

- not acting with the standard of care and skill that is in accordance with honest market practice and in good faith (failing to show professional diligence) [p36-38], or
- engaging in one of the 'banned practices'. Examples include displaying a trust mark (such as a logo) without authorisation and claiming falsely to be a member of a professional body or an approved redress scheme, when you are not. [p34-35]

2.5 Apart from the banned practices (which are banned outright), these breaches have a threshold: the commercial practice will be unfair if it affects or is likely to affect the transactional decision making of the average consumer.⁸

- 'Transactional decision' is defined widely and is not simply a consumer's decision to use your services or not, or to buy a property or not. It could, for example, be a client's decision to accept an offer, or a buyer's decision to view a property, commission a survey or instruct a conveyancer. [p17-18]
- The 'average consumer' is someone who is reasonably well-informed, and reasonably observant and circumspect. For example, an average consumer would pay some attention to documentation given to them, but not necessarily to the small print unless key points in it are brought to their attention. An average consumer would check out publicly available facts for themselves where this is straightforward to do, although what checks they actually make will be influenced by the information that you have given them. [p14-16]
- The important question is whether your act or omission is likely to have an impact on the **average** consumer, not an actual consumer (who may be more or less well-informed, observant or circumspect than the average one).

⁸ The general prohibition on unfair commercial practices in regulation 3 of the CPRs requires that the practice materially distorts, or is likely to materially distort, the economic behaviour of the average consumer regarding the product.