



Guidance

Unfair commercial practices

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Overview

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

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^[footnote 4] and ‘drip pricing’.^[footnote 5]

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

This Guidance updates and replaces [Consumer Protection from Unfair Trading Regulations: OFT1008 \(https://www.gov.uk/government/publications/consumer-protection-from-unfair-trading-regulations-traders\)](https://www.gov.uk/government/publications/consumer-protection-from-unfair-trading-regulations-traders).

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

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’.

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

The UCP provisions prohibit unfair commercial practices. These are practices which involve a trader misleading consumers, behaving aggressively, or otherwise acting unfairly towards consumers.

Overview of the prohibitions contained in the UCP provisions

Schedule 20 of the DMCC Act covers 32 specified practices which are in all circumstances considered unfair. [Go to chapter 3](#) for more detail.

Section 230 of the Act covers the prohibited conduct of omitting any information that must be contained in an invitation to purchase. [Go to chapter 4](#) for more detail.

Section 226 covers the following prohibited conduct:

- provision of false or misleading information
- deceptive overall presentation
- creating confusion with competitors' products
- failing to comply with requirements in a code of conduct

[Go to chapter 5](#) for more detail.

Section 227 covers the following prohibited conduct:

- omission (or unclear, untimely or obscure provision) of material information
- omission of legally required information
- failing to identify the commercial intent of a practice

[Go to chapter 6](#) for more detail.

Section 228 covers the prohibited use of aggressive practices like harassment, coercion or undue influence. [Go to chapter 7](#) for more detail.

Section 229 covers falling short of the requirements of professional diligence. [Go to chapter 8](#) for more detail.

Section 225 covers the prohibited 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. [Go to chapter 9](#) for more detail.

What makes a commercial practice unfair?

There are 2 main types of unfair commercial practice:

- practices that are always considered to be unfair
- 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 [\[footnote 9\]](#)

Practices that are always unfair

There are 32 commercial practices listed in the DMCC Act^{[footnote 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](#).

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](#).

Promoting unfair commercial practices in a code of conduct is also prohibited. This is dealt with in [chapter 9](#).

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

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		

Top table alt text: Practices that are prohibited regardless of impact on consumers' transactional decisions include 32 banned practices, omission of material information from an invitation to purchase and the promotion of unfair commercial practices in a code of conduct.

Bottom table alt text: Practices that are unfair if they are likely to cause consumers to take a different transactional decision include misleading actions, misleading omissions, aggressive practices and the contravention of the requirements of professional diligence.

Practices that may be unfair if they impact on consumer decisions
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.

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.

When do the UCP provisions start to apply?

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
- average consumer, vulnerable consumer and targeted consumer

The meaning of each of these is discussed below with examples.

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. [\[footnote 12\]](#)

Who counts as a trader?

The UCP provisions define a trader as either:

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

'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. [\[footnote 14\]](#)

'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.

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 [\[footnote 15\]](#)
- 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

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.

What is a commercial practice?

A commercial practice is an act or omission by a trader relating to the promotion or supply of either:

- the trader's product to a consumer
- another trader's product to a consumer
- a consumer's product to the trader or another person [\[footnote 16\]](#)

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
- membership rights, such as membership of a club

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

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.

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.

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.

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.

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

Examples of practices not covered by the UCP provisions

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.^[footnote 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

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.

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.

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?

The UCP provisions define a consumer as an individual acting for purposes that are wholly or mainly outside the individual's business.^{[\[footnote 19\]](#)}

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.^{[\[footnote 20\]](#)} 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^{[\[footnote 21\]](#)}

- 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^{[\[footnote 22\]](#)}
- 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

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.^{[\[footnote 23\]](#)}

What is a transactional decision?

‘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.^{[\[footnote 24\]](#)} This concept should be considered in parallel with the concept of ‘average consumer’ discussed below.

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)^{[\[footnote 25\]](#)}

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.^{[\[footnote 26\]](#)} The wording makes clear that transactional decisions may occur before a consumer has taken any in-principle decision whether to purchase a product. It covers decisions taken before, during and after a contract is made or a transaction takes place.^{[\[footnote 27\]](#)}

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)

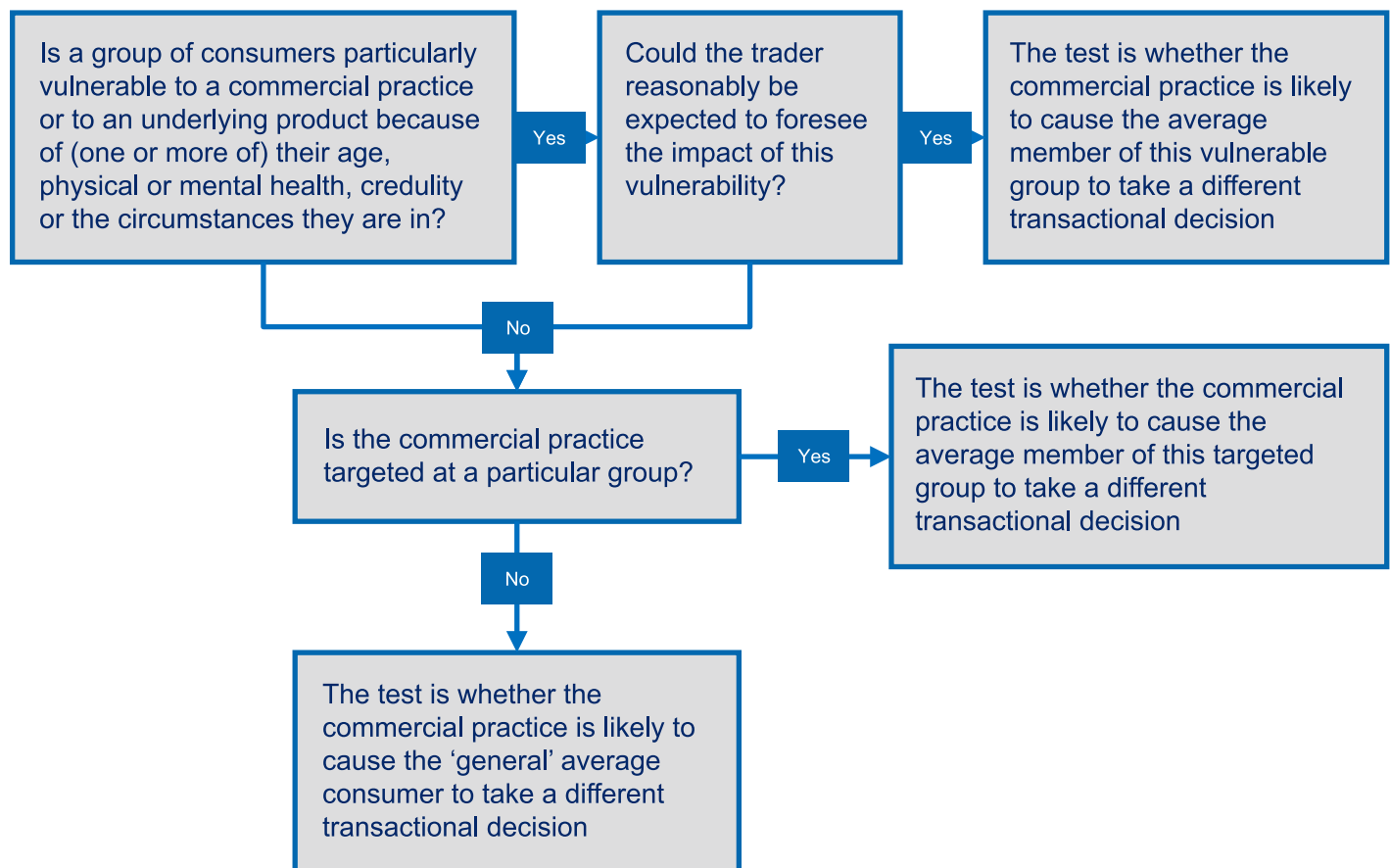
- whether to enter a contract
- whether to exercise a cancellation right, a right to a refund or replacement, or a right in relation to an after-sales service
- whether to pay a debt [\[footnote 28\]](#)

The average consumer

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
- the ‘average member’ of a vulnerable group of consumers. [\[footnote 29\]](#)

The diagram below demonstrates how the effects of a commercial practice on each of these 3 types of consumers have to be assessed to determine if the practice may be unfair.



Alt text: This diagram describes how the effects of a commercial practice on three types of consumers, that is the average consumer, the average member of a targeted group of consumers, and the average member of a vulnerable group of consumers, have to be assessed to determine if the practice may be unfair.

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’.

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.

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

Where:

- there is a group of consumers
- the group is particularly vulnerable to a commercial practice
- 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. [\[footnote 30\]](#)

In relation to the breaches mentioned under [the average consumer](#) (<https://www.gov.uk/government/publications/unfair-commercial-practices-cma207/unfair-commercial-practices#the-average-consumer>), 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.

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). [\[footnote 31\]](#)

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.

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. [\[footnote 32\]](#)

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