

## **Consumer protection law compliance**

### **Principles for businesses offering online accommodation booking services**

#### **Who are these principles for?**

1. These principles are intended for use by any business offering online accommodation booking services. This includes online travel agents (OTAs), metasearch engines (MSEs), big hotel chains and individual hotels offering online booking.
2. The principles are also likely to be of relevance to other online businesses who engage in the practices described below.

#### **What is the background to these principles?**

3. Online hotel<sup>1</sup> booking websites, including OTAs, MSEs and hotel chains, play a significant role in helping consumers find, compare and book hotels online.
4. In October 2017, the Competition and Markets Authority (CMA) announced that it was opening a sector-wide investigation into accommodation booking platforms' practices as it was concerned that in some instances the clarity, accuracy and presentation of information on these platforms could mislead people and stop them finding the best deal.<sup>2</sup>
5. Following this review, in June 2018, the CMA opened investigations against a number of hotel booking websites.
6. In February 2019, those hotel booking websites provided the CMA with formal commitments to not engage in certain practices which the CMA considered may mislead consumers.
7. The CMA is committed to ensuring compliance with consumer protection law across the online hotel booking sector. To help deliver compliance, the CMA has drawn out key principles from the formal commitments it obtained.

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<sup>1</sup> Throughout this document, we refer to "online hotel booking websites", but the principles apply equally to other online accommodation booking platforms. References to hotel means any separately listed lodging, including but not limited to hotels, hostels, bed and breakfasts, guest houses vacation rentals, and holiday apartments.  
<sup>2</sup> Online hotel booking case page

8. The CMA considers that, if online hotel booking sites diligently apply these principles, those businesses will be less likely to breach consumer protection law in particular the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs).
9. In the following pages, we give:
  - An overview of the practices which caused the CMA concern and the principles which address those concerns;
  - A more detailed explanation of each of the practices and the principles which the CMA expects online hotel booking sites to apply;
  - Some information about interpreting the principles; and
  - Links to other sources of advice on compliance with consumer protection law.

## **What are the practices of concern and principles for compliance?**

### ***Practices and principles in brief***

10. A summary of the key principles which the CMA considers relevant to each practice are set out in Table 1.

Table 1 – examples of key principles

<b>Practice</b>	<b>Key principles</b>
Failure to disclose the effect of payments on search results	If money earned by the hotel booking website, for example as the result of a booking or “click” by a consumer, may affect how search results are ranked, the hotel booking website must explain this to the consumer in clear and prominent static text.
Misleading reference prices	<p>Comparisons between offers must not be presented in a manner which falsely implies a price discount.</p> <p>Any differences between the offers that form the basis of the comparison must be clearly and prominently identified.</p> <p>Price comparisons that are presented as a discount must represent a genuine saving for consumers.</p>

Misleading presentation of prices	The price displayed must be the total cost, including all compulsory charges that are reasonably calculable based on the search criteria (such as city tax and resort fees). Charges are compulsory if consumers cannot avoid them.
Misleading popularity and availability statements	<p>Statements about popularity and availability must:</p> <ul style="list-style-type: none"> <li>• be clear;</li> <li>• disclose the assumptions, limitations and qualifications that are relevant to the statement; and</li> <li>• be substantiated by the hotel booking website's data.</li> </ul>

### ***Practices and principles in detail***

#### *Practice 1 - Failure to disclose the effect of payments on search results*

11. The CMA has considered the way in which search results are ranked and displayed to consumers, and the information given to consumers about this. The ranking, and in particular the default ranking whereby results are presented to consumers after they enter their search criteria, is, in the CMA's view, a crucial factor in determining which hotel a consumer chooses.
12. The CMA's Digital Comparison Tools Market Study<sup>3</sup> (DCTs Market Study) found that consumers typically think that comparison sites are not pushing any particular supplier or product, and that results are unbiased. Furthermore, the DCT Market Study found that comparison sites may breach the CPRs if they do not provide clear information upfront about the effects of any commercial relationships on the ranking of results.
13. It is common practice for the default ranking in particular to be influenced by a number of factors, including the amount of money earned by the hotel booking website from the hotel (or from other sources). Where hotel booking websites fail to clearly and effectively explain to consumers the methodology for

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<sup>3</sup> <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>

determining the ranking, consumers may take a transactional decision<sup>4</sup> without sufficient knowledge of the commercial relationship underlying the recommendations. For example, consumers may interpret the search results presented in the default listing as being tailored entirely based on their search criteria and in their interest, without any direct reference to the interests of the hotel booking website.

14. During the investigation, the CMA found that some hotel booking websites did not provide this information to consumers at all, some included a reference to the fact they receive payments, but not the impact that had on the ranking. In some instances, the information was included in the terms and conditions or limited information was displayed in hover over text on the search results page. The CMA considered that those disclosures did not sufficiently bring to consumers' attention that the amount hotel booking websites were paid could affect their search results.

*What the CMA expects hotel booking websites to do*

15. If money earned by the hotel booking website from a hotel may<sup>5</sup> affect how search results are ranked, the hotel booking website must explain this to the consumer. The explanation must be in clear and prominent static text either:
  - on the same webpage, screen or equivalent as the search results; or
  - on any webpage, screen or equivalent where a consumer can carry out a search for hotels; or
  - on a webpage, screen or equivalent presented during the period from when the consumer carries out a search for hotels until immediately before the consumer is presented with the search results.
16. For the avoidance of doubt, it is insufficient to require consumers to take action in order to view this information, for example by presenting it in hover over text or via a link to another page.
17. If money earned has affected the ranking and this has been disclosed as required at para 15 above, the hotel booking site may provide further

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<sup>4</sup> The term "transactional decision" is widely defined in case law and is not limited to the decision whether or not to make a purchase. In this sector, it may include, for example, deciding not to continue searching for a hotel room or clicking through to the next page in the booking process.

<sup>5</sup> For example this could include instances where commission is the sole factor, or a decisive factor, or a factor taken into account only where all other factors used to determine the ranking are equal.

information about how money earned affects the ranking of search results in non-static text, such as a hover-over message or a link to another page.

18. In circumstances where a particular listing has paid to appear in a specific, pre-determined position in the search results page, such listings must be:
- clearly and prominently labelled as such; and
  - differentiated from other listings.

### *Practice 2 - Misleading reference prices*

19. Reference pricing, where the price of a product or service is compared to a different price (which is usually higher), this higher price can be viewed by consumers as an anchor for estimating the value of a product or service.<sup>6</sup> Misleading reference pricing, where the reference price does not reflect the genuine or underlying value of the product or service, can cause consumers to overvalue the product or service and increase the amount they are prepared to pay for it. This can cause consumers to take a transactional decision that they would otherwise not have taken.<sup>7</sup>

### *What the CMA expects hotel booking websites to do*

#### *Comparisons with prices in different circumstances*

20. Comparisons between prices that are payable in different circumstances (for example comparing prices for different stay dates) must not imply that the comparison represents a price discount. For example, the hotel booking website must:
- (a) clearly and prominently identify and differentiate between the relevant features of the two offers (e.g. through static text immediately adjacent to the comparison); and
  - (b) not present the comparison with a strike-through line, “% off”, “reduced”, specific value claims or any equivalent wording or presentation, unless the hotel booking website has clearly and prominently identified and

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<sup>6</sup> Office of Fair Trading, [Advertising of Prices December 2010](#), explained that ‘Evidence set out in the psychology literature review shows that a reference price is very effective at encouraging consumers to make a purchase they may not otherwise have made by increasing consumers perceptions of the value of the product and the inferred saving. This change in perception arises because consumers do not fully adjust their perceptions of the offer away from the reference (or ‘anchor’) price.’

<sup>7</sup> Evidence suggests that reference pricing can still influence consumers where reference prices are exaggerated or where consumers are sceptical about whether the references are genuine. See Office of Fair Trading, [Advertising of Prices December 2010](#).

differentiated between the two offers in accordance with paragraph 20.(a) above.

#### *Comparisons with offers that are bookable on other websites*

21. Where one hotel offer is compared with another hotel offer that is bookable on another site (e.g. on a hotel provider's website or another booking site), the hotel booking website must:
- clearly and prominently identify and differentiate between the two offers, including by clearly and prominently displaying the name of the hotel provider or booking site in permanent static text immediately adjacent to the comparison; and
  - clearly provide details of the comparison offer; and
  - take appropriate steps to ensure the offer is genuinely available to book at the time the comparison is made and that the comparison does not become misleading in circumstances where the hotel offer made elsewhere has changed; and
  - not create the impression that the comparison shows a discount. For example, the hotel booking website will not use the messaging referred to in paragraph 20.(b) above, unless:
    - the comparison is made between offers with the same stay dates, comparable room types and comparable booking conditions; or
    - the hotel booking website has clearly and prominently identified and differentiated between the relevant features of the two offers (e.g. through permanent static text immediately adjacent to the comparison).

#### *Price discounts*

22. Price comparisons that are presented as a discount must represent a genuine saving for consumers.
23. When showing a discount, the hotel booking website must provide details about what the reference price refers to.
24. Where the discount is set by the hotel booking website, the hotel booking website must:
- (a) take all steps that are reasonably practicable to ensure that the reference price used as a comparator is the price that a consumer would have genuinely had to pay in circumstances matching their search criteria; and

(b) when assessing whether the reference price is genuinely payable, the hotel booking website should take into account, in particular, the “*CTSI Guidance for traders on pricing practices*” and the sections of the “*UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing*” that relate to prices, as amended from time to time.

25. Where the discount is set by the hotel, the hotel booking website will:

- (a) refer the hotel to the guidance, or an explanation of the guidance described above in paragraph 24.(b).
- (b) put in place appropriate mechanisms to ensure that the reference price is genuinely payable, such as audits or other technical means available to the hotel booking website; and
- (c) take appropriate action to ensure compliance where the mechanism set out in paragraph 25.(b) demonstrates that the reference prices were not genuine prices.

### *Practice 3 - Misleading presentation of prices*

26. In circumstances where unavoidable fees, charges and taxes that are reasonably calculable in advance, such as city tax and resort fees, are not presented to the consumer in a way that is sufficiently clear, prominent or timely, consumers may:

- believe the total cost of the room is lower than it really is; and/or
- find it more difficult to compare prices across platforms; and/or
- find it more difficult to understand the total price.

### *What the CMA expects hotel booking website to do*

27. To ensure that consumers are not misled about the amount they have to pay, hotel booking websites must ensure that:

- (a) The price shown is the total cost, including all compulsory taxes, charges and fees that are reasonably calculable based on the search criteria (such as city tax and resort fees). Charges are compulsory if consumers cannot avoid them.
- (b) Where elements of the total price are calculable in a foreign currency, the approximate total must be calculated and included in the total price. An explanation of how the amount has been calculated (e.g. the currency

exchange rate used) must be provided no later than the stage at which the consumer will complete their booking.

- (c) Where a breakdown of the price is displayed, the total price must be displayed clearly and prominently next to the constituent elements.
- (d) If results are ranked by price, the ranking must be based on the total price unless specifically requested by the user. The total price must still be displayed, as set out in para 27.(a), regardless of the ranking criteria selected.
- (e) If a user requests that search results are ordered according to a combination of price together with other criteria (e.g. star rating, customer reviews), the price element used to determine the ranking must be the total price.
- (f) Once a consumer selects optional extra products or services, the cost of these must be included in the price displayed.

*Practice 4 - statements about popularity and availability and price*

28. Statements about the popularity and availability of destinations and/or hotels and/or prices should be designed with the purpose of informing consumers. They should not be designed in order to create an artificial impression of scarcity. Table 2 below includes examples of the types of statements and practices observed by the CMA and a summary of the CMA’s concerns.

Table 2 – examples of popularity and availability statements

<b>Example statement / practice</b>	<b>CMA’s concerns</b>
“x other people are viewing this property right now”	<p>The CMA considers that consumers will understand the statement to mean that the hotel inventory relevant to the consumer’s search is popular and/or is selling quickly, when in fact the claims may refer to other dates or rooms unrelated to the consumer’s search.</p> <p>Furthermore, where statements refer to a timed element such as “right now” the CMA is of the view that consumers are likely to understand that the claim is based on real-time data.</p>



	<p>If this is not the case the consumer may be misled to believe that they are in competition with other consumers for the same room and stay dates.</p>
<p>“Destination Y is x% booked for your travel dates”</p>	<p>The CMA considers that the statement creates the misleading impression that it refers to the total availability of hotels at the selected destination, and not just those hotels that are available to the hotel booking website.</p>
<p>(i) “x rooms left” /  (ii) “X rooms left on our site”</p>	<p>The CMA is concerned that the statements create the misleading impression that:</p> <p>(i) the number of rooms referred to in the statement represent the total number of rooms available at the hotel rather than the number of rooms available on the hotel booking website; and / or</p> <p>(ii) the number of rooms referred to in the statement represent the total number of rooms available on the hotel booking website that meets the consumer’s search criteria, not just the availability of the exact room type featured on the search results page.</p>
<p><i>Time limited offers – for example listings labelled as “Deal of the Day” or similar. These may also include an image of a clock and a timer counting down the hours minutes and seconds before the offer expires. The display may also include a struck through higher price and a “x% saving” claim.</i></p>	<p>The CMA considers that such statements create the impression that the consumer has a limited period of time to accept an offer, after which the price will increase. The CMA has observed instances where the price remained the same after the time limit indicated. In this scenario the consumer is misled as to the existence of a genuine price advantage.</p>
<p>Sold out listings - Intentionally inserting sold out hotels to appear at specific</p>	<p>The CMA considers that the inclusion of ‘sold out’ listings in pre-selected slots (irrespective of the ranking criteria selected by the consumer) gives those listings false prominence, which in turn</p>

positions within the selected ranking option regardless of whether the hotel would have appeared in that slot had it been available.	creates a false and misleading impression about the popularity and availability of hotels matching the consumer's needs.
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*What the CMA expects hotel booking websites to do*

29. Statements about popularity and availability must:
- (a) be clear;
  - (b) disclose the assumptions, limitations and qualifications that are relevant to the statement; and
  - (c) be substantiated by the hotel booking website's data.
30. In particular:
- (a) if a statement is not based on real time data it must disclose the time-period to which it relates (e.g. "in the last X minutes" rather than "right now") in at least the same format, and as clearly and prominently, as that used to display the statement.
  - (b) if statements about the number of consumers viewing or searching for a destination, hotel or room type do not relate to the same destination, hotel, stay dates or other search criteria (other than occupancy level) selected by the consumer then this must be explained in at least the same format, and as clearly and prominently, as that used to display the statement;
  - (c) statements about the availability of hotels or room types for a destination must state in at least the same format, and as clearly and prominently, as that used to display the statement that this represents only those hotels and / or rooms available to the hotel booking website.
  - (d) statements about the number of available rooms in a hotel must include any applicable qualifications (e.g. that the statement only applies to rooms available to the hotel booking website and at a particular offer price and not to all rooms).

### *Time limited offers*

31. An offer must not be presented as being time limited in circumstances where it will continue to be made available beyond the stated period. Examples of the steps hotel booking websites must take to promote genuine time-limited offers include:
- referring hotels that submit time limited offers to the principle at paragraph 31 above; and
  - putting in place appropriate mechanisms to ensure that the advertised price will not continue to be available after the expiry of the stated period. Such mechanisms may include, but are not limited to, appropriate audit mechanisms or other technical means available to the hotel booking website.
  - ensure that the presentation of non-time limited offers does not include countdown timers or other messages or graphics which imply there is a deadline after which the advertised price will no longer be available.
32. For the avoidance of doubt paragraph 31 does not prevent a time limited offer from being made available at a future time provided that:
- the price was not presented as a unique offer that would not be repeated; and
  - a reasonable period of time has elapsed after the expiry of the stated time period.

### *Sold-out hotels*

33. Sold-out hotels must not be displayed in pre-determined positions in the search results unless:
- (a) absent the ranking system specifically placing sold-out hotels in pre-determined positions, the hotel would ordinarily have occupied the same or a substantially similar position, based on the consumer's search criteria; or
  - (b) where 33.(a) is not possible, the position of a sold-out hotel is appropriate within the search results based on the consumer's search criteria; or
  - (c) the sold-out hotels only appear after all the listings that are available to book.

## Interpreting the principles

Each of the principles apply wherever and in whatever format the hotel booking website makes search and booking of standalone hotels available to UK consumers on its websites. This includes but is not limited to mobile, tablet and application-based formats of the websites.

For the avoidance of doubt, these principles apply to online accommodation booking platforms. This includes online travel agents, metasearch engines and, where relevant, hotel websites.

The following definitions are relevant:

clear and clearly means information must be:

- clear
- displayed in plain language
- easily understandable
- accurate
- not misleading, both by action or omission

hotel means any separately listed lodging, including but not limited to hotels, hostels, bed and breakfasts, guest houses vacation rentals and holiday apartments.

prominent and prominently means information must be presented so that it:

- is noticeable to consumers
- is in a font, size, colour and position to enable the consumer to easily identify, read and understand the information, including as compared with other information on the page
- does not require the user to take any action to access the information

ranking means the relative prominence given to a hotel in the search results.

static text means text (or other information) which is automatically displayed on the face of the website without the need for any triggering action from the consumer. For the avoidance of doubt, unless otherwise stated, static text does not include text that appears for a limited period of time, for example “hover-over” text, or text available via a link to another page.

Where additional information is required to supplement a statement, the explanatory text must not materially alter or contradict the impression created by the original

statement. If this is the case, the requirement to provide information clearly will not be met.

For the avoidance of doubt, the principles set out above are not intended to be exhaustive and are not a substitute for legal advice. You should regularly review your practices to ensure they comply with the law.

## Sources of guidance on consumer law compliance

The following documents will also be relevant when reviewing your practices:

- [Guidance on the Consumer Protection from Unfair Trading Regulations 2008](#)
- [CMA guidance on Unfair Contract Terms](#)
- The CMA's Digital Comparison Tools Market Study (DCT Market Study) identified 4 high-level principles for how digital comparison tools (DCTs) should behave, in order to support consumer trust and informed choice between DCTs and between suppliers. DCTs should treat people fairly, by being Clear, Accurate, Responsible and Easy to use (the CARE principles). Further information is available via the following link:
- <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study#final-report>
- The Chartered Trading Standards Institute has produced [Guidance for Traders on Pricing Practices](#).
- [\*The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing\*](#)

## Conclusion

Online accommodation booking platforms can be a very valuable source of information for people looking for hotels and other short-term accommodation. It is crucial that these platforms operate in a way which is fair and not misleading to consumers.

The CMA expects all online accommodation booking platforms to comply with consumer protection law. These principles should help any such platform to comply with the law and address the CMA's concerns.

To the extent there is any conflict in wording or interpretation between this document and the signed undertakings<sup>8</sup> upon which the above principles are based, the signed undertakings would prevail. We note that only a court can determine whether there has been a breach of consumer protection law.

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<sup>8</sup> [online-hotel-booking#undertakings](#)