

This advice relates to the recent enactment of the Consumer Protection from Unfair Trading Regulations 2008. There has been a lot of talk recently on various internet forums and websites regarding the new Regulations which came into force on 26th May 2008. To describe the reaction of some sections of the 'psychic' community as 'hysterical' would not be an exaggeration. Here we present the considered facts.

Much has been made by various news sources of 'they [the psychics] should have seen it coming'. A typical article within the community itself goes on to describe how Spiritualism and such assorted practices are being 'persecuted', and how mediums will be obliged to 'disavow their religion' by claiming that everything they do is unproven, must be regarded 'as an experiment' or should be regarded as 'for entertainment purposes only'. There has even been talk about how this can be seen as religious discrimination, and a 'return to the dark ages'. Many of the articles heavily imply that these new regulations specifically outlaw Spiritualism, fortune telling and psychic services.

Aside from these vocal responses, this regulation is a relatively obscure piece of legislation, introduced because the EU says we must, which had its nod through parliament and was introduced without much fanfare. Although some sites have suggested it was passed "without consultation" it went through a "request for consultation" period for at least a year, albeit not widely advertised.

If the Spiritualist Workers Association had not gone to every newspaper and broadcast media outlet they could find (including BBC Radio 4's Today programme and Radio 2's Lunchtime with Jeremy Vine on the same day) then we have to suggest that the awareness of this 'new law' would be much lower than it now is; tarot readers and other associated readers would not be in a panic, and the newspapers would not have 'reported' hysteria based scare-mongering as 'fact'.

Read some or all of the below articles for a flavour of what's been said, and then, if you are really keen, Google "Consumer protection regulations 2008 fortune tellers" and see how similar many of the results are – a typical case of "cut and paste" ruling over actual consideration and fact. One word of caution - watch out for the Australian items, they seem to have brought in something similar and have taken a similar approach!

http://business.timesonline.co.uk/tol/business/law/public_law/article3987725.ece

<http://news.bbc.co.uk/1/hi/magazine/7354089.stm>

<http://www.telegraph.co.uk/news/uknews/2029154/Consumer-protection-laws-overhaul-to-stem-unfair-practices.html>

<http://news.bbc.co.uk/1/hi/business/7416809.stm>

The “news” and resulting “general perception” of this regulation **simply do not accord with the actuality of the legislation**. Other claims in the “community”, such as that the repealed Fraudulent Mediums Act gave “statutory recognition of genuine mediumship” are also misleading, another being that the prior Witchcraft Act was repealed due to a “freedom campaign” - about which we have been unable to find any information, but are still researching, if anyone knows!

In fact, when we actually researched the previous act, we found that in over fifty years of its existence, only 8 cases had ever been brought to court! It is likely that all these eight cases were outright fraud and little to do with mediumship or tarot! It is also important to recognise that when people talk about an increasingly “litigious society”, that under the prior law, a private individual could not prosecute someone, it had to be the Chief Justice himself calling the case! No wonder it was rarely enforced, but it just goes to show that the perception and likelihood, even under this new regulation, of Joe Bloggs suing you for the sake of it are extremely unlikely.

Our opinion is that the ensuing publicity of being the first tarot reader to be taken to court would bring in enough financial reward in selling your story to the papers, getting exclusive TV coverage and publicity as to make it worthwhile!

What virtually all of these “news items” and articles do is to state, as a ‘fact’ that ‘all spiritualists and fortune tellers will be obliged to say that their work is “for entertainment purposes only”’ - or similar wording. **This just isn’t true**. We’ve read the Regulations very carefully, more than once, and we just can’t see anything about this. We cannot find anything which specifically or implicitly refers to mediums, spiritualists or tarot readers. We believe it is a good thing that the new legislation, which takes the advantage to repeal several old laws, has resulted for the first time in mediumship, tarot, spiritualism, etc., **not** being singled out in their own law!

As with much legislation these days, rather than deal with one thing in one Act, many things have been lumped together and dealt with via a ‘broad-brush’ approach. Trying to read the legislation is confusing, you have to try and cross-reference to several other parts of the legislation to be able to attempt to understand what it is that is actually being outlawed.

One thing which does strike us is that ‘commercial practices’, which are the entire focus of the regulations, are taken to include the supply of a service, whether or not a commercial transaction occurred. Our interpretation of this is that a “free reading service” could potentially be included in that definition. So it would not be a defence to say the reading had been offered in return for a “donation”, for example.

Of the 31 practices specifically outlawed within the legislation, the two which are most ‘relevant’ to ourselves are number 17 “Falsely claiming that a product is able to cure illnesses, dysfunction or malformations” and number 20 “Describing a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item”.

These two provisions are plainly aimed at those people who either advertise offering to cure you of a curse or bad luck, or who send you junk mail offering bits of tat which have been 'blessed by the saints', or whatever the current line is, for only a 'processing fee' of a frankly eye-watering amount of money (think £25 and upwards).

It is important to note that when they talk about 'product' they also include 'service' within the definition of 'product'. We cannot see how an honest tarot reader, who stressed to all querents that tarot can't run their lives for them, and that they are responsible for their own decisions, could be held liable under this.

So, what does 'the Government' have to say about all this? We suggest you spend ten minutes or so reading the below linked leaflet, published by the Office of Fair Trading. It should alleviate most fears:

http://www.offt.gov.uk/shared_offt/business_leaflets/530162/oft979.pdf

You may also, if you have a particularly fierce bout of insomnia, wish to read the Regulations themselves. The best publicly available link we can find to these is below, and they are still labelled as 'draft'. Please be assured that nothing is different in the enacted version.

http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110811574_en_1

Here is what the the Department for Business, Enterprise and Regulatory Reform had to say (section in bold highlighted by us for emphasis) in response to a letter:

"Thank you for your e-mail of 23 May about the repeal of the Fraudulent Mediums Act 1951 and the new legislation that replaces it.

The Consumer Protection from Unfair Trading Regulations (CPRs), which came into force on 26 May, put in place a comprehensive framework for dealing with sharp business practices and rogue traders harming the economic interests of consumers. The Regulations set out broad rules outlining when commercial practices are unfair. These fall into four main categories:

1. A general ban on conduct below a level which may be expected towards consumers (honest market practice/good faith). This is intended to act as "safety net" protection for consumers.
2. Misleading practices such as through the provision of false or deceptive messages or by omitting important information that consumers need to make informed choices.
3. Aggressive sales techniques that use harassment, coercion or undue influence.
4. 31 specific practices are banned outright.

For a practice to be unfair under the first three categories it must harm, or be likely to harm, the economic interests of consumers. **Where a person pays to have a Tarot reading knowing full well what he is buying we think this is unlikely to be unfair.** This is because the consumer would not have been misled into taking a transactional decision he would not otherwise have taken.

The CPRs are not directly concerned quality of the goods or services provided, e.g. the accuracy of a Tarot reading, to which other longstanding legislation applies. They are mainly concerned with the way traders advertise and market their goods and services to consumers. Provided this is not misleading we do not believe Tarot readers will need to give disclaimers saying that the reading is for ‘entertainment purposes only’.

The CPRs are enforced by the Office of Fair Trading and local authority Trading Standards Services. These enforcers have limited resources and will focus their enforcement work on unfair practices causing significant consumer detriment. However, where an enforcer brings enforcement action for a breach of the Regulations it will need to prove the facts of the case.

The CPRs do not give individuals a private law right of civil redress where they have been harmed by an unfair practice. The Regulations therefore make no changes to the existing law of contract or tort, or the burden of proof in such cases.”

So, in essence, as long as you aren’t door-stepping old ladies and insisting that they pay you £50 for a one card reading lasting 90 seconds ‘or else you will be cursed for ever and your house will fall down’, then we should all be fine. Does anyone honestly approach people and ask if they’d like to pay for a tarot reading?

We suspect what happens is that we set ourselves up quietly somewhere at a quiet ‘festival’, put some fliers out and sit there and wait for the clients to come to us. Some of us may have websites offering our services, or adverts in local newspapers. We don’t know any reputable tarot readers who use aggressive sales techniques.

If you are still worried that someone’s going to leap out in front of you one day and slap a summons on you (which, if you’ve read all of the above, you will know is highly unlikely), then what can you do to protect yourself?

- 1) Join a ‘reputable’ organisation. If you’re reading this, then you’re already a member of Tarot Professionals and have a genuine interest in being honest, reputable and responsible.
- 2) Get a qualification. Obviously there is no recognised Tarot Qualification as such although Tarot Professionals offers a range of certifications of study. Other international organisations may offer something equivalent.

Beware of charlatans in this area, especially some 'organisations' in America who will offer 'qualifications' in almost anything for a small fee. Be as sensible and circumspect as you would want your clients to be!

You might alternatively want to consider a qualification or short course in a related field - counselling, business management (for those reading full-time/professionally), possibly therapy techniques or maybe NLP. Again, some of these modalities have no recognised status or certification. If possible, at least choose one based in your country and working towards recognition.

- 3) Use a disclaimer. A controversial suggestion; there's no guarantee they'd work, you're potentially creating a lot of paperwork for yourself, and, as a lawyer, I find it astonishing that clients just don't read what I give them to sign - how many clients will actually read the disclaimer?
- 4) Assess the client. There's a big difference between "should I dump my boyfriend" and "I'm not sure where my relationship with my boyfriend is going, can the cards offer any advice". The first wants you to tell her what to do, the second wants some insight. The first is more likely (in my opinion) to report you to Trading Standards depending on 'what the cards tell her'. Spend a few minutes giving them a 'verbal disclaimer'. When I do Free Readings for people via e-mail, the second paragraph states that the cards cannot tell them what to do, but can offer advice and insight into the possible outcome of the path of life they currently find themselves on. I go on to emphasise that they can change their path themselves at any time. You should assess whether the person sat in front of you has the ability to think for themselves. Obviously this can be a very hard call, but the question they ask should give you a good lead into this. If you are wary about the client (and rely on your intuition here), you can always refuse to read. Better to turn down a client and leave them a bit upset than, that to take the money and open yourself up to aggravation.
- 5) Only read for one person at a time. If 'Sandra' has a question, only have Sandra in the room when you answer, not Sandra and four of her mates. Obviously, if you're reading for a couple then there is an exception, but generally, 'hangers on' will not be helpful.
- 6) Make a note of your readings. Even if it's only a book with some columns you fill in such as 'date', 'time', 'client's name', 'number of cards used', 'question asked', and possibly not even as detailed as that, then this all goes to show that you are reputable.
- 7) Have a 'flyer'. This should contain your details, and a post-reading 'disclaimer'. Something along the lines of 'I hope you enjoyed your reading today. Please remember that the cards cannot tell you what to do in life, and you must take responsibility for your own actions, inactions and the decisions you take in life'.

- 8) Be squeaky clean. Even if you're only doing one event a year and making virtually nothing in 'profit' - be above board. Have insurance in place - as a rough guide you'll need Public Liability and almost certainly Professional Indemnity. If you read from your home (i.e. clients come to your house) then you should tell your house insurer. If you have a vehicle and you use it to get to places where you do readings, tell your insurer. It is likely that any increase in premium will be only slight, but if you have told them, then you are fine. If you don't and then have to claim, you may well find them refusing to pay out - even if the claim is nothing to do with your Reading Business.

Sort out your tax and NI position. HM Revenue & Customs provide a tremendous amount of help for new businesses. Yes, you will have to complete a self-assessment tax return, but as long as you've kept adequate paperwork you'll be fine. If you are reading on a small scale basis you'll be able to do the 'short' return, and you will be able to claim a very wide range of expenses to off-set any tax liability. You'll also need to pay NI, unless you earn less than around £4,800. Yes, there are many forms to fill in, and yes, it will be boring, but set aside an evening in June to sort it all out and it'll be fine - if you get your return in early they'll even work out the tax for you. If you're a serious full-time Reader then you might want to employ an accountant to sort all this out for you.

From anecdotes and personal experience, **you stand a much greater chance of a disgruntled client reporting you to Revenue & Customs or your council benefits agency than you do of them reporting you to Trading Standards** - get in there first!

- 9) Consider working through an agency. The advantage of this is that not only will the agent vet you, but they'll probably also carry out some due-diligence on the client. This sort of work is more likely to be at the Corporate and "light-weight" end of things, but I hear that the money can be very good. The disadvantage is that the agent will take a cut of your fees, and may even tell you how much you're going to be paid, rather than you setting how much you'd like to charge.
- 10) Tape readings. Again, this is highly controversial. Some readers won't; some get very nervous about speaking into any sort of machine; some are worried about something they may say within a reading getting taken out of context if listened to again at a later date. Consensus seems to be that if you are going to go down this path, it should be either on a digital format and both you and the client get a copy, or you should retain the 'tape' for yourself and not let the client have it at all.
- 11) Use your discretion. If an event doesn't want 'hippy lunatic tarot readers', don't force yourself onto them. I know we're not doing anything wrong, and most of us aren't doing anything that could even be described as 'occult', but some people get very anxious about these sorts of things, and before you know where you are, there's banners and protests and letters to the editor of the local newspaper.

Be upfront with an organiser of any event, and if they think you won't fit in, don't bother. Do you really want the hassle of a hostile reception? Let someone else fight the battle and go back when you will be accepted.

In summary, our advice is not to panic. **An individual member of the public cannot sue you for 'a bad reading'**. The worst they can do is report you to Trading Standards. Unless you have a particularly forceful local Trading Standards Officer, who has a particular hatred/fear of readers and their crafts, then you should be fine. If you take your time to understand and read the Regulations and ensure that you are a reputable dealer who isn't taking advantage of clients, then you should be fine.

This advice is based on my understanding of the law at the time of writing (August 2008). The Regulations are, as far as I can tell, currently untested - that is, no-one has as yet been taken to court by Trading Standards for breaching the requirements of the Regulations. As such, you should apply your own common-sense and knowledge of the Regulations. You should read at least the OFT leaflet so that you are aware of your obligations. This advice is not a substitute for specific legal advice in relation to your specific problem or situation. If you are unsure about what you should do, then you should seek professional legal advice from your own solicitor. If you don't have one, look on the Law Society Website for your territory, for 'Commercial' lawyers in your area.

We have also been asked to comment on how this legislation may apply to astrologers. We refer you to this article, which sums up the situation neatly:

<http://www.astrology.co.uk/news/News.htm>

That article makes a very valid point regarding disclaimers generally. You don't have to act against your beliefs, you just have to make sure that your client is aware of the concept of self-determination, and that you have told them that you cannot decide the course of their life for them.

Astrologers, much the same as any type of 'reader', would be advised to be aware of the legislation, and to have taken steps to ensure that they are acting in accordance with the Regulations.

You can also read on the following pages below the advice offered by the Astrological Association.

And now for my disclaimer:

I am a qualified solicitor who is admitted to the Supreme Court of England & Wales. This means I don't know much about Scottish Law (it's a different legal system). I work in the field of Private Client law and do a little bit from lots of areas of law. I dabble in Tarot Cards on the side, and am setting out down the road of reading professionally.

As I say above, I'm no substitute for specific legal advice about your specific situation, and if you do some form of reading I'm not familiar with (which is practically anything other than tarot) then you should consult someone who does know about that type of reading.

Anne Davies, Tarot Professionals, August 2008.

Astrology, that EU Directive and Consumer Law

[From the Astrological Association, August 2008]

We should make it clear that what follows is an account of some further thoughts and discussion between colleagues on the EU Directive and what it may mean for astrologers. None of us have legal qualifications and our exploration of the subject is not comprehensive in its scope. What follows is some information to help and encourage you to find out the facts for yourself and so to act in accordance with the any new requirements in the law.

Geoffrey Dean has emailed referring us to <http://rudolfhsmit.nl/index.html>. This site details research that was unable to find a statistically significant connection between the researchers' selection of astrological concepts and expected outcomes. It also contains extensive arguments against the Gauquelin research and various claims of how astrology works. Because of this, he advises astrologers to be very careful about the claims they make for their services [At the time of going to press, we are awaiting Geoffrey's permission to make his email discussions with Robert Currey regarding this available on a web link.]

In addition to research outlines, the Rudolf Smit pages show the considerable disagreement that exists between academics about the suitability, reliability and conclusions of many of the tests. You may wish to refer to the sources criticised, such as Suitbert Ertel's *The Tenacious Mars Effect*. More recently, Dr Pat Harris' PhD Thesis on *The Application of Astrology to Health Psychology: astrological and psychological factors and fertility treatment outcome* (2005) and in-depth work outlined by Dr Jan Ruis and Graham Douglas in the recent *Correlation* Vol. 25(2) seem likely to advance the debate.

When considering the supply of goods and services, the key requirement of the Consumer Protection Regulations seems to be that suppliers are clear and honest about what they are offering, and especially protect vulnerable people.

The Association of Professional Astrologers International (APAI) has received some sensible advice from Balens, the company that arranges their members' insurance. A summary of guidance received by their Treasurer from his local branch of the Office of Fair Trading can be read at www.professionalastrologer.co.uk. Readers could find it very helpful to go to the website and study this information carefully.

As a result of further thought and feedback, we have reworded our outline of information to clients as below. However, what each astrologer offers will be different, so only you can decide how to make your services clear to clients. Advice on this can be sought from your local Office of Fair Trading (OFT).

<http://www.astrologicalassociation.com/>

Information for clients**Please read this important note on the scope of services offered**

An astrological analysis is based on a translation of the symbolic meaning of astronomical cycles into ordinary language. This knowledge has been acquired through observation and application over thousands of years and supported by my experience practicing astrology over X years. To date, this analysis is not supported by experiments using the conventional research methods of hard science. Some scientists and most astrologers consider such test methods to be inappropriate for the subject matter and flawed for a variety of reasons. Astrology is a symbolic language and offers a balance of probabilities rather than specific certainties. As such, astrology cannot foretell your future. You should also seek qualified professional advice for medical, financial, legal and other specialist questions.