

Running a business?

The OFT and the laws that could affect you



The Office of Fair Trading’s goal is to make markets work well for consumers. Markets work well when there is vigorous competition between fair-dealing businesses. When markets work well, good businesses flourish.

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The OFT and the law

The OFT has certain powers and responsibilities to enforce aspects of consumer and competition law.

This guide is for businesses and it outlines the legislation under which the OFT has powers.

The laws shown from page 3 to 7 apply to all businesses from large companies to sole traders.

Other sections of the guide cover legislation that deals with specific activities or sectors of the marketplace. While not all of this legislation will necessarily be relevant to you, it's important that you know which laws do apply to your business activities and the powers that the OFT has in enforcing those laws.

There can be substantial fines and even imprisonment for breaking some of these laws.

This guide is a quick reference to some of the laws that might affect your business. It is only an outline guide to the legislation under which the OFT has powers. There is no in-depth breakdown about the legislation, nor should you treat this guide as a substitute for professional legal advice.

If you are interested in finding out more about a particular act or you'd like help in understanding any of the regulations, our Enquiries Unit can help on 08457 224499. The unit can put you through to someone you can talk to in more detail, or tell you how to get a copy of one of our free publications or guidance notes. Many of these are mentioned in the following pages and can also be downloaded from our website www.of.gov.uk.

We also have a Business Information Unit which can arrange for members of the OFT to speak to groups of businesses about the various laws we administer. Contact details are on page 23.

Introduction

The OFT enforces competition and consumer protection laws. These laws exist to make sure that traders compete properly with their rivals for business and deal fairly with their customers.

The laws are there primarily to protect consumers but businesses also benefit from the laws because they:

- pave the way for legitimate businesses by driving out disreputable elements
- encourage fair competition between businesses
- offer better protection for businesses from anti-competitive behaviour



Legislation for all businesses

The Competition Act 1998

Who does the Act apply to?

Businesses of all sizes and types are potentially affected.

What does the Act do?

It prohibits agreements, business practices and behaviours that have, or are intended to have, a damaging effect on competition in the UK.

There are two different prohibitions in the Act, one covering anti-competitive agreements (the Chapter I prohibition) and the other covering abuses by businesses that are dominant in a market (the Chapter II prohibition).

The Chapter I prohibition

This outlaws agreements between businesses which prevent, restrict or distort competition and which might affect trade within the UK. These agreements can be written or verbal, formal or informal. Examples might include:

- agreements between competitors on the prices to be charged for goods or services
- agreements between competitors on which customers or areas to supply
- agreements between competitors to limit output

Cartels are a category of anti-competitive agreement. Put simply, cartels are agreements between businesses not to compete with each other, whether on price, discount levels, credit terms, which customers or areas to

supply, who should win a contract in a bidding process or on some other trading condition. These agreements are usually verbal.

Agreements are prohibited only if they have what is known as an 'appreciable effect on competition'. This will depend on a number of factors, including the combined market share of the businesses involved in the agreement. Cartel agreements are likely to have an appreciable effect on competition regardless of how small the businesses involved are.

Some types of agreement are excluded from the prohibition altogether. Other agreements might qualify for an exemption if they satisfy certain criteria.

Further details on appreciable effect, exclusions and exemptions are set out in the OFT guide *The Chapter I Prohibition*.

The Chapter II prohibition

Chapter II of the Act prevents businesses with a dominant position in the marketplace from abusing that position.

The OFT uses a two-stage test to assess first, whether the business is in a dominant position and secondly, whether there is an abuse of that position.

There is no hard and fast rule about what constitutes a 'dominant position'. A key factor will be the market share of a business. As a general rule, a business is unlikely to have a dominant position when its share of the market is below

40 per cent, but other factors are also relevant. These include the number and size of competitors and customers and whether new businesses could easily set up in competition.

Examples of abuse of a dominant position might include:

- charging excessively high prices
- refusing to supply an existing customer without good reason
- limiting production
- charging different prices to different customers where there is no difference in quantity, quality or other characteristics of the products, thereby placing certain parties at a competitive disadvantage
- making a contract conditional on factors that have nothing to do with the subject of the contract

Further details are given in the OFT guide *The Chapter II prohibition*.

How does the Act affect my business?

The Act may affect your business in one of two ways:

- First, you may do something that breaches the Act. The consequences of this can be very serious (see opposite)
- Secondly, your business may suffer as a result of another business breaching the Act

Either way, it will help if you and your business colleagues are aware of the Act and what is prohibited.

If you are unsure about whether something your business is doing, or planning to do, breaches the Act, you should seek professional advice.

If you suspect that another business is breaching the Act, contact the OFT by telephone, email or in writing, giving as much information as you can to support your suspicions. We may launch a formal investigation if we have reasonable grounds for suspecting that the Act has been breached.

What you should know:

- The OFT has a wide range of powers to investigate suspected infringements of the Act, including the power to enter premises, with or without a search warrant, and require the production of documents and information relevant to the investigation
- The OFT can order that any offending agreements or anti-competitive behaviour be stopped
- Businesses that breach the Act can be fined up to 10 per cent of their UK turnover for up to three years

- Damages claims can be brought by third parties and by consumer groups on behalf of named consumers against businesses that breach the Act

- Individuals found by a court to be dishonestly involved in cartels can be fined and imprisoned for up to five years

- Directors of companies that breach either of the Act's prohibitions can be disqualified and banned from carrying out certain other company management functions for up to 15 years (see page 5)

- Under its cartels leniency programme, the OFT can reduce the fines for businesses which blow the whistle on cartels, and give total immunity to the first to come forward. Individuals who provide evidence of cartels may be granted immunity from criminal prosecution and director disqualification (see page 5). This takes the form of a 'no action' letter from the OFT

The OFT produces a wide range of leaflets and publications about the Competition Act which are available online or in hard copy. Details of how to order are on page 23. A free video is also available.

Enterprise Act 2002

Who does the Act apply to?

Aspects of the Act apply to all types and sizes of businesses.

What does the Act do?

The Act, which came into force in June 2003, strengthens competition and consumer law enforcement and gives competition authorities such as the OFT greater independence. The Act complements the Competition Act 1998 and largely replaces the Fair Trading Act 1973. It completely replaces the Stop Now Orders (EC Directive) Regulations 2001.

Criminalisation of cartels

The Act makes it a criminal offence for individuals to engage dishonestly in the most serious cartel activities: price-fixing, market-sharing, bid-rigging and agreements to limit production or supply. This offence carries a maximum penalty of five years' imprisonment and/or an unlimited fine. In certain cases, the OFT may grant immunity from prosecution, in the form of a 'no action' letter, to individuals who come forward with details of cartels.

Disqualification of directors

The OFT and sector regulators can apply to the court for a Competition Disqualification Order (CDO) against a director whose company has breached UK or EC competition law. A CDO, which disqualifies directors for up to 15 years, may be granted if the

court decides that an individual contributed to the breach or failed to take steps to prevent it.

Mergers

The majority of merger decisions will be taken by the OFT and the Competition Commission (CC) as specialist, independent competition authorities. The OFT will refer to the CC any merger which may be expected to result in a 'substantial lessening of competition'. In order to qualify for examination under the Act a merger must meet certain criteria: either the UK turnover associated with the enterprise which is being acquired exceeds £70 million, or the merger would create or enhance a share of supply of 25 per cent or more of a particular product or service in a substantial part of the UK.

Super-complaints

Certain consumer groups, designated by the Department of Trade and Industry, can make 'super-complaints' to the OFT where there is evidence that consumer interests are being significantly harmed or appear to be so harmed by a feature or combination of features of a particular market. The OFT must announce within 90 days whether or not the complaint will be taken further, for example to a full market study or enforcement action.

OFT market studies

The OFT will study markets that do not appear to be working well for consumers. Studies may be initiated by the OFT or as a result of complaints, including super-complaints by designated consumer bodies. A market will only be chosen for study if there is evidence that it is not working well for consumers. Studies will normally take between nine and twelve months and their findings will be published. Possible outcomes include enforcement action, a market investigation reference to the CC (see below), a consumer information campaign or a clean bill of health.

Market investigation references

The OFT and certain sector regulators may refer markets to the CC for investigation, without ministerial involvement, where they have reasonable grounds to suspect that competition is being prevented, restricted or distorted.

Consumer codes of practice

The OFT can approve voluntary codes of practice which safeguard or promote consumer interests. A code sponsor can be any body that administers codes and can influence and raise standards within its sector. A code sponsor must be able to prove its code meets challenging criteria, drawn up to ensure that businesses provide benefits above minimum legal requirements. Approved codes can display an OFT logo, which will be vigorously promoted to consumers.

Consumer enforcement orders

The Act gives the OFT, trading standards departments and designated other enforcers the power to seek court orders against businesses that breach specified consumer protection laws. Further details of these orders are provided on page 7.

How does the Act affect my business?

Some elements of the Act will have direct implications for your business. For example, you will need to ensure that your dealings with consumers are fair and above board. If your business breaches competition law there may be serious consequences for the company and its directors. You may also find yourself the subject of a merger inquiry if you take over another business.

Other elements of the Act might have an indirect effect on your business. You may, for example, be a customer, supplier or competitor in a market that is under OFT scrutiny, perhaps as part of a market study or merger assessment. The information you provide will help us gain a better understanding of how the market works.

The OFT has produced a range of free guidance booklets and leaflets on the Act. Details are provided on the OFT website, **www.oft.gov.uk**

Consumer Enforcement Orders – Enterprise Act 2002

Who does the law apply to?

The law may apply to any business that breaches specified consumer laws (see below).

If your business sells goods, provides services or offers credit facilities to consumers you will need to comply with these laws. This includes the way in which you advertise or offer your goods or services to consumers.

What does it do?

The Enterprise Act gives the OFT, trading standards departments (TSDs) and other designated enforcers greater scope to take immediate action against businesses which break consumer law.

The OFT and TSDs can apply to the courts for enforcement orders to stop 'community infringements' or 'domestic infringements'. Community infringements are breaches of UK laws giving effect to a number of specific EC Directives (e.g. on package holidays) where the breach harms the collective interests of consumers. Domestic infringements are breaches of UK laws, or breaches of rules of law specified by the Department of Trade and Industry which are committed in the course of business and harm the collective interests of consumers in the UK.

These new powers cover a wide range of laws including, amongst others, the:

- Sale of Goods Act 1979
- Trade Descriptions Act 1968
- Control of Misleading Advertisements Regulations 1988
- The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987
- Consumer Credit Act 1974
- The Package Travel, Package Holidays and Package Tours Regulations 1992
- Timeshare Act 1992
- Unfair Terms in Consumer Contracts Regulations 1999
- Consumer Protection (Distance Selling) Regulations 2000

Further details of these laws are given later in this booklet.

What you should know:

- Except in urgent cases, the OFT will, before applying for an enforcement order, consult with the business to try to stop the infringement. In many cases, there will be a minimum period of 14 days for consultation. Wherever possible, satisfactory undertakings will be sought and court action will only be taken if these are not forthcoming. The OFT can apply for an order to the High Court or County Court (or Court of Session or Sheriff Court in Scotland)
- In more urgent cases, an interim order can be obtained,

in which case the prior consultation period is shortened. An interim order will last until the court decides whether or not to make a final enforcement order

- The court can order the business to stop, and not repeat, the infringing conduct. It can also stop a person infringing in the same way through any other business
 - As an alternative to an enforcement order, the court may accept undertakings that the infringement will cease
 - If a person breaches an order or undertakings given to the court, he or she can be fined and/or imprisoned for up to two years for contempt of court
 - The OFT has the power to require persons to provide information or documents, and can seek a court order if they refuse
 - The OFT and TSDs have enforcement powers in respect of all types of infringements. The DTI may also designate certain sector regulators and consumer bodies as enforcers in respect of all or a limited range of infringements. The OFT has a coordinating role to ensure that action is taken by the most appropriate body in each case
- More information on enforcement orders is provided on the OFT website www.of.gov.uk. The OFT has also produced guidance on the consumer reforms in the Enterprise Act.



FINANCE

*Buy NOW * Pay LATER*



BUILDING SOCIETY

0%

furniture



BANK

HIRE HIRE

Instant credit



Legislation for businesses that offer credit

The Consumer Credit Act 1974

Who does it apply to?

Most businesses that offer goods or services on credit, lend money or hire out goods to consumers, run a credit reference or debt collection agency or offer debt counselling, debt adjustment or debt collection services or act as credit brokers.

What does it do?

The Act requires most businesses involved in the activities listed above to obtain a consumer credit licence from the OFT. Trading without a licence is a criminal offence and can result in a fine and/or imprisonment. Also an unlicensed company may not be able to enforce credit agreements in court, if the customer defaults.

The rules are fairly complex, but as a rough guide you are not likely to need a licence if you:

- are lending amounts of credit that are always more than £25,000
- hire out goods where the total cost of hire is always more than £25,000 or where your hire agreements are not capable of lasting more than 3 months
- deal only with limited companies (unless you are a credit reference agency)
- merely accept credit cards or trading cheques issued by someone else (and you didn't introduce the borrower to them)

- allow customers to pay their bills in four or fewer instalments in less than a year

The Act also requires certain credit and hire agreements to be contained in writing, set out in a particular way and to contain certain information – for example, they must contain an annual percentage rate (or APR) which is based on the 'total charge for credit' so that consumers can work out the comparative value of the deals.

We produce a number of guidance notes about the Act to help businesses (see page 10).

Under the Act, the OFT is responsible for issuing credit licences. The OFT's consumer credit licensing bureau issues several thousand new licences every year and keeps a public register of licensed traders and anyone who has ever applied for a licence. A licence is usually valid for five years.

How does it affect my business?

- you must apply for the correct licence and make sure that it applies to all the activities that you need to have covered
- if your business trades under one or more names, you must specify all the names in your application and use only the names specified in the licence in carrying out your consumer credit business

- the name(s) under which you want to be licensed must not be misleading or undesirable in any other way
- you will need to read the OFT guide *Do you need a credit licence?* which gives a breakdown of the different categories of licence and explains how to apply for one
- *Consumer credit licences – guidance for holders and applicants* outlines the ‘fitness test’ that the OFT applies to those applying for a new licence or to have an existing licence renewed
- the OFT has also published ‘fitness’ guidance for a number of business sectors: non status lending; debt management; debt collection and car dealers. Copies of this guidance is on the OFT’s website: www.of.gov.uk
- our consumer credit licensing bureau has an enquiry line: 020 7211 8608

What you should know

- the OFT makes sure that you are a ‘fit’ person to be involved in the activities that the licence covers
- each application is considered on its own merits
- after following established procedures, the OFT has the right to refuse or to revoke licences
- there is a right of appeal to the Secretary of State against the OFT’s decisions
- the OFT has powers to enforce the requirements of the Act independently of any licensing action it may take
- we produce a number of more detailed guidance booklets about aspects of the Act to help businesses. These include: *Credit Charges and APR; Regulated and exempt agreements; Matters arising during the lifetime of an agreement*

Please see page 23 for our publications order line.

The Consumer Credit (Advertisements) Regulations 1989

Who do the regulations apply to?

Any person who is involved in any way with the publication of an advertisement

What do they do?

The regulations place controls on advertising credit or hire facilities so that consumers are given full and clear information about the nature of the credit and its cost. They are then able to compare different products and choose the ones that are best for them.

The regulations apply to advertising in any form: whether it's in print, on radio, TV, films or video, catalogues, at point-of-sale displays, show cards or price lists, but there are special rules relaxing the requirements applying to some forms of advertising. A circular letter can be classed as an advertisement even though it is addressed to the recipient.

The rules cover an advertisement's *content* – the amount and type of information and its *form* – how that information is presented.

The regulations divide advertisements into three categories: **simple**¹, **intermediate**² and **full**³.

But the regulations are flexible and allow considerable freedom within each of the three categories.

How do they affect my business?

- all credit and hire advertising must meet the content rules of one of the three categories
- you can choose the set of rules under which you want to advertise – the choice will depend on how much information you want to give
- an important requirement is that credit information should be shown in a clear and legible manner and, apart from your name and address, be presented 'together as a whole'
- some expressions such as 'overdraft', 'no deposit' and 'interest free' may not be included except in certain limited circumstances
- the rules on how information must be presented at your own business premises or in catalogues are more flexible
- a lot of credit advertisements must contain the annual percentage rate – or APR. There are rules governing the prominence of the APR, which you will need to know

What you should know

The OFT has powers to ensure that credit advertising adheres to the regulations.

The OFT's guide *Credit Advertising* will help you and your marketing team in the preparation or publishing of a credit advertising campaign.

It explains in detail exactly what information is and is not allowed within each of the three different categories. Details of how to get a copy are on page 23.

You should also ensure that your advertising is not misleading whether you are selling credit or any other type of product. You should look at page 19 which shows the Misleading Advertisements Regulations 1988 for further information.

¹ Simple advertisements allow only very limited information and are designed to do little more than keep the name of a trader in the public eye.

² Intermediate advertisements allow some choice in the amount and type of information – and all ads must offer on request information about its terms.

³ Full advertisements allow detailed information about the credit or hire facility – all ads must offer written quotations.



Legislation for businesses that sell direct to consumers

Unfair Terms in Consumer Contracts Regulations 1999

Who do the regulations apply to?

Any business that uses standard term contracts in its dealings with consumers.

What do they do?

The regulations protect consumers from unfair terms which are contained in standard contracts. For example, they:

- protect consumers from any standard contract terms that reduce their statutory or common law rights
- protect consumers from contract terms that try to impose unfair burdens on them over and above the obligations of the ordinary rules of law

A standard contract term is unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

Standard terms can be drafted to protect commercial interests but such terms must take into account the interests and rights of consumers. Standard terms must go no further than is necessary to protect the commercial interests of the business concerned.

Most standard contract terms are covered by the regulations except those which:

- set the price or define the product or service being supplied (but these terms must be written in plain English)
- have been individually negotiated
- are in business to business contracts or non-business contracts involving only private individuals
- are in certain types of contracts. For example, contracts to do with employment, succession rights, or family law
- are in contracts that were entered into before 1995

How do the regulations affect my business?

You need to make sure that the standard terms you use in any contract you enter into with consumers meet the legal requirements.

You should also make sure that your contracts are written in plain English.

What you should know

The OFT, TSDs and a number of other qualifying organisations have powers to stop the use of unfair standard terms in contracts with consumers and to prevent anyone from recommending unfair terms.

The OFT:

- will consider any complaint about a contract term being unfair
- has powers to ask for a court injunction to prevent unfair terms being used in current and future contracts
- can accept an undertaking from a business that it will stop using unfair contract terms

There is a good deal of material available to help business and consumers:

- The OFT publishes a general guide: *unfair contract terms guidance*. For details of how to get a copy please see page 23
- On the OFT website you'll find copies of Unfair Contract Terms Bulletins. These identify terms which the OFT or other enforcers have considered unfair with a brief explanation about why they were considered unfair and details of how those terms have been amended

Consumer Protection (Distance Selling) Regulations 2000

Who do the regulations apply to?

Any business operating a system for offering goods or services which consumers can buy from home.

What do they do?

The Distance Selling Regulations give certain rights to consumers when they shop from home – regardless of whether the shopping is done by phone, mail order, fax, digital television or over the internet.

Although the regulations apply to almost all types of home shopping there are some exceptions including business to business contracts; financial services; auctions; and contracts for the sale of land.

Please also note that most of the regulations will *not* apply to food and drink delivered on regular rounds (for example a milk round); as well as transport, accommodation, catering or leisure services that are provided on specific dates, timeshare agreements and package holidays.

How do they affect my business?

It is important that you make sure that you give consumers the following information in writing before they buy:

- your name and normally your address
- a description of the goods and services
- the price – including all taxes
- arrangements for payment
- delivery costs if they apply
- arrangements for the delivery (usually within 30 days unless the contract says otherwise)
- the right to cancel the order (unless there is no such right)
- for long-term contracts, the minimum duration of the contract
- for how long an offer or price is valid

Following the decision to buy, consumers are also entitled to:

- written confirmation of the information mentioned (except the last two items on the list), unless that information has already been given in writing – in a catalogue for example
- details of when and how customers can cancel
- a proper address for complaints (not a PO box number or e-mail address)
- details of after sales services and guarantees
- when and how consumers can terminate any contract which lasts longer than a year or has no specified end date

The regulations also give consumers the unconditional right to cancel an order and any related credit agreement:

- Goods – seven working days, starting from the day after they are received
- Services – seven working days, starting from the day after the contract is made

There are certain types of goods which do not have a cancellation right (for example, personalised goods) and you can prevent a consumer cancelling a service contract once you have started to provide the service. Where a consumer cancels, if they have paid in advance you must refund all the money within 30 days, though you can normally charge them for the cost of returning the goods.

You should also remember that consumers still have their normal statutory rights to return all faulty or misdescribed goods at no charge.

It is an offence to make a demand for payment from consumers for unsolicited goods or services if you do not have cause to believe you have right to payment. Anything unsolicited can normally be treated as a gift and to ask for payment for such products or services will often be a criminal offence.

Please note that consumers whose credit card is used fraudulently for any type of home shopping can now cancel the payment and the card issuer must refund all the money.

What you should know

The OFT has powers to:

- enforce the regulations
- apply for a court injunction to ensure compliance

www.of.gov.uk outlines the Distance Selling Regulations in detail.

The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 (SI 1987 No 2117) as amended by the SI 1988 No 958 and SI 1998 No 3050. (Doorstep Selling Regulations)

Who do the regulations apply to?

Any business that enters into contracts with consumers following unsolicited visits to their homes, their places of work or during excursions organised away from the business' premises. The regulations do not apply to certain types of contracts⁴.

What do they do?

The Doorstep Selling Regulations give consumers cancellation rights when they buy goods and services away from a trader's normal place of business. The regulations also ensure that consumers are informed about these rights.

How do they affect my business?

You must be clear what an unsolicited visit is. An unsolicited visit is a visit by a trader that takes place without the express request of the consumer – the definition includes any later calls at the home or place of work that result from the first unsolicited visit.

- a requested visit will still be regarded as unsolicited if the trader introduces 'new' goods or services during that visit
- a visit is unsolicited even if it is agreed to by the consumer after an unsolicited phone call from the trader suggesting such a visit
- you must give consumers a seven day cooling off period to cancel a contract
- the regulations state that if consumers do not receive a written notice informing them of their right of cancellation – the contract will not be enforceable

What you should know

- the OFT can obtain an Enforcement Order(s) against traders breaching the regulations. Please also see Enforcement Orders on page 7
- it is a criminal offence to fail to deliver to consumers the notice of their cancellation rights

⁴ There are exceptions for contracts relating to: land; food and drink; certain catalogue sales; insurance; investment agreements; goods or services worth less than £35.

The Timeshare Act 1992

Who do the regulations apply to?

A business offering timeshare holidays to consumers. A timeshare is when someone has the right for at least three years to spend a set or ascertainable period of the year in a holiday property.

The regulations do not cover packages offered through holiday clubs or a scheme that lasts for less than three years.

What do they do?

Protect UK consumers who buy timeshare rights in properties in the UK or other member states of the European Economic Area (EEA). The EEA is made up of the member states of the European Union plus Norway, Liechtenstein and Iceland.

How do they affect my business?

If your business sells timeshare you need to:

- produce a brochure setting out specified information about the timeshare

- make sure that the brochure and the agreement are written in the consumer's national language or the language of the country in which the consumer lives (and if this is the UK the contract must also be in English)
- give the consumer written notice of the right to cancel the contract. In the UK a blank cancellation form must be included with the contract
- you must give the consumer a cooling-off period, during which time they can withdraw from the contract. In the UK the cooling-off period is 14 days
- you cannot ask the consumer for any money during the cooling-off period

What you should know:

- The OFT can obtain a Consumer Enforcement Order against a business breaching the regulations. Please also see Consumer Enforcement Orders on page 7

ADVERTISE



HERE



Legislation for businesses that advertise

Control of Misleading Advertisements Regulations 1988

Who do the regulations apply to?

Any business involved in composing, producing, planning or publishing advertising. If you are involved in a campaign that is advertising credit facilities please also see page 11.

What do they do?

Stop misleading advertising. After receiving a complaint, the OFT can seek a court injunction preventing the continued publication of misleading advertising that appears in almost any form, such as:

- newspapers and magazines
- outdoor advertising – including posters or ads on buses or taxis
- cinema commercials
- brochures, leaflets, inserts, point of sale and display material, circulars and direct mail
- internet advertising

The regulations also set requirements for advertisements which make comparisons with competitors.

How do they affect my business?

The regulations cover advertising in just about every type of commercial activity including advertising that is done in speech, in print and on the internet. Be careful that your advertising does not mislead consumers or other businesses.

An ad can be misleading in a variety of ways. If, for example, it:

- contains a false statement of fact
- conceals or leaves out important facts
- promises to do something – but there is no intention of carrying it out
- creates a false impression – even if everything stated in the ad may be literally true

Advertising which identifies a business's competitors must meet a number of conditions laid down in the regulations and it is important that you know what these conditions are. They are included in an OFT briefing leaflet. Please see the last paragraph.

What you should know

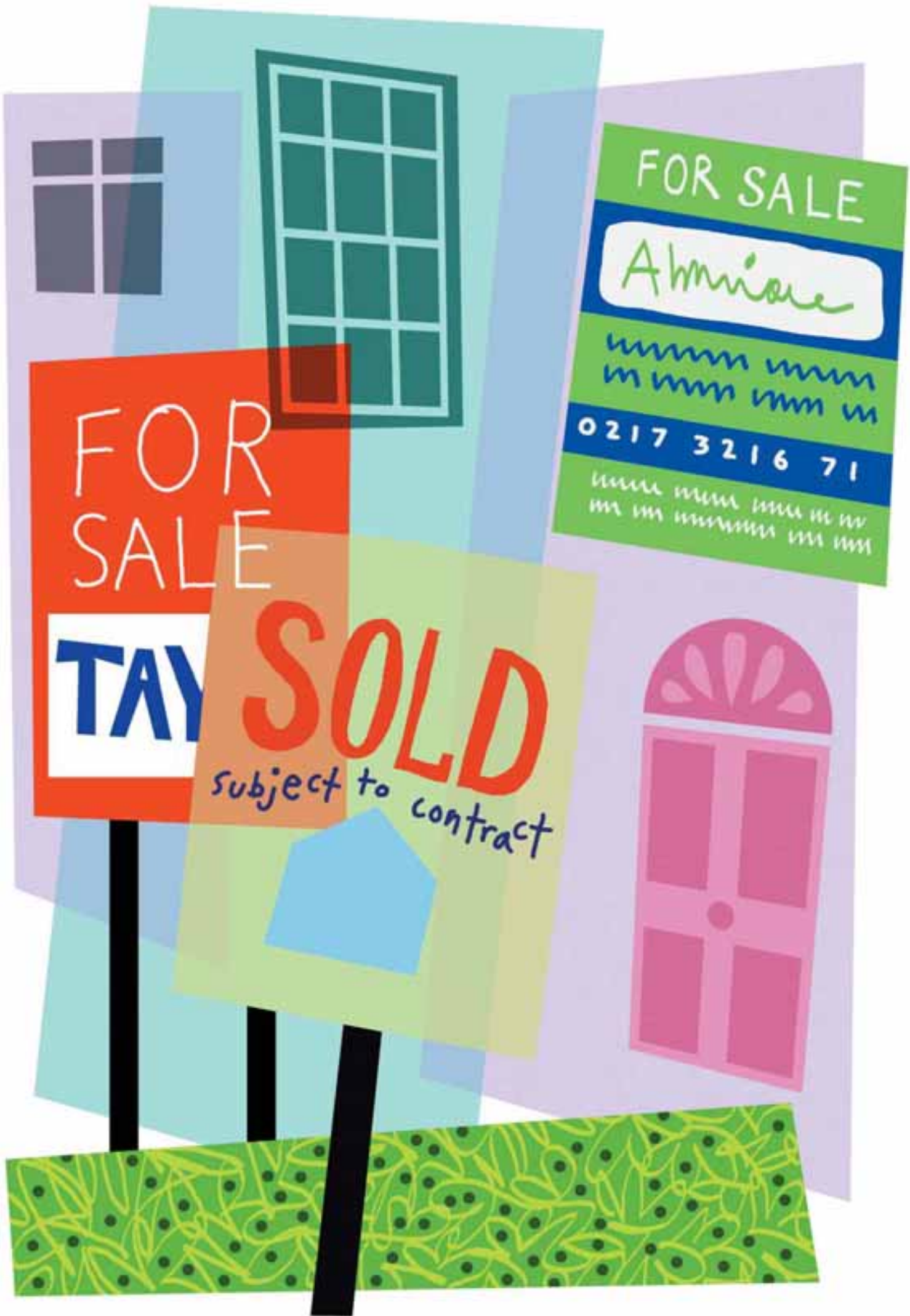
The OFT's role is mainly to support and reinforce the controls on advertising exercised by other organisations and to step in when they are unable to take effective action.

Most complaints are handled in the first instance by the Advertising Standards Authority (ASA), a self-regulatory body which administers the British Codes of Advertising, Sales Promotion and Direct Marketing www.asa.org.uk, and local trading standards authorities www.tradingstandards.gov.uk.

Advertisements on commercial, cable and satellite TV are dealt with by the Independent Television Commission. Ads on commercial radio by the Radio Authority.

Although the OFT cannot clear advertising copy in advance of publication, you may be able to get advice from the Committee of Advertising Practice, an industry body that created, revises and enforces the British Codes of Advertising. Sales Promotion and Direct Marketing (www.cap.org.uk) that are administered by the Advertising Standards Authority.

There is an OFT briefing leaflet *Misleading Advertisements* and more information on www.of.gov.uk



FOR
SALE

TAY

SOLD

subject to contract

FOR SALE

Almira

0217 3216 71

Legislation for estate agents

The Estate Agents Act 1979

What does it do?

This Act regulates estate agents' work to ensure that agents are fit to carry out this work. It also regulates how buyers and sellers should be treated.⁵

How does it affect my estate agency business?

You must make sure you offer clear written information to your clients including:

- details of how much they will be charged and when payments are due
- details of any charges which are in addition to your fees, which may include how much you will charge if the property is taken off the market without a sale
- if exact charges are not known, you must tell them how the cost will be worked out
- if additional charges are made – such as for the cost of a 'for sale' board and advertising – you must state these amounts or give an estimate of them
- you must explain clearly what certain technical phrases mean⁶

You must also tell your clients in writing:

- of all offers that are made on the property – unless the client informs you in writing that they are not interested in offers below a certain amount or of a certain type
- if you or someone connected with you, such as a relative or a business partner, wants to buy the property
- if you or someone connected with you owns or has an interest in the property

You have to tell buyers as well as sellers in advance when you have a personal interest in a property.

If you offer other services, such as organising surveys, valuations, arranging mortgages or life insurance, you must:

- tell your clients in writing about any service that you – or a person connected to you – might offer
- you must give details of the type of service offered and inform your clients if you make a commission

You must not:

- discriminate against a prospective purchaser who does not want to take up other services
- misrepresent the details or existence of any offer or the existence or status of any purchaser

What you should know

The OFT has powers to:

- investigate complaints about estate agents
- issue a warning order giving notice that continuing the conduct in question would lead to a ban
- ban people from engaging in estate agency work

The OFT produces *The Estate Agency Guide* which includes a useful checklist of all the things which are required of you by law.

There's also more about the Estate Agency Act on www.of.gov.uk

⁵ Some property-related work is not covered by this law including: surveys or valuations carried out independent of any other estate agency work; work connected with planning applications and matters covered by the Town and Country Planning legislation; arranging rentals or property management; overseas property transactions; work done by solicitors or their employees; activities done in the course of arranging mortgages and insurance.

⁶ These include 'sole selling rights'; 'sole agency'; and 'ready, willing and able purchaser'.

Legislation for businesses in the travel industry

The Package Travel, Package Holidays and Package Tours Regulations 1992

Who do the regulations apply to?

Any business that organises package holidays or sells them to consumers.

What do they do?

The regulations set out the responsibilities that travel organisers and retailers have towards their customers – and what rights consumers have under the legislation.

The regulations define the term 'package' as a pre-arranged holiday combination sold or offered for sale at an inclusive price, covering a period of more than 24 hours and including at least two of the following:

- transport
- accommodation
- other significant tourist services (not ancillary to transport or accommodation)

How do they affect my business?

The regulations may affect various aspects of your business, including the form in which information is provided to customers, the contracts you have with them, how price changes are handled and what you must do when customers change their minds or want to cancel their holiday. You must also ensure that holidays are covered by suitable insolvency protection.

What you should know:

- as well as giving rights to consumers, the regulations create certain criminal offences. Examples are providing misleading or inadequate information in brochures and not providing customers with key information about the package. The criminal provisions of the regulations are enforced by trading standards officers
- the OFT may take out a Consumer Enforcement Order against traders who breach the regulations
- a full list of the responsibilities placed on your business is set out in a DTI guide called *Looking into the Package Travel Regulations*. Copies can be obtained by calling DTI on 020 7215 0328

How to contact us

If you have a question about the OFT and the laws that affect our work, please call:

Enquiries

Tel: 08457 22 44 99

Open during office hours (9am till 5pm) and is the first port of call for an enquiry. We will direct you to the right person to talk to and suggest any appropriate background guidance.

Cartels hotline

If you suspect that one of your competitors, suppliers or customers is operating as part of a cartel please call our hotline on:

Tel: 020 7211 8888
or e-mail
enquiries.competitionact@oft.gov.uk

Consumer credit licences

For all applications and queries call our enquiry line:
Tel: 020 7211 8608

Address:
The Consumer Credit Licensing
Bureau
Craven House
40 Uxbridge Road
Ealing
London W5 2BS

If you are a business organisation and are interested in arranging for a speaker from the OFT to talk to your members about the law, please contact the Business Information Unit on 020 7211 8983.

OFT publications

We produce a wide range of material about the legislation mentioned in this guide, including fact sheets and in-depth guidance. Our publications order line is:
Tel: 0870 60 60 321

You can also order and download online:

www.oft.gov.uk

Our website holds a wealth of easy-to-access information about the legislation outlined in this guide. You can:

- order publications
- download guidance material
- read the latest OFT news
- check out the reports on market sectors
- find out more about the cartel leniency programme

Our main address:

The Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Tel: 020 7211 8000
Fax: 020 7211 8800

This information is available in other formats and languages on request. Please ring 0870 60 60 321 for details.

This leaflet is only a simple guide and should not be relied on as a complete statement of the law. To understand your rights and obligations fully, study the relevant law or consult a solicitor.

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