

# Regulatory Newsletter

## Penalties for health and safety offences increased

There have been major changes to the powers of punishment a court has in respect of any health and safety offences committed after 16 January 2009.

In certain cases maximum fines are increased and there is now the additional possibility of six months imprisonment. Courts can impose both.

The penalties for individuals are potentially very serious. All employees are under a duty to take care of the health and safety of others. Those found guilty of not doing so could face a fine of £5,000 but also six months imprisonment if the case proceeds in the Magistrates Court. Such a case heard in the Crown Court could attract an unlimited fine, two years' imprisonment OR BOTH.

There are similar penalties for those who are found guilty of interfering or misusing things provided for health and safety purposes.

Health and safety law involves many separate regulations and the previous maximum fine for a breach in the Magistrates Court was £5,000. Under these new rules in the Magistrates Court the imprisonment period is six months but if the Government enacts provisions of the Criminal Justice Act 2003 that six month period will increase to a maximum of 12 months.

There can be no doubt that these are significant changes and it remains to be seen how Courts will work with these new penalties. It seems inevitable that fines in the Magistrates Court, particularly for breach of regulations, will increase.

It may well mean that Magistrates take the views that their powers of punishment are



insufficient, resulting in many more cases being transferred to the Crown Court where the penalties are much greater. It will be how the courts exercise their new powers of imprisonment which will cause most interest, and equally, most fear, for those caught up in such situations.

*Chris Platts*

## New regulations start to bite?

The Consumer Protection from Unfair Trading Regulations 2008 (the "CPR"s) came into force on 26 May 2008 with the intention of shaking up the commercial practices adopted by businesses before, during and after a contract with a consumer is made.

The simple advice is that if a business deals fairly with its consumers and does not mislead, adopt aggressive selling practices or engage in any of the banned practices specified by the regulations, that business is likely to be compliant with the CPRs.

Since the introduction of the regulations, Trading Standards Departments and other enforcement bodies across the country have responded with vigour, seeking to enforce the CPRs using Civil or Criminal proceedings against businesses for as many breaches of the CPRs as can be identified.



When a single advert alone can contain multiple breaches of the CPRs and with the possibility of enforcement orders (injunctions by another name), imprisonment and unlimited fines, what help is available?

The Office of Fair Trading issues general guidance about the CPRs that will be taken into account by prosecuting authorities and the courts. Most recently, the Office of Fair Trading has published draft guidance for the second hand car industry. The guidance reviews the relevant regulations and provides examples of offences contained within them.

Regulation 6, for example, focuses on "Misleading Omissions" and covers the failure to provide information that a potential purchaser will need in order to make an "informed purchasing decision" before the sale. Although some of the examples provided by the Office of Fair Trading seem like common sense, there are others which are not so obvious and

which demonstrate the strict application of the regulations. One practice suggested as being a "misleading omission" is the failure by a car dealer to proactively inform a potential purchaser that a vehicle is a former rental vehicle.

To avoid attracting the attention of the local Trading Standards Department and risking enforcement action, all information intended to assist a consumer with a purchasing decision (whether contained in an advert or provided during a conversation with a salesman) must comply with the regulations.

*Jennifer Sewell*

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## The Unfair Terms in Consumer Contract Regulations 1999 – Keep it plain and simple

The OFT has recently examined an estate and letting agent's terms of business and has once again stressed the need for contract terms to meet the standard of fairness set out in the Regulations.



The estate agents dealt with individuals who were letting their homes for fixed terms whilst abroad. Their contracts allowed for commission to be charged on lease periods after the initial term, on renewals, extensions and continuations, and also in the event of a sale of the property to a tenant. The OFT determined that the terms relating to renewal commission were not drafted in plain and intelligible language. In addition, the commission provisions were unfair as they subjected the consumer to unexpected financial liabilities and conferred a benefit on the estate agent where the consumer was getting very little in return.

As these were not standard terms and the consumer may not have expected them, the estate agent should have taken steps to flag them up, which it had failed to do. Accordingly, the provisions were unfair and were not binding on the consumer.

The OFT's approach shows that businesses dealing with consumers should be aware of terms which create imbalance between the contracting parties, which could potentially be held to be unfair and therefore unenforceable.

*Rebecca Latus*

## Who is driving your company's vehicles?

The advent of unmanned speed cameras has led to a surge in the amount of requests made by the Police to businesses requesting the identity of the driver of a vehicle caught on camera.

If you cannot, when asked, identify a driver and cannot show that even applying "reasonable diligence" to that task you would still be unable to do so you run the risk of conviction and a fine of up to £1,000.

One local Court is convinced that many businesses cover up for their employees to avoid them getting penalty points and has introduced a policy of imposing the maximum fine of £1,000 if a business fails to identify a driver of one of its vehicles.

Never be tempted to cover up for any one. If you do, a fine of £1,000 may be the least of your worries if the Police choose to prosecute you for attempting to pervert the course of justice. The safest course is to introduce proper written records of all drivers of your business' vehicles. If you think that is impracticable to do then you had better be prepared to try and to convince the Court that it would be unreasonable to expect you to keep such records. The Court will take some convincing!

For further information, please contact Jennifer Sewell from Rollits Regulatory Group on 01482 337368, email [jennifer.sewell@rollits.com](mailto:jennifer.sewell@rollits.com)

*Jennifer Sewell*



## Using a mobile phone whilst driving

Most people are aware of the offence of using a mobile phone whilst driving and that this will attract a penalty. One recent case has seen a Judge decide that where an individual was switching off an alarm on a phone whilst driving this constituted "using the phone". A Police Officer spotted the driver's hand moving across the keys of the phone; although there was never any suggestion that the driver was making a call, a Judge decided that in effect it did not matter what the driver was doing and that switching off an alarm amounted to using a hand held phone. There seems little doubt that this rationale could be followed in other types of cases, so beware!

*Chris Platts*

## Information

If you have any queries on any articles in this newsletter or regulatory matters in general please contact: Chris Platts on 01482 337363 or George Coyle on 01482 337351

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The law is stated as at 1 February 2010.

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