



Trading Standards Unit

Internet Sales Project
2006-07

Report

INTERNET SALES PROJECT 2006-07

Summary

The Highland Council Trading Standards Service aims to devote significant time and resources to project-led enforcement. We consider this to be the best way to address current issues of concern in a targeted and effective way. Information from a variety of sources is used to determine the areas of trade to be investigated, in particular:

- analysis of complaints received;
- views of officers from their observations of trading activity;
- the views, perceptions and priorities of various interested parties such as consumer and business associations, politicians and the media.

In 2006, we observed that all three of these sources pointed to the area of internet sales and in particular issues surrounding delivery charges to the Highlands. There also appeared to be related problems with the still relatively new Distance Selling Regulations. Accordingly, we decided to conduct a survey into these matters during the year 2006-07.

Our project had two distinct stages. First, a total of one hundred websites were checked for compliance with prices legislation and the DSRs. Then, further enquiries were made on sites that gave cause for concern. This involved a combination of test purchases, investigations by Highland Trading Standards and referrals to "home authorities".

An apparently high level of non-compliance was uncovered, with the overall headline figure of 40% being much higher than would be found in the majority of comparable Trading Standards contexts. Significant and useful enforcement work followed, with a number of written warnings issued and assurances given. More importantly, perhaps, non-compliant websites were amended and traders were observed to change illegal policies and procedures.

However, the project only included a small sample of the many thousands of websites that sell goods to the public. The findings suggest that there are many non-compliant websites on the internet. Further, even the compliant sites were seen to not always meet the "spirit" of the law, with important information not easily accessible.

Our experience with this project leads us to make a number of recommendations. We urge Trading Standards authorities to give a high priority to enforcement in the internet sales arena, and for government and representative bodies to recognise and promote such a prioritisation. Further, we suggest that the Regulations could be tightened, in particular by introducing a more prescriptive format for cancellation rights notification.

The Project

Over recent years, Highland Council Trading Standards Service has received increasing numbers of complaints about internet and other distance sales. These have involved a mixture of issues particular to this area, such as overcharging for delivery, and more general matters, such as failure to notify of cancellation rights. As a result, we conducted a project into these matters which included a “sweep” of websites to see if the problems encountered by our complainers were typical. To keep the project focused, we concentrated on issues surrounding misleading price indications and the Distance Selling Regulations (DSRs). Other Trading Standards matters – such as Trade Descriptions, Sale of Goods, Unfair Contract Terms and Credit – were not considered.

Ten product sectors were selected, each with a significant presence in the internet market. For each sector, ten websites were picked at random using internet search engines. There was a conscious effort to include a range of businesses sizes, from local sole traders to large multi-nationals. The intention was also to restrict the project to “respectable” business and not to seek out scams or select traders with a dubious history.

Analysis of the findings suggested three categories for the websites involved.

These categories were:

- Fully compliant or insufficient problems to justify a home authority referral
- Significant non-compliances worthy of a referral to home authority
- Problems justifying detailed investigation by Highland including test purchase.

The “inspection sweep” part of the project was carried out in December 2006. The test purchases and other investigations were mostly complete by the end of March 2007, with a few continuing beyond that.

There was a certain arbitrariness about the choice of businesses from which we carried out a test purchase. Generally, the sites that gave the most cause for concern were chosen, but there were no explicit “qualifying factors”. Further, the number of purchases was constrained by time and resource pressures. The outcome should not be taken to indicate that only eight of the one hundred sites involved warranted a test purchase; a number of others could also have been checked in this way had circumstances allowed.

The overall statistics are listed overleaf in Table 1.

Table 1

Product Type	Compliant	Home Authority Referral	Test Purchase And Detailed Investigation
Car Parts	5	4	1
Clothing	10	0	0
Computer Goods	6	4	0
DIY Goods	6	2	2
DVDs/ CDs	6	4	0
Electrical Goods	8	0	2
Furniture	6	2	2
Jewellery	6	4	0
Nursery Goods	6	4	0
Toys	5	4	1
Total	64	28	8

Table 1 shows that over one third (36%) of businesses were significantly non-compliant. On disregarding the compliant sector of clothing, the figure rises to 40% (i.e. 36 out of 90). We would suggest that this is a very high level of non-compliance, especially considering that the focus was on legitimate business.

The most common problems encountered were:

- Overcharging on test purchases
- Unclear delivery charges
- VAT-exclusive Pricing
- No indication of DSR cancellation rights
- Operating policies of refunding purchase price only and excluding other costs such as delivery charges

See Appendices 1 and 2 for more detailed statistics and case studies. The general work carried out in the three categories is outlined below.

Test Purchases

A total of eight test purchases were carried out, resulting in two formal warnings, two informal assurances, one no further action and four cases still pending with enquiries continuing.

Two of these purchases involved sellers of DIY products. Of these, one involved overcharging for delivery and various DSR failings. The outcome was a formal written warning. The second involved DSR failings, principally an incomplete refund, and ended with informal assurances being given by the company.

A further two test purchases were of electrical goods. The first of these resulted in overcharging for delivery and DSR contraventions over information and the refund offered. A formal written warning was issued to the trader, who also gave assurances as to future conduct. The other did not uncover any serious problems and resulted in no further action.

Two furniture retailers were also targeted. One of these involved a small overcharge and major failings regarding DSRs. The firm involved is now being investigated by the home authority. The other involved unclear delivery charges information.

Two other trade sectors saw one test purchase each, both still pending. A toy seller gave an incomplete refund and is still being pursued. The other related to the test purchase of car parts and involves VAT-exclusive pricing and DSR issues.

Referrals to Home Authority

The referrals were carried out in two ways: by telephone and by letter. The telephone referrals were in situations where the circumstances required some explanation and/or it was felt the situation was significant enough to “press” the

issue with the home authority. This was done in eleven cases, and each of the businesses involved is now under investigation by the home authority.

In 17 other cases a letter was sent to the home authority to inform them of non-compliances. These letters did not ask for a response and so only a few of the authorities have replied. It is unclear, therefore, how many of these are being investigated.

In total, therefore, 28 referrals were made to 23 different local authorities. These were spread throughout the country, from Hampshire and West Sussex to the Orkney Islands, and including authorities throughout England, in Wales and in South and Central Scotland. This illustrates that internet sellers are based all over the UK.

Compliant Sites

Even with many of the compliant traders there was a feeling they were failing to comply with the “spirit” of the law with the DSR information often “hidden away” in obscure parts of the site. As a consequence, it is possible to complete a purchase on most sites without accessing information about DSR cancellation rights. The assumption must be, therefore, that significant numbers of internet buyers are not aware of their cancellation rights when buying on-line. We are confident that appropriate survey evidence would back this up, and indeed may indicate that a **majority** of internet buyers are unaware of their rights.

For the DSRs to work effectively, it is essential that buyers know when they have cancellation rights. We are strongly of the view that information about these rights is not prominent enough on the majority of websites and the DSRs require to be amended to be more prescriptive about how the information is communicated.

There were also a number of issues identified which are outwith the remit of Trading Standards enforcement, but which have in the past been the subject of regular consumer complaints. Most prominent among these are perceived excessive delivery charges to Highland locations and complete refusals to sell to consumers based in the more remote Highland and Island areas.

Conclusions & Recommendations

The project by Highland uncovered a level of non-compliance which is unusually high for modern Trading Standards issues. This is exacerbated by the fact that only “legitimate” traders were selected: an active search for, and inclusion of, more dubious businesses would presumably have resulted in even higher non-compliance figures. Similarly, the work was restricted to overcharging and DSRs. Inclusion of other matters such as trade descriptions and unfair terms would almost certainly have increased the figures further.

The levels of non-compliance were much higher than those typically found via traditional “routine inspection” visits to physical shop premises. There are probably a number of reasons for this: not least the fact that internet sellers have the extra responsibilities of the DSRs and E-Commerce rules. We would also point to the fact that internet selling is still relatively new and typically internet traders will have received less attention from Trading Standards authorities than well-established high street shops. There is also the potential for a higher number of smaller-scale businesses, increasing the need for an “educating” enforcement role by Trading Standards.

Some of the problems encountered could be seen as significant in themselves: for example overcharging or a complete absence of DSR information and procedure. Other issues are more minor in a one-off situation, but present the possibility for significant consumer detriment when the practice is widespread. The best example of this is the giving of DSR refunds which exclude the original delivery charge and other extra (but unavoidable) charges. The project demonstrated that such policies are operated very widely across the internet market, in clear defiance of the requirements of the DSRs.

We make the following recommendations.

1. The DSRs need to be amended to require websites to give greater prominence to pre-contract information. In particular we would suggest a requirement that the Home Page of a website must contain a notice indicating the seven day cancellation period (if applicable); this notice to be of a minimum size of a specified proportion (perhaps 5%) of the screen size.
2. A more concerted effort is required by Trading Standards authorities to enforce the full range of Trading Standards law as it applies to internet traders. This may need to be at the expense of some traditional “routine inspection” of physical shop premises.
3. Internet selling needs to be given a higher priority by all the major players in consumer law enforcement, including OFT, DTI, LACORS, TSI and Trading Standards authorities
4. The Trading Standards National Performance Framework and other performance measures need to take account of these changing circumstances.

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Appendix 1 – Statistics

Table 2 Breakdown of types of non-compliance

Non-compliance	Number	Percentage Of Non-compliant Sites	Percentage Of Total Sites Checked	Percentage Of Total Sites Excluding Clothing*
Overcharging on test purchases	3	38% (total of 8 test purchases)	N/A	N/A
Unclear delivery charges	11	31%	11%	12%
VAT-exclusive Pricing	5	14%	5%	6%
Insufficient or incorrect DSR information	27	75%	27%	30%
Policy of Incomplete Refunds **	16	44%	16%	18%

** The clothing sector was found to be 100% compliant and is thought to be significantly different from the other trade sectors included.*

*** Figures for this are artificially low as the situation is unknown for some websites (only known if test purchase undertaken or site specifically states policy).*

Table 3 Non-compliances by trade sector

	Unclear Delivery Charges	VAT-Exclusive Pricing	Insufficient Or Incorrect DSR Information	Policy Of Incomplete Refunds**
Car Parts	20%	40%	40%	10%
Clothing	0	0	0	0
Computer Goods	10%	10%	40%	20%
DIY Goods	20%	0	30%	30%
DVDs/CDs	0	0	40%	10%
Electrical	20%	0	10%	10%
Furniture	30%	0	30%	10%
Jewellery	0	0	40%	20%
Nursery Goods	0	0	30%	30%
Toys	10%	0	60%	30%

*** Figures for this are artificially low as situation unknown for some websites (only known if test purchase undertaken or site specifically states policy).*

Appendix 2 – Case Studies

Case Study 1 – Test Purchase and Full Investigation

Company F sells household electrical appliances. Delivery charges identified as unclear and possibly misleading so test purchase carried out. Suspicions confirmed when test purchase resulted in higher charge for delivery than indicated in price displays on website. Covert action continued by cancelling the order under the DSRs. This resulted in an incomplete refund which excluded the delivery charges. DSRs issues raised with Company F who acknowledged failings and amended website to clarify delivery charges. Company also gave assurances to comply with DSRs fully in future. Formal warning issued to company with regard to offences under Consumer Protection Act Part III regarding the overcharging.

Case Study 2 – Home Authority contacted by telephone

Company D sells jewellery. Returns policy gave buyers two days to return unwanted items. Case officer telephoned home authority officer for Company D. Home authority officer visited company who agreed to amend website and gave assurances as to future compliance.

Case Study 3 – Letter to Home Authority

Company I sells computer products. Prices on website are VAT-exclusive and there is no indication of the right to cancel. Letter sent to home authority.

Case Study 4 – Compliant Trader

Company M sells CDs and DVDs. The right to cancel is indicated in the “Help” section on the website and is not particularly prominent to the buyer. No action taken as no breaches of law but information does not appear to be as readily available as the Regulations intend.

Case Study 5 – “Political” issues relevant to Highland

Company L sells computer products. No clear non-compliances on website but delivery charges to Germany and France are cheaper than those to the mainland Scottish Highlands (e.g. Inverness).

Company X is a multinational seller of electrical goods and refuses to deliver items to the Isle of Skye, which is connected to mainland UK by a toll-free bridge.