

# Is Your Website Breaking the Law?

*Expert knowledge means success*

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Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

## Introduction

Many websites may be breaking the law according to the Office of Fair Trading (OFT). By law, consumers must be given clear and full information for goods or services bought from home, whether over the Internet, telephone, digital TV or by mail order. Failure to tell consumers about their right to cancel and to a full refund is a breach of the Distance Selling Regulations and is something which the OFT and trading standards service say must be put right. It is in the interests of consumers and good businesses to make ways of buying from home as robust as possible.

## Internet Sweeps

In 2001, a 'mystery surf' of the Internet of 637 UK retail websites conducted by the OFT and trading standards departments, found that 52% failed to give easily accessible information on refund or exchange policies. Most of the 637 UK sites examined provided only basic business contact details. These included a postal address, e-mail address and telephone number and an itemisation of costs. But they fell short in providing any easily accessible information on both refund and exchange policies, and how they would handle customers' personal details. These companies were then followed up by the OFT, working with trading standards authorities, to ensure that their sites were amended to comply with the law.

Since then, numerous sweeps have been carried out. In 2002, over a thousand potentially misleading health products and 'miracle' cures were uncovered on websites by a co-ordinated worldwide internet search including over 170 UK-based websites. More than a third of these promoted slimming and weight loss cures, while others offered treatments for cancer, arthritis, sexual performance and hair loss. Some used 'customer testimonials' or 'clinical studies' to try and add credibility to their claims.

In 2003, a co-ordinated international worldwide internet sweep identified more than 50 UK travel websites which made potentially misleading claims. Initial analysis suggested

that 40% of UK-based websites visited during the search contained potentially misleading claims. The OFT issued a further warning to the holiday and travel industry in February 2007 and successfully took action later that year against 13 airlines that did not include all fixed, non-optional costs, such as taxes, in prices on their websites.

In 2004, the OFT in conjunction with the International Consumer Protection and Enforcement Network (ICPEN) undertook an internet sweep to identify mobile phone advertising that targeted children. 31% of the websites did not give sufficient information on the prices being charged, 30% of the websites did not give clear information about necessary technical adjustments that would need to be made to the consumer's phone and 22% gave no information on how to cancel the agreements. Only 6% of the websites displayed an age limit for those entering it although 46% of the websites had unsuitable content for the assumed target group.

In the same year, ICPEN conducted the 'Too good to be true' sweep with 31 countries operating together to detect cross border scams and misleading and fraudulent adverts on the web. This resulted in 320 websites being closed or amended, 440 warning letters being sent to traders and 5 court enforceable undertakings. In the UK 8 websites were closed and 27 forced to change their websites. 27% of the scams were 'work at home schemes', 21% 'get-rich-quick' schemes and 18% were pyramid or multilevel marketing schemes.

In 2006, the OFT undertook an internet sweep of 57 websites (and newspaper advertisements) promoting Individual Voluntary Arrangements resulting in 17 financial management businesses being warned that their adverts and websites potentially mislead consumers.

In November 2007, the OFT announced that it was carrying out a web sweep of the UK's top 600 retail websites to ensure that they comply with key requirements of online shopping laws. This followed on from an internet shopping market study, published in June 2007 which found that 28% of the online traders it surveyed were unaware or only slightly aware of the laws applying to internet shopping, and 66% had never sought advice on them. More than 20% of websites did not provide an email address as required by regulations, 16% of websites did not tell shoppers that they had cancellation rights and



### Main regulations to be aware of:

- Data Protection Act 1998
- Which? Web Trader - code of practice
- Direct Marketing Association - code of practice
- Distance Selling Regulations 2000
- Office Of Fair Trading
- Trust UK

59% appeared to impose conditions that could prevent or at least deter consumers from exercising their cancellation rights.

## What the Distance Selling Regulations mean

The Distance Selling Regulations came into force on 31 October 2000 and give new rights to consumers in the area of home shopping. The main thrust of the legislation is to give consumers confidence in purchasing goods and services where there is no face to face contact with the seller, and to ensure that all traders operating distance selling schemes meet the basic requirements laid down in the Regulations.

Under the Regulations, consumers shopping for goods and services by telephone, mail order, fax, digital television and the Internet and other types of distance communication now have the right to:

- Clear information before placing orders;
- Written information (by letter, fax or e-mail) about purchases;
- A cooling off period, during which an order can be cancelled for any reason and a full refund received;
- Full refunds if goods/services are not provided by an agreed date or if no date was agreed then within 30 days of placing an order;
- Further protection against credit card fraud.

The Regulations apply to almost all types of home shopping but there are some exceptions:

- Business to business contracts;
- Financial services;
- Auctions;
- Contracts for the sale of land;
- Vending machines.

Some of the Regulations will not apply to: deliveries of food and beverages by regular roundsmen, contracts for transport, accommodation, catering or leisure services provided on specific dates or within specified periods, and timeshare and package holidays.

### Website checklist

The following checklist includes items that may be required under current legislation:

- Full company details - name, a UK geographic address and an e-mail address.
- Full terms and conditions which are readily accessible, fair and meaningful.
- A description of the goods or services being sold.
- Pricing information, fully inclusive of any delivery charges, taxes, excise duty, etc.
- Information about how long the offer or price applies.
- Details of stages involved in the ordering process, including any costs involved in distance communication, if the cost is at anything other than a standard rate.
- The different technical steps to follow to conclude a contract, so that consumers are made aware of what the process will involve and the point at which they will commit themselves.
- Information about the availability, delivery and despatch of goods.
- Information about substitutes in the event that goods or services are not available, including telling the consumer that the cost of returning unsatisfactory substitute goods will be refunded.
- Clear complaints procedure and policy on returning goods.
- Information about withdrawal / cancellation rights.
- A statement that the UK law is the applicable law.
- A statement indicating that, when buying goods and services on the Internet, the consumer is entering a legally binding contract.
- The technical means for identifying and correcting input errors prior to the placing of the order.
- A data protection statement.
- A privacy policy and information about security issues.
- A cookie (unique identifier) policy.
- An opt in box for unsolicited e-mail.
- Details of any Registration Scheme to which you belong (e.g. Corgi) and your registration number or other means of identification in that register.
- Details of certain professional bodies you are registered with, your professional title and applicable rules (e.g. chartered surveyor and RICS).
- Details of any Code of Practice to which you subscribe.
- VAT number (if appropriate).

Source: Trading Standards



## Electronic Commerce (EC Directive) Regulations 2002

These Regulations came into force on 21 August 2002 and stipulate further information that must be included on a website including clearly defined information about the trader, the nature of commercial communications (e.g. e-mails) and how to complete an online transaction.

The legislation is available online at:  
<http://www.legislation.gov.uk/ukxi/2002/2013/contents/made>

## The Data Protection Perspective

You may use your website to collect information on visitors, for example registration information. You may also use "cookies" - which your site leaves on a user's hard disk so it can remember their preferences and other information the next time they visit. However, the Assistant Data Protection Commissioner has said that, in relation to privacy matters, those collecting personal information need to be satisfied that the individuals concerned have at least a broad appreciation of what their personal data will be used for and that a suitable explanation of any non-obvious uses should, therefore, be provided.

Business Link, the government service that provides practical advice for businesses details the following regulations:

- If you use "cookies" you must provide information about the purposes of the cookie, as well as giving the user the opportunity to refuse it;
- If you record personal information you must inform people how you plan to use that information. Make it clear why you need the information - for example, to fulfil orders or to use it for marketing to them. One way of doing this is to display a privacy policy on your website. It should be readily available - you might include links to it from every page, for example:
  - You must not publish personal information on your website without consent;
  - Your website must transmit information securely;
  - You must give people the chance to opt out if they don't want mailings from you and ask people to opt in if you want to send them marketing e-mails;

- You will need consent if you want to sell your mailing list or share your information with other businesses.

Further information can be found at:  
[www.businesslink.gov.uk](http://www.businesslink.gov.uk)

## Data protection and websites aimed at children

From a data protection perspective, if your website is aimed at children and it collects data from children you may have to put in place more rigorous safeguards to ensure that the processing of those children's information is fair. There is currently much debate as to at what age a child can act in his or her own right in providing personal information online.

With regards to specifically commercial considerations, the Direct Marketing Association Code of Practice provides guidance on marketing to minors, including via the internet as detailed later in this publication.

TrustUK approved web traders must:

- recognise that children need to be treated differently from adults;
- not market their products in any way that exploits children;
- not collect information from children under 12 without first obtaining the permission of a parent or guardian; and
- must not collect personal data about adults from children.

## The Disability Discrimination Act Perspective

Your website may be secure, attractively designed and fast to load, but does it comply with the Disability Discrimination Act (DDA)?

Many businesses remain unaware that the duty not to discriminate against disabled persons extends to other areas - including equal access to electronic information and services, such as websites. The DDA makes it unlawful for a provider of services to discriminate against disabled persons. The owner of a site must take all reasonable steps to:

- Make accessible a site which is impossible or unreasonably difficult for a disabled person to use; and



## Company details mandatory on websites

From 1 January 2007, the Companies Act requires the following information to appear legibly on all its websites:

- the company's name
- the company's place of registration and the number with which it is registered,
- the address of its registered office,
- in the case of an investment company, the fact that it is such a company, and
- in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact that it is a limited company.

- Provide an auxiliary aid (e.g. an audio commentary) or service if that would make it easier for a disabled person to use a site.

## A website could be inaccessible if it:

- Is written in an incompatible code which cannot be converted into speech by "Speech Recognition" software;
- Is configured so that a user cannot make changes to the font or background colour to improve visibility;
- Makes extensive use of audio commentary without a written transcript.

Reasonableness is judged by reference to the particular circumstances and factors may include:

- The site owner's financial resources;
- Whether it is practicable to take the steps;
- The cost of making necessary adjustments.

If a business operates a website which does not comply with the requirements of the Act, not only do they run the risk of facing an action for disability discrimination, but also the associated negative adverse publicity.

The Equality and Rights Commission (ERC) produced a number of codes of practice, explaining legal rights and requirements under the Disability Discrimination Act. These Codes are practical guidance - particularly for disabled people, employers, service providers and education institutions - rather than definitive statements of the law. However, courts and tribunals must take them into account.

The codes of practice are now available at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/>

From 1 October 2010, the Equality Act replaced most of the Disability Discrimination Act (DDA). However, the Disability Equality Duty in the DDA continues to apply. The legislation is available online at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

## Good practice guide

In April 2004 the Disability Rights Commission published the results of a "Formal Investigation" into the issues that disabled people face when using websites. The investigation found that many disabled

people find many websites difficult to use, although this has not always been the case. Initially, most websites were hand-coded using the World Wide Web Consortium (W3C) HTML standards and therefore worked well with access technologies that could for example, convert web text into audible, synthetic speech that blind people could hear. The growth of Web authoring software tools that do not produce W3C-compliant code, has meant that many disabled people have found their access technologies incompatible with a significant number of web services. The DRC addressed this situation in 2004 in their report '*The Web: Access and Inclusion for Disabled People*' which revealed that in a study by City University of 1,000 British websites, 81% of them failed to meet the most basic criteria for conformance to web accessibility guidelines. The Formal Investigation report is available at: [http://www-hcid.soi.city.ac.uk/research/DRC\\_Report.pdf](http://www-hcid.soi.city.ac.uk/research/DRC_Report.pdf)



The report includes a list of the most common problems faced by web users. It also includes the results of a survey of website commissioners and developers which reveals that 97% of large organisations claim to be aware that web accessibility is an important issue and 68% claim to take accessibility into account when designing websites. This is in stark contrast to the 81% of the websites tested by City University that lacked evidence of any attempt to make their content accessible. The report also highlights a huge gap in the knowledge of website commissioners and developers.

As a result of this investigation, the DRC in cooperation with the British Standards Institution (BSI) has produced formal guidance on website accessibility which aims to inform website commissioners and developers of their obligations and of good practice in this area. The document describes:

- the standards that websites should conform to;
- the role of automated tools;
- how to validate web code;
- quality assurance and benchmarking;
- and how and when to involve disabled people in the design lifecycle.

The guidance "*PAS 78: a guide to good practice in commissioning accessible websites*" is available from:

<http://www.equalityhumanrights.com/footer/accessibility-statement/general-web-accessibility-guidance/>

## Direct Marketing Association Codes of Practice

The Direct Marketing Association has published a best practice statement relating to websites and Internet trading. It is summarised here but a visit to their website is recommended ([www.dma.org.uk](http://www.dma.org.uk)).

### Information you should provide

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- Company identity, on/off-line contact details, company name, legal address, e-mail, phone, hours of business;
- Offer subject to restrictions or conditions such as parental permission, geographic or time;
- Clearly describe goods and services offered:
  - Main characteristics.
  - Price including tax and duties.
  - Additional costs e.g. postage, packaging.
  - Cost of communication e.g. premium rate / free phone.
- Payment mechanisms must be easy to use and must express security and protection used;
- Clear details on:
  - Delivery of goods or performance of service.
  - Fulfillment times (Max 30 days from day after order).
  - Right of withdrawal where applicable.
  - Returns policy / procedures / cancellation / refunds.
  - Guarantees / warranties including statement that retains statutory rights.
  - Minimum duration of contract where supply is to continue.
- Clear ordering details:
  - How to order.
  - How and when confirmation is sent.
  - Summary of goods selected.
  - Explanation of how to stop / cancel ordering process.
- Easy access to Terms & Conditions;
- Information on complaint procedures;

### Performance Fulfilment

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- Unless agreed otherwise order must be fulfilled within 30 days after the day of order;
- If not able to fulfill then must advise customer with revised date and also opportunity to cancel;
- All orders must be acknowledged online immediately with date & time of order, unique reference number and total final price;

- Do not create demand that cannot be met;
- An advertisement must clearly state if product not yet available;
- Prepayment must not be debited until product is available to despatch. Orders must be dispatched within a few days of payment being taken.



### Privacy

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- You must have a policy to protect privacy of visitors, and must display prior to, or at the time information is collected;
- You must adhere to the Data Protection Act 1998:
  - Ensure collection of data is legal and fair.
  - Ensure responsibility must be taken for information collected and stored.
  - Ensure there is a clear statement displayed explaining what information is collected and for what, how collected and by who. You also need to include information collection via cookies or other tracking technology.
  - Ensure where information is collected not from subject themselves, they must be made aware i.e. tracking tools for click throughs etc.
- You must not collect sensitive or personal information including race, origin, religion, union membership, health, sex life, convictions / offences;
- Personal information must not be subsequently used for other purposes without consent of user, you may inform user and give them 30 days to object. Information not needed for the transaction must be labelled as being optional;
- A statement **must be given of the user's** right to object to the processing of their information for marketing purposes. There must be an online mechanism for opting out of this. e.g. a check box;
- You also need a mechanism to opt out of information being passed to third parties or partner companies;
- Personal information must be accurate and only kept for as long as is necessary for the purpose it was collected;
- Appropriate measures must be taken to secure information. These measures must be updated and reviewed regularly;
- Upon request, all information must be disclosed to individual once you have confirmed they are who they say they are. Incorrect information must be amended promptly or deleted if requested;
- These requests must be answered in 20

days unless circumstances are unreasonable;

- If you are transferring data out of Europe then you must say so as several **other countries don't operate on EU** privacy regulations.

## Unsolicited mail

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- Must be identified as such when sending;
- Must not be untargeted;
- Must not send to those who have objected to receive;
- Must offer opportunity to opt out;
- **If operating a "member get member" scheme then you must clearly state origin of address.**

## Security

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- Payment method must be easy to use and secure;
- BS7799 Code of Practice for Security Management as basis for security management processes;
- You must review your policies regularly;
- You must identify an individual who is responsible for security;
- You must ensure third parties involved in transaction also comply with security measures.

## Complaints

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- You must have a complaints handling procedure which is fast and easy to use;
- Users must be able to make initial online complaint;
- You must have an in-house named individual for handling complaints / enquiries and who has the authority to resolve the problem;
- You must acknowledge complaint within 5 working days.

## Communications to Children

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- Children classed as those under 18 unless stated;
- Promotions should not make child feel inferior for not buying the product;
- Child should be able to judge size and performance characteristics of product on offer;
- Parental permission must be obtained before committed to purchasing complex / costly goods;
- Promotions should not encourage child to be a nuisance to parent / teacher;
- You should not make a direct appeal to child to purchase unless child could afford / would be interested in product;

- You should not encourage child to eat / drink near bedtime, to eat frequently through day or to replace main meals with confectionary or snacks;
- You should not send material to children, which is only suitable for adults;
- You must not encourage child to enter competition where prize may cause problems with parent / teacher unless rules require consent of parent / teacher i.e. prizes such as cash, holidays etc;
- You must not send unsolicited e-mail unless consent given from parent / teacher;
- Orders must not be taken from children under 16 unless consent of parent / teacher gained;
- You must not collect data from under 14s without consent of parent / teacher;
- Data collected from under 14s must not be publicly available unless consent given;
- You must request age of child before any details gathered other than age - if under 14 then child should be excluded from giving further information unless consent given;
- A notice must be shown indicating where consent is needed from parent / child. It should explain briefly why information is being gathered;
- You must ensure a privacy policy is present and could be understood by child;
- Your privacy policy must be in prominent position and must contain:
  - Identity of company collecting information.
  - Statement that data will not be collected without consent of parent / teacher.
  - Explanation of what data will be used for.
  - Potential recipients of data.
  - Any means of collection if not obvious.
  - Explanation of anonymous data collection e.g. cookies.
  - Provision that data requested is voluntary.
  - The steps taken to ensure confidentiality of data.
  - The measures that parent / teacher can take to access data if details incorrect, or if wish to be removed.

## Promotions / Prizes

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- Ads must include:
  - Nature & quality of prizes given.
  - Closing date.
  - Details on restrictions on number of entries.
  - Details on restrictions of who can enter.

- Permission from parent / employer if needed.
- Details on cash alternatives if offered.
- Proof of purchase requirements.
- Details on how & when winners will be notified.
- How and when winner's details will be accessible / announced.
- Any intention to use winners for publicity.
- Conditions of disqualification.
- Disclaimer against entries that are lost.
- Competition rules must be available from start of competition.
- Closing date should not change unless for example put back due to low number of entries.
- Where all respondents receive goods must not call it a prize, it should be described as a gift.
- Instant win prizes must be shown immediately.
- Winners lists must be available on request.
- Winners must receive prizes within 6 weeks of promotion draw.
- Prize Draws:
  - Involves winning or being selected by chance.
  - When winning by chance get legal advice as forcing to buy or purchase in order to enter results in an illegal lottery. Usual response is no purchase necessary.
  - Possible to restrict respondents as long as no payment or purchase is required.
  - Chances of winning must be the same for all.
  - Drawing winner must be adjudicated by independent witness.
- Prize competitions:
  - Element of skill involved.
  - Must information whether prizes limited to entries of a certain standard.
  - Explain judging criteria.
  - Explain whether and how entries are returned.
  - Must ensure entrants are given adequate time to submit.
  - Selection of prizes must include one independent judge with skill in area of the competition.

## Other Sources of Advice

Other sources of advice on best practice for websites and Internet trading are:

- Which?  
<http://www.which.co.uk/>
- Trust UK  
[www.trustuk.org.uk](http://www.trustuk.org.uk)
- Trading Standards –  
[www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)
- Office of Fair Trading  
[www.oft.gov.uk](http://www.oft.gov.uk)

The OFT's booklet, *Shopping from Home – Your Distance Shopping Rights Explained* is available online at:  
[www.oft.gov.uk/shared\\_of/consumer\\_leaflets/general/oft334.pdf](http://www.oft.gov.uk/shared_of/consumer_leaflets/general/oft334.pdf)

## Further Information

This guide is for general interest - it is always essential to take advice on specific issues.

We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

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