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## Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

19 March 2008

Report of the Director of Neighbourhood Services

### Implications of the Unfair Commercial Practices Directive

#### Summary

1. The purpose of this report is to inform members of the new legislation aimed at ensuring businesses trade fairly with consumers.

#### Background

2. The Consumer Protection from Unfair Trading Regulations 2008 (the Regulations) will come into force on 26<sup>th</sup> May 2008, and bring about a number of significant changes to the legislation that trading standards officers enforce. Most notably, the offence provisions of the Trade Descriptions Act 1968 (which made it an offence for traders to falsely describe goods or to knowingly/recklessly make a false statements about their services) will be repealed, as will many other established pieces of consumer protection legislation.
3. A variety of new measures will come into place, which are anticipated to further strengthen consumer protection, and improve fair competition between businesses. A number of different unfair commercial practices are prohibited by the Regulations, below is a summary of the main provisions and examples of the kind of actions which are prohibited. However, unlike existing legislation, the Regulations are only concerned with dealings between consumers and businesses. Separate legislation covering misleading claims (only) in business to business dealings will come into force in April 2008.
4. Misleading Actions

These provisions prevent a trader giving false information about their goods or services or presenting information in a way that is likely to deceive the **'typical consumer'**, and as a result the consumer makes a (or is likely to make) a **'transactional decision'** (for example to buy the goods) that they wouldn't otherwise have made. It may be false (or deceiving) information about many aspects of the product, including the characteristics such as claiming that jewellery is gold or other precious metal when it is not, or giving a misleading price about the product e.g. claiming that it will cost £50 to cut back the trees in a consumer's garden and presenting an invoice for £500 (£50 per tree).

(See Annex One for the definition of ‘typical consumer’ and ‘transactional decision’)

## 5. Misleading Omissions

Misleading omissions are where a trader fails to give a consumer information, and as a result, the consumer makes (or is likely to make) a transactional decision that they would not otherwise have made. For example the trader omits to tell a consumer that a car they were thinking of buying from him had been previously involved in an accident. This section also applies where a trader hides material information (e.g. something hidden away in the small print of the terms and conditions), or provides material information in a manner which is unclear, unintelligible, ambiguous or untimely (e.g. presenting the consumer with a document about the car’s accident history after the sale has been concluded).

6. It will also be a misleading omission if the trader makes an ‘invitation to purchase a product’ and fails to give material information including details of the main characteristics of the product including the identity of the trader (i.e. their name and address), the price and other additional charges amongst other things (e.g. failing to disclose a booking fee for a concert ticket).

## 7. Aggressive Commercial Practices

A trading practice is aggressive, and therefore unlawful, if the trader uses harassment, coercion or undue influence to impair the consumers choice or conduct. An example might include driving a consumer to the bank to obtain cash for work they have carried out on their home.

## 8. Specific ‘Banned’ Practices Listed in the Regulations.

The Regulations specify 31 practices which will be considered unfair in any circumstances. These practices are shown in Annex Two and it will be seen that they include some of the most commonly complained about trading practices. Many of these practices are not illegal under current legislation. The list in the schedule includes; displaying a quality mark (logo) without having obtained the necessary authorisation such as where a plumber falsely claims CORGI registration, making inaccurate claims to a consumer about the risks to their personal security if they do not buy the product they are selling (e.g. that a consumers house is likely to be burgled unless they buy an alarm), claiming that a trader is about to cease trading or move premises when they are not and traders who claim their job is in jeopardy if the consumer doesn’t buy their product.

## 9. General Unfair Commercial Practices

Finally the Regulations make it an offence to knowingly or recklessly engage in a practice which falls below ‘the requirements of professional diligence’ i.e. below what is ‘honest market practice’ or ‘good faith’ in the trader’s field of activity. Again, in simple terms, the practice must be likely influence a consumer’s decision to buy the product, an example might be a consumer who

engages a roofer to replace tiles he says need replacing on a persons home when they do not.

#### 10. Defences and Penalties

As with most consumer protection and other regulatory law there is a 'due diligence' defence available to a businesses (the defence does not apply in respect of general unfair commercial practices outlined in paragraph 9 above). This means when a business has taken all the reasonable steps they can to avoid the offence and exercised all due diligence to make sure that the steps are effective they can avoid any prosecution.

A breach of the regulations can be dealt with under either the criminal or civil law. If a prosecution is taken, a fine of up to £5000 per offence may be imposed in the Magistrates' Court. If the matter is heard in the Crown Court, the maximum penalty is an unlimited fine and up to 2 years in prison (or both). Alternatively a breach of the Regulations may lead to a complaint being made to the County Court under the Enterprise Act 2002 to seek an injunction to stop the trader carrying out their unfair practice.

#### 11. Powers

Trading standards officers have powers inspect goods and to enter businesses premises to ascertain whether there has been a breach of the Regulations. In addition, there are powers for trading standards officers to require businesses to produce documents and to seize goods (or documents) in certain circumstances such as where they are required as evidence in the same way that existing powers allow.

### **Consultation**

12. There is no consultation associated with this report.

### **Options**

13. City of York Council has a statutory duty to enforce the Regulations. This report is for information only

### **Analysis**

14. Not applicable.

## **Corporate Priorities**

15. Enforcement of the Regulations will contribute towards the corporate priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on the people in York.

## **Implications**

### **Financial**

16. There are no financial implications associated with this report.

### **Human Resources (HR)**

17. There are no human resources implications associated with this report

### **Equalities**

18. There are no legal implications associated with this report.

### **Legal**

19. The City of York Council has a duty to enforce these Regulations.

### **Crime and Disorder**

20. There are no crime and disorder implications associated with this report.

### **Information Technology (IT)**

21. There are no IT implications associated with this report

### **Property**

22. There are no property implications associated with this report.

### **Other**

23. There are no other implications associated with this report.

### **Risk Management**

24. In compliance with the council's risk management strategy. There are no risks associated with the recommendations of this report.

### **Recommendations**

25. That the advisory panel advise the executive member to note the report.

Reason: To inform members of this significant change in consumer protection legislation.

**Contact Details**

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**Report Approved**

**Date** 18/2/08

**Specialist Implications Officer(s)** *None*

**Wards Affected:**

**All**

**For further information please contact the author of the report**

**Background Papers:**

- None

**Annexes:**

One. Definition of 'typical consumer' and 'transactional decision'.

Two. Commercial practices which in all circumstances are considered unfair.