

What rights do consumers have in contracts for Goods and Services?

As the growth of consumerism is now pervasive in every respect, do consumers have corresponding rights and are they adequately protected?

As far as the ordinary customer, forced by everyday necessity into contracts with traders and companies of all kinds was concerned, there was formerly no recognition of unequal bargaining power, nor any concept of consumer protection through parliamentary legislation.

However, as the consumer revolution continues to increase, arguably due to people having greater amounts of disposable income - matched with a significant range of goods and services available, it is necessary to ask what general remedies exist if these goods and/or services are not up to the standard, or the quality that is expected.

Parliamentary legislation has had a great effect on providing protection for consumers. The first ever act was the *Sale of Goods Act (SOGA) 1893* which gave merchants a limited entitlement to redress for a contractual dispute, however, since its re-enactment in 1979 some amendments have been made to accommodate the changing need in consumer transactions. The general principle of SOGA 1979 is that terms of the contract will be implied unless there is something that indicates that the parties intend otherwise.

s.13 refers to Sale by Description: this basically is a condition that goods supplied shall correspond with the description, and this section is applied very strictly in favour of the buyer.

s.14 refers to Quality: a condition that goods are of merchantable (now "satisfactory" under the *s.1 of the Sale and Supply of Goods Act 1994*) quality if the seller sells the goods – new or second hand – in the course of business. This requirement will not apply where any defect or other matter is drawn to the buyer's attention before the contract is made or which ought to have been revealed by the buyer's own examination of the goods.

s.14(3) refers to Fitness for Purpose: a condition that goods sold in the course of business are reasonably fit for the purpose expressly or impliedly made known to the seller by the buyer. This term will only be appropriate where it is reasonable to rely on the seller's skill or judgement; not for example where the buyer knows the seller has no expertise or where the buyer conducts an examination.

The *Unfair Contract Terms Act (UCTA) 1977* gives further protection for consumers. An express term exempting the seller from all implied obligations (as above) will be void. Furthermore, in a consumer sale any term of the

contract which purports to exclude or restrict the operation of SOGA 1979 (ss.13 –15) is also void.

Contracts for services are covered in the *Supply of Goods and Services Act 1982*. This statute covers goods supplied as part of a service. Sections 2-5 of the Act imply the same terms as they are applied to ordinary contracts for the sale of goods, as well as covering goods that are hired.

s.13 requires that a service will be carried out with '*reasonable care and skill*'. What is reasonable will depend on the facts and circumstances of the case. s.14 requires that goods will be carried out '*within a reasonable time*' (if time is not expressly agreed) and the supplier will be paid a '*reasonable price*' (s.15). What is reasonable will be determined by comparisons with other trades.

European influences have had a significant effect in English law - the *Unfair Terms in Consumer Contracts Regulations 1994* arose from an EU Directive. It suggests that every term that is written in a contract must be written in good faith, and the common phrase of the 'small print' must not be too small, and must be written in plain English and not jargon.

The *Consumer Protection Act 1987* was passed as a result of the EC Directive of July 1985, which sought to harmonize the law of Member States on liability for defective products. The Act establishes strict liability for damage caused by defective products. This means that a claimant does not have to establish that the manufacturer was negligent; unless the manufacturer is covered by one of the defences provided by the Act, he/she will be held responsible for the damage.

s.2(1) of the Act lays down the basic liability for damages caused by a defective product. '*Product*' is widely defined to mean '*any good or electricity*'. This means that the Act applies to all the usual consumer goods.

The Act imposes liability on the producer of a product. In most cases this will be the manufacturer, however, in the case of 'own brand' products made by manufacturers but sold under the names of supermarkets and large chain stores, the retailer whose name appears on the pack will be regarded as the producer (s.2(2)).

s.3(1) states that there is a defect in a product '*if the safety of a product is not such as persons generally are entitled to expect*'.

While it seems big companies like Dixon's and Curry's still have Standard Form contracts that negate the terms of the contract entirely; consumers in return have an abundance of rights at their disposal if they need to enforce them. European legislation has introduced the concept of good faith into English law and has provided further protection for consumers against unfair contract terms.

These array of rights are now effective in redressing the imbalance that was more prevalent before exhaustive legislation had a major role in consumer

law. Moreover, it must be remembered that Britain's benefit from being a member of the European Community is that such membership brings standardisation and a level playing field for all consumers of goods and services throughout the Community.

The phrase the '*customer is always right*' should continue to be echoed by traders, companies and firms, as the quality of consumer protection is at an all time high!

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