

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux
www.cas.org.uk



The Consumer Protection from Unfair Trading (Amendment) Regulations 2013

Fraser Sutherland, Policy Officer
October 2013

- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using nearly 250 service points throughout Scotland, from the islands to city centres.
- In 2012/13, the Citizens Advice Service helped consumers in Scotland with almost 207,000 consumer issues. That is 826 consumer issues for every working day. Just over a quarter of these were addressed by the Citizens Advice Consumer Service, handling nearly 57,000 issues, including 3856 about energy or post.
- Scottish citizens advice bureaux helped consumers with 150,000 consumer issues, covering topics as diverse as payday loans and car maintenance.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.



Reform of Consumer Law draft regulations: proforma for additional comments by 11 October 2013

We welcome any further comments on the draft Regulations. If you would like to comment, please complete this form.

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Please return completed forms to:

Consumer Bill Team
Consumer and Competition Policy
Department for Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Or email: consumerbill@bis.gsi.gov.uk

Please tick a box from the list of options that best describes you as a respondent.

	Business representative organisation/trade body
	Central government
X	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

Comments

Please use this table for any comments that you may have on the draft Regulations.

Proposed Measures	Comments on the Draft Regulations																		
Consumer Protection from Unfair Trading (Amendment) Regulations <i>General Comments</i>	<p>Citizens Advice Scotland (CAS) generally welcome any move by the government to allow for consumers to take action against traders where they feel that they have been a victim of misleading or aggressive sales practices. As Consumer Focus found in their research in 2009¹ over 60% of GB consumers interviewed felt they had been a victim of unfair commercial practices at some point. This research also found that 78% agreed that the ability to take action directly against a trader through private action would be a good idea. This is backed up by statistics from the Citizens Advice Consumer Service which took over 2900 calls from Scottish consumers in the six months between April and September 2013 regarding aggressive or misleading selling and unfair business practices (see table 1 for further detail).</p> <p><i>Table 1: Calls made to the Citizens Advice Consumer Service by Scottish consumers regarding unfair trading practices (April to September 2013)</i></p> <table border="1" data-bbox="520 1173 1386 1933"> <thead> <tr> <th data-bbox="520 1173 1007 1285">Complaint Type</th> <th data-bbox="1015 1173 1386 1285">Number of calls (Q1 & Q2 2013-2014)</th> </tr> </thead> <tbody> <tr> <td data-bbox="520 1285 1007 1352">Unfair Business Practices</td> <td data-bbox="1015 1285 1386 1352">1509</td> </tr> <tr> <td data-bbox="520 1352 1007 1464">Verbal misrepresentation/mis-description</td> <td data-bbox="1015 1352 1386 1464">836</td> </tr> <tr> <td data-bbox="520 1464 1007 1532">Misleading pre-shopping advice</td> <td data-bbox="1015 1464 1386 1532">325</td> </tr> <tr> <td data-bbox="520 1532 1007 1599">Misleading quote/estimate</td> <td data-bbox="1015 1532 1386 1599">117</td> </tr> <tr> <td data-bbox="520 1599 1007 1666">Harassment</td> <td data-bbox="1015 1599 1386 1666">100</td> </tr> <tr> <td data-bbox="520 1666 1007 1733">High Pressure Selling</td> <td data-bbox="1015 1666 1386 1733">49</td> </tr> <tr> <td data-bbox="520 1733 1007 1845">Direct marketing to vulnerable groups</td> <td data-bbox="1015 1733 1386 1845">42</td> </tr> <tr> <td data-bbox="520 1845 1007 1933">Total</td> <td data-bbox="1015 1845 1386 1933">2978</td> </tr> </tbody> </table>	Complaint Type	Number of calls (Q1 & Q2 2013-2014)	Unfair Business Practices	1509	Verbal misrepresentation/mis-description	836	Misleading pre-shopping advice	325	Misleading quote/estimate	117	Harassment	100	High Pressure Selling	49	Direct marketing to vulnerable groups	42	Total	2978
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<p><i>Legal Action</i></p>	<p>CAS are concerned that having to take legal civil redress as an individual could be a significant barrier for some consumers. As the process of reclaiming such costs will be for the individual to pursue through court this is unlikely to help consumers who have lost small sums of money or who simply can't afford to take action themselves. These consumers are unlikely to want to spend the time and costs pursuing a trader through what can be a lengthy and cost prohibitive court process.</p> <p>We are further concerned that it could be seen by trading standards and other bodies as now being the consumer's responsibility to take private action against unfair traders rather than criminal proceedings being brought against repeat offenders. We would ask that the Government, if it continues with these regulations, ensures that action by trading standards and other bodies against unscrupulous traders will not suffer as a result of new civil rights for redress. 41% of the consumers surveyed by Consumer Focus in 2009ⁱ stated that they would not have taking civil action against a trader with 89% putting that down to it being too much hassle or too expensive to take action themselves.</p>
<p><i>Scope of regulations</i></p>	<p>We welcome the fact that these regulations will provide amendments which will, in line with the new consumer bill of rights, introduce digital content as a 'product', thus increasing consumer protection. With an ever increasing amount of certain types of media, such as music and video, being purchased in this digital manner we are encouraged that strong protection will be made available to the purchase of this type of product in the same way as any other.</p> <p>We agree that the definitions under the 2008 Consumer Protection regulations are sufficiently clear and robust as to what is deemed as misleading and aggressive selling practices and welcome that the rules that apply for criminal action will be replicated for consumers to use if they wish in civil cases.</p>

<p><i>Vulnerable consumers</i></p>	<p>CAS is slightly concerned by the continued use of the ‘average consumer test’ with this being defined as a consumer who is ‘reasonably well informed, observant and circumspect’. We do not believe that this definition is sufficiently clear and indeed have concerns that particularly vulnerable consumers may lose out by them potentially not being as informed as is being assumed by the use of standard definition of an ‘average consumer’.</p> <p>With regard to the action required to be taken by individual consumers we are concerned that the most vulnerable in society will not be able or willing to take civil action through the sheriff court. This move could leave some of the most vulnerable consumers out of pocket where those able to afford legal action will be able to re-coup what they have lost. We would draw attention to the Consumer Focus 2009 report¹ which found, “<i>Vulnerable people are more likely to cite their own finances and not wanting to make more trouble as reasons for not suing.</i>”</p>
<p><i>Remedies introduced</i></p>	<p>CAS welcome the aim of the regulations’ remedies as that of placing the consumer in the position they were in before the misleading practices happened. We agree that a 90 day period in which to unwind from any contract that has been entered into as a result of misleading or aggressive practices and receive a full refund is fair and easy to understand for consumers. We are concerned however that for digital content this may not be applied in practice as under clause 27E (7) (b) of part 4a (consumers’ right to redress) it refers to digital content as having been consumed if the period the content was made to the consumer has expired. This in practice could mean that if a digital rental had ‘expired’ even though it had been sold misleadingly no action could be taken by the consumer under the regulations. We would welcome further explanation of this point as we do not believe any type of exemption should be made for digital content.</p> <p>CAS welcomes the proposal that consumers will have the ability to take action even after these 90 days, although only receiving a discounted rate rather than a full refund. We do welcome that for the most serious cases, as judged in a court, of prohibited practices that a consumer may receive a full refund even after the passing of the 90 day period and</p>

	<p>welcome that seriousness is determined by the impact that it has had on the consumer. We also welcome that additional damages will be able to be claimed by consumers where either they have been inconvenienced or distressed or where they have suffered economic loss.</p> <p>Once again however we are concerned that in order to receive such costs and refunds an individual consumer will have to take their own legal action. While this will be useful to some consumers to exercise their rights we are concerned that help will not be available to those who need it most and cannot take action themselves due to cost or time constraints.</p>
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Thank you for taking the time to provide feedback on the draft Consumer Rights Bill. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would you be content if we were to contact you again either for research or to send through consultation documents?

Yes

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BIS/13/1107RF

Reference

ⁱ Consumer Focus, The Extent of Unfair Commercial Practices, March 2009