



Commercial Briefing

Selling at a distance

Home shopping is now a well established part of the consumer shopping experience. People are increasingly looking to buy goods and services in new ways whether by mail order, over the internet or using interactive TV. Indeed recent surveys suggest that online sales in particular are growing rapidly.

These kinds of sales to consumers conducted in the non face-to-face environment are however subject to their own set of rules, commonly known as the Distance Selling Regulations. In this briefing, we take a look at the effect of these regulations and most importantly what should be done when selling goods and services at a distance.

What do the regulations say?

In summary, the regulations cover two key areas. The first area is concerned with the provision of information to consumers in relation to a wide range of issues relevant to the distance sale.

The second main area relates to the rights which consumers have to return goods and cancel arrangements in a number of situations.

Information provision

If you are distance selling then you must provide your customers with clear information about your organisation, the goods and services on offer and the arrangements for the transaction. The rationale behind these requirements is to ensure that customers fully understand the arrangements for sale which in turn enables them to decide whether or not they wish to make a purchase.

The list of information which should be given is fairly lengthy. By way of example, the customer should be informed about the price and payment requirements, delivery arrangements and be given a clear description of the goods or services on offer. In most scenarios, the information should be provided before the contract is concluded and this usually means before or early in the ordering process.

Key recommendations

- **Make sure that all information as stipulated in the regulations is given to your potential customers at an appropriate stage in the purchasing process, at all times being mindful of the nature of the distance communication and the products and services being offered.**
- **Ensure that systems and processes take account of the cancellation and refund rights which consumers have and importantly that they are dealt with in a timely manner. The timescales stipulated**

The means of distance sale is also an important factor here. The regulations do recognise that the amount of information which can be provided perhaps on a website very much differs from the amount of information which can be given say, over the phone or in a text message and therefore they set out requirements on what information should be given and very importantly, when.

The right to cancel the contract

Another thing which the customer must be informed of is his or her right to cancel the agreement and notably, must also be told where no such right exists. This cooling-off period gives a customer an unconditional right to cancel the contract and is usually a period of seven days from receipt of goods or booking of services. This seven day period can however be extended by up to three months if there is a failure by the seller to provide the correct information referred to above which can obviously have important consequences for sales revenue.

The regulations also contain provisions addressing the arrangements for return of goods and reimbursement of payment which should be made as soon as possible and certainly within a maximum period of 30 days from cancellation. This means that your sales and payment processing systems should allow for this whenever necessary in order to ensure that any appropriate reimbursement is done in a timely manner.

Exceptions

The rights of cancellation do not however apply to all types of distance sale. There are categories of goods and services where the cancellation rights don't apply, usually because of the nature of the goods or in the case of services, once the provision of that service has already begun. For example, the cancellation rights do not apply to goods which have been made to a customer's specification or to the sale of certain perishable goods, for example flowers or frozen foods.

In the case of services, cancellation rights do not apply if the service provision has already begun with the customer's agreement within the seven day cooling off period nor do they apply to certain leisure services which are to be provided on a specific date, for example theatre tickets. It should always be remembered however that even if cancellation rights do not apply, it does not necessarily provide exemption from the other requirements of the regulations.

are key so should be built into your ordering, delivery and payment procedures as appropriate.

- **Make sure that trading terms take full account of the distance selling regime – barring refunds and cancellations in terms and conditions which are otherwise available at law will be ineffective and moreover would not be viewed favourably should any disputes arise.**

- **Ensure that you are familiar with any sector specific regimes and guidance which may apply to your business and assess whether your distance selling activity takes account of them.**

Sector specific requirements and guidance

It is also worth noting that there are a number of regulations and guidance notes (produced by the Department of Trade and Industry) which deal with distance selling in specific sectors. Most notably, the sale and marketing of consumer financial services is subject to its own separate set of distance selling regulations with, for example different cancellation rights to take account of the nature of various financial services. There are also specific guidance notes available which take account of how the distance selling regime is to be applied to the sale of vehicles and consumer IT products as well as commentary from the DTI on application of the regulations to sellers of food, CDs and DVDs and many other products. This was produced following a consultation process and fairly recent amendment to the distance selling regime.

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