

Changes to the Code of Practice for Traders on Price Indications

Government response to the consultation of March 2003 on proposed changes to the Code of Practice for Traders on Price Indications.

Background

Part III of the Consumer Protection Act 1987 makes it a criminal offence to give misleading price indications. Section 25 of the Act gives the Secretary of State power to approve codes of practice to give practical guidance to traders on good practice in avoiding the giving of misleading price indications. A Code of Practice under S. 25 of the Act was first approved in 1988. The DTI published proposals in March 2003 for updating the current Code.

The Code is addressed to traders and sets out what is good practice to follow in giving price indications in a wide range of different circumstances. It does not have mandatory force. Non-compliance with the Code is not, of itself, an offence, although it may be taken into account in establishing whether an offence has been committed under the Act. Likewise, compliance with specific aspects of the Code does not, necessarily, establish that a price indication is not misleading. Where an offence of giving a misleading price indication is alleged, a Court would have regard to all the relevant circumstances.

Although the Code seeks to give guidance on a range of practical situations, it cannot be comprehensive or address every situation in which price indications may be given.

The DTI's consultation paper on proposed changes to the Code followed informal consultation with major stakeholders – retailers, enforcers and consumer interests – on the changes they considered necessary to the Code.

In general, the proposed changes have three main aims:

- to bring the Code up to date, including advice on avoiding giving a misleading price indication through the Internet or other innovative selling mechanisms;
- to clarify the guidance where new relevant legislation has been introduced since the Code was issued in 1988, and on specific queries that have arisen; and
- to identify specific circumstances in which the basis of price comparisons should be made clear to the consumer.

Response to consultation

1. General

Of those respondents who expressed a view, most felt that the guidance provided by the Code was valuable, both to traders and enforcers, in helping to avoid misleading price indications.

Many comments were received proposing reference in the Code to other legal requirements relating to price indications (other, that is, than Part III of the 1987 Act). We have aimed to include references to such other requirements where these are particularly relevant and helpful. But the Code is not meant as a guide to legislation and it is not possible to cite every requirement which might be relevant in particular circumstances.

In addition to the specific changes that were consulted on, a number of respondents suggested further changes, in areas such as reference prices for price comparisons, or seasonal variation in prices of soft fruits. To the extent that these were not issues addressed in the consultation document, we do not think it would be right to make changes in the current round of revisions. But the Department will discuss with stakeholders the operation of the Code and the law in these areas, and consider, taking account of the implementation of the Unfair Commercial Practices Directive, whether further revisions to the Code might be desirable or necessary.

2. The Introduction to the Code

The Department sought comments on a number of proposed changes to the Introduction to the Code. The main changes were:

- to make it clear that the guidance applies to all retail sales, including websites;
- to clarify the status of the Code as guidance;
- to refer where appropriate to the Trading Standards Institute's Enforcement Concordat, to the Home Authority principle and to Trading Standards Officers' advisory role on relevant regulations.

There were very few comments on the proposed changes to this section of the Code. Of those who commented, the focus was on the inclusion of further references to other legislation that may be relevant.

We will make the changes proposed. As noted above, citations have been provided to other legislation which is particularly relevant, although this is not intended to be a comprehensive list. The text of the Introduction has also been further amended to emphasise that the Code does not have mandatory status and is no more than guidance on good practice in avoiding misleading price indications.

3. Definitions

We sought comments on a number of proposed changes to the definitions in the Code. The main changes were:

- a definition of a “distance contract” has been included, so that the Code covers sales that are concluded by any means without the simultaneous physical presence of the trader and the consumer.
- the previous definition of “shop” has been expanded to “outlet” to ensure that it covers all circumstances in which goods, services, accommodation or facilities are offered to consumers.
- the definition of “services” has been clarified to exclude services provided by an employee to his employer and facilities for a caravan which is the occupier’s main or only home.

Some respondents asked why definitions included in the Code were different to definitions in other legislation. The Code is intended to provide accessible practical guidance, and for that purpose it seems more helpful to provide simpler definitions which are appropriate to the context. The heading however now makes clear that the legal effect of terms used in any legislation depends on the definitions set out in the legislation.

4. Part 1 – Price comparisons

We sought comments on a number of proposed changes to Part 1 of the Code (on price comparisons). The main changes were:

- clarification of the circumstances in which price comparisons should be qualified in a way that is unambiguous, easily identifiable and clearly legible to the consumer;
- a warning against abusing the guidance on price comparisons by use of an inflated reference price;
- further advice on distance contract sales and new guidance on factory outlets;
- the removal of the requirement to show all prices when a series of reductions are made with only the first and final price being required plus any intervening prices that are lower than the final price.

Nearly all the enforcement bodies that responded expressed concern over the practice of artificially inflating selling prices for the purpose of establishing a misleading base from which to later claim a price reduction. Retail respondents however thought the reference to abuse was unclear. A few respondents called for paragraph 1.2.3 to be deleted.

In the light of a recent Court judgement, we consider that concerns about artificial reference prices are well founded, and we agree that the Code should be strengthened on this point. But we accept that the wording proposed did not make clear the nature of the abuse in question. Following further discussions with stakeholders, a new paragraph has been added (1.2.4) which advises that a price used as the basis of a price comparison should be a genuine retail price - a price at which the trader had a reasonable expectation of selling the goods in question.

Also, several enforcement bodies suggested that a previous price should in all instances have to be a price offered at the same outlet. We think that such a restriction would be a substantial departure from hitherto accepted practice, and would require fuller justification. However, where the previous price was not offered at the same outlet, the circumstances should be clearly explained (as the Code already advises).

5. Part 2 – Actual price to the consumer

We sought comments on a number of proposed changes to Part 2 of the Code (on actual price to the consumer). The main changes were:

- inclusion of a reminder that specific regulation (which may alter during the life of the Code) exists on price transparency in particular situations and circumstances and that up-to-date advice on it can be obtained from Local Authority Trading Standards Services;
- clarification on how the guidance in the Code relates to distance contracts, including the Internet; on pricing in foreign currencies in addition to sterling; and on the circumstances in which VAT inclusive prices must be given;
- some reordering of the text in the section covering service charges to make the sequence more logical;
- clarification of when “free call out” claims are appropriate

No substantive comments were received and these changes have been made.

6. Part 3 – Price indications that become misleading after they have been given

We sought comments on a number of proposed changes to Part 3 of the Code (on price indications that become misleading after they have been given). The main changes were:

- advice on giving a price indication which applies for a limited period only;
- clarification of guidance in relation to distance contracts;
- advice on the way in which changes to the rate of VAT might be indicated.

Some respondents expressed concern about the changes made to paragraph 3.5.1, recognising that a general notice may be used for displaying a change in the rate of VAT, as this might be applied to printed material such as mail order catalogues. We consider that the proposed amendment is generally helpful and should be retained, but traders should of course also consult the Price Marking Order and observe the relevant requirements (article 11).

7. Part 4 – Sale of new homes

We sought comments on a proposed change to Part 4 of the Code on the sale of new homes, namely the insertion of contact details for information on the provisions

applicable to old/second hand homes or commercial property. No comments were received, and the proposed change has been made.

Next steps

The Order was made on 12 September 2005 and comes into effect on 21 October 2005.

Consumer & Competition Policy Directorate
DTI

September 2005

Respondees

British Soft Drinks Association
Nottingham City Centre Retail Association
Hadaway & Hadaway Solicitors
Fife Trading Standards Service
Scottish Consumer Council
Retail Motor Industry Federation
Working Men's Club & Institute Union Ltd
Derby City Council
Meat and Livestock Commission
London Borough of Merton
Aberdeenshire Council
Scottish Grocers' Federation
National Consumer Federation
Trading Standards North West Region
Booksellers Association
South East Trading Standards Authorities
Wiltshire county Council
LAWMARK
Glasgow City Council
Midcots Trading Standards Service
National Association of Estate Agents
UK Metric Association
The Officers Club Ltd
ACCA
The Mail Order Traders' Association
Advertising Standards Association
The Wine and Spirits Association
The National Association of Goldsmiths
Tesco Stores Ltd
LACORS
Dr & Mrs R Rowell (Butterworths)
Halfords Ltd
British Retail Consortium
Petrol Retailers Association
The Co-Operative Group
Office of Fair Trading
Independent Television Commission
Lincolnshire County Council
British Hospitality Association
Advertising Association
Bucks Trading Standards Department
Courts Plc
Leicestershire County Council
Fine Art Trade Guild
Birmingham Trading Standards Department
Royal Pharmaceutical Society