

Chapter 5

Consumer protection

Why do consumers need protection?

Many businesses are managed in an ethical fashion and focus on providing excellent quality goods and services to meet customer expectations. However, this is not always the case and the drive to maximise profit overwhelms some organisations resulting in them resorting to dubious tactics in order to increase sales and revenue. There are a huge number of suppliers and retailers operating in the UK and this gives the opportunity for unscrupulous traders to set up in business. Poor quality goods, substandard services, misleading information and pressurised selling tactics are among the practices that the UK government seeks to discourage.

In order to control the way in which businesses conduct themselves and offer protection to consumers, the government has passed a number of laws and set up various organisations. These laws and organisations are together known as 'consumer protection'.

Consumer protection legislation

The latter half of the twentieth century saw a massive rise in consumerism (the number of goods bought and sold). The government recognised the need to regulate business practices and passed a number of important pieces of legislation such as the Sale of Goods Act 1979. Some of the main pieces of legislation are outlined below:

Consumer Rights Act 2015

The **Consumer Rights Act 2015** is the major piece of law covering the purchase of goods, services and digital content. Every time a consumer buys a product or a service, they make a 'contract' with the retailer. The Consumer Rights Act regulates this contract (agreement). It states that all goods must be of satisfactory quality, fit for the purpose for which they were bought and must correspond with any description given. For example, if you buy a car it must be capable of reliably transporting its passengers or if you buy a pair of wellington boots they should be waterproof. If a consumer buys a product that isn't satisfactory or doesn't match the description etc., they are entitled to return the goods to the retailer and ask for a refund. If the retailer refuses to reimburse the consumer, the consumer can then take court action, i.e. sue the retailer in court and ask for compensation or repair/replacement of the product.

The Consumer Rights Act 2015 also states that services must be carried out for a reasonable price (unless agreed beforehand), within a reasonable time, and with reasonable care and skill. For example, if you visit a hair salon to dye your hair, the hairdresser would not be providing a service with reasonable care and skill if they dyed your hair the wrong colour.

Consumer Protection from Unfair Trading Regulations 2008

This is a very broad piece of legislation that makes it a criminal offence for businesses to engage in unfair business practices. This means that businesses can be prosecuted and fined for engaging in these practices, such as making untrue statements about a product or service, using aggressive sales techniques such as harassment or misleading consumers about the price of a product or service. For example, if a car dealer tells you that a vehicle has 50,000 miles on the clock but knows the true figure to be 70,000, they are omitting a key fact which would affect your decision to purchase the car.

Manufacturers and retailers have to take a great deal of care about information presented on the packaging of their goods, or within advertisements and any other form of promotional material.

Consumer Credit Acts 1974 and 2006

These laws, together with the **Consumer Credit Regulations 2010**, control the way that businesses lending money operate. These laws require the creditor (lender) to give certain key information to the debtor (borrower) before the contract is made including the interest rate, how much the repayments will be and the cancellation rights of the debtor. Credit companies have to publish a figure known as the Annual Percentage Rate (APR). This percentage not only reflects the rate of interest charged but also how it is calculated and added and any arrangement fees. The APR enables consumers to compare credit deals. The laws also give the debtor a 'cooling off period' after signing a credit contract during which they can change their mind. (In many cases this is 14 days). All organisations involved in credit must obtain a licence from the appropriate government authority – it is a criminal offence to operate without one.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

These help protect consumers who buy over the phone or online. These are distance sales, which mean that there was no face to face contact at the time of purchase. If businesses break these regulations then the consumer is not bound by the purchase contract. These regulations provide the consumer with a cancellation period of 14 days: the 'cooling off' period during which consumers are entitled to change their minds and cancel the contract and receive a full refund, regardless of whether the product is defective.

These regulations also apply to goods or services purchased at your home, or 'off-premises'. For example, if a sales person visits you at your home and you agree to buy a new mobile phone, you have the right to change your mind and cancel the agreement, within 14 days. Also consumers are not bound by charges they have not expressly agreed to – such as hidden delivery or card payment costs.

The role of the ombudsman

Ombudsman services are available for various industries and offer complaints procedures for dissatisfied customers. Ombudsman services are set up by the government and are free for consumers to use. Examples of ombudsman services include the Health Service Ombudsman, the Legal Services Ombudsman and the Energy Ombudsman. Consumers can usually complain to the relevant ombudsman once they have tried to resolve any dispute with the relevant business and also followed up any other complaints procedures. The ombudsman services are the last port of call before full legal action in court is taken. When consumers take a complaint to an ombudsman, the ombudsman will look at all written information provided by the consumer and the business and make a decision accordingly. The decision is final and can only be overturned by a court.

Trading Standards departments

All local authorities have a Trading Standards department. The department is responsible for checking that local businesses are complying with the various trading laws e.g. Consumer Protection from Unfair Trading Regulations 2008. Trading Standards officers visit businesses and carry out spot checks. They investigate whether goods are correctly described, priced clearly and sold in the correct quantities. (For example, if a restaurant has 'locally sourced Welsh beef' on their menu, the officers will establish whether this is a true statement). They will also ensure that no counterfeit goods are being sold. Trading Standards officers can prosecute businesses if necessary and this process can result in fines and, in extreme cases, imprisonment.

The Competition and Markets Authority (CMA)

The Competition and Markets Authority (CMA) was set up by the government in 2014 and replaces the former Office of Fair Trading and Competition Commission. Its mission statement is 'to make markets work well for consumers' and, in order to pursue this aim, the CMA carries out investigations into various markets such as the groceries market and the energy market. The purpose of these investigations is to ensure that the businesses operating in these markets are not engaging in any 'anticompetitive business practices' that restrict competition within the market. These practices would include activities such as 'price agreements' where businesses agree not to compete on price or 'boycott activities' where suppliers refuse to supply to retailers if they stock the goods of a competitor. The CMA investigates markets and can elicit 'undertakings' (promises) from businesses to change their business practice if they uncover anticompetitive activities. If a business fails to honour these undertakings, it can result in more stringent measures such as fines. The CMA also investigates proposed mergers if the merger would result in a company with such a large market share that it may restrict competition.

The CMA works closely with the government's Department for Business, Innovation and Skills (BIS) and local Trading Standards departments.

Competition policy is focussed on controlling the power of big business. If businesses in a monopoly or near monopoly are able to hold a dominant market position, then they are likely to have control over price or the amount produced within the market. Governments (UK and EU) will therefore put in place laws and regulators to limit the potential abuse of market power and thereby protect consumers.

One role of the CMA (see text box) is to examine situations where companies act together, forming an illegal cartel to limit the competition within an industry. Businesses, if they have a choice, will not compete on price and they may take the view that by creating a dominant market position by working with other large businesses, they can limit price competition. Because of the potential of cartels and collusion between businesses, legislation allows for guilty parties to be fined up to 10% of turnover for each year of illegal activity.

Role of the CMA

- investigating mergers which could restrict competition
- conducting market studies and investigations in markets where there may be competition and consumer problems
- investigating where there may be breaches of UK or EU prohibitions against anticompetitive agreements and abuses of dominant positions
- bringing criminal proceedings against individuals who commit the cartel offence
- enforcing consumer protection legislation to tackle practices and market conditions that make it difficult for consumers to exercise choice
- co-operating with sector regulators and encouraging them to use their competition powers

Consumer advice

Consumers can access advice about consumer problems via a number of websites. For example, www.citizensadvice.org.uk, www.consumer-rights.org.uk and Consumerline www.nidirect.gov.uk/consumerline.

Ethical issues related to consumer protection

Ethics relate to what is morally right and wrong and businesses have to make ethical decisions. How they treat their customers is part of the wider field of 'business ethics'. Other ethical issues include how businesses deal with their suppliers (Do they pay a fair price? What are the working conditions like in their overseas factories?) and their workers.

Many of the practices that consumer protection laws seek to ban are unethical. Giving false information about a product (e.g. claiming eggs to be free range when they are not or stating that a garment is 100% silk when it isn't), putting pressure on a consumer to purchase something or supplying poor-quality goods that break easily are all examples of unethical behaviour on the part of businesses.

Business ethics is a complicated field and, because ethics relate to opinions, there is sometimes disagreement over whether a particular practice is unethical or not. Marketing in particular can cause disputes in this area. For example, some stores display sweets at the checkout. This is regarded as unethical by some because it encourages 'pester power' (children repeatedly asking parents to buy the sweets for them). As sweets are unhealthy food, this practice can be seen as unethical. However, others argue that people have a choice whether they purchase them or not and it is up to parents to educate their children about healthy foods.

Some businesses have tried to reinvent themselves because their marketing has been labelled unethical. McDonalds 'supersize' was once a marketing winner, but with increased worries about people's weight problems, the campaign was dropped. McDonalds now focus a large part of their advertising and product development on healthier meals.



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<http://bit.ly/1QbAQYy>

Discussion themes

Visit the website of the Competition and Marketing Authority and look for two examples of recent investigations. What were the findings and recommendations?

Use online consumer advice sites such as www.citizensadvice.org.uk, www.consumer-rights.org.uk and Consumerline www.nidirect.gov.uk/consumerline to research consumer protection laws.

Turn the advice around and design a brief guidance document advising SMEs on what they must do to avoid breaching the various pieces of legislation.

Should ethics be part of a business's marketing approach?

Discuss the following statement: 'With so much choice available, consumers are capable of looking after themselves.'