

What is your organisation or group's name?

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS)

Do you have any comments on the structure or clarity of the Draft Guidance?

The structure of the guidance is well-designed and clear. Including real-life examples in prominent sections, such as the blue boxes, is particularly valuable. Traders are unlikely to read the entire document and will instead focus on the sections most relevant or important to them. The guidance strikes a good balance between referencing legislation and providing explanations in plain language. This approach is especially important given the diverse audience, with varying levels of understanding of the law and its interpretation. In Part 3, page 44, which addresses commercial practices that are prohibited regardless of their impact on the average consumer's transactional decision, it may be helpful to lead with the banned practices themselves, as they are outright prohibitions. While there is a substantial amount of information to cover, the guidance is clear, factual, and supported by meaningful examples that effectively demonstrate the intent of the Act. A minor point regarding clarity: some sections are quite dense and legalistic, which may make them more challenging for traders or non-legal professionals to navigate. It could be helpful to distinguish legal references—such as 'wholly or mainly outside business' or 'gain or reward'—by using bold or italic formatting. This would make it clearer what constitutes legal terminology versus guidance. In Section 4, 'Assessing Unfairness of Commercial Practices' (page 22), the term 'Banned Practice' is not used in the opening paragraph. It would be beneficial to include this terminology for consistency, as it is used elsewhere in the guidance. For example, the sentence could read: '4.1 Under the UCP provisions, a subset of commercial practices is prohibited regardless of their impact on the average consumer's transactional decisions (i.e., the transactional decision test does not apply and are banned practices), whereas others are only unfair if they are likely to cause the average consumer to take a different decision.' The 'Misleading Actions' section (Section 6, page 29) is comprehensive and provides valuable legal detail. However, it might benefit from a summary at the beginning to outline the key points before delving into the legal text. Alternatively, using clearer subheadings could improve navigation and accessibility. Currently, it reads very much like legislation, which may be challenging for some audiences. It would be helpful to introduce examples earlier at each relevant point. Currently, there is a significant amount of legal text before reaching the examples. Including a few sentences in simplified language to bridge the legal text with the examples would enhance the guide, while still retaining the legal terminology. For instance, in Section 9.1 on 'Invitations to Purchase,' the terminology may not be familiar to the average trader, even if they are aware of the current Consumer Protection from Unfair Trading Regulations. An opening sentence such as the following could provide clarity: 'An invitation to purchase is when

a trader provides information about a product, such as its price and features, to help the consumer decide whether to buy it. The consumer does not need to purchase the product immediately, but it provides enough details to make an informed decision. Examples include advertisements, online product listings, or restaurant menus.’ This approach would make the guidance more accessible while ensuring it remains clear and informative. Starting each section with a couple of sentences of clear, plain English explanations, free from legal terminology, would help readers gain a basic understanding before delving into the detailed legal wording. This would help make the guidance more user-friendly ensuring that key concepts are clearly understood from the outset. It would be particularly beneficial for readers who may only engage with the opening paragraphs of each section, rather than diving directly into the legal language from the legislation. You may lose the attention of traders if it starts off too legal.

Do you have any comments on the illustrative examples of commercial practices applying the prohibitions? Are there any areas where you think additional examples could usefully be reflected in the Draft Guidance?

The examples provided in the guidance are highly relevant and reflect common areas of consumer complaints, such as drip pricing in ticket sales. It is also reassuring to see car repairs included as an example, such as carrying out repairs without the consumer's agreement. Car-related complaints consistently rank among the most frequently reported issues with purchases or services. It would be valuable to include additional examples addressing key issues frequently encountered by Trading Standards, such as further examples of the second-hand motor trade and doorstep selling. For example, while Annex A features a motor dealer case on car clocking, it would be beneficial to include an example under the misleading omissions section, highlighting scenarios such as 'one owner' descriptions that fail to disclose a car's history as an ex-rental or taxi. Furthermore, the examples at 6.6 p30 for misleading actions do not represent the more typical, mainstream cases we regularly address. Similarly, the reference pricing example given at 6.9 p32 under the misleading actions section could be considered less common of modern practices. The scenario of 'the higher price was offered at our X store between X and Y date' reflects practices more common 20 years ago. The retail sector has largely moved on from such approaches. A more relevant and impactful example would focus on whether the product represents a genuine retail price, including considerations such as the time period for which the higher price applied and the quantities sold at that price—aligning with the standards the CMA has been advocating for.

Do you have any comments on the Draft Guidance on the ‘drip pricing’ provisions in the DMCC Act (found in the ‘Material pricing information’ section of Chapter 9 of the Draft Guidance), including the illustrative examples? In particular, are there any specific pricing practices that have not been included in the ‘drip pricing’ illustrative examples which you think it would be helpful to include, and if so, what should such further guidance specifically cover?

The guidance on drip pricing would benefit from the inclusion of examples drawn from sectors where this practice is most prevalent, such as accommodation bookings, the airline industry, and packaged holidays. A supermarket-related example would also be particularly valuable, such as promotions advertised at one price but revealing additional charges—like add-ons or delivery fees—during the checkout process. An online supermarket scenario illustrating hidden fees for delivery, packing, or priority processing could further enhance the practical relevance of the guidance. Additionally, introducing a brief heading, 'What is drip pricing?' at the beginning of Sections 9.14 and 9.15, would provide greater clarity by offering a concise definition and explaining why this practice is considered unfair. The existing ticket sales and laptop examples are strong and well-chosen. To further expand the range, an example from the holiday rental sector could be included, highlighting situations where additional costs—such as cleaning fees—are added after an initial price is displayed (e.g., advertising a holiday let at £200 per night but subsequently applying undisclosed charges). By incorporating these examples, the guidance would more effectively address the contexts in which drip pricing commonly occurs, ensuring it reflects consumer experiences across a broad range of contracts and transactions. There is an additional example that could be highlighted. Most people probably associate drip pricing with the online marketplace but it also happens instore. For example, many furnishing stores charge delivery charges even for delivery to store or do not offer the facility to deliver to store citing lack of storage space. So, a customer cannot actually buy a sofa for the indicated price of £499 as delivery charges are compulsory. The buyer does not have the option of uplifting from the store (presumably the item is transferred from a central location or a third party directly to the customer’s home).

Do you have any comments on the Draft Guidance on the banned practice relating to fake consumer reviews (found in Annex B to the Draft Guidance)?

The content is detailed and well-crafted for traders with a strong understanding of legislation or legal concepts. However, for a broader audience, the language may come across as overly complex, dense, and legalistic. The examples provided are highly effective and add valuable clarity. The guidance would benefit from including examples of the most common sectors as suggested in question 3.

Do you have any other comments on topics not covered by the specific questions above? If so, the CMA requests that respondents structure their responses to separate out their views in relation to each of the Draft Guidance's chapters

No.

Other information

None.
