

LONDON BOROUGHS OF BRENT AND HARROW

TRADING STANDARDS ADVISORY BOARD – 1st DECEMBER 2008

REPORT NO. 04/08 FROM THE DIRECTOR OF TRADING STANDARDS

FOR INFORMATION

TITLE OF REPORT: An update on new Trading Standards legislation

1.0 SUMMARY

1.1 This report updates Members on legislation that has recently been enacted.

2.0 RECOMMENDATIONS

2.1 That Members consider the content of the report and comment as appropriate.

3.0 FINANCIAL IMPLICATIONS

3.1 There are no financial implications contained within this report.

4.0 STAFFING IMPLICATIONS

4.1 There are no staffing implications contained within this report.

5.0 DETAIL

5.1 The report is attached as an Appendix.

6.0 BACKGROUND INFORMATION

6.1 Relevant Regulations & Guidance notes

Anyone wishing to inspect the above should contact Nagendar Bilon, Director of Trading Standards, 249 Willesden Lane, London NW2 5JH, Telephone 020 8937 5500.

NAGENDAR BILON
DIRECTOR OF TRADING STANDARDS

Appendix 1

An update on new Trading Standards legislation

1.0 Introduction

Along with other Regulatory Services, Trading Standards has to deal with changes in the legislation it has to enforce every year. Along with laws specific to the UK, there is an increasing amount of European-wide law. New and changing laws have always been a feature of Trading Standards work but this last year has seen arguably the biggest changes for 40 years. This report aims to give a brief overview of some of those changes to help give an understanding of what Trading Standards staff have to deal with.

2.0 The Protection of Consumers from Unfair Commercial Practices Regulations 2008

The Regulations, the single biggest change in law to affect Trading Standards for 40 years, came into effect on 26th May. The new regulations implement European Directive 2005/29/EC concerning unfair business-to-consumer commercial practices and offer consistent European-wide protection for consumers. This should help businesses prosper in European markets as well as providing consumers with confidence to shop with traders within the EU, whether online or while on holiday.

In implementing the new law, a number of existing laws were repealed or amended. These include the Trade Descriptions Act 1968, probably the most well known and often used piece of Trading Standards legislation. The Mock Auctions Act 1961, Part III of the Consumer Protection Act 1987 that dealt with misleading pricing, parts of the Fair Trading Act as well as a Section within each of the Weights and Measures Act 1985 and Consumer Credit Act 1974 also cease to have effect. Other casualties include pricing laws on the resale of tickets and on price displays for food and drink.

The Regulations apply to products – both goods and services – and cover commercial practices before, during and after a contract is made. They do not cover consumer to consumer transactions but trader to consumer (and consumer to trader) transactions. They may also apply to trader to trader transactions where the product is sold to consumers further down the supply chain.

The Regulations contain 31 banned practices that are illegal in all circumstances. These include some of the more common offences that were previously covered by the Trade Descriptions Act 1968, such as a trader claiming to be approved by a body such as CORGI when they are not. Other banned practices mirror protection in legislation now repealed, such as a trader falsely representing themselves as a consumer. There are also banned practices that are new, such as telling a consumer that if they don't buy the product, the trader's job will be in jeopardy or ignoring a consumer's request to leave when a trader is visiting the consumer's home.

As well as the specific banned practices, there are controls on acting aggressively, giving false information or failing to give important information about a product, where such action will cause or is likely to cause an average consumer to take a different decision about a product than they would have done otherwise.

Finally, the Regulations contain a general duty not to trade unfairly. This is made up of two tests. Traders cannot contravene the requirements of professional diligence and materially distort the economic behaviour of the average consumer with regard to the product. In other words, traders shouldn't behave unprofessionally and influence consumers to buy something they wouldn't have done otherwise.

In the previous two paragraphs and in the Regulations themselves, the phrase 'average consumer' is used in setting out certain safeguards. The phrase has been developed in European case law and should generally mean someone who is reasonably well informed, reasonably observant and circumspect, taking into account social, cultural and linguistic factors. In the Regulations, the average consumer can also have different meanings in certain cases. Where a commercial practice is targeted at a particular group of consumers, then it is the average member of that group that is relevant. An example may be where television adverts during children's programmes are aimed at children.

There is extra protection for vulnerable consumers where they are vulnerable because of infirmity (mental or physical), age or credulity. Where a clearly identifiable group of consumers is particularly vulnerable to a trading practice or the product, in a way that the trader could reasonably be expected to foresee, then it is the average member of that group that is the relevant average consumer. For example, wheelchair users may be a vulnerable group in relation to advertising claims about ease of access to a holiday destination or the elderly may be particularly vulnerable to practices connected with burglar alarm sales.

The Regulations will take a while for consumers, traders and enforcement staff to get used to. Interpretation of new law in different ways by different people takes a while to resolve. However, there are many new protections available to consumers that should make consumer protection easier. Traders who trade fairly have nothing to worry about but the few rogues out there now have something else to fear.

3.0 The Protection of Businesses from Misleading Marketing Regulations 2008

These Regulations also came into force on 26th May 2008 and provide protection for businesses from misleading marketing. They set out the conditions under which comparative advertising (advertising which identifies a competitor or a competitor's product) is permitted. In addition, they require code owners (traders and bodies responsible for codes of conduct or monitoring compliance with such codes) not to promote misleading advertising and comparative advertising which is not permitted.

This protection is new and should help protect businesses from misleading scams such as a recent data protection one where businesses were sent faxes from a company requesting they pay nearly £100 to comply with the Data Protection Act when they could do it themselves for £35 if they needed to.

4.0 *Housing Act 2004 / Home Information Pack (No.2) Regulations 2007*

These Regulations brought in the requirement for home information packs (HIPs) to be provided when properties are placed on the market. Initially this applied to a limited number of properties for sale but now applies to the vast majority of sales and majority of rentals. The main constituent of the HIP is the energy performance certificate (EPC) which details the current energy efficiency of the property and its potential if improvements are made.

5.0 *London Local Authorities Act 2007 (Section 75)*

This Section gives London Authorities the chance to set up controls for mail forwarding businesses. A mail forwarding business is one where a postal address is made available to a person for the receipt of postal packets that are held for collection or forwarded on. Clients range from individuals to companies both at home and abroad.

Trading Standards receive a significant number of complaints regarding traders who use the services of mail forwarding businesses. Often money has been sent in response to various kinds of scams and frauds. In the absence of existing legal requirements to keep records, most mail forwarding businesses do not require copies of identification of clients and many keep insufficient or no records at all. Some have a reputation for operating on a 'no questions asked basis.' In seeking information from mail forwarding businesses the level of co-operation afforded to enforcement officers will vary and where no or insufficient records are kept, tracing clients involved in criminal activities will be virtually impossible.

The new requirements for a mail forwarding business are to register with the Council, keep records of persons using mail forwarding and holding services including copies of two pieces of identification, to retain the records for one year after the service has expired and make them available for inspection by the police and authorised Trading Standards Officers. This will be a considerable help in our efforts to clamp down on rogue traders. A separate committee report will be submitted in due course to bring this law in to force in Brent and Harrow.