

Consumer Rights Act 2015

By Ben McCosker, Commercial Legal Advisor, Croner - September 2015

On 1st October 2015 the new Consumer Rights Act 2015 (“referred to in this factsheet as “the Act”) changed the law relating to contracts made between traders and consumers (see below for key definitions) for the supply of goods (including sale, hire, hire-purchase and work/materials), services and digital content.

The Sale of Goods Act 1979, Supply of Goods and Services Act 1982, Unfair contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 (and other legislation – see Schedules of the Act for details) were effectively replaced insofar as they relate to terms implied into contracts between traders and consumers, consumer’s rights for breach of those terms and unfair terms and notices in relation to consumer contracts.

Other parts of the old legislation (some of which is referred to above) will still apply between traders and consumers e.g. section 49 of the Sale of Goods Act 1979 gives the seller of goods an ability to claim for the price of the goods (in accordance with the provisions of that section) and this applies whether the buyer is a consumer or business.

This factsheet is intended to give a brief overview of the Act. It will give general guidance on key definitions, terms implied into contracts between traders and consumers, the consumers’ rights if those terms are breached and exclusions and restrictions of traders’ liability.

This factsheet is not intended to be an exhaustive statement of the law under the Act. It therefore should not be used as a replacement for legal advice in any given case. A list of material that traders should familiarise themselves with is included at the end of this factsheet.

Key Definitions

Who is a trader?

If you are a person acting for purposes relating to your trade, business, craft or profession, whether acting personally or through another person acting in your name or on your behalf then you are a trader. Person includes a body of persons corporate or unincorporated (Interpretation Act 1978, Section 5 and Schedule 1).

Who is a Consumer?

A consumer is an *individual* acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession. It was possible under the old law for a ltd company to be a "consumer" in certain circumstances (**Feldarol Foundry Plc v Hermes Leasing (London) Ltd and another [2004] EWCA Civ 747**).

Given the definition of consumer as *individual* in the Act, it would appear beyond doubt that from October 2015 it will be legally impossible for a limited company or other body of persons (corporate or unincorporated) to be a consumer.

It is of course entirely possible for an individual to be a trader.

What are the key terms implied by the Act into contracts between trader and consumer for supply of goods and/or digital content?

In a contract for the supply of goods and/or digital content (or both) the terms implied are that the goods and/or digital content (where the terms relate to goods only this is indicated):

- Will be of satisfactory quality,
- Fit for any particular purposes the consumer expressly or implicitly draws to the trader's attention before making the contract,
- That they will match any description provided,
- That they will match a sample seen or examined before the contract is made (goods only),
- That they will match any model seen or examined before entering into the contract (goods only, where sold "by reference" to the model)
- That the trader has the right to supply.

The terms relating to digital content are brand new, however much of what is included in relation to goods is similar to the old law. Where it is different is that the implied terms no longer take effect as conditions of the contract. The significance of this is that, for breach of a condition, the consumer had a right under the general law (i.e. not under the old legislation) to treat the contract as at an end immediately. This is now not the case, however the situation will be explained under "What is the significance of the change from conditions (old law) to terms (new law)?"

What are the terms implied by the Act into contracts between trader and consumer for supply of services?

In a contract to supply services the terms implied are:

- The trader must perform the service with reasonable care and skill,
- Where there has been no price fixed or otherwise formula included for how the price is to be fixed, that the consumer must pay a reasonable price for the service,
- Where there has been no time fixed for the service to be performed within or otherwise no formula included for how the time for performance is to be fixed, the trader must perform the service within a reasonable time.

What is the significance of the change from conditions (old law) to terms (new law)?

For breach of the conditions as to e.g. satisfactory quality, fitness for particular purpose etc. the consumer could (before October 2015) under the general law treat the contract as at an end immediately and of course make a claim for damages (or money back straight away).

From October 2015 it is not open to the consumer to treat the contract as at an end under the general law by reason of breach of the terms implied (see above). The consumer's right of termination/rejection for breach of the terms implied into the contract by the Act are as spelt out in the Act itself.

What are the consumer's rights where there has been a breach of the terms implied in relation to supply of goods and/or digital content (where rights are available only in relation to supply of goods, this is indicated)?

Generally, the rights are:

- The short-term right to reject (goods only),
- The right to repair or replacement;
- and the right to a price reduction or the final right to reject (goods only).

What is the short-term right to reject and when can it be exercised?

For breach of most of the implied terms in relation to goods (see above) the consumer has a short-term right to reject. This is in effect the replacement of the right under the general law to reject immediately for breach of a condition.

If the consumer is going to exercise this right they must do so within 30 days beginning with the first day after ownership (or possession, as applicable) of the goods has been transferred to the consumer, the goods have been delivered and, where the contract requires the trader to install the goods or take other action, the trader has notified the consumer that the action has been taken.

All the consumer needs to do to exercise this right (or the final right to reject – see below) is indicate to the trader that they are rejecting the goods and treating the contract as ended.

Where the consumer chooses to exercise this right, *they* must prove that there has been a breach of the implied term(s) (where this is not accepted).

Once the consumer has exercised this right, generally the trader has a duty to give the consumer a refund without undue delay and, in any event, within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund. In these circumstances the consumer also has a duty to make the goods available for collection or to return them as agreed.

Whether the consumer has a duty to return them or not, the trader must bear any reasonable costs of returning them, other than any costs incurred by the consumer in returning the goods to the place where the consumer took possession of them.

What is the right to repair or replacement?

For breach of most of the implied terms in relation to goods and digital content the consumer has the right to repair or replacement.

If the consumer requires the trader to repair or replace, the trader must do so within a reasonable time and without significant inconvenience to the consumer, and bear any necessary costs incurred in doing so (including costs of labour, materials or postage).

The consumer cannot require repair or replacement if that right (the repair or the replacement) is impossible or disproportionate compared to the other of those rights.

Either of those rights are disproportionate to the other if in comparison to the other it imposes costs on the trader which are unreasonable, taking into account the value which the goods/digital content would have if there had been no breach, the significance of the breach and whether the other right could be effected without significant inconvenience to the consumer.

Where the consumer alleges breach of the implied terms within the period of six months from the date of delivery of goods/supply of digital content, and they require repair or replacement, they must still prove breach, if they do, it is presumed that the goods/digital content did not conform to the contract standard at the date of delivery and, in that case, the trader would have to show otherwise.

What is the right to price reduction or the final right to reject and when are these available?

The right to price reduction is, generally, the right to require the trader to reduce by an appropriate amount the price the consumer is required to pay under the contract and to receive a refund from the trader for anything already paid by the consumer above the reduced amount.

The amount of the reduction could, in appropriate circumstances, be the full amount of the price.

A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both) and may only do so in one of these situations:

- After one repair or one replacement, the breach has still not been remedied (goods only),
- Where repair or replacement is either impossible or disproportionate; or
- The consumer has required the trader to repair or replace the goods and/or digital content, but the trader is in breach of the requirement to do so within a reasonable time and without significant inconvenience to the consumer (see above under “What is the right to repair or replacement”).

Once the consumer has exercised the right to a price reduction, generally the trader has a duty to give the consumer a refund without undue delay and, in any event, within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.

If instead of a price reduction the consumer chooses to exercise the final right to reject, then all they need do (as with the short-term right to reject – see above) is indicate to the trader that they are rejecting the goods and treating the contract as ended.

If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take into account the use the consumer had of the goods in the period since they were delivered.

There are exceptions to this however e.g. if the final right to reject is exercised within the first 6 months beginning with the first day after passing of ownership/possession, delivery and installation or other action required by the trader, and the consumer has been notified of completion of that action, then no deduction may be made for use (unless the goods consist of a motor vehicle or other goods specified by Order of the Secretary of State-no such Order has yet been made at the date of writing).

If the consumer seeks to exercise either the right to price reduction or the final right to reject for alleged breach of the implied term(s) within the period of six months beginning with the day on which goods were delivered/digital content was supplied (as applicable) to the consumer, again if they can prove breach is presumed that there was such a breach at the time of delivery, unless the trader can show otherwise.

What about terms implied as to time of delivery of goods?

If the contract doesn't specify an agreed time or period for delivery of goods, it is implied in the contract that the trader must deliver the goods without undue delay and in any event not more than 30 days after the day on which the contract was entered into.

If the trader doesn't deliver within an agreed time or agreed period, or within the implied period (above) when told that either of these were essential then the consumer may treat the contract as ended and in those circumstances the trader must reimburse all payments made under the contract.

What are the consumer's rights in relation to contracts to supply services?

Generally the rights are:

- The right to require repeat performance;
- Or the right to require a price reduction.

What is the right to require repeat performance?

This is a right to require the trader to perform the service again to the extent necessary to complete performance in line with the contract.

If the consumer requires this, the trader must provide it within a reasonable time (depends on the nature of the service and purpose for which the service was to be performed) and without significant inconvenience to the consumer and must bear any necessary costs incurred in doing so (including labour and materials).

The consumer cannot require repeat performance where completing performance in line with the contract is impossible.

What is the right to price reduction in relation to contracts for supply of services and when is it available?

Similar to goods and digital content, the right to require the trader to reduce by an appropriate amount the price the consumer is required to pay under the contract and to receive a refund from the trader without undue delay and, in any event, within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund, for anything already paid by the consumer above the reduced amount.

The amount of the reduction could, in appropriate circumstances, be the full amount of the price.

Where the consumer has this right and the right to require repeat performance, they will only be entitled to a price reduction where repeat performance is impossible or the consumer has required repeat performance but the trader has failed to do it within a reasonable time and without significant inconvenience to the consumer.

There is no presumption concerning time of breach in favour of the consumer in a contract for supply of services.

What else does the Act say that is significant about the terms implied into the contracts considered above?

Generally, a trader cannot exclude or restrict liability under the terms, which includes seeking to prevent an obligation or duty arising or limiting its extent. A term purporting to do so would not be binding on a consumer.

Are the statutory rights mentioned the only rights the consumer has?

No, the Act makes it clear that these are in addition to rights the consumer already has under the general law e.g. the ability to claim damages, seek an injunction etc. and that these rights may be used either in the alternative to or cumulatively with the statutory rights (provided this doesn't result in recovering for the same loss twice).

How are the rights of consumers/obligations of traders enforced?

Consumers would be able to bring civil proceedings to enforce their rights in the County Court/High Court. In addition bodies such as the Competition and Markets Authority and Trading Standards have wide ranging powers of enforcement (including the ability to bring legal proceedings in their own right) for breaches of the legislation.

List of material

Recourse should be had to the following:

- The Act,
- Business companion material on Consumer Rights Act 2015 (trading standards law explained),
- Competition and Markets Authority (Draft-as at the date of writing for consultation purposes) Guidance on Unfair Contract Terms,
- Department for Business Innovation and Skills Draft Guidance on Investigatory Powers of Consumer Law Enforcers.

For further information on this or any other commercial legal matter, please do not hesitate to call our commercial legal experts on 0844 561 8133.

Croner can also support you with the creation of commercial legal documentation. For further information, contact Denise Leigh on 01455 897372.

Denise.Leigh@wolterskluwer.co.uk

