



Traders Take Stock: Consumer Law Reform is on Order

The Consumer Rights Act 2015 (“CRA”) is the keystone of the Government’s consumer law reform programme. It will reform and consolidate much of consumer law in the UK and constitutes the most extensive consumer law reform in the UK in decades.

The CRA comes into force on 1 October 2015. Traders need to prepare: the CRA makes changes to contractual relationships and affects how goods and services should be offered to consumers. The opportunity is ripe to review and consider existing T&Cs as well as other communications with customers and to educate staff about the changes the CRA will bring.

Who does the CRA affect?

The CRA applies to contracts and notices entered into between a “trader” and a “consumer”, so business-to-business arrangements will largely remain unaffected.

A “trader” is a “person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf”. A person can mean more than one individual - for example, if your business is a partnership of two or more people. A person can also be a company, a charity (or other not-for-profit organisation), a government department, a local authority or a public authority.

A “consumer” is defined as “an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession”. This definition is wider than existing definitions as it includes individuals who enter into contracts for a mixture of business and personal reasons. If a trader claims that the customer is not a consumer, and that the customer’s statutory rights are therefore limited, it is for the trader to prove this.

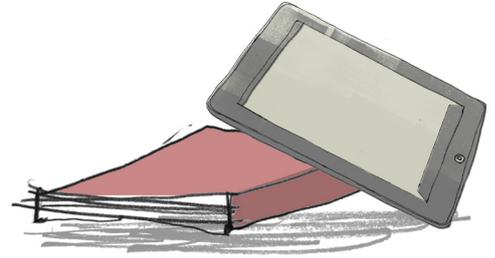
If you deal with consumers, even in a more limited capacity, you will be affected by the CRA.

What does the CRA do?

For the most part, the law set out in the CRA is similar to existing laws with which most traders will be familiar. However, there have been some changes (particularly in relation to the provision of services, and unfair terms in contracts). In addition, new concepts have been introduced, notably the introduction of express rights and remedies for defective digital content and the right to bring private collective consumer actions.

In summary, the CRA:

- reforms the law on rights and remedies for defective goods and services;
- introduces new rights and remedies for digital content;
- reforms the law on unfair terms in consumer contracts;
- extends the range of remedies that can be imposed on a business in breach of consumer law;
- reforms powers of enforcement; and
- enables consumers to bring private collective actions.



What other rules affect consumer contracts?

Traders should remember that there remain in force other rules affecting consumer contract. T&Cs and business practices must also deal sufficiently with them. Such rules include the following:

- the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013: these provide consumers with a 14-day cooling off period for most “distance contracts” (i.e. those made via the internet or mail order) as well as those made “off-premises” (e.g. in a consumer’s home). Businesses are also required to give certain information about themselves and the contract to consumers at requisite stages. In addition, be careful not to make hidden charges and make sure the consumer’s express agreement is obtained before seeking to impose any additional charges;
- the Consumer Protection from Unfair Trading Regulations 2008: these have provided consumers with an additional and alternative right of redress since they came into force in October last year. Traders must avoid the use of misleading or aggressive selling practices (an area in respect of which employees should be trained), otherwise the consumer may claim compensation and/or a price reduction, or cancel the contract completely;
- the Consumer Protection Act 1987: this allows a person to claim compensation if he is injured by a defective product. Any business in the supply chain (from manufacturer through to retailer) can be affected, depending on the circumstances;
- disclosure of identity: a trader must always display their identity and address at their place of business, on key business documents (such as T&Cs) and on websites: a consumer needs to know who he is dealing with.

What steps should traders take now?

Given the extent to which consumers are protected under consumer law, many traders will be questioning the role which their consumer T&Cs have. Do not despair, T&Cs for business-to-consumer arrangements are a useful compliance tool, and can be used:

- to provide certain of the required pre-contract information to the consumer. Although there is no requirement that the information be contained in formal T&Cs, the T&Cs (and the information in them) should be made available to the consumer before he orders. If this is done the requirement to provide information “pre-contract” would be met. Even where the information is also provided elsewhere, for example in marketing literature (whether in hard copy or online), duplicating it in T&Cs increases the chances of compliance;
- to provide the consumer with a reference document which will answer questions he may have about, for example, what (if any) guarantee will be offered (which should in addition, act to streamline business transactions); and
- perhaps most importantly, to protect the business by excluding terms implied by consumer legislation to the fullest extent permitted by law, and by limiting its liability to the fullest extent permitted by law. For example, a trader can exclude its liability for failures caused by circumstances genuinely outside its control.

T&Cs form the basis of every contract a trader enters into. It is therefore essential that any consumer T&Cs are drafted or reviewed against the background of the consumer protection rules currently or soon-to-be in force. Traders, act now. Dig out and dust off your T&Cs for review.

If you have any questions or would like to discuss your T&Cs, please do get in touch.

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This article is not intended to be a full summary of the law and advice should be sought on all issues.

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