

**DERBYSHIRE COUNTY COUNCIL**

**MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES**

**22 September 2015**

**Report of the Strategic Director, Health and Communities**

**CONSUMER RIGHTS ACT 2015**

**1. Purpose of Report:**

To advise the Cabinet Member, Health and Communities of the main provisions of the Consumer Rights Act 2015 and potential implications for Derbyshire residents.

**2. Information and Analysis:**

- 2.1 When we buy goods or services we enter into a contract with the person selling those goods or services. For most day to day transactions there is no written contract, but for more significant purchases there may well be a written contract which is a document that sets out the terms and conditions of the contract. All contracts are subject to the specification of the law and for the past 36 years the principal legislation has been the Sale of Goods Act 1979 together with a number of other pieces of law such as the Supply of Goods and Services Act 1982 and the Unfair Contract Terms Act 1977. However, from October this year there will be a new piece of legislation that is intended to consolidate and update contract law.
- 2.2 Whilst rules setting out rights when buying and selling goods can be traced back to Greek and Roman times, the majority of UK contract law steps from the Industrial Revolution and the significant increase in trade. The first 'Sale of Goods Act' was in 1891 which was intended mainly to provide clarification in contracts between traders, whereas the 1979 Act sets out the rights of 'consumers' and contains the three fundamental rights which consumers can expect, which are that goods should be:
- Of satisfactory quality (previously referred to as 'merchantable quality'),
  - Fit for their intended purpose, and
  - As described
- 2.3 The consequences of a 'breach of contract' are difficult to determine as they are dependent on a number of factors. The time that has elapsed since the contract was completed, the price paid, the extent of any fault, how the goods were used, how the goods or services were described (and whether or not this can be corroborated), where and how the goods/services were sold and how

they were purchased; ie cash, credit, finance agreement. Depending on the circumstances, a consumer who has bought goods or services that are faulty or not as described, should be able to seek redress (damages) from the person who sold the goods/provided the service. In theory, the amount of redress will be determined by the nature and extent of the fault/problem and how long after the contract was completed that it became apparent. If it was a major issue soon after purchase then the consumer would be likely to be able to reject the goods/service and have their money back. If however, in the case of, for example, a washing machine two years after purchase, then the redress is likely to be an effective repair or if this is not possible a refund less an amount to take into account the usage of the goods since purchase. However, this is somewhat dependent on the willingness of the seller to honour their contractual obligations.

- 2.4 Existing contract legislation seeks to set out the rules for buying and selling goods, but these have been open to interpretation by the courts and there are numerous court cases where the courts have sought to determine how the rules should be applied. The new Consumer Rights Act 2015 which is enacted on 1<sup>st</sup> October this year, consolidates the main legal provisions covering consumer contracts for goods and services and also extends the provision of the law to the internet by including 'digital content'. It also includes rules on 'unfair terms' whereby unscrupulous traders seek to limit consumer rights in their terms and conditions. The Act introduces new powers to seek redress for consumers who have been disadvantaged by breaches of consumer law, and to seek remedies from traders to improve compliance and reduce the likelihood of future breaches.
- 2.5 The main change to the law is that it clearly sets out the time frame in which consumers can act if wishing to make a claim for faulty goods. A summary of the main points which vary depending on the type of product and the circumstances of the sale and which also includes recent changes as a result of the Consumer Contract Regulations 2013 which extended the previous seven day 'cooling off' period' are as follows:

### **Goods bought in a shop**

The Consumer Rights Act 2015 says goods must be as described, fit for purpose and of satisfactory quality. During the expected life of your product you're entitled to the following:

- Up to 30 days: If the item is faulty you can get a refund
- Up to six months: If your faulty item can't be repaired or replaced, then you are entitled to a full refund in most cases.
- Up to six years: If the item can be expected to last up to six years you may be entitled to a repair or replacement, or if that doesn't work, some money back

### **Services paid for in a shop**

The Consumer Rights Act 2015 says:

- You can ask the trader to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if they can't fix it.
- If you haven't agreed a price upfront, what you're asked to pay must be reasonable.
- If you haven't agreed a time upfront, it must be carried out within a reasonable time.

### **Goods bought at home**

The Consumer Contracts Regulations 2013 say:

- You can change your mind, in most cases, up to 14 days after receiving your goods and get a full refund

The Consumer Rights Act 2015 says goods must be as described, fit for purpose and of satisfactory quality. During the expected life of your product you're entitled to the following:

- Up to 30 days: If your item is faulty, you can get a refund.
- Up to six months: If your faulty item can't be repaired or replaced, then you're entitled to a full refund in most cases.
- Up to six months: If your faulty item can't be repaired or replaced, then you're entitled to a full refund in most cases.

### **Services paid for at home**

The Consumer Contracts Regulations 2013 say:

- In most cases, you can cancel within 14 days. If you agree the service will start within this time, you may be charged for what you've used.

The Consumer Rights Act 2015 says

- You can ask the trader to repeat or fix the service if it's not carried out with reasonable care and skill, or get some money back if they can't fix it.
- If a price hasn't been agreed upfront, what you're asked to pay must be reasonable.
- If a time hasn't been agreed upfront, it must be carried out within a reasonable time.

### **Digital content**

The Consumer Contracts Regulations 2013 say:

- You may have a 14 day right to change your mind and get a full refund on your digital content, but you might lose this right by agreeing to download the content.

The Consumer Rights Act 2015 says digital content must be as described, fit for purpose and of satisfactory quality.

- If your digital content is faulty, you're entitled to a repair or a replacement.
- If the fault can't be fixed within a reasonable time, or without causing you significant inconvenience, you can get some or all of your money back.

- If you can show the fault has damaged your device and the trader hasn't used reasonable care and skill, you may be entitled to a repair or compensation.

2.6 The new law also consolidates the law with regards to what might constitute an 'unfair term' in a consumer contract and extends the list of what is considered to be unfair to include:

- Extortionate charges when a consumer decides to cancel a contract.
- Allowing the trader to make decisions about the characteristics of the subject matter after the contract had been concluded.
- Giving the trader a mandate to vary the price after the consumer is already bound.

2.7 An addition, the Consumer Rights Act imposes a duty on letting agencies to publicise fees and to say whether or not they are a member of a money protection scheme, and which redress scheme they have joined. There are also new requirements for the resale of tickets for recreational, sporting, and cultural events. Further details about the new Act are provided in Appendix 1 which comprises of Frequently Asked Questions and was compiled by Citizens Advice; and in Appendix 2 which is a summary of the main provisions of the Act taken from Wikipedia.

2.8 The best pre-shopping advice to local residents remains to 'shop around' to get the best price before buying goods; to always check the Derbyshire Trusted Trader website when seeking to have work done on your property or other services and to never deal with someone who knocks on the door who is following up an unsolicited phone call. If a problem does occur then it is always best to immediately talk to the trader and explain the issue and to seek advice from the Citizens Advice Consumer Advice Service<sup>1</sup>.

### **3 Other Considerations:**

In preparing this report the relevance of the following factors has been considered; human resources, legal, financial, prevention of crime and disorder, equality of opportunity; environmental, health, human resources, property and transport considerations.

### **4 Background Papers:**

None

### **5 Key Decision:**

No

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<sup>1</sup> Consumer Advice Consumer Service is available by contacting them on the following number: 03454 040506 or via the following website: <https://www.citizensadvice.org.uk/consumer/protection-for-the-consumer/citizens-advice-consumer-service/if-you-need-more-help-about-a-consumer-issue/>

**6 Call-in:**

Is it required that call-in be waived for any decision on this report? No

**7 Officer's Recommendation:**

That the Cabinet Member, Health and Communities notes the report.

**David Lowe  
Strategic Director  
Health and Communities**

## **Appendix 1 – Questions and answers on new consumer laws<sup>2</sup>**

### **1 What will the Consumer Rights Act do?**

The Act is a part of the Government's reform of the UK's consumer landscape which aims to make it easier for consumers to understand and access their key rights, including:

- the right to clear and honest information before you buy;
- the right to get what you pay for;
- the right to goods and digital content being fit for purpose, and services being performed with reasonable care and skill; and
- the right that faults in what you buy will be put right free of charge or a refund or replacement provided.

### **3 When is it coming into force?**

- The measures in the Consumer Rights Act come into force on the 1st October.

### **4 Where can businesses get more information?**

- More information and guidance can be found on the Business Companion Website:  
<http://www.businesscompanion.info/en/quick-guides/goods/the-sale-and-supply-of-goods-from-1-october-2015>

### **5 Where can consumers get more information?**

- Citizens Advice website, your local bureau, or helpline 03454 040506

### **6 What is Alternative Dispute Resolution?**

- Alternative Dispute Resolution (ADR) is a process that enables disputes between a consumer and business to be settled via an independent mechanism outside the court system.
- There are different forms of ADR: mediation (where the ADR provider facilitates an agreement between the parties), adjudication and arbitration. In both adjudication and arbitration, the ADR provider makes a decision based on the information provided by the parties (either in writing or in person) but, while the decision of an adjudicator can be appealed to the courts, the decision of an arbitrator cannot (other than in limited circumstances). The decisions of an adjudicator and an arbitrator are both binding on the parties and can be enforced through the court.

### **7 Why ADR?**

- It can be cheaper and quicker for consumers and business to use ADR rather than taking a dispute through the courts.

### **8 Why can't consumers sort out their own disputes?**

- In most cases, consumers will continue to sort out disputes between themselves and a business informally (usually through the business' own

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<sup>2</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-consumer-work/the-consumer-rights-act-2015/>

complaints procedure). Indeed, consumers will always be expected to give traders the chance to address a problem before engaging in ADR.

- ADR gives consumers and business another option for sorting out disputes rather than the consumer having to resort to formal court action.

## **9 What are the Consumer Rights Directive/Consumer Contracts Regulations 2013/Consumer Rights (Payment Surcharges) Regulations 2012?**

- The Consumer Rights Directive (CRD) was agreed by all Member States and was implemented into UK law through the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Rights (Payment Surcharges) Regulations 2012.
- The regulations set out rules in relation to the following aspects of the business-to-consumer transaction.

### *Information rights & cancellation rights for distance and off-premises selling:*

- The Regulations consolidate and update these requirements and came into force in June 2014. The key changes are that:
  - The cancellation period extends from 7 to 14 days.
  - Consumers can cancel services started in the cancellation period (this was not possible under the previous distance selling regime).
  - Traders selling at a distance or off-premises can withhold a refund until goods are returned.
  - Such traders can deduct money from a refund where an item appears to have been used (beyond handling to see if the goods are as expected).

### *Provisions to prevent hidden costs:*

- These prohibit specific 'hidden cost' practices which can prevent informed comparison of competitive offers. They include:
  - Prohibition on excessive surcharges for payment methods - came into force in the UK in April 2013.
  - Requirement that, where traders offer telephone helplines for calls by customers to the trader about products purchased e.g. to complain, enquire, or to exercise cancellation or other rights, consumers must not have to pay more than the basic rate for a call. (This came into force in the UK in June 2014.)
  - Requirement to obtain a consumer's active consent for any additional payments. This means pre-ticked boxes will no longer be permitted. The consumer must tick any boxes themselves. (This came into force in the UK in June 2014.)

## **10 What other changes have been made recently?**

- The Consumer Protection (Amendment) Regulations 2014 came into force on 1st October 2014. They provide new private rights for consumers who have suffered harm as a result of a misleading or aggressive practice to:
  - seek to unwind from a contract and get their money back;
  - seek a discount on price paid; and
  - seek damages for detriment caused.

- Misleading and bullying consumers into contracts now carries up to 90 days to unwind the contract.
- The Consumer Protection (Amendment) Regulations 2014 provide new standard remedies for those who have suffered harm from a misleading or aggressive practice.

## **Appendix 2 - Consumer Rights Act 2015 Summary<sup>3</sup>**

An Act to amend the law relating to the rights of consumers and protection of their interests; to make provision about investigatory powers for enforcing the regulation of traders; to make provision about private actions in competition law and the Competition Appeal Tribunal; and for connected purposes.

### **Impact**

It is hoped that by consolidating existing legislation the new Act will simplify consumer protection law for both consumers and businesses alike. The government predicts that the Act will "boost the economy by £4 billion" over the course of the next decade.

### **Background**

The Act was introduced to parliament by the parliamentary under-Secretary in the Department of Business Innovation and Skills (BIS) on 23 January 2014 with the aim of consolidating and updating consumer protection law and to therefore provide a "modern framework of consumer rights."

Among the pieces of legislation that have been combined into the Consumer Rights Act are, most notably:

- Unfair Terms in Consumer Contracts Regulations 1999
- Unfair Contract Terms Act 1977
- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982

### **Definitions**

Section 2 lays out the key definitions pertinent to the Act:

A 'consumer' is "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession." This extends beyond any previous definition in UK or EU law as it includes contracts that are entered into for a combination of personal and business reasons.

- A 'trader' is defined as "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."
- 'Business' is taken to include "the activities of any government department or local or public authority."

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<sup>3</sup> [https://en.wikipedia.org/wiki/Consumer\\_Rights\\_Act\\_2015#Impact](https://en.wikipedia.org/wiki/Consumer_Rights_Act_2015#Impact)



- 'Goods' are "any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for supply in a limited volume or set quantity."
- 'Digital content' means "data which are produced and supplied in digital form."

## **Part 1 Consumer Contracts for Goods, Digital Content and Services**

### **Goods**

The Act requires goods to be:

- Of satisfactory quality.
- Fit for a particular purpose.
- As described.

Previously defective goods had to be rejected within a 'reasonable period' but now consumers have a minimum of 30 days in which they can reject goods that fail to conform to the contract

### **Digital Content**

Digital Content includes not only content that is supplied for a price but also freemium software. The requirements are identical to those of goods, stated above. The main difference is that there is no right to reject digital content but rather the remedies include the right to repair or replacement, the right to a price reduction and the right to a refund. Consumers may also pursue other traditional remedies such as damages and specific performance.

### **Services**

Services must be performed with "reasonable care and skill" and also "within a reasonable time". The Act also ensures that any statement a trader makes when a consumer is either deciding to enter into the contract or making a decision about the service after entering into the contract is now a binding contractual term. Previously such terms may only have given rise to an action in the tort of misrepresentation but now a claim may be brought for breach of contract. This means that a claimant's case will generally be easier to prove and expectation damages may be awarded rather than compensation based on the principle of *restitutio ad integrum*. On top of the usual remedies consumers now also have the right to repeat performance and price reduction.

## **Part 2 Unfair terms**

The definition of an 'unfair term' remains the same as that originally outlined in the Unfair Contract Terms Act 1977; i.e. a term is unfair if, "contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer." However terms that express the main subject matter of the contract are not subject to this fairness test provided such terms are both transparent and prominent in the contract. The Act also adds to the so-called 'grey list' that lists a non-exhaustive range of terms which are, in most cases, likely to be considered unfair by the courts. These include:

- Extortionate charges when a consumer decides to cancel a contract.
- Allowing the trader to make decisions about the characteristics of the subject matter after the contract had been concluded.
- Giving the trader a mandate to vary the price after the consumer is already bound.

Section 71 places a duty on the court to consider the fairness of contractual terms even where neither party raises the issue.

## **Part 3 Miscellaneous and General**

### **Competition law**

Schedule 8 amends the Competition Act 1998 and greatly expands the jurisdiction of the Competition Appeal Tribunal to the extent that it now has similar powers the High Court. The Act also now provides for collective proceedings, a form of class action, on an 'opt-out' basis on top of the present 'opt-in' system. There is also now a statutory scheme of voluntary redress in competition law; a form of ADR.

### **Duty of letting agents to publicise fees**

Letting agents are under a duty to display a list of fees in each of their offices in a prominent position. Such a list must include:

- A description of each fee.
- Whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house.
- The amount of each fee.

The notice must also indicate that the agent is part of a redress scheme and give the name of said scheme.

### **Secondary ticketing**

Anyone reselling tickets for an event must give the following information:

- The seat (or standing area) that the ticket is for.
- Any restrictions on the type of person who may use the ticket (e.g. age restrictions etc.).
- The face value of the ticket.

The event organiser may not cancel a ticket or blacklist a seller for re-selling the ticket unless this right is contained within the original terms of the ticket.