

# What comes first, the Premium Delivery or the Earth? The legal issues and ethics of mass sales and attitudes of large retailers in the UK

Businesses are flooding everyone's inbox with promotional mail, social media feeds are plastered with ads and the traffic in shopping centres is spilling onto the streets like oil dumping in the ocean - call it Black Friday.

Black Friday, a tradition finding its roots in the USA, has now settled into Europe and its impact on the UK markets, ethics and even the field of law are ever-growing. Black Friday receives its name from the Philadelphia police in the 1960s who used the term to refer to the day after Thanksgiving to encapsulate the chaos that took over the streets as locals and tourists rushed to do their Christmas shopping. The word gained a more positive meaning in the 1980s when marketers used the narrative to turn the idea of "black" profits as businesses were able to make up for any losses made around Thanksgiving by offering discounts and promotions to get out of the "red" (loss) margin.<sup>1</sup>

The supply chain crisis which eventuated over the course of 2021 as COVID-19 affected households resulted in serious predictions for a steady rise in sales as we saw major closures of leisurely businesses throughout the year. This unconscious shopping frenzy, however, has serious consequences on an environmental level, and the unspoken tale of legal and ethical levels should raise an eyebrow, particularly when looking at some of the mass corporations and their "up to 80% off!" limited-time offers.

## Environmental Impact

The fashion industry, being the top profiler of Black Friday by a large margin, is already notorious for its exploitation of labour and pollution concerns. The holiday, not-at-all-shockingly, is single-handedly the most polluting day in the UK, with The Dirty Delivery Report calculating 429 000 tonnes of greenhouse gas emissions being produced on that day alone. According to one of the top clothing sellers in the UK, each medium parcel's shipping emits 3.68kg of carbon.<sup>2</sup>

Transportation has a significant environmental impact here, too. It has been estimated that shipping accounts for 3-4% of human-caused carbon emissions. A recent report from the European Parliament estimated that the number could rise as high as 17% by 2050.<sup>3</sup>

The gravity of the problem does not end at the shopping and delivery process. Black Friday promotes overconsumption at its utmost; Professor Phil Phurnell, Professor of Materials and Structures, and Research Impact Fellow in Circular Economy Dr. Anne Velenturf finds that up

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<sup>1</sup> Vaughan Dan, "Why is it Called Black Friday?", Britannica

<sup>2</sup> Haqqi Salman, The Dirty Money Report, Money.

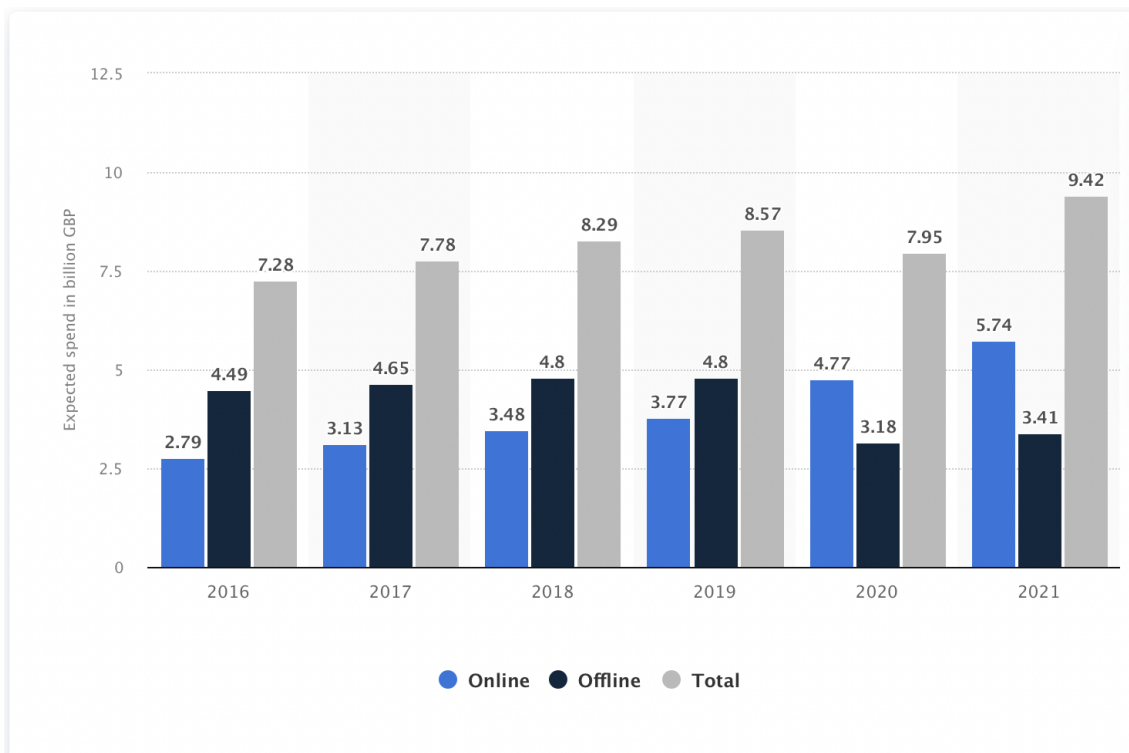
<sup>3</sup> Directorate General for Internal Policies, European Parliament, Economic and Monetary Affairs, 2015

to 80% of clothing items bought during Black Friday sales are worn between zero and one times before being landfilled or incinerated.

## Economic Impact

Despite the serious claims of the large profits made on Black Friday and the baseline assumption that money flow drives the economy, the long-term impacts of such mass spending actually show an equilibrium in its impact. The supporters argue that well planned, targeted promotions with global suppliers will help them to achieve a boost in sales while still preserving profits margins. However, it is relatively obvious to recognise that the Black Friday sales bring forward Christmas sales which the retailers would have otherwise been able to make at full price, thus reducing business in the following pivotal weeks.

*Value of spending over Black Friday weekend in the United Kingdom (UK) from 2016 to 2021<sup>4</sup>*



An alternative approach to sales, supported by senior policy advisor Libby Peake, is a circular economic system—where long-lasting repairable products are the norm and resources are maintained, reused or recycled back into high quality uses—as the way to avoid such unnecessary waste and high spending leading to major shortfalls.

It would also avoid the environmental damage caused by such resource wastage, from initial raw material extraction to end-of-life problems such as marine plastic pollution.

<sup>4</sup> Statista, Retail & Trade, Spending over Black Friday Trends

The country's current system is not set up to be circular, despite recent promises in the government's resources and waste strategy to preserve our stock of material resources by minimising waste, promoting resource efficiency and moving towards a circular economy.

A high value circular economy could generate billions of pounds for the economy, deliver half a million clean green jobs, and be a huge opportunity to reduce carbon emissions.<sup>5</sup>

## Legal Implications

The legal implications of such an immense peak in sales affects various avenues - criminal law (thefts, burglaries, assault), contract law (complications in terms, scam, ITI), cyber and digital law (phishing, internet safety, hacking), environmental law (business sustainability, country standards and regulations) to name a few.

Some of the greatest revenue-makers in the fashion industry for the UK, as it will not be of any shock to you, are sister-companies. The sales of £2 tops, dresses and £8 jeans will inevitably cross some legal lines which reportedly not many of us consider when we add to basket. Evidently, just 1 in 10 shoppers (11.72%) factor carbon friendly delivery into their decision when purchasing online whilst almost three quarters (72%) of shoppers said they would look more favourably on a retailer offering free delivery. One in three (35%) of those surveyed admitted that they look for the least 'green' delivery option of next day delivery when making a purchase online.<sup>6</sup>

3 of the top 5 fashion retailers show no evidence they have taken meaningful action to reduce or eliminate hazardous chemicals, nor does it implement any water reduction initiatives. While it does measure and report on greenhouse gas emissions from its direct operations, it skips over the supply chain! Although the businesses are under no contractual obligation to report those figures, 2 of those businesses carry a 'Sustainable' line which claims this promise. Sounds like an invalid express term to us!

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<sup>5</sup> Peake Libby, University of Leeds, Phys - Most Black Friday purchases end up in waste

<sup>6</sup> Haqqi Salman, The Dirty Money Report, Money.

*Performance Data by Industry: Median Percentage Differences (Nov 2020 vs Nov 2021) as at 29/11/2021<sup>7</sup>*

<b>INDUSTRY</b>	<b>AOV</b>	<b>CONVERSION RATE</b>	<b>SALES</b>	<b>TRAFFIC</b>
Fashion & Accessories	+11%	-8%	+6%	-1%
Health & Beauty	+9%	-3%	+5%	-5%
Home & Garden	+10%	-5%	+3%	-13%
Sporting Goods & Hobbies	+11%	+38%	+1%	-9%
Pet Supplies	+6%	-1%	+9%	-31%

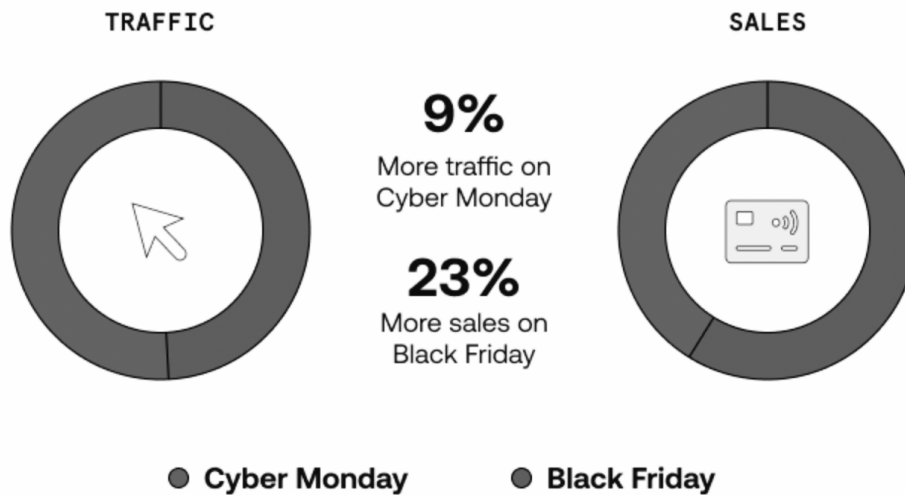
From Labour and pay standpoint, it is of no surprise that employees in such factories are overworked and underpaid. Most supply chains of fashion retailers in the UK are certified by Sedex Members Ethical Trade Audit – SMETA Best Practice Guidance in the final stage of production. All of the top businesses received a score of 0-30%. The top UK clothing retailer for Black Friday publishes zero or minimal information about its supplier policies and audits, and it doesn't disclose any information about forced labour, gender equality, or freedom of association. While ambassadors seem happy, the same can't be said for workers in the supply chain. There is also no evidence it ensures payment of a living wage or any policies or safeguards to protect suppliers and workers from the impacts of COVID-19! It doesn't take a law degree to spot the Human Rights Act 1998 violations as a bare minimum.

Online safety is yet another legal concern for companies and consumers alike. The traffic on websites as well as the sales increase, as shown below, indicate a major rise on two of the top marketing days - Black Friday and Cyber Monday.<sup>8</sup>

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<sup>7</sup> Statista, Retail & Trade, Spending over Black Friday Trends

<sup>8</sup> Statista, Retail & Trade, Spending over Black Friday Trends



£2.5 million were fraudulently taken in the most recent Black Friday; many never received goods they ordered from unfamiliar websites, and some were subsequently targeted by criminals using bank details given during transactions. It is no secret that the Internet is a rather grey territory when it comes to policing and regulations so it is difficult to put responsibility on retailers, however fraud is undeniable. During last year's Black Friday season there was a 17% increase in reported shopping scams with victims losing an average of £538, Barclays estimated.<sup>9</sup>

There are quite a few areas of concern to take into account when it comes to large corporations' negligent attitude towards consumers, the environment and the law when profits become a factor. The reports all show an increasing pattern of engagement by consumers, and a more concerning likelihood for businesses to refrain from disclosing key information about sourcing and materials. The ethics of mass sales remains an undermined topic, overshadowed by try-on hauls and next day delivery excitement.

<sup>9</sup> Topham Gwyn, Police and banks tell shoppers to be vigilant for Black Friday scams, The Guardian

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