

EU Consumers' Rights

How EU consumers' rights benefit Hampshire citizens

Being treated unfairly by a business?
Know your rights!



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Being treated unfairly by a business in Hampshire is a crime... Know your rights!

Introduction

Hampshire is a great county. It has fantastic scenery, a good standard of living, large commercial centres like Basingstoke, Portsmouth, Reading, Southampton and Winchester, the beauties of the coast and the New Forest, and is also well served in terms of small and large businesses.

However, despite all these advantages, too many consumers have problems in the region from traders or businesses that treat them unfairly, or mislead them or treat them aggressively.

The aim of this publication is to inform consumers in Hampshire what they can do if they are treated unfairly by a local trader or business.

These practices are not just unfair or annoying, they are actually a criminal offence, so local people have the power to fight against shoddy business practices, as they are in the stronger position.



Background

The Unfair Commercial Practices Directive is an EU law that gives you the power to challenge businesses that try to rip you off.

It was enacted into UK Law by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

Under the UK Regulations, it is a criminal offence to use any of the strategies on the list of banned practices (known as the blacklist) or to treat consumers in a misleading, unfair or aggressive manner.

The punishment for any of these illegal commercial practices is a maximum fine of £5000. In the case of a company, the director, manager, company secretary or similar officer of the company is personally liable and can be subject to the same fine and up to two years imprisonment.

This is a very strong sanction, putting consumers in a very strong position to defend themselves against traders who try to rip them off, as the law is very much on their side!

Your right not to be treated unfairly

Under the EU Directive and resulting UK law it is an offence for a trader to treat a consumer unfairly.



So when is a commercial practice unfair?

A commercial practice is unfair if:

- a) It's a misleading action or omission, which means the business has either done something misleading, or they have failed to do or say something that they should have done.
- b) The business or trader doesn't do something which it is reasonable for you to expect them to do (known as "professional diligence"), and because they haven't exercised professional diligence, the consumer makes a different financial or economic choice than they would have made if they had had the correct information (known as "material distortion of the economic behaviour of the average consumer" with regard to the product).

The Blacklist

There are thirty one specifically banned behaviours contained on the blacklist that are automatically unfair if a business does them.

If you are a consumer and a local business treats you in any one of the following ways then that business, its owners, and managers are committing a criminal offence, with the possible sanctions of fine and imprisonment. So if businesses treat you unfairly use these regulations to protect yourself. The business is in a far weaker position than you are!

The blacklist:

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. “Bait advertising”: Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered.
6. “Bait and switch”: Making an invitation to purchase products at a specified price and then:
 - a) refusing to show the advertised item to consumers,
 - (b) refusing to take orders for it or deliver it within a reasonable time, or
 - (c) demonstrating a defective sample of it,with the intention of promoting a different product
7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the EEA State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.
10. Presenting rights given to consumers in law as a distinctive feature

of the trader's offer.

11. Using editorial content in the media to promote a product where a trader has paid for the promotion ("advertorial") without making that clear in the content or by images or sounds clearly identifiable by the consumer.

12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.

13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not. ("passing off")

14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

15. Claiming that the trader is about to cease trading or move premises when he is not (false "closing down sale" offers).

16. Claiming that products are able to facilitate winning in games of chance.

17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

20. Describing a product as “gratis”, “free”, “without charge” or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.
22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to a product is available in an EEA State other than the one in which the product is sold.
24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer’s home ignoring the consumer’s request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.
28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.
29. Demanding immediate or deferred payment for or the return or



safekeeping of products supplied by the trader, but not solicited by the consumer, except where the product is a substitute supplied in accordance with regulation 19(7) of the Consumer Protection (Distance Selling) Regulations 2000 (inertia selling)(1).

30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:

(a) there is no prize or other equivalent benefit, or

(b) taking any action in relation to claiming the prize or other equivalent benefit which involves the consumer paying money or incurring a cost.

Who do these rules apply to?

These rules apply to all businesses that do business with consumers, whatever their size and whether sole traders or companies. Large companies, including banks, railways and utility companies come under these rules although they are often some of the largest offenders. If a large company is treating you unfairly, write to the directors of the company concerned, and point out that unless the unfair treatment stops immediately that you shall be contacting the regulator, who has the power to prosecute the directors or officers of the company as well as the company itself. Once informed of a breach, if they fail to act they personally run the risk of a large personal fine, imprisonment, and possibly being barred from holding a directorship unless the unfair treatment stops.

Thanks to the EU, consumers now have real power to challenge unfair commercial practices, particularly by big businesses.

This law was the biggest shake up of consumer law in 40 years, so make sure you use these rights if you are treated unfairly. There is no reason for any consumer to put up with unfair treatment by a business.

These EU rules are powerful and put consumers who are treated in an unfair, misleading or aggressive way in a very strong position, as few traders would be prepared to go to prison for two years for such behaviour.

So if you are being treated badly by a business or trader in Hampshire, then enforce your rights!

Where can you go for help if you have been treated unfairly by a trader or business in Hampshire?

Trading Standards

Your first stop if you feel that you have been the victim of any of these practices is to contact the local Trading Standards Office as they are under a duty to act.

Hampshire Trading Standards can be contacted at:

Montgomery House
Monarch Way
Winchester
SO22 5PW.

Tel: 01962 833620

Email: tsadvice@hants.gov.uk

Citizens Advice

Consumers in Hampshire can get further advice by contacting the Citizens Advice consumer service which provides free, confidential and impartial advice on consumer issues.

Web address is: www.adviceguide.org.uk.

You can contact the Citizens Advice consumer helpline:

Tel 03454 04 05 06.



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