

The Consumer Protection from Unfair Trading Regulations 2008



The Consumer Protection from Unfair Trading Regulations 2008 came into force on 26 May 2008. These Regulations apply to commercial practices before, during and after a contract is made so for them to apply there does not have to be a contractual relationship between consumer and agent. In other words an agent's dealings with a prospective buyer of a property have to be fair even though there will be no contractual agreement in place at any point (unless where you are acting as a buying agent).

The Regulations set out a general prohibition on unfair business to consumer commercial practices, also known as the general duty not to trade unfairly. The general prohibition is made up of two tests prohibiting practices that:

- Contravene the requirements of professional diligence, i.e. the standard of skill and care which an agent may reasonably be expected to exercise towards consumers.
- Materially distort the economic behaviour of the average consumer's ability to make an informed decision.

The Regulations specify particular prohibitions of misleading and aggressive commercial practices. Those commercial practices relate to 'business to consumer' only transactions and to the likely effect on the 'average consumer'.

This guidance note is designed to give agents an awareness of the existence of the legislation and can only highlight the general obligations placed on them – agents are strongly advised to obtain a copy of the Regulations for reference.

www.legislation.gov.uk/ukdsi/2008/9780110811574/contents

Outright Prohibitions

There are 31 commercial practices which are considered to be unfair to the consumer in all circumstances and are therefore banned. These banned practices are listed in Schedule 1 of the Regulations. A breach of the Regulations in this regard is considered a criminal offence.

Misleading Practices

Under the Regulations, Misleading Actions and Misleading Omissions can lead to criminal prosecution if the average consumer takes, or is likely to take, a different decision as a result of being given false information about your services or the properties being marketed, is deceived about your service matters relating to any property, including your failure to give any consumer all relevant material information to enable them to make an informed choice.

Material information is defined as information that the average consumer needs to have, in the context of the transaction, in order to make an informed decision.

Further prohibitions are placed on actions which set out to create confusion with competitors' services.

Aggressive Commercial Practices

These are practices that intimidate or exploit consumers and restrict their ability to make a free or informed choice and the practice causes the average consumer to take a different decision. Again a breach of the Regulations in this regard can result in criminal prosecution.

Aggressive practices include harassment (this could include the uncontrolled use of flyers when canvassing for new business), coercion or applying undue influence on the consumer.

Compliance and Enforcement

Local Authority Trading Standards Services (in Northern Ireland, the Department of Enterprise, Trade and Investment) and the Office of Fair Trading have a duty to enforce these Regulations.

Contravention of the Prohibitions, Misleading Actions and Misleading Omissions Regulations will be considered a criminal offence.