


The DMCC Act and consumer protection: Unfair commercial practices

27 May 2025  Cat Driscoll and Emma Roake

It's been a long time in the making. Seven years after the Digital Markets, Competition and Consumers Act 2024 (DMCC) was first publicly discussed, and 11 months after the bill received Royal Assent, on 6 April 2025 two crucial components of the DMCC came into force for all commercial practices happening from that day onwards.

The first was the new direct enforcement powers of the Competition and Markets Authority (CMA) which allow it to fine companies the higher of £300,000 or 10% of annual turnover for breaking consumer law, and the second was the revised rules on unfair commercial practices.

In this series of articles, we consider what the new rules on unfair commercial practices mean for businesses and the way in which they operate, and we then consider the detail of specific unfair commercial practices which are likely to be top of the CMA's list when it comes to enforcement. These areas should be your main areas of focus when it comes to putting in place compliance processes to avoid breaches which could leave your business open to fines by the CMA and reputational damage.

What are unfair commercial practices?

Unfair commercial practices are those which involve a business misleading consumers (not only by what businesses say – but also what they omit to say), behaving aggressively or otherwise acting unfairly towards consumers. Such practices may either be:

1. always considered to be unfair (banned practices), or
2. unfair only if they are likely to cause the 'average consumer' to take a 'transactional decision' they would not have otherwise taken.

The prohibition of such behaviours is not new; in fact many of these practices have been illegal since 2008 when the Consumer Protection from Unfair Trading Regulations 2008 (the CPUTRs) identified 32 commercial practices that are always unfair and rules for identifying those which may be unfair.

However, now that the CMA has powers to directly fine businesses for breaches of these laws (and has made it clear that it intends to use those powers), businesses who sell products and services aimed at consumers need urgently to put in place compliance procedures to ensure that they are not engaging in any potentially unfair practices.

So what does the DMCC do?

Chapter 1, Part 4 of the DMCC revokes the CPUTRs and replaces it with similar but enhanced provisions on unfair commercial practices.

Whilst the majority of the changes introduced by the DMCC are relatively minimal and reiterate much of previous rules, the list of practices which are automatically unfair have been updated for today's online world, some terms have been clarified and/or extended and a handful of new concepts have been introduced.

What are the main changes?

The main changes fall broadly into four categories:

1. clarification of key definitions/concepts;
2. new rules relating to drip pricing and invitations to purchase ([see our drip pricing article](#));
3. changes to the automatically unfair commercial practices ([see our fake reviews article](#)); and
4. the extension of the concept of vulnerable consumers ([see our vulnerable consumers article](#)).

‘Commercial practices’, ‘average consumers’ and ‘transactional decisions’ – what do these terms mean?

A **commercial practice** can be **any act or omission** by a business relating to the promotion or supply of a product/service by a business to a consumer (or by a consumer to the business or another person). The act or omission does not need to be directly connected to the promotion or supply and can happen before, during or after it. This means that the rules cover everything from [advertising](#) to the sale of, or provision of after-sales services relating to, the product or service.

There is no need to show that actual consumers have been affected by an unfair commercial practice in order for it to fall foul of the legislation.

Some commercial practices are not automatically unfair and instead will only be unfair if they cause the **average consumer** to make a transactional decision that they would not otherwise have taken. In line with other consumer law, the average consumer is not the statistically average consumer but rather a reasonably well-informed, observant and circumspect individual.

However the new rules make it clear that even a well-informed individual (who a business might ordinarily think would mean someone who undertook research) will not be deemed to have knowledge of any information which the business has concealed in some way.

The DMCC has also broadened the definition of ‘**transactional decision**’ so that an actual transaction does not need to take place for a transactional decision to be made. Any decision made relating to a purchase of product – whether before (such as clicking through to a website) or after the product has been bought (such as whether to exercise a cancellation right) – can be a transactional decision. What this means is that during the lifecycle of a retailer’s relationship with a consumer – before and even after a product or service has been purchased – the retailer’s practices need to be compliant. In other words, the retailer’s obligations to act with transparency, good faith and fairness and not mislead the consumer do not end when payment has been made.

Actions for retailers

You should carefully consider every aspect of your consumer transactions to ensure that every step taken or information given to a consumer at each stage of the customer journey and product lifecycle is fair, accurate and transparent.

Some changes are small but mighty

There have been a number of changes to the list of 32 commercial practices that are always unfair. At first glance some of the changes introduced look like minor drafting clarifications. However the impact of even a small drafting change can be huge. For example the CMA has issued a death knell on the indiscriminate use of countdown clocks to advertise a discount, displaying wording such as ‘limited time only’ or ‘exclusive offer’, or stock counters aimed at encouraging a consumer to purchase an item ‘before it’s gone’ by the simple means of removing the word ‘very’ from the prohibition on falsely stating that a product will only be available for a limited time or that it will only be available on certain terms for a limited time.

Action for retailers

The use of practices aimed at encouraging consumers to make an immediate decision to buy a product for fear of missing out should be carefully considered and only used sparingly.

Resetting of clocks when time runs down or **repeating ‘exclusive offers’** shortly after the previous one expired should be things of the past.

Stock counters should be used with caution and consideration given to including information of when stock may be replenished to enable a consumer to make an informed choice.

Some things haven’t changed

All businesses remain subject to an overarching requirement to be professionally diligent in how they behave. This means that a business must use the standard of skill and care which would reasonably be expected which is commensurate with either honest market practice in the business' field or the general principle of good faith in that field.

The CMA has recently issued the [CMA 207 Unfair commercial practices guidance](#) which outlines the sort of behaviours which might be considered a contravention of this duty. This can be distilled to activities which put the consumer at a disadvantage or make the consumer unable to secure redress or exercise remedies to which they would otherwise be entitled. One example is failing to handle complaints in a timely manner, thereby preventing a consumer securing redress.

The CMA's approach to compliance

While there is no transition period, the CMA has indicated that in the first 12 months of its new powers it will focus on the most serious harms.

Four areas of obvious risk for retailers selling online are:

- unfair terms in the retailer's terms and conditions of sale, which will be easily accessible to the CMA on the retailer's website;
- [pricing practices](#);
- greenwashing; and
- [online choice architecture](#), being the way in which the website is designed and how that impacts consumer choice/ behaviour.

We strongly recommend that all retailers review their website and associated practices to ensure that they are compliant with these new rules.

Does any of this impact manufacturers or distributors?

For those businesses that do not supply directly to consumers but are part of a retailer's supply chain, beware! The rules on unfair commercial practices may also apply to you.

It is incumbent on every business that [manufactures](#) products for the consumer market to ensure that the information they provide and statements they make about their products are clear, true and accurate. The retailer may rely on and repeat them after all! If the information supplied is incorrect or misleading then even though the business does not trade directly with the consumer it may be in breach of the unfair commercial practice rules and at risk of enforcement action by the CMA. In addition, if the retailer is fined, the retailer is likely to bring a claim against the manufacturer or distributor if they contributed to the harm caused.

More is yet to come

The DMCC will (in due course – expected to be in 2026) tighten rules governing subscription contracts to make it easier for consumers to manage and cancel their subscriptions.

Retailers who offer subscription packages will have to provide transparent information about pricing, renewal dates and cancellation policies, and issue clear notices to consumers before auto-renewal takes place. The cancellation of a subscription contract should be as easy as the initial sign-up ('one-click cancellation').

Further information and advice

In our other articles in this month's [Retail Law Roundup](#), we take a more detailed look at some of the consumer law issues which we recommend retailers prioritise when designing compliance processes to address the enhanced risk from breaching [consumer laws](#).

If you have any questions or would like to discuss anything raised in this article please [contact us](#).

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