businesscompanion
trading standards law explained

Part 2. Engagement

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Entering into a contract

Once a consumer is interested in purchasing energy-saving measures for installation in their home, a business will normally arrange to visit the property. The visit is a very important part of the whole process, and its primary purpose is to discuss the consumer's requirements and to agree a price.

This is also the opportunity for the business to assess the suitability of the measures being proposed and to conduct an initial site survey. This might include taking measurements, assessing the fabric of the home, assessing the quality of any existing energy-saving measures, and working out access to the water system, electricity and gas where appropriate.

The visit is normally the first time that the business will meet the consumer and is an opportunity to assess their potential vulnerability.

Businesses need to understand a range of issues during the pre-contract period, as follows.

Consumers will need to be given clear information about the products and services that they are intending to purchase. Product-performance claims made to consumers, both verbally and in writing, must be accurate. Providing false information is a criminal offence (as discussed in part 1). The use of 'up to' savings claims must be treated with extreme caution, particularly if the 'up to' figure is only rarely achieved in practice. In a situation where a consumer is led to believe that they will achieve the 'up to' saving when the evidence shows this is unlikely, the business may be guilty of criminal offences.

It is best practice for any energy performance calculations to be provided in writing to every consumer in plain, easily understandable language. Great care must be taken when producing these calculations because they will form a key part of any subsequent contract.

Any discussions about price that include discounts, sales or special offers must be genuine and not misleading. Using a list of inflated prices (which, in practice, are never charged) and then discounting from those inflated prices is likely to be misleading and a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Businesses should be fully aware of the *Guidance for Traders on Pricing Practices*, which can be found in 'Providing price information'. By following this guidance, it is unlikely that a business will commit a criminal offence relating to misleading pricing. All prices for consumers must include VAT.

Businesses need to exercise caution with how products and services are priced. Many consumers will not be familiar, for example, with the price of a heat pump because it is a product that they are unfamiliar with. Exploiting consumer vulnerability and charging extortionate sums for products or services is likely to breach criminal legislation, most notably the 'fraud by false representation' provisions of section 2 of the Fraud Act 2006.

High pressure and aggressive selling have traditionally been major problems when businesses visit consumers in their homes. It is a criminal offence under the CPRs for a business to engage in these practices. Although not precisely defined in law, businesses should avoid the following behaviours (this is not an exhaustive list):

- repeatedly visiting or contacting a consumer to secure a sale
- conducting sales visits that are excessive in length
- sales visits that last late into the evening
- not leaving a consumer's home when requested to do so (this is a specific criminal offence)
- refusing to leave until a contract has been signed
- getting a consumer to agree to work starting right away unless there is good reason to do so
- failing to recognise that a consumer is clearly confused or unsure about what they are doing
- stating that discounts are only available if a contract is signed immediately

Businesses are directly responsible and accountable for the actions of any employees or agents involved in the sales process. Some businesses employ sales agents on very high levels of commission, so it will come as no surprise that this might contribute to the likelihood of consumer detriment and breaches of consumer protection legislation.

A particularly important set of regulations for businesses in this sector are the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. They apply to contracts made both on and away from business premises, specifically in a consumer's home. The Regulations require detailed information to be given to consumers and, most crucially, give them a statutory 14-day cancellation period if they enter into a contract. It is possible for a consumer to ask for work to start right away but, unless there is a very good reason for doing so, a business that encouraged such behaviour might be investigated for high pressure or aggressive selling. Full details on these Regulations, in relation to off-premises sales, can be found in 'Consumer contracts: off-premises sales'.

There is no legal requirement for a business to provide a written contract, but it is strongly advised that this happens in the renewable energy, green heating and insulation sector. However, just because there is no written contract in place does not mean that a contract isn't formed. A written contract makes clear exactly what is being purchased, who the contracting parties are, the agreed price, when contract performance is expected to take place and any relevant terms and conditions. If a business wishes to rely on the terms of a contract, it is essential that those terms are 'fair'. Unfair terms are not legally binding on consumers, and enforcers can also take action to stop businesses from using them. See 'Unfair contract terms' for further information.

It is important for businesses to always act with professional diligence, especially in such a specialist and complicated field as this. Failure to do so can be a criminal offence under the CPRs (under the unfair commercial practices provisions). As an example, a business that accepted an order for a heat pump installation where the existing property infrastructure was wholly insufficient to allow the heat pump to work effectively could be guilty of an offence.

A business that fails to provide information that is relevant to the contract, or gives insufficient information about a product, might contravene the misleading omissions provisions of the CPRs. A good recent example of this might apply to the sale of spray foam insulation. Consumers who have purchased this product have subsequently experienced difficulties in selling their property or remortgaging due to the

inability of a surveyor to fully inspect the condition of the roof. A spray foam business that failed to mention this to a prospective purchaser might fall foul of this provision until this industry-wide issue is hopefully resolved during 2023.

It is good practice for consumers to obtain more than one quotation for any work that they want to have carried out. It is the headline price that will have the main impact on a consumer so it must be accurate and include all components of the proposed contract. This will include the cost of any products, the labour costs to install them and any associated costs, such as the erection of scaffolding.

When providing pricing information that is linked to projected future energy savings, consumers will be particularly interested in trying to establish the payback period and whether it makes economic sense to proceed with installing measures in their home. It is therefore imperative that businesses factor in any foreseeable additional costs that are likely to arise during the lifetime of a product. For example, with a solar PV system, a business should advise the customer that it is likely that the electrical inverter will need to be replaced and give an indication of the replacement cost and expected life cycle. Another example is a heat pump where, as a condition of any warranty, an annual service may need to be paid for by the consumer. Any foreseeable additional costs should always be flagged by a business.

Businesses will be asked by the consumer to indicate the date when any work will commence and how long it will take. This has the potential to form a term of the contract and if key dates are missed without reasonable excuse, the consumer may be able to claim compensation. Equally, if for any reason the consumer is unable or unwilling to allow access to the property without reasonable excuse, the consumer may be liable to compensate the business.

Where consumers are entitled to external funding or Government incentives, businesses must clearly explain the terms of these arrangements and any conditions or qualifying criteria that may be attached. Where grant-funded work is being carried out, the business must be properly certified according to the rules of the particular scheme that relates to the measures being installed.

Businesses must ensure that they have the appropriate authorisation from the Financial Conduct Authority if they are selling, arranging or discussing finance options with consumers. See 'Credit and other financial matters'.

Where renewable energy, green heating and insulation products are being installed in a consumer's home, there may be requirements to involve the local authority Building Control department. There may also be additional restrictions if the consumer lives in a conservation area or in a listed building. The business must ensure that any local authority procedures and permissions are flagged with the consumer, and it is clear what needs to be done and who will be doing it. This can be a complex area and there may be permitted development rights for most renewable energy projects, but it should always be checked. The Planning Portal website is very useful.

Once a price has been agreed with a consumer, it is reasonable for a business to take a deposit payment. Consumers are advised to never pay in full for work on their property and, as a rough guide, a reasonable deposit payment is 25% with staged payments thereafter. Full payment should only be taken on satisfactory completion of the work.

It is possible that consumers having measures installed in their homes may need to advise their home insurance company. This a grey area and requirements may vary between different insurance companies. Good practice for a business is to advise customers to notify their insurance company before any subsequent work is undertaken.

Contract performance

Any work that a business carries out in a consumer's home must be carried out with reasonable care and skill. There are important issues that businesses need to be aware of, which are outlined below.

Businesses need to be aware of their responsibilities under the Construction (Design and Management) Regulations 2015. The Health and Safety Executive website has a useful page that explains businesses' responsibilities under the Regulations.

Businesses need to take adequate precautions to prevent damage to the consumer's home, including the use of sheeting and protective covers. Consumers should be asked to remove any precious or valuable items from work areas. Businesses should try to plan work to minimise any disruption and, at the conclusion of the work, should ensure that the property is left clean and tidy. Adequate public liability insurance should also be in place.

Where sub-contractors are appointed by a business to deliver ancillary services at the consumer's property - for example, the erection of scaffolding - they should be competent and carry an appropriate level of public liability insurance. Businesses should keep in mind that they are responsible for the actions of sub-contractors who deliver services on their behalf. The consumer will take action against the contracting business, not any of that business's sub-contractors.

Businesses should keep the consumer updated during the progress of any work. If something goes wrong or something unexpected crops up, the business needs to keep the consumer informed and agree a way forward.

Businesses should ensure that any waste is disposed of responsibly and safely and that a waste carriage licence is held where necessary.

After installation

Once work has been completed, it is important for the business to show the consumer exactly what they have done. This may be quite simple in the case of insulation products, but it can also be very complicated in the case of a solar PV with battery storage installation. Take time to demonstrate how any appliances work and ask the consumer to demonstrate their understanding. Ensure that any operating instructions or manuals are handed over.

If a warranty or insurance-backed guarantee is provided with the measures that have been installed, it is vital that these are properly registered, and the relevant paperwork is provided to the consumer. If these warranties or guarantees were part of the sales process, failing to properly register them can be a criminal offence under the CPRs.

If a business is a member of an approved trader scheme or subscribes to a consumer code, there will be checklists of tasks that it will need to complete. These checklists must be meticulously followed.

< Part 1. Promotion

> Part 3. Complaints and redress

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