



Fair Trading Act 1973

1973 CHAPTER 41

PART III

ADDITIONAL FUNCTIONS OF DIRECTOR FOR PROTECTION OF CONSUMERS

34 Action by Director with respect to course of conduct detrimental to interests of consumers

- (1) Where it appears to the Director that the person carrying on a business has in the course of that business persisted in a course of conduct which—
- (a) is detrimental to the interests of consumers in the United Kingdom, whether those interests are economic interests or interests in respect of health, safety or other matters, and
 - (b) in accordance with the following provisions of this section is to be regarded as unfair to consumers,

the Director shall use his best endeavours, by communication with that person or otherwise, to obtain from him a satisfactory written assurance that he will refrain from continuing that course of conduct and from carrying on any similar course of conduct in the course of that business.

- (2) For the purposes of subsection (1)(b) of this section a course of conduct shall be regarded as unfair to consumers if it consists of contraventions of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty, prohibition or restriction is imposed in relation to consumers as such or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention.
- (3) A course of conduct on the part of the person carrying on a business shall also be regarded for those purposes as unfair to consumers if it consists of things done, or omitted to be done, in the course of that business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any enactment or rule of law and enforceable by civil proceedings, whether (in any such case) civil proceedings in respect of the breach of contract or breach of duty have been brought or not.

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- (4) For the purpose of determining whether it appears to him that a person has persisted in such a course of conduct as is mentioned in subsection (1) of this section, the Director shall have regard to either or both of the following, that is to say—
- (a) complaints received by him, whether from consumers or from other persons;
 - (b) any other information collected by or furnished to him, whether by virtue of this Act or otherwise.

35 Proceedings before Restrictive Practices Court

If, in the circumstances specified in subsection (1) of section 34 of this Act,—

- (a) the Director is unable to obtain from the person in question such an assurance as is mentioned in that subsection, or
- (b) that person has given such an assurance and it appears to the Director that he has failed to observe it,

the Director may bring proceedings against him before the Restrictive Practices Court.

36 Evidence in proceedings under s.35

- (1) For the purposes of section 11 of the Civil Evidence Act 1968, section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 7 of the Civil Evidence Act (Northern Ireland) 1971 (each of which relates to convictions as evidence in civil proceedings), proceedings under section 35 of this Act shall (without prejudice to the generality of the relevant definition) be taken to be civil proceedings within the meaning of the Act in question.
- (2) Where in any proceedings under section 35 of this Act the Director alleges such a breach of contract or breach of duty as is mentioned in section 34(3) of this Act, a judgment of any court given in civil proceedings, which includes a finding that the breach of contract or breach of duty in question was committed,—
 - (a) shall be admissible in evidence for the purpose of proving the breach of contract or breach of duty, and
 - (b) shall, unless the contrary is proved, be taken to be sufficient evidence that the breach of contract or breach of duty was committed.
- (3) For the purposes of subsection (2) of this section no account shall be taken of a judgment given in any civil proceedings if it has subsequently been reversed on appeal, or has been varied on appeal so as to negative the finding referred to in that subsection.
- (4) In subsection (1) of this section " the relevant definition " means section 18(1) of the Civil Evidence Act 1968, section 17(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 14(1) of the Civil Evidence Act (Northern Ireland) 1971, as the case may be.

37 Order of, or undertaking given to, Court in proceedings under s.35

- (1) Where in any proceedings before the Restrictive Practices Court under section 35 of this Act—
 - (a) the Court finds that the person against whom the proceedings are brought (in this section referred to as " the respondent") has in the course of a business carried on by him persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and

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- (b) the respondent does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and
- (c) it appears to the Court that, unless an order is made against the respondent under this section, he is likely to continue that course of conduct or to carry on a similar course of conduct,

the Court may make an order against the respondent under this section.

- (2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(a) of this section relates, and shall direct the respondent—
 - (a) to refrain from continuing that course of conduct, and
 - (b) to refrain from carrying on any similar course of conduct in the course of his business.

- (3) Where in any proceedings under section 35 of this Act the Court makes such a finding as is mentioned in subsection (1)(a) of this section, and the respondent offers to give to the Court an undertaking either—
 - (a) to refrain as mentioned in paragraphs (a) and (b) of subsection (2) of this section, or
 - (b) to take particular steps which, in the opinion of the Court, would suffice to prevent a continuance of the course of conduct to which the complaint relates and to prevent the carrying on by the respondent of any similar course of conduct in the course of his business,

the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

38 Provisions as to persons consenting to or conniving at courses of conduct detrimental to interests of consumers

- (1) The provisions of this section shall have effect where it appears to the Director—
 - (a) that a body corporate has in the course of a business carried on by that body persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and
 - (b) that the course of conduct in question has been so persisted in with the consent or connivance of a person (in this and the next following section referred to as " the accessory ") who at a material time fulfilled the relevant conditions in relation to that body.
- (2) For the purposes of this section a person shall be taken to fulfil the relevant conditions in relation to a body corporate at any time if that person either—
 - (a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity, or
 - (b) whether being an individual or a body of persons, corporate or unincorporate, has at that time a controlling interest in that body corporate.
- (3) If, in the circumstances specified in subsection (1) of this section,—
 - (a) the Director has used his best endeavours to obtain from the accessory such an assurance as is mentioned in the next following subsection and has been unable to obtain such an assurance from him, or

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- (b) the accessory has given such an assurance to the Director and it appears to the Director that he has failed to observe it,
the Director may bring proceedings against the accessory before the Restrictive Practices Court.
- (4) The assurance referred to in subsection (3) of this section is a satisfactory written assurance given by the accessory that he will refrain—
- (a) from continuing to consent to or connive at the course of conduct in question;
 - (b) from carrying on any similar course of conduct in the course of any business which may at any time be carried on by him ; and
 - (c) from consenting to or conniving at the carrying on of any such course of conduct by any other body corporate in relation to which, at any time when that course of conduct is carried on, he fulfils the relevant conditions.
- (5) Proceedings may be brought against the accessory under this section whether or not any proceedings are brought under section 35 of this Act against the body corporate referred to in subsection (1) of this section.
- (6) Section 36 of this Act shall have effect in relation to proceedings under this section as it has effect in relation to proceedings under section 35 of this Act.
- (7) For the purposes of this section a person (whether being an individual or a body of persons, corporate or unincorporate) has a controlling interest in a body corporate if (but only if) that person can, directly or indirectly, determine the manner in which one-half of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

39 Order of, or undertaking given to, Court in proceedings under s.38

- (1) Where in any proceedings brought against the accessory before the Restrictive Practices Court under section 38 of this Act—
- (a) the Court finds that the conditions specified in paragraphs (a) and (b) of subsection (4) of that section are fulfilled in the case of the accessory, and
 - (b) the accessory does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and
 - (c) it appears to the Court that, unless an order is made against the accessory under this section, it is likely that he will not refrain from acting in one or more of the ways mentioned in paragraphs (a) to (c) of subsection (4) of that section,
- the Court may make an order against the accessory under this section.
- (2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(a) of this section relates, and shall direct the accessory, in relation to the course of conduct so indicated, to refrain from acting in any of the ways mentioned in paragraphs (a) to (c) of subsection (4) of section 38 of this Act.
- (3) Where in any proceedings under section 38 of this Act the Court makes such a finding as is mentioned in subsection (1)(a) of this section, and the accessory offers to give to the Court an undertaking either—
- (a) to refrain from acting in any of the ways mentioned in paragraphs (a) to (c) of subsection (4) of that section, or

(b) to take particular steps which, in the opinion of the Court, would suffice to prevent him from acting in any of those ways,
the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

40 Provisions as to interconnected bodies corporate

- (1) This section applies to any order made under section 37 or section 39 of this Act.
- (2) Where an order to which this section applies is made against a body corporate which is a member of a group of interconnected bodies corporate, the Restrictive Practices Court, on making the order, may direct that it shall be binding upon all members of the group as if each of them were the body corporate against which the order is made.
- (3) Where an order to which this section applies has been made against a body corporate, and at a time when that order is in force—
 - (a) the body corporate becomes a member of a group of interconnected bodies corporate, or
 - (b) a group of interconnected bodies corporate of which it is a member is increased by the addition of one or more further members,the Restrictive Practices Court, on the application of the Director, may direct that the order shall thereafter be binding upon each member of the group as if it were the body corporate against which the order was made.
- (4) The power conferred by subsection (3) of this section shall be exercisable—
 - (a) whether, at the time when the original order was made, the body corporate against which it was made was a member of a group of interconnected bodies corporate or not, and
 - (b) if it was such a member, whether a direction under subsection (2) of this section was given or not.

41 Concurrent jurisdiction of other courts in certain cases

- (1) In any case where—
 - (a) the Director could bring proceedings against a person before the Restrictive Practices Court under section 35 or section 38 of this Act, and
 - (b) it appears to the Director that the conditions specified in the next following subsection are fulfilled,the Director may, if he thinks fit, bring those proceedings in an appropriate alternative court instead of bringing them before the Restrictive Practices Court; and, in relation to any proceedings brought by virtue of this section, the appropriate alternative court in which they are brought shall have the like jurisdiction as the Restrictive Practices Court would have had if they had been brought in that Court.
- (2) The conditions referred to in the preceding subsection are—
 - (a) that neither the person against whom the proceedings are to be brought nor the person against whom any associated proceedings have been or are intended to be brought is a body corporate having a share capital, paid up or credited as paid up, of an amount exceeding £10,000, and
 - (b) that neither those proceedings nor any associated proceedings involve or are likely to involve the determination of a question (whether of law or of fact)

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of such general application as to justify its being reserved for determination by the Restrictive Practices Court.

- (3) For the purposes of this section, the following shall be appropriate alternative courts in relation to proceedings in respect of a course of conduct maintained in the course of a business, that is to say, the county court for any district (or, in Northern Ireland, any division) in which, or, in Scotland, any sheriff court within whose jurisdiction, that business is carried on.
- (4) In relation to any proceedings brought in an appropriate alternative court by virtue of this section, or to any order made in any such proceedings, any reference in section 37, in section 39 or section 40 of this Act to the Restrictive Practices Court shall be construed as a reference to the appropriate alternative court in which the proceedings are brought.
- (5) In this section " associated proceedings "—
 - (a) in relation to proceedings under section 35 of this Act, means proceedings under section 38 of this Act against a person as being a person consenting to or conniving at the course of conduct in question, and
 - (b) in relation to proceedings under section 38 of this Act, means proceedings under section 35 of this Act against a person as being the person by whom the course of conduct in question has been maintained.

42 Appeals from decisions or orders of courts under Part III

- (1) Notwithstanding anything in any other enactment, an appeal, whether on a question of fact or on a question of law, shall lie from any decision or order of any court in proceedings under Part III of this Act.
- (2) Any such appeal shall lie—
 - (a) in the case of proceedings in England and Wales, to the Court of Appeal;
 - (b) in the case of proceedings in Scotland, to the Court of Session;
 - (c) in the case of proceedings in Northern Ireland, to the Court of Appeal in Northern Ireland.

43 Legal aid in proceedings under Part III in Restrictive Practices Court

- (1) The paragraph set out in the next following subsection shall be inserted—
 - (a) as paragraph 5, at the end of Part I of Schedule 1 to the Legal Aid and Advice Act 1949 ;
 - (b) as paragraph 4, at the end of Part I of Schedule 1 to the Legal Aid (Scotland) Act 1967; and
 - (c) as paragraph 6, at the end of Part I of Schedule 1 to the Legal Aid and Advice Act (Northern Ireland) 1965.
- (2) The paragraph referred to in subsection (1) of this section is as follows:—

“Proceedings in the Restrictive Practices Court under Part III of the Fair Trading Act 1973, and any proceedings in that Court in consequence of an order made, or undertaking given to the Court, under that Part of that Act”.