹² [Regulation 7\(3\)\(b\)](#)

- **False free offers** - describing a product as “free”, “without charge” or similar if the consumer must pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
- **Faking credentials** – for instance, a trader claiming to be a signatory to a code of conduct when he is not.
- **Bait advertising** – enticing the consumer with advertising around special prices when the trader knows that he cannot offer that product, or only has a few in stock at that price.
- **Bait and switch** – luring the consumer with attractive advertising of one product at a special price, with the intention of selling the consumer something else.
- **Limited offers** – falsely stating that a product will only be available for a limited time, or that it will only be available on certain terms for a very limited time, to force the consumer to make an immediate decision.
- **Pressure selling** – creating the impression that the consumer cannot leave the premises until a contract is formed.
- **Aggressive doorstep selling** – in particular, a salesman conducting personal visits to the consumer’s home and ignoring the consumer’s request to leave or not to return.

It is possible for a commercial practice to fall foul of multiple prohibitions.¹³

2.4 Redress for consumers

Regulation 3 of the [Consumer Protection \(Amendment\) Regulations 2014](#) inserts a new Part 4A into the Unfair Trading Regulations to introduce a new civil right of redress for consumers against traders for some practices prohibited by the Unfair Trading Regulations.¹⁴ Specifically, consumers can make a claim in the civil courts against traders who commit the following prohibited practices: misleading actions (regulation 5) or aggressive practices (regulation 7).

For this civil right of redress to apply, two conditions must be met:

- First, the consumer must have entered into a contract. This is different from the rest of the Regulations where it is enough to show that the consumer took some other kind of transactional decision (for example, deciding to go into a particular shop because of a misleading advertisement in the window).
- Second, the misleading action must be a significant factor. In effect, if the consumer entered into a contract as a result of a misleading action

¹³ For example see [Case C-11/14, Criminal Proceedings against Canal Digital Danmark A/S](#)

¹⁴ [Regulations 27E to 27J](#), new Part 4A inserted into the Regulations by the [Consumer Protection \(Amendment\) Regulations 2014](#)

or aggressive selling, he/she will need to show that this was at least a significant factor in their decision to enter into the contract.¹⁵

If both conditions are satisfied, a consumer may have the benefit of one or more of the following civil remedies:

- **A right to undo the contract** - The consumer may be able to end the contract provided they haven't fully consumed goods or digital products or received a service in full. To receive a refund the consumer must have exercised their right to unwind the contract not more than 90 days from when they received the goods, or the service commenced. This is on the provision that any goods supplied to the consumer are made available for collection by the trader.¹⁶
- **A right to a discount on the price paid** – The consumer may be able to seek a discount in respect of past or future payments due under a contract. In practice, the “seriousness” of the trader's breach would depend on the nature of their behaviour; the impact this has had on the consumer; and how long it has been since the consumer signed the contract.
- **An entitlement to seek damages** – In certain circumstances, a consumer may be able to claim damages if they have incurred a financial loss as a result of the trader's actions. A claim might also be made if the consumer has suffered “alarm, distress or physical inconvenience or discomfort” as a result of the trader's actions (again, much would depend on the circumstances). However, a trader may have a defence to a claim for damages, for example, if they can demonstrate that their actions were accidental, due to a mistake or to factors outside their control.

It is important to note that there is no right of redress for payments or contracts made before 1 October 2014.¹⁷

As already outlined above, the Unfair Trading Regulations list commercial practices which are in all circumstances considered unfair, and lead to criminal liability (see Schedule 1, known as the ‘blacklist’). [Guidance](#)¹⁸ states that the [2014 Regulations](#) do not provide automatic remedies to consumers affected by banned practices but such practices will, in many circumstances, be in fact either misleading actions or aggressive practices. If so, consumers would have a claim in respect of these practices.

¹⁵ Department for Business, Energy and Industrial Strategy, [Misleading and aggressive commercial practices: New private rights for consumers](#), July 2018

¹⁶ Note: depending on the exact circumstances, any related finance agreement entered into by the consumer may be cancelled

¹⁷ [Regulation 1\(3\)](#), Consumer Protection (Amendment) Regulations 2014

¹⁸ Department for Business, Energy and Industrial Strategy, [Misleading and aggressive commercial practices: New private rights for consumers](#), July 2018

2.5 Enforcement

Trading Standards Services (TSS) in England, Wales and Scotland enforce the Unfair Trading Regulations, in Northern Ireland it is the Department of Enterprise, Trade and Investment. The Competition and Markets Authority (CMA) also has powers to tackle undesirable market wide practices that are in breach of the Unfair Trading Regulations. The CMA shares this power to enforce with TSS.

A wide range of sanctions are available depending on the seriousness of the offence. However, this does not mean that civil or criminal enforcement action must be taken in respect of each and every infringement. It should also be noted that under [regulation 19\(4\)](#), each enforcement authority must consider whether, in the circumstances, it can use ‘established’ means to control unfair practices. An example of ‘established means’ is the Advertising Standards Authority (ASA) enforcement of the Advertising Codes.

Trading Standards enforce the Unfair Trading Regulations:

- Using criminal law to prosecute offences.
- Through enforcement orders granted by the civil courts to protect the collective interests of consumers under Part 8 of the [Enterprise Act 2002](#).

Criminal offences

Under the Regulations, a trader commits a criminal offence if it engages in a commercial practice that fits any of these descriptions:

- A breach of the **general prohibition**. In the case of a breach of the general prohibition, the prosecution must prove that:
 - the trader has knowingly or recklessly breached the requirements of professional diligence; and
 - the practice materially distorts (or is likely to distort) the behaviour of the average consumer.¹⁹
- A misleading action (regulation 9). However, a failure to comply with a code of conduct whilst a misleading action is not a criminal offence.
- A misleading omission (regulation 10).
- An aggressive practice (regulation 11).
- A banned commercial practice listed in Schedule 1.

Where offences have been committed by corporate bodies, a director, manager, secretary or similar officer and anyone purporting to act as such

¹⁹ [Regulation 8](#)

may be prosecuted, as well as the corporate body, if the offence has been committed with the consent or connivance of the officer or is attributable to any neglect on their part.²⁰

A person may be guilty of an offence, whether or not they are a trader, if because of their act or default, a trader commits an offence under regulation 9, 10, 11 or 12 (misleading actions, misleading omissions, aggressive practices). A person may also be prosecuted whether or not proceedings are also brought against the offending trader.²¹ However, there is a time limit for bringing a prosecution of either:

- Three years from the date of the offence.
- One year from the discovery of the offence by the prosecutor.²²

However, a trader has the following statutory defences to offences under regulations 9 to 12 (misleading actions, misleading omissions, aggressive practices):

- Due diligence offence. The trader must prove that the offence was committed:
 - because of a mistake, reliance on information supplied by another person, the act or default of another person, an accident, or another cause beyond their control; and
 - they took all reasonable precautions and acted with due diligence to avoid the offence.²³
- Innocent publication defence. In the case of advertisements, if the trader can prove that their business is the publishing of advertisements, they received the advertisements in the ordinary course of business and did not know that publication would be an offence.²⁴

However, these defences do not apply to the general prohibition offence.

The penalty for a criminal offence, on summary conviction, is a fine not exceeding the statutory maximum; on indictment, a fine or up to two years imprisonment or both.²⁵

²⁰ [Regulation 15](#)

²¹ [Regulation 16](#)

²² [Regulation 14](#)

²³ [Regulation 17](#)

²⁴ [Regulation 18](#)

²⁵ [Regulation 13](#)

2.6 Interaction with other consumer protections

It is important to note that the Unfair Trading Regulations sit alongside other protections for consumers, for example, the requirements of the [Consumer Rights Act 2015](#) (CRA 2015).

As already outlined, the Unfair Trading Regulations 2008 make it a criminal offence for traders to give consumers misleading information. Firms are required to provide consumers with the information necessary to make informed decisions and not to omit or hide material information that the average consumer needs. Under the [CRA 2015](#) (part 2), all terms in a consumer sale contract must be transparent and the contract must not contain unfair terms.

Whilst the Unfair Trading Regulations is the main piece of legislation controlling business to consumer advertising,²⁶ the content of advertising, sales promotions and direct marketing across all media, including marketing on websites, is self-regulated by the [ASA](#). The ASA is responsible for enforcing the [CAP Code](#) (for non-broadcast advertising) and the [BCAP Code](#) (for broadcast advertising). When advertising products or services, firms must also comply with the rules set out in the Codes.²⁷

The prohibitions in the Unfair Trading Regulations are reflected in the CAP and BCAP Codes. If an advertiser refuses to comply with an ASA ruling in respect of misleading or unfair advertising then the offending firm may be referred to Trading Standards or the CMA, who can take enforcement action under the Unfair Trading Regulations.

²⁶ Note: there is also legislation controlling advertising of specific products, for example, tobacco, alcohol, and baby milk

²⁷ The Codes are written by the [Committee of Advertising Practice](#) (CAP) and the [Broadcast Committee of Advertising Practice](#) (BCAP)

3 Call for reform

3.1 CMA proposals for reform – Lord Tyrie’s letter

On 11 April 2018, the Department for Business, Energy and Industrial Strategy (BEIS) published a [Green Paper](#) on modernising consumer markets.²⁸

In August 2018, the then Secretary of State for BEIS asked Lord Tyrie, then Chairman of the CMA, to make proposals on legislative and institutional reforms to safeguard the interests of consumers and to maintain and improve public confidence in markets. CMA proposals in response to this commission were sent to the Secretary of State on 21 February 2019 and can be viewed at “[Letter from Andrew Tyrie to the Secretary of State for BEIS](#)”.²⁹ These were proposed as improvements to the current regime, rather than a fundamental rewrite of the statute book. In making these proposals, the CMA considered that “the twin challenges posed by the growth of the digital economy, and declining public confidence in market competition, required reforms to competition and consumer protection law and policy”.³⁰

3.2 Consultation: reforming competition & consumer policy

On 20 July 2021, BEIS published a consultation paper, [Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that](#)

²⁸ Department for Business, Energy & Industrial Strategy, [Modernising consumer markets: green paper](#), 11 April 2018

²⁹ Competition and Markets Authority, [Letter from Andrew Tyrie to the Secretary of State for Business, Energy & Industrial Strategy: A letter and summary outlining proposals for reform of the competition and consumer protection regimes from the Chair of the Competition and Markets Authority](#), 25 February 2018

³⁰ Competition and Markets Authority, [Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers](#), CMA 149 con, 4 October 2021, para 125

[work for consumers](#).³¹ With regard to the consumer law aspects of the consultation, the Government identified three main areas of reform:

1. **Preventing online exploitation of consumers.** Strengthening the law to better prevent posting of fake reviews online and championing ‘fairness by design’ principles in how online transactions are presented.

According to BEIS, the pandemic has accelerated the rise of online shopping. Websites are increasing the collection and use of consumer data, and according to BEIS some are using this insight unfairly to exploit consumers’ behavioural biases, forcing them into purchases they would not have otherwise made. For example, by presenting options in a way that leads consumers to make choices to their potential detriment.

2. **Tackling subscription traps by strengthening and clarifying the law on pre-contract information** so that consumers know what they are signing up for and are given a choice on auto-renewal; nudging consumers so they are aware of ongoing subscriptions; and making it easier for consumers to exit subscriptions.

BEIS estimates consumer spending on subscriptions as being between £28 billion and £34 billion a year across multiple sectors.³² While subscriptions can be a convenient and low-cost way for consumers to purchase goods, services, and digital content, some traders make it too difficult for consumers to cancel a subscription. This can cause ongoing detriment because such subscriptions can auto-renew, sometimes indefinitely, with consumers continuing paying for items they do not need or want.

3. **Better prepayment protections.** Strengthening prepayment protections for consumers by amending the law to mandate that consumer prepayment schemes like Christmas savings clubs have means to safeguard customers’ money (e.g., through insurance or trust accounts).

In addition, the consultation paper asked if the Government should add to the list of automatically unfair practices in [Schedule 1](#) of the Unfair Trading Regulations the following:

- commissioning consumer reviews in all circumstances; or
- commissioning a person to write and/or submit fake consumer reviews of goods or services; or
- commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services.

³¹ Department for Business, Energy & Industrial Strategy, [Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers](#), CP488, 20 July 2021

³² Ibid, [para 0.24](#)

The consultation noted that these practices were investigated by the CMA in its recent enforcement work in relation to fake and misleading reviews.³³

BEIS also asked what ‘reasonable and proportionate’ steps should be taken by businesses to ensure consumer reviews hosted on their sites are ‘genuine’. For example, should the Government also add to the list of automatically unfair practices in Schedule 1 the practice of traders offering or advertising to submit, commission or facilitate fake reviews.

In its consultation paper, BEIS highlighted ‘drip pricing’ and paid-for search results’ that are not labelled accordingly, as practices likely to be breached under the Unfair Trading Regulations. BEIS asked if more should be done to address these issues.

Drip pricing & undisclosed paid-for search advertising

In brief, drip pricing is where a consumer is advertised a price for goods, services, or digital content, but then finds that additional fees and charges have been added to the price before the transaction can be completed (i.e., once he or she proceeds to the online ‘basket’ to complete the transaction). When these additional fees and charges are not optional and the transaction cannot proceed without their addition, these are required under the Unfair Trading Regulations to be signalled to the consumer from the outset, so that they can make an informed decision before attempting the transaction. ‘Undisclosed paid-for search advertising’ is where search results on a trader’s website are influenced by third parties paying to have their goods, services, or digital content feature more prominently.

BEIS suggested that adding these practices to [Schedule 1](#) of the Unfair Trading Regulations would make it easier to enforce the rules because the practices in Schedule 1 are automatically unfair, without the need to show they have caused or are likely to cause the average consumer to take a different transactional decision.³⁴ BEIS sought stakeholders views on the proposals, including their likely impact on businesses of different sizes. BEIS also proposed a package of reforms to the enforcement of consumer law.

The consultation closed on 1 October 2021. As at the date of this briefing paper, the Government had not yet published its response.

It should be noted that the Department for Digital, Culture, Media & Sport (DCMS) and BEIS also published a joint [consultation paper](#) on a new pro-competition regime for digital markets and the establishment of the Digital Markets Unit.³⁵

³³ Competition and Markets Authority, [Case study: Fake and Misleading Online Reviews Trading](#), 21 June 2019 (last updated 9 April 2021).

³⁴ Department for Business, Energy & Industrial Strategy, [Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers](#), CP488, 20 July 2021

³⁵ Department for Digital, Culture, Media & Sport (DCMS) & Department for Business, Energy & Industrial Strategy (BEIS) joint consultation paper, [A new pro-competition regime for digital markets](#), CP 489, July 2021

3.3

CMA response to BEIS consultation

On 4 October 2021, the CMA published its [response](#) to the BEIS consultation on reforming competition and consumer policy.³⁶ The CMA welcomed the consultation, which it described as “perhaps the most important review of competition and consumer policy in a decade”.³⁷ It was pleased to see that the Government was proposing to take forward many of the recommendations made in Lord Tyrie’s 2019 letter:

“The CMA considers that across the Consultation, government has identified a compelling package of legislative reform proposals, and areas for further consideration, that taken together will help promote fair, open and competitive markets, and promote the interests of consumers as well as those of fair-dealing businesses wishing to enter markets, grow their businesses, and compete with large incumbents. In this way, the government’s proposals can also be expected to support growth and economic recovery.”³⁸

However, the CMA noted that in the consultation, the Government had not proposed taking forward some of the CMA’s recommendations in Lord Tyrie’s letter. These included:

- Proposals for the CMA, and the courts, to have an overriding duty to promote the interests of consumers.
- Aligning the scope of the market investigation reference test with the market study’s “adverse effects on consumers” assessment (currently, the market investigation reference can only consider whether there is an adverse effect on competition).
- A new statutory requirement on the CMA to conduct its investigations swiftly, while respecting parties’ rights of defence (‘duty of expedition’).

The CMA noted that legislative change is a matter for Parliament, but the CMA nevertheless considered these proposals beneficial to the development of the UK competition and consumer regime.

The CMA argued that introducing new powers for the Secretary of State or the CMA to add to the list of banned practices in Schedule 1 of the Unfair Trading Regulations, by way of secondary legislation, would be of great benefit to consumers. The CMA suggested that such changes to the list of banned practices could be triggered by a CMA market study or enforcement work:

“While still a member of the EU, the UK was not able to unilaterally add to the list of banned practices due to the maximum harmonisation nature of the Directive. However, since 2008 considerable experience has been

³⁶ Competition and Markets Authority, [Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers](#), CMA 149 con, 4 October 2021

³⁷ Ibid, [para 1.6](#)

³⁸ Ibid, [para 1.6](#)

gained by UK enforcers as to the changing nature of ‘automatically unfair’ commercial practices. In the view of the CMA, it is important to create a legislative route to add to the CPRs list of banned practices without having to wait many years until a suitable opportunity to update the legislation arises.”³⁹

In particular, the CMA said consideration should be given to adding banned practices around manipulation of consumers through the presentation of information, as well as drip pricing and unlabelled paid-for search advertising, as proposed by BEIS.

3.4 Comparable changes in the EU

In April 2018, the European Commission adopted its “[New Deal for consumers](#)” package, which aimed to strengthen the enforcement of EU consumer protection rules and update them for the digital age.⁴⁰ The package was adopted in response to a ‘fitness check’⁴¹ that aimed to assess whether EU consumer protection and marketing Directives were still fit for purpose.⁴² The results of the fitness test were published on 29 May 2017.⁴³

One part of the “New Deal for consumers” package is the [Enforcement and Modernisation Directive](#) ((EU) 2019/2161), often referred to as the Omnibus Directive. Member states have until 28 November 2021 to transpose this Directive into national law, it is to apply from 28 May 2022. Amongst other things, this Directive will amend the [Unfair Commercial Practices Directive](#) (2005/29/EC) (“the UCPD”).

Of course, now that the UK has left the EU it is not obliged to implement the Omnibus Directive. As at the date of writing this paper, the Government has not indicated that it will duplicate the changes made to the UCPD in the Unfair Trading Regulations.

³⁹ Ibid, [para 2.106](#)

⁴⁰ European Commission, [Review of EU consumer law – New Deal for Consumers](#), 11 April 2018

⁴¹ European Commission, [Understanding the Fitness Check Consumer Legislation in the EU](#), undated

⁴² The [Misleading and Comparative Advertising Directive](#) (2006/114/EC), the [Unfair Commercial Practices Directive](#) (2005/29/EC), the [Price Indication Directive](#) (98/6/EC), the [Unfair Contract Terms Directive](#) (93/13/EEC), the [Sales and Guarantees Directive](#) (1999/44/EC) and the [Injunctions Directive](#) (2009/22/EC)

⁴³ [European Commission lays the groundwork for future action in EU consumer law](#), European Commission press release [online], 29 May 2017 (accessed 24 November 2021)

4

Help and information

A consumer may wish to seek proper legal advice on whether the Unfair Trading Regulations apply to the circumstances of their case. The briefing paper, “[Legal help: where to go and how to pay](#)”, may assist. In addition to a solicitor, legal advice might be sought free of charge from the consumer’s local citizens Advice Bureau (CAB). The [Citizens Advice website](#) contains a useful search tool to help people find their nearest CAB. There is also the Citizens Advice [consumer helpline](#): **0808 223 1133**.

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