

CONSUMER PROTECTION AND THE LAW

There are a number of pieces of legislation that traders need to be aware of and we have focused here on three of the most important. These are:

- The Supply of Goods and Services Act 1982
- The Consumer Protection Act 1987 and
- The Consumer Protection (Distance Selling) Regulations 2000.

THE SUPPLY OF GOODS AND SERVICES ACT 1982

The legal position of the trader and the customer on the supply of goods and services has come about as a result of many legal developments but is now based on the Supply of Goods and Services Act 1982 (note that in Scotland the legal position is still based on common law). The Act is described below but notice that it does allow a trader and a customer to agree that the customer's legal rights in any transaction should not apply or should be limited in some way.

In summary the law says that certain terms are implied in every transaction for the transfer of goods and that the goods must:

- correspond with the description given
- be of satisfactory quality; and
- be fit for the purposes.

KEY QUESTIONS

What happens if the implied conditions are breached?

If the goods do not 'correspond with the description' or are not of 'satisfactory quality' or are not 'fit for the purpose' the customer can reject the goods and is entitled to his money back. He does not have to accept a credit note and he may even be entitled to compensation for any losses or expenses incurred.

There are some exceptions to this rule for situations such as where defects were brought to the customer's attention before the sale or if the trader had made clear he was not sure whether, for example, a particular part would be suitable for a particular purpose.

You may have read discussions of these types of issue in, for example, motor magazines where journalists try to identify when it might be possible to reject a car which has been purchased.

What is the effect of a manufacturer's guarantee?

The rights of the customer under law are against the supplier rather than the manufacturer and a manufacturer's guarantee does not take those rights away. Both the customer and the supplier will benefit if customers complete and post manufacturer's guarantee and registration cards.

When does a possible claim for defective goods lapse?

Once goods have been 'accepted' the customer loses his right to reject them and therefore claim back what he has paid. Acceptance can be either by an explicit acknowledgement or by, for example, keeping them for more than a reasonable time. This is an area where car dealerships have attracted some doubtful publicity and where there have been calls for changes to the law.

Can a trader contract out of responsibility for liability for negligence?

Traders' ability to limit their own liability is restricted by the Unfair Contract Term Act 1977 (applicable in England & Wales only) under which traders cannot exclude or limit liability for death or personal injury arising from negligence but can exclude or restrict their liability for other loss or damage arising from negligence providing the exclusion clause meets the test of 'reasonableness'.

This test is very difficult to summarise but the court will consider the circumstances that were known to the parties (or should have been known) when the contract was made and will pay particular attention to such issues

as the relative bargaining strength of the parties, whether the customer received any special inducements and whether the customer knew or should reasonably have known about the restriction clause. It is the trader who has to prove that the clause was reasonable.

THE CONSUMER PROTECTION ACT 1987

The aim of the Consumer Protection Act was to help to safeguard the consumer from products that do not reach a reasonable level of safety. The main areas dealt with can be described as Product Liability and Consumer Safety.

Product liability

The Act allows injured persons to sue producers, importers and own-branders for death, personal injury or losses on private property valued above £275 and the injured party must be able to show that on the balance of probabilities, the defect in the product caused the damage. Prior to the Act the injured party could only sue the supplier under the Sale of Goods Act.

Defective products are defined as being those where the safety of the product is not such as persons generally are entitled to expect. On the other hand a product will not be considered defective simply because it is of poor quality or because a safer version is subsequently put on the market.

A court would take into account:

- the way in which the product was marketed
- any instructions or warnings coming with the product
- what might reasonably expect to be done with it
- the time that the producer supplied the product.

The extent of the defendant's liability could be affected by any contributory negligence on the part of the person making the claim (that is any carelessness by that person).

Consumer safety

The Consumer Protection Act has been substantially changed by the General Product Safety Regulations introduced in 1994.

Essentially the Regulations require producers and distributors to take steps to ensure that

the products they supply are safe, that they provide consumers with relevant information and warnings, and that they keep themselves informed about risks.

Safe products are defined as being products which under normal or reasonably foreseeable conditions of use, including duration, present no risk or only the minimum risk compatible with the product's use, and which is consistent with a high level of protection for consumers.

Offences against the Act can incur penalties of up to a £5,000 fine or a maximum prison term of six months, or both.

THE CONSUMER PROTECTION (DISTANCE SELLING) REGULATIONS 2000

The intention of the regulations is to increase consumer confidence where contracts are made without any face to face contact between supplier and consumer. These new regulations apply where goods or services are sold to consumers either:

- on the internet or through digital television
- by mail order, including catalogue shopping
- by phone
- by fax.

The key features of the regulations are:

- the consumer must be given clear information about the goods or services offered (see below)
- after making a purchase the consumer must be sent confirmation (by letter, fax or email)
- the consumer has a cooling-off period of seven working days and the consumer must be given information on how to cancel, and for contracts with no specified end date (such as a mobile phone) the customer must be sent details as to when and how the contract can be terminated
- there are new powers for local trading standards departments and the Office of Fair Trading.

The seller must provide clear and comprehensible information to enable the consumer to decide whether to buy. This must include:

- the seller's name and, if payment is required in advance, his/her postal address

- a description of the goods or services
- the price including all taxes
- delivery costs where they apply
- arrangements for payment
- arrangements and date for delivery
- the right to cancel the order
- how long the offer or the price remains valid.

In addition in cases of telephone selling by cold calls, the caller must identify the business represented and the commercial purpose of the call at the beginning of the conversation.

HOW WE CAN HELP

We will be more than happy to provide you with assistance or any additional information required.

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