

Consumer Protection from Unfair Trading Regulations (CPR)

A brief introduction to the new Regulations

Cases Worcestershire Regulatory Services deal with:-

- Counterfeiting
- Underage Sales
- Rogue Traders (Doorstep Crime)
- Mis-descriptions
- Food Composition
- Pricing
- Safety
- Animal Diseases/Welfare

Legislation

- Trade Marks Act 1994
- Licensing Act 2003
- Food Safety Act 1990
- Consumer Protection Act 1987
- Trade Descriptions Act 1968

However

Consumer Protection from Unfair Trading Regulations (CPR) **replaces** Trade Descriptions offences, the Consumer Protection Act pricing and a range of other legislation.

Nature of the New Regulations – They came from:-

- EU Directive :With maximum harmonisation.
- Principle based, not prescriptive.
- Previous case law may not apply.
- New concepts like "average consumer," "professional diligence," "transactional decision".

Unfair Commercial Practice

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 in relation to the product.

Professional Diligence covers:-

The standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with:

- Honest market practice in that activity.
- The general principle of good faith.

Materially Distort Economic Behaviour, which:-

Appreciably impairs the average consumer's ability to make an informed decision causing him to take a transactional decision he would not otherwise have taken.

Transactional Decision, means:-

- Any decision taken by a consumer, whether it is to act or refrain from acting concerning:
- Whether, how, on what terms, to purchase, make payment in whole/part for, retain or dispose of a product OR
- Whether, how, on what terms, to exercise a contractual right in relation to a product.

Average Consumer

Reasonably well informed, reasonably observant, reasonably circumspect.

BUT

- Where particular groups are targeted, it is the average member of that group.
- If this person has particular vulnerabilities, Trader must account for this.

Prohibitions

- Schedule 1 absolute prohibitions (31)
- Misleading actions
- Misleading omissions
- Aggressive practices
- General

Absolute Prohibitions

- 31 activities on the list provided
- All apart from number 11 and number 28 constitute criminal offences.
- Civil and criminal process
- Enterprise Act 2002 injunctive processes can be used for all.

Misleading Actions

A commercial practice is misleading if:-

- It contains false information/is untruthful.
- Overall presentation deceives or is likely to deceive the average consumer.

AND

- Causes or is likely to cause consumer to take a transactional decision he would not otherwise have taken.
- Regulation 5(4), (5), (6) list of matters, cover virtually all aspects of transactions in goods and services.
- Reflects position under Trade Descriptions Act.

Misleading Omissions

A misleading omission if:-

- Omits or hides material information.
- Provides material information which is unclear, unintelligible, ambiguous or untimely,
- Fails to identify its commercial intent.

AND

- Causes or is likely to cause the average consumer to take a transactional decision he would not otherwise have taken.

Material information is:-

- The information required by the average consumer to make an informed transactional decision, in context.
- Any informational requirement which applies in relation to a commercial communication as a result of a community obligation.

Misleading Omissions include:-

- Trader identity.
- Geographical address of trader
- Price, inclusive of taxes OR
- Method of calculation if price not direct.

Additional charges should be made clear, or a statement that they may be made should be included.

Aggressive Practices

Commercial practice is aggressive if (FACT):

- It significantly impairs or is likely to impair the average consumer's freedom of choice or conduct in relation to a product concerned through the use of harassment, coercion or undue influence AND
- Thereby causes/is likely to cause him to take a transactional decision he would not otherwise have taken.

Undue influence means exploiting a position of power in relation to a consumer so as to apply pressure even without using/threatening physical force, in a way which significantly limits a consumer's ability to make an informed decision.

- Can consider timing, location, nature or persistence.
- Use of threatening behaviour or language.
- The exploitation of any specific misfortune or circumstance so as to impair the consumer's judgement and influence the consumer's decision.

Offences

- Misleading action/omission/aggressive practice ALL STRICT LIABILITY.
- Schedule 1: ALL STRICT LIABILITY
- General Duty.
- Knowingly or recklessly engage in practice contrary to professional diligence AND
- Materially distort or be likely to materially distort the economic behaviour of the average consumer.

Penalties & Time Limits

- Summary conviction: Statutory maximum fine.
- Indictment: Fine and up to 2 years imprisonment.
- One year from discovery.
- Three years from commission.

Defences & Bypass

- Third parties can be prosecuted for act/default.
- Due diligence: must show.
- Mistake/RELIANCE on information, act or default/accident/other cause beyond control AND
- Took all reasonable precautions and exercised due diligence.

Enforcement

- This is a Statutory Duty so will be used.
- All powers from TDA for entry, making test purchases, seize & detain goods/documents, may be required as evidence/obtain entry warrant.
- It is an offence to obstruct an officer in commission of duties under this Act.

Conclusion

This is the biggest change to consumer legislation since the 1960s. It offers both civil and criminal remedies for the same activities. The Authority to decide the most appropriate approach.

The Macrory Penalties Review offers new alternatives to prosecution.

How to contact Worcestershire Regulatory Services

Consumer Advice - regarding issues relating to 'Consumer goods or Services' contact Citizens Advice Consumer Service on 08454 040506, alternatively research your consumer rights on the HM Government, DirectGov website www.direct.gov.uk

Business Advice only - telephone 0845 330 3313, or email wrsenquiries@worcsregservices.gov.uk

General Customer Enquiries - contact the Worcestershire Hub on 01905 822799 (Mon – Fri 8am-8pm, Sat 9am-5pm) or visit your local Customer Service Centre. Opening times and locations can be found at www.whub.org.uk

Postal address – Worcestershire Regulatory Services, PO Box 866, Worcester, WR1 9DP



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