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New Consumer Law Regime for Unfair Commercial Practices in the UK

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Today's speakers

Speakers Today



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Agenda

- What has changed and why?
- Unfair commercial practices
- Spotlight on customer reviews, subscription contracts, pricing, greenwashing and the online store
- Enforcement and litigation risks
- Compliance and risk mitigation

The background features a dark blue gradient with numerous thin, curved lines of light in shades of blue, purple, and red. These lines appear to be light trails or data paths, with small circular particles scattered along them, creating a sense of motion and depth.

What has changed and why?

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Which?

Creating a successful enforcement system for UK consumers

POLICY REPORT FEBRUARY 2019

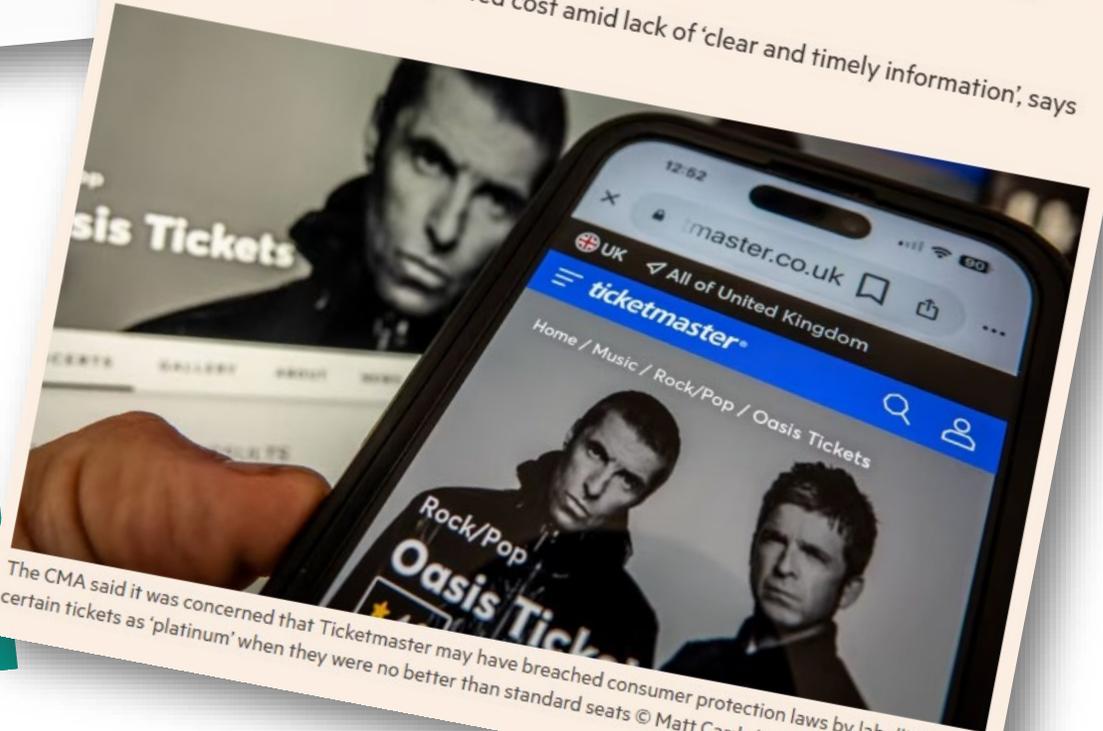
Press release

CMA to boost consumer and business confidence as new consumer protection regime comes into force

CMA now able to act more swiftly and directly to protect consumers and foster a level playing field for business to invest and grow.

Ticketmaster under fire from UK watchdog over Oasis ticket pricing

Fans paid multiple times expected cost amid lack of 'clear and timely information', says CMA



The CMA said it was concerned that Ticketmaster may have breached consumer protection laws by labelling certain tickets as 'platinum' when they were no better than standard seats © Matt Cardy/Getty Images

Rationale for reforms



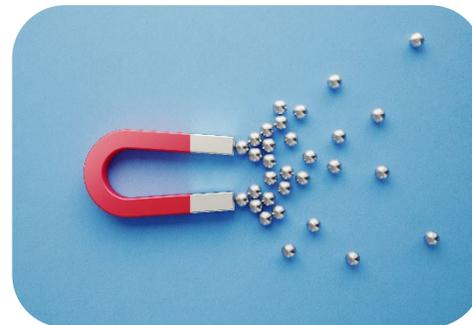
Low consumer trust levels during cost-of-living crisis



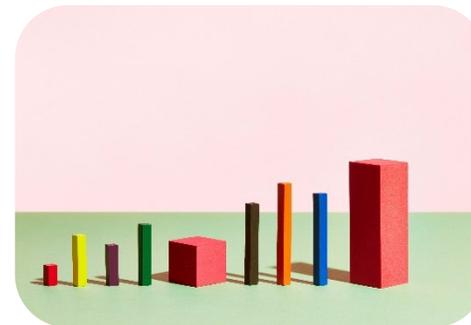
Emergence of new types of consumer harm following rise in e-commerce



Existing laws seen as outdated



CMA concerned about weakness of enforcement powers



Desire to create level playing field to fuel growth and investment

Two key areas of change from consumer rights perspective

More muscular enforcement

- Significantly strengthens powers of the CMA – no need to go to court to enforce consumer law breaches
- The CMA can impose fines, remedies and redress
- More later in the presentation....

Increased obligations

- Prohibition of drip pricing – *in force*
- Prohibition of fake reviews – *in force*
- New rules for subscription contracts – *expected from 2026*
- Tests used to establish existence of unfair commercial practices have been changed
- Divergence from EU consumer protection framework

Implementation timeline – consumer aspects



April 2025

The CMA's new direct enforcement powers for consumer protection in force

Unfair trading protections in force*

Unfair commercial practices guidance published

Latest version of the CMA's direct consumer enforcement guidance published



June 2025

End of three-month grace period for securing compliance

Summer 2025 – further consultation on more uncertain aspects of drip pricing rules



Autumn 2025

Further guidance on uncertain aspects of drip pricing rules (and delay on enforcement for breaches falling into this category)



Spring 2026 or later

Subscription contract rules (waiting on secondary legislation)

Unfair commercial practices

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What is a “commercial practice”?

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

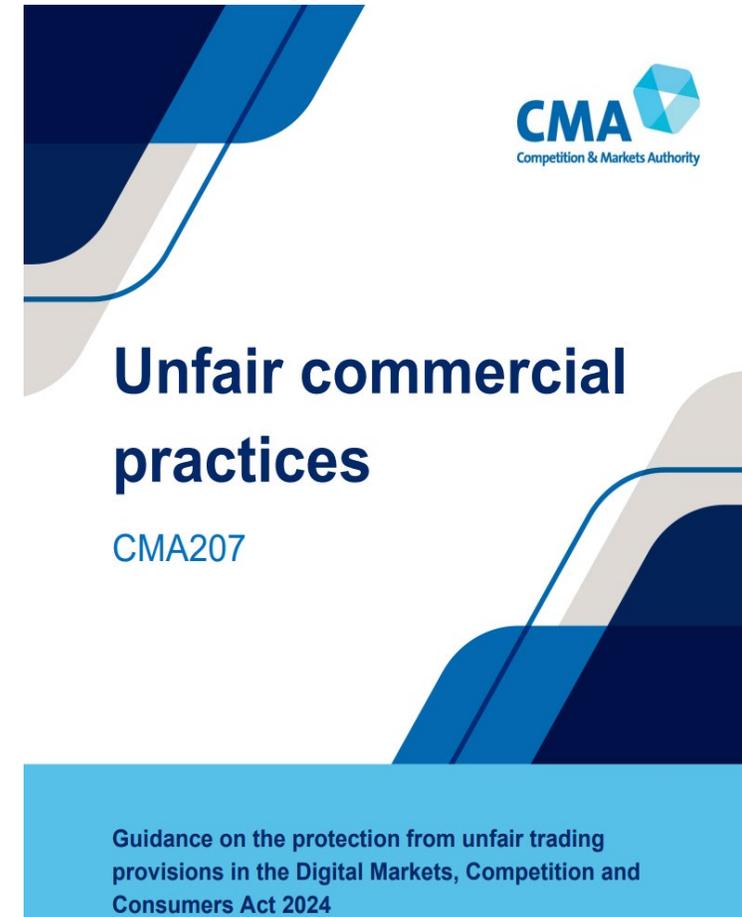
- the trader’s product to a consumer;
- another trader’s product to a consumer; or
- a consumer’s product to the trader or another person.

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.

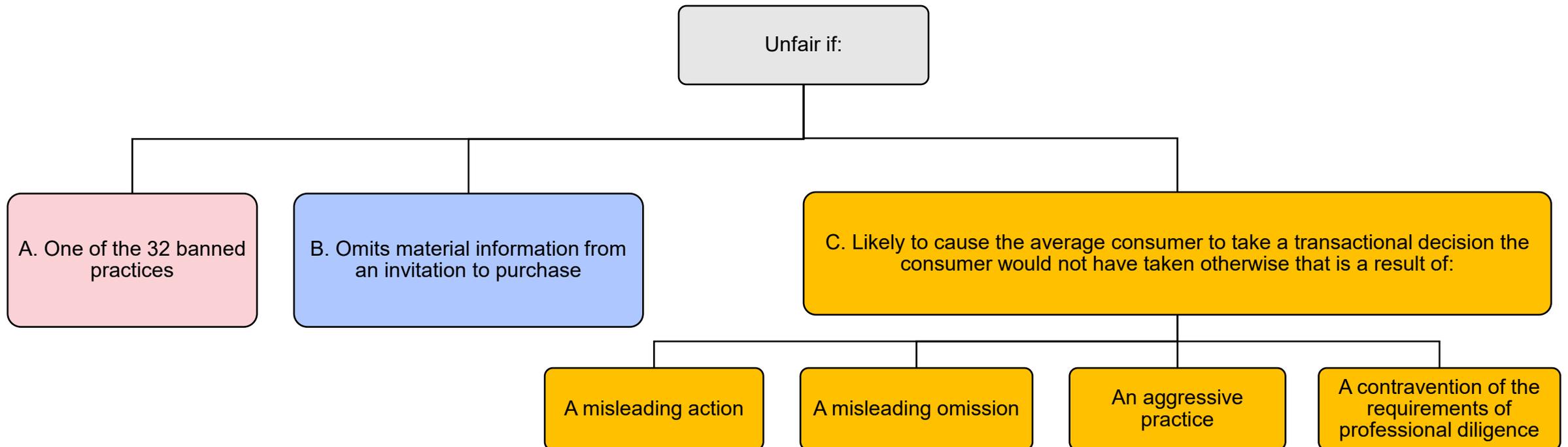
Covers acts or omissions which happen before, during or after the promotion or supply in question.

Covers advertising, the sale and supply of products, and post-contractual matters such as after-sales services and debt collection.

CMA guidance: *"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 is an unfair commercial practice?



A. Banned practices

1. Claiming to be a signatory to a code of conduct when the trader is not	2. Claiming that a code of conduct has an endorsement from a public or private body which it does not have	3. Displaying a trust mark, quality mark or equivalent without authorisation	4. Falsely claiming a trader's commercial practice has been endorsed by a public/private body
5. Making an invitation to purchase products at a price where it will not be possible to supply at that price for a reasonable period of time	6. Making an invitation to purchase at a specified price and refusing to show the advertised item or take orders, with the intention of promoting a different product	7. Falsely stating a product will only be available for a limited time to elicit an immediate decision and deprive consumers of the opportunity to make an informed choice	8. Undertaking to provide an after-sales service but not making it available in English
9. Falsely claiming that an after-sale service is available from any particular country or location	10. Stating or otherwise creating the impression that a product can be legally sold when it cannot	11. Presenting rights given to consumers by law as a distinctive feature of the trader's offer	12. Using editorial content in media to promote a product where the trader has paid for promotion and not made it clear
 NEW 13. Submitting, commissioning or publishing fake reviews	14. Making materially inaccurate claims about risks to the personal security or safety of the consumer	15. Promoting a product similar to a product made by another manufacturer in order to mislead the consumer that it is made by the same manufacturer	16. Establishing, operating or promoting a pyramid promotional scheme
17. Claiming that the trader is about to cease trading or move premises when the trader is not	18. Claiming that products can facilitate winning in games of chance	19. Making false medical-related claims about a product	20. Providing materially inaccurate information about market conditions or about product availability to induce consumer to purchase under less favourable conditions
21. Claiming to offer a competition or prize promotion without awarding prizes	22. Claiming the consumer has won a prize when no prize exists	23. Describing a product as free but imposing an additional cost or fee	24. In marketing materials, sending consumers an invoice to give the impression that the consumer has ordered the product
25. Falsely claiming or creating the impression that the trader is not acting for purposes relating to trader's business	26. Creating the impression that the consumer cannot leave the premises until a contract is formed	27. Ignoring a request from a consumer to leave or not to return to the consumer's home	28. Making persistent and unwanted solicitations by any means to enforce a contractual obligation
29. Failing to honour an insurance policy or conduct to dissuade a consumer from exercising their contractual rights	30. Including in an advertisement a direct appeal to children to buy the advertised products	31. Supplying products to a consumer that have not been requested by the consumer and demanding that the consumer pays	32. Telling a consumer that, if the consumer does not buy the product, the trader's job or livelihood will be at risk

B. Omission of material information from an invitation to purchase



Smart Watch 3000 – **Only £99.99!** Order now while stocks last!

Invitation to purchase = provision of information to a consumer which:

- indicates the characteristics of a product and its **price**, and
- enables, or purports to enable, the consumer to decide whether to purchase the product or take another transactional decision in relation to the product.

Websites

Social media posts

Advertisements

Email or text promotion

Posters

Mobile banners

TV commercials

Menu in a restaurant

And others...

B. Omission of material information from an invitation to purchase (cont'd)

DMCC requires the following information to be included in each invitation to purchase:

- ✓ Main product characteristics
- ✓ Total price including mandatory fees, charges, or other payments; or
- ✓ Where total price cannot be reasonably calculated in advance, method of price calculation
- ✓ Optional freight, delivery, or postal charges
- ✓ Identity of the trader and contact information
- ✓ If the trader is acting on behalf of another person, their relevant contact information
- ✓ Details about rights of withdrawal or cancellation
- ✓ Details of third parties used for payment, delivery, performance, or complaint handling
- ✓ Any other information required by law

Where the nature of the communication limits what information traders can provide, the trader has to take steps to overcome these (e.g., pointing to website, QR code, etc).

Key changes from previous regime:

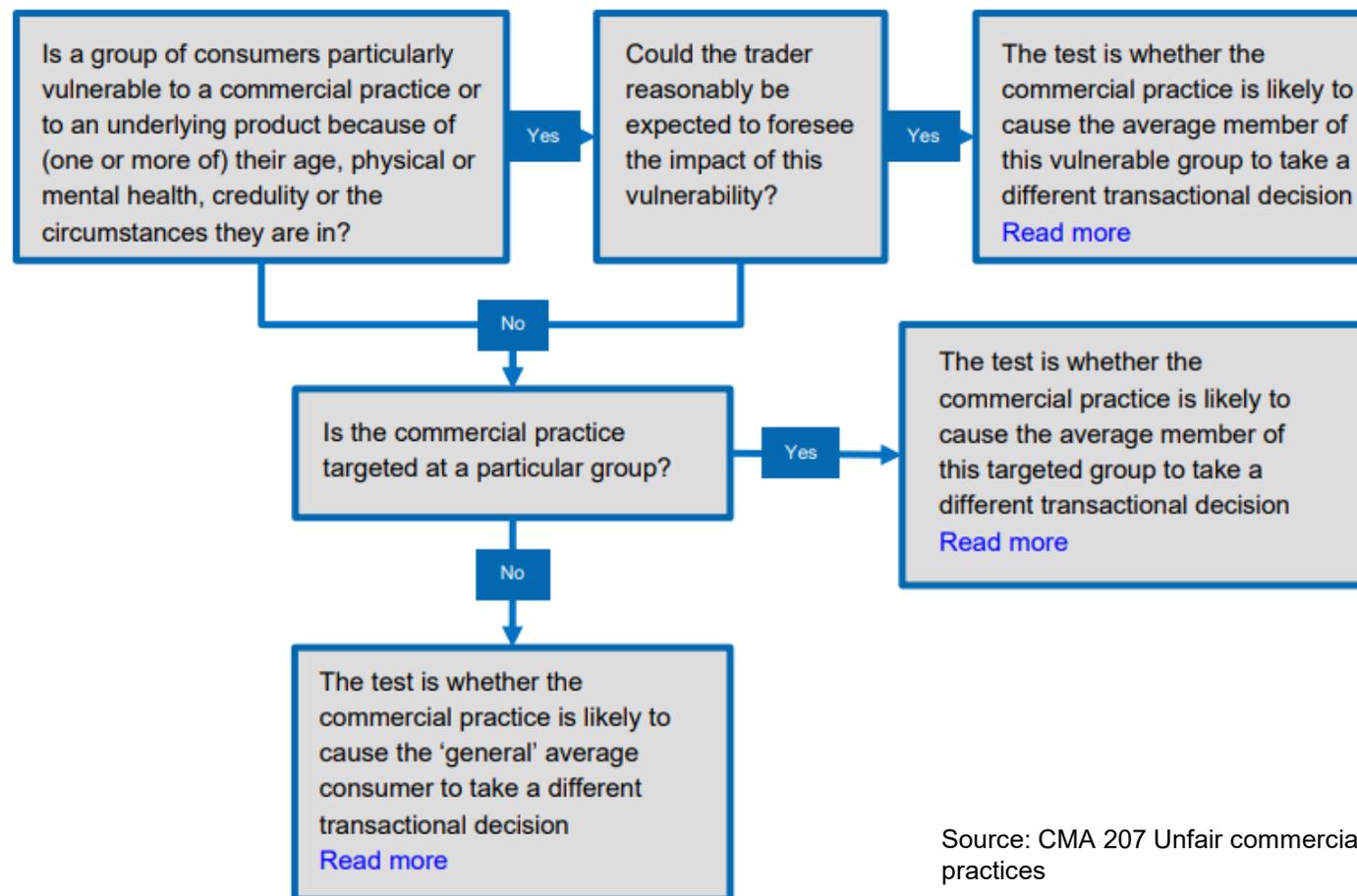
- No need to prove consumer took a different transactional decision. Omission now automatically unfair – **Higher compliance risk**
- Total price of the product must be presented to consumers (including any fees, taxes, charges or other payments which will be necessarily incurred) – **Prohibition of drip pricing**

C. Transactional decision

“A **commercial practice** is unfair if it is likely to cause the **average consumer** to take a **transactional decision** that the consumer would not have taken otherwise.”

Transactional decision

- No need for an actual transaction
- Can occur before consumer has taken decision to purchase
- Decision relating to the:
 - Purchase or supply of a product (including whether/on what terms to make the purchase or supply)
 - Retention, disposal or withdrawal of a product
 - Exercise of product related contractual rights



Source: CMA 207 Unfair commercial practices

Spotlight on customer reviews,
subscription contracts, pricing,
greenwashing and the online store

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Fake reviews

DMCC introduces a banned practice in connection with consumer reviews.

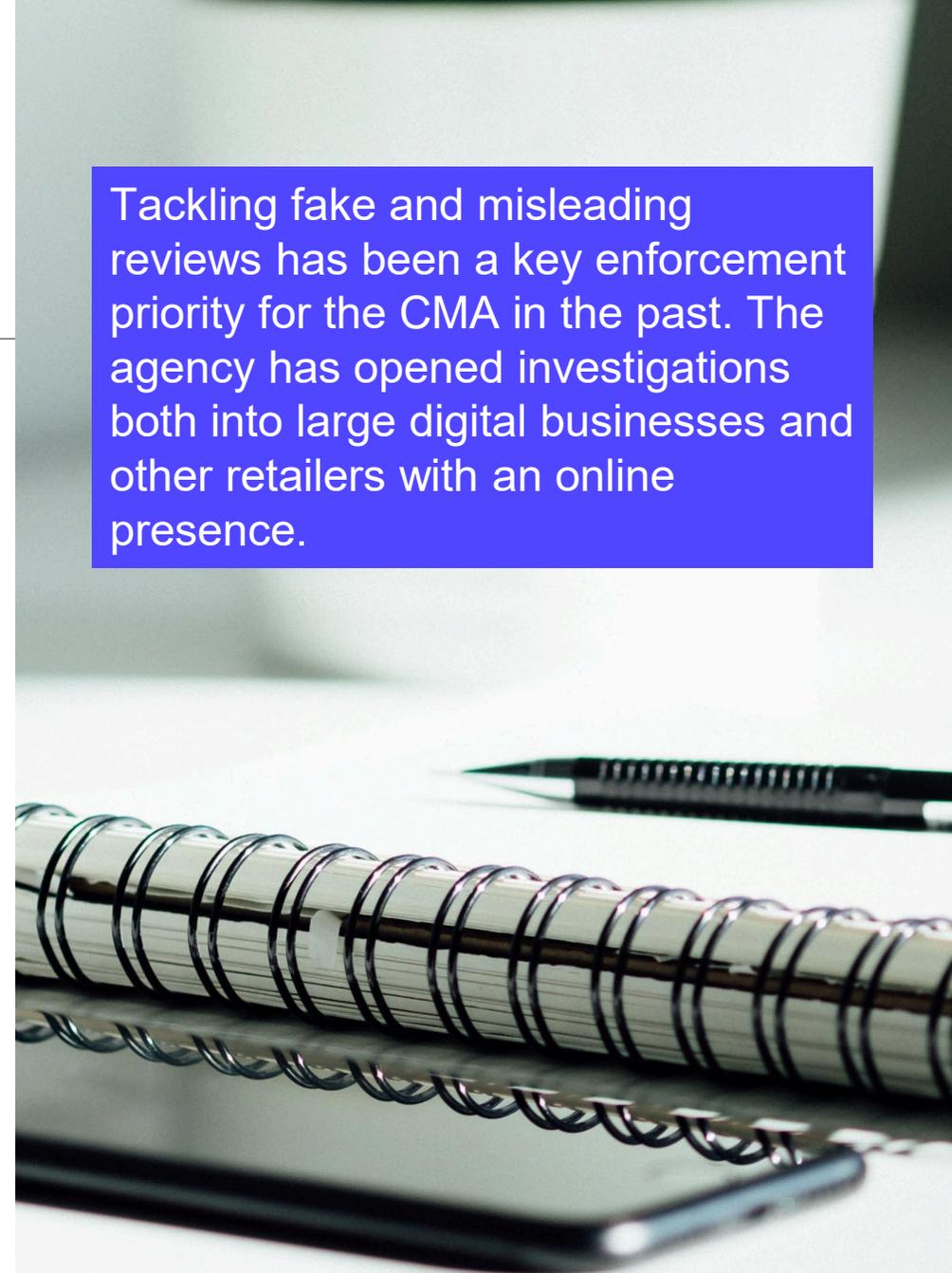
Two-part obligation imposed on traders:

1. **Negative obligation:** Not to submit / commission / publish fake reviews.
2. **Positive obligation:** Take reasonable and proportionate steps to prevent and remove banned reviews and false / misleading consumer review information.

Risk areas:

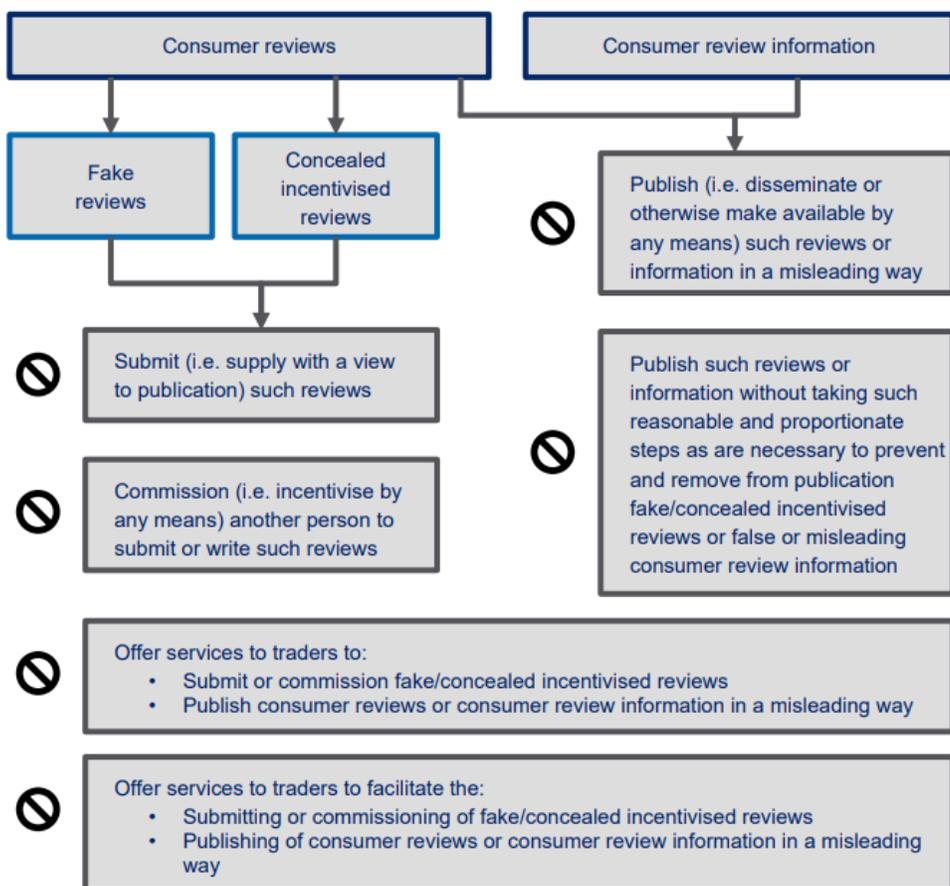
- Influencers and social media
- Incentivised reviews, where it is not made clear that a review has been written in exchange for money

Tackling fake and misleading reviews has been a key enforcement priority for the CMA in the past. The agency has opened investigations both into large digital businesses and other retailers with an online presence.



Fake reviews

Banned practice covers broad range of behaviours:



To meet their positive obligations, the CMA expects traders that publish consumer reviews to:

- Have a published policy that prohibits fake reviews and sets out its approach to incentivised reviews.
- Conduct an assessment of the risk of banned content being published within content controlled by the trader, including measures on how to address such risks effectively.
- Update this risk assessment regularly.
- Design processes to detect banned reviews and false / misleading consumer information, investigate suspected banned reviews, and take action in order to remove this content and reduce the risk of it reappearing.

Subscription contracts

DMCC will strengthen consumer rights when entering / renewing subscription contracts:

More pre-contract information

- Including when payment is due

Reminders at key points

- Before trial comes to an end
- Before long-term contracts (12+ months) come to an end
- Every 6 months for shorter contracts

Easy exit

- As easy as subscribing
- If subscribing online, cancellation also online

14-day cooling-off period:

- After trial
- After commencement
- After *each* renewal for long-term contracts

Expected to come into force in 2026 – awaiting further guidance

Drip-pricing

- Drip pricing expected to be the target of early enforcement action by the CMA.
- However, consultation responses raised a large number of issues, and the CMA is expected to publish further guidance, including on:
 - Local tourist taxes
 - One-off fees
 - Mid-contract price increases
 - Presentation of delivery charges
- Further consultation is expected in Summer 2025, with final guidance in Autumn 2025.



The CMA has an ongoing investigation into Oasis ticket sales. The CMA alleges that Ticketmaster had not informed consumers that there were two categories of standing tickets at different prices, with all cheaper tickets sold first and then more expensive tickets sold after. This resulted in consumers waiting in a lengthy queue without understanding what they would be paying, and then having to decide whether to pay a higher price than expected

Drip pricing

Businesses must ensure that headline prices include all fixed mandatory charges, and that consumers are able to estimate variable charges in an invitation to purchase

- No mandatory charges to be added at the end of purchasing process unless included in the initial headline price.
- All fixed mandatory prices to be included in the initial price in the invitation to purchase.
- Explanation must be given of the calculation of variable charges.
- This must be as clear and prominent as the headline price.

Example of prohibited drip pricing:

A company offers an online learning course in a specific subject area for £100. When the consumer prepares to pay the £100 total, they are informed of an additional mandatory £40 “enrolment fee” to access the course content. The consumer was initially provided with a headline price for the course of £100, while the total price of the course is actually £140.

Greenwashing

The CMA has made it clear that “greenwashing” is a priority for early enforcement

- Previously published guidance on “green claims” includes several examples of prohibited practices, including:
 - Making general claims like “eco-friendly” without sufficient substantiation.
 - Highlighting positive environmental attributes, while omitting material information (e.g., omitting emissions from other stages of the product lifecycle).
 - Suggesting a product or service is more environmentally beneficial than it really is.
- These types of claims can mislead the average consumer – or a consumer who is particularly motivated by environmental factors.
- The CMA has made clear that the assessment of greenwashing includes not only text, but the overall presentation of the claim (e.g., colours, pictures, logos etc.)

Green claims must:

Be truthful and accurate

Be clear and unambiguous

Not omit or hide important information

Only make fair and meaningful comparisons

Consider the full life cycle of the product

Be substantiated

The online store

DMCC requires that a trader's website content and customer journey do not mislead consumer

- Online choice architecture (or dark patterns) = design of the online environment and the impact this has on a consumer's decision-making and actions.
- Consistent concern of the CMA.
- Can be a breach of consumer law where it deceives, manipulates or misleads consumers.
- Examples:
 - Misleading/false price reductions
 - Urgency claims (e.g., countdown timers)
 - Scarcity claims (e.g., identifying that products are running out)
 - Harmful/dark nudges used to encourage consumers to make ill-advised decisions (e.g., one option may be less cumbersome or time consuming)
 - Confirm-shaming (i.e., pressuring or shaming a consumer into doing something, for instance by the use of language which suggests there is a "good" and "bad" choice)



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GARDEN

Enforcement and litigation risks

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More muscular enforcement powers

01 

Direct infringement notices to traders in suspected breach of consumer law

02 

Fines:

- Up to 10% of annual global turnover
- Personal fines of up to £300,000 to persons who are an 'accessory' to substantive consumer law infringements by a business

03 

Enhanced consumer protection measures:

- Online interface notices
- Redress orders
- Compliance orders
- Choice measures

Litigation risks

Claims from disgruntled customers

- More awareness
- More rights
- More information in public domain
- More adverse regulatory findings
- Follow-on damages actions for individual loss

Class action risk

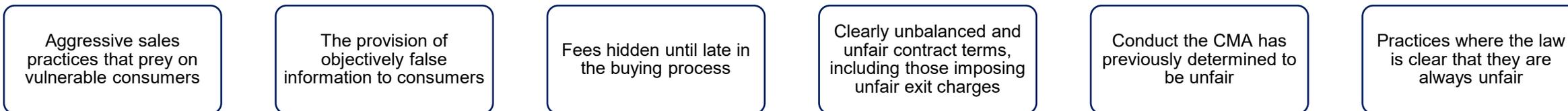
- General growth in consumer class actions in UK/EU
- Kitchen sink approach to claims

What you can do

- Consider publicity risk of regulatory action
- Focus on customer complaints
- Recognise where claims have a potential “long-tail”
- No class action waivers
- Contractual safeguards in third-party contracts

What can we expect from the CMA?

The CMA's priority for the next 12 months will be on stopping and remedying most egregious breaches



Early cases will focus on stopping problematic behaviour. rather than setting high fines.
Areas of household essential spending will likely face significant scrutiny.

EU position

Patchwork of regimes: not fully harmonized on the EU level, but EU-wide consumer protection provisions include:

- Prohibition on unfair practices (including fake reviews)
- Pre-contract information
- 14-day cooling-off period
- Fines of at least 4% of annual turnover

Proposed EU Digital Fairness Act to adapt framework to digital age

- Commission currently drafting proposals
- Expected Q3 2026
- Potential areas to be addressed: in-app purchases, contracts concluded with AI assistants, influencer marketing, digital subscriptions, dark patterns and addictive design, unfair personalisation, digital contracts and dynamic pricing

Compliance and risk mitigation

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Selling direct in the UK B2C

What are some compliance steps for you to take?



As a B2B provider – Watch out



Retailers/distributors may build additional requirements into their contracts to ensure that marketing and presentation of products is compliant - e.g., green claims.



Retailers/distributors may not be fully aware of new requirements themselves and may engage in non-compliant practices – do not want this to be pushed back – contractual obligations to clarify responsibility.



Whilst criminal liability cannot be contracted out, watch-out for other attempts to re-attribute liability and damages from intermediaries to suppliers.

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