

The Consumer Rights Act 2015: What does it mean for you?



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Those active in the retail industry, or those paying attention to the news, may have noticed on October 1st the coming into force of a piece of legislation called The Consumer Rights Act 2015 (the "CRA") and the ensuing media coverage. The CRA represents the biggest overhaul of consumer law in decades, shaking up the consumer rights regime in the UK.

What has changed and how will it affect you?

Buying and selling

The CRA has brought about numerous changes to the way businesses must operate. The following have been selected as being of particular importance:

Tiered remedies:

The new Act has brought in a regime of 'tiered remedies', creating a hierarchical structure for the remedies available for faulty or non-conforming goods. In brief, the hierarchy is as follows:

- Right to refund: statutory right to reject the goods and receive a full refund for faulty goods up to 30 days after purchase. This is more prescriptive than the former legislation, which simply provided for a right to reject within a reasonable period. This period may be limited for certain categories of goods, for example perishables;
- Right to repair or replacement: Both during and beyond the statutory 30 day limitation period for rejection and refund, the buyer will be entitled to repair or replacement of the faulty or non-conforming goods; and
- Right to price reduction or final rejection: If, even after a repair or a replacement, the goods are still not to the customer's satisfaction (or the repair or replacement

has not taken place within a reasonable time frame) the consumer will be entitled to a reduction of the price, or to reject the goods and receive a refund. This refund may be capped if the final rejection is made six months after the purchase of the goods (depending on how much the goods have been used).

Digital Goods:

- Consumers now have the rights to repair, replacement or reduction in price of digital content either bought online, or that comes as part of a purchase of non-digital goods (e.g. a disc containing digital content as part of a language learning pack).
- Retailers may now also be liable if their digital content causes a virus or other technical issues on the consumer's personal devices.

Services:

- The CRA has enhanced consumer protection in respect of the purchase of services.
- The stipulations that a service must be provided with reasonable care and skill remain. These are, however, now bolstered by specific statutory remedies for failure to provide the correct service, in particular the right to request repeat performance or the right to a reduction in price.



Unfair Terms in Consumer Contracts:

- If the key terms of a consumer contract are not both prominent and transparent, they may now be assessed for fairness.

On the one hand, the main impact of these changes is a re-balance of power in favour of the consumer. The enhanced remedies enshrined in the new CRA are more robust than those in the previous consumer protection regime, potentially to the cost of the business.

On the other, the new regime streamlines and consolidates the existing legislation, increasing transparency and clarity and creating a stronger compliance framework. This should enhance understanding of the regime, increasing certainty and making it easier for businesses to adhere to and apply the law. Of key importance is that businesses become aware of any adjustments they will be required to make to their business practices in order to comply with the new consumer rights regime, with the intended result of reducing the number of consumer rights infringements that occur in the first place.

Dispute Resolution

The CRA has also amended the way that consumer and business disputes are to be dealt with. The following are the two key changes that the CRA has brought into play:

Alternative Dispute Resolution:

- There is now an option for alternative dispute resolution for the consumer and the retailer, which will provide a cheaper mechanism for resolving issues. Businesses should make it clear in their terms whether they are prepared to use an alternative dispute resolution solution.
- This process includes the option of a voluntary redress scheme ("VDS"), whereby the parties can apply to the Competition and Markets Authority ("CMA") to make an order for compensation to be paid by the infringer to the victims of the infringement. This would ensure a quicker receipt of damages for individuals harmed by competition law infringements, and also benefit the infringing party as the CMA may entitle them to a discount of 20% in respect of the infringement.

Competition Appeals Tribunal:

- The Competition Appeals Tribunal ("CAT") now has the jurisdiction to deal with stand-alone as well as follow-on competition claims.
- A new regime has been put into place to allow 'class actions' to be brought against businesses at the CAT for breaches of UK/EU competition law. Such class actions will be based on either an:

- "opt-in" model, whereby claimants must elect to be part of the represented group; or
- "opt-out" model, whereby UK based claimants are automatically included in the represented group unless they elect to opt-out. The structure of the claim will be defined in a 'collective proceedings order'.
- The decision as to whether to allow a class action will be at the discretion of the CAT, which can take into account all matters it thinks fit. The CAT may likewise determine whether the proceedings are to be run on an opt-in or opt-out basis.

The VDS may be of benefit to businesses and consumers alike. Although it may lead to consumers obtaining up to 20% less than they would from a full process, it does provide certainty of redress if both parties agree to the process. For both parties, VDS also avoids the potential costs in both time and money associated with a litigation process.

In respect of the new collective actions process, although it provides consumers with a new and convenient route to achieving redress from businesses who have infringed consumer law, this method is not without its perils for the complainants. There are serious risks for the representative claimant – the class representative must have sufficient funding (or insurance) to cover the cost of the claim *and* the costs of the defendant in case of loss. This will limit the number of parties who are willing to stand as representative in the claim, at least in the next few years when parties are still unfamiliar with the process.

However, these limitations do not mean that parties will not seek to utilise the new class action option, and this may be sooner rather than later. Businesses should therefore acquaint themselves with the new regime before they find themselves at the sharp end of this new CRA complaints mechanism.

If you would like further information about the new consumer rights regime, or if we can help you with a consumer rights related issue, please contact [John Schmidt](#) or [Claire Stockford](#).

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