

## **BWF Guide to Consumer Regulations**

### **Consumer Regulations Update:**

#### **Your Responsibilities at the Time you Sell Goods**

Whenever you sell goods to a customer you have certain responsibilities.

You must make sure the goods or services 'conform to contract'. This means that they must be as described in the contract - for instance, a door must be the exact model that you say it is, of the correct size and with the correct finish that you told the customer it would have. You should also note that any information which you give a consumer before the contract is finalised, if it encouraged the consumer to enter into the contract, will be part of the contract even if it is not put in writing.

By law, all descriptions, including those that are verbal, written, implied or given in an illustration, must be accurate and not misleading. Describing goods inaccurately means the customer may have a claim against you for breach of contract, and may put you in breach of the Consumer Protection from Unfair Trading Regulations 2008.

The goods or services must also be of satisfactory quality - meaning they should be safe, work properly and have no defects. Although there is more responsibility attached to the manufacturers and producers of goods or services, you could also be held liable for any damage, injury or death caused by the use of products or services you supply - see our guide on product liability.

You must also ensure the goods or services are 'fit for purpose'. This means they should be capable of doing what they are meant for. For example, in the case of a dining table, it should generally be level and capable of withstanding a reasonable weight. However, if the customer has made you aware beforehand that the table must be collapsible in order to fit into a specific room up a narrow staircase, it must also be fit for this purpose.

Not only are these your legal responsibilities - they make sound business sense if you want to attract and retain customers.

## Your Responsibilities if you Sell Services

Whenever you sell services to a customer you have certain responsibilities.

The Consumer Rights Act 2015, says that a person providing a service must do so with 'reasonable care and skill'. It also requires the service to be carried out within a 'reasonable time' and for no more than a 'reasonable charge' unless there was prior agreement with the customer about these matters. In Scotland, the common law has a similar effect.

The definition of the term 'reasonable' will vary, depending on the circumstances.

If you have agreed a price for your service with a customer, it is not 'reasonable' to change it without a good reason. For example, agreeing with the customer to provide additional services. If a price has not been agreed beforehand, it would not be deemed reasonable to charge an excessive sum which is much greater than that which would have been charged by a competitor for the same work.

Similarly, if a defined timescale has been agreed with your customer for the delivery of services, it should not be changed without good reason and agreement with the customer.

Any goods you supply as part of delivering your service will be subject to the conditions covering goods. For example, if you supply and fit doors, your service would be installing doors, but you would also be responsible any other goods you install, such as hinges, handles, door closers, etc.

Under the Consumer Rights Act 2015, goods supplied under a contract which also includes installation will be deemed not to conform to the contract if the installation is incorrect. In the above example, even if the door was free from any defect, but the handle had been installed in the wrong place, the consumer would have the right to demand that the installation was put right. If this was not done, or the installation was re-done but again not to the correct specifications, the consumer would have the right to demand a reduction in the price charged, or to reject the goods as a whole and demand a refund.

## The Rights of Customers: Goods

If you sell your customers goods that don't conform to contract you are legally obliged to resolve the problem if they seek redress.

## Implied Terms:

When dealing with consumers, a number of clauses are deemed to be included in the contract for sale, whether specifically included or not. This only applies to consumers, who are defined in the regulations as individuals acting wholly or mainly outside of their usual trade, business, craft or profession. If you deal only with other businesses, the Consumer Rights Act does not apply.

A good or service does not conform to the contract if it contravenes any of the provisions set out in clauses 9 to 15 of the Consumer Rights Act 2015. These are:

9. Satisfactory quality
- 10 Fitness for purpose
11. Matching any description given prior to conclusion of the contract
12. Other pre-contract information included in contract
13. Matching any sample examined by the consumer prior to conclusion of the contract
14. Conforming with any model examined by the consumer prior to conclusion of the contract
15. Correct installation (as discussed above)

## **Pre-Contract Information and Distance Selling**

The information referred to as “pre-contract information” is set out in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. In brief, your obligations are to provide details of the goods being purchased, including the price, any relevant delivery arrangements, your own details and details of any relevant after-sales service, guarantees or complaints handling policies. Please note that, when selling to consumers, any price quoted must include VAT.

Where the contract was concluded away from your business premises, e.g. on a visit to the consumer’s home or place of work, or if the contract was concluded by telephone, you must also inform the consumer of his or her right to cancel the contract for no reason within 14 days. A model cancellation clause, together with a tear-off cancellation notice for completion by the consumer, is available on our website and appended to the Standard Terms and Conditions for Consumer Contracts.

It is very important that the information regarding the right to cancel is given to consumers, as failure to do so is an offence under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, and could result in you being fined.

If you don't give your client the required information regarding their right to cancel, and the time limit and procedures for cancelling, then the cancellation period will be extended beyond the usual 14-day period:

- If you give your client the relevant information within a period of 12 months after the contract is entered into, the cancellation period ends 14 days after your client receives the information.
- If you don't give this information to your client at all, the cancellation period ends at the end of 12 months and 14 days.

This means that if you don't give your client a notice of their right to cancel, then you will not be able to enforce the contract against them until you either give them the relevant information or a period of 12 months and 14 days has lapsed.

### **Distance Selling and goods made to the consumer's specification**

It will be relevant to many members that the requirement for a 14 day cooling off period for distance sales does not apply to goods made to the consumer's specification, or goods that are clearly personalised. In such circumstances, the consumer can reject the goods only if there has been a breach of their statutory rights which would include other instances such as misdescribed goods too.

By way of example, if you were contracted to produce window frames for a property, and the measurements of the window frames were specific to that property, regardless of where the contract was concluded the consumer cannot reject the windows if they conform to the contract. However, if the window frames were of a standard size, the distance selling requirement would apply, so if the contract was concluded away from your place of business, you must give notice of the cooling off period.

This does not affect the rights of consumers to reject goods which do not conform to the contract, as set out below.

## Consumers' Rights of Redress

Any customer, whether a consumer or a business customer, is entitled to bring a claim against you for breach of contract if the goods or services supplied do not conform with the contract. In law you have a responsibility to your customer for up to six years from the date of purchase (in Scotland, five years from discovery of the problem). During this period, you are legally obliged to deal with any claim of breach of contract.

However, the Consumer Rights Act 2015 states that if consumers want to reject goods that 'do not conform to the contract' under sections 9, 10, 11, 13 or 14 of the Consumer Rights Act they can do so within 30 days of delivery of the goods or, in the case of services, within 30 days of the conclusion of the contract. If the consumer chooses to reject the goods within the 30 day period, the consumer must be able to prove that the goods do not conform to the contract.

If a customer rejects non-conforming goods within the 30 day period, they are entitled to ask for their money back. Alternatively, even after the 30 day period, they can ask for a repair or a replacement (instead of asking for a refund). If the consumer opts for repair or replacement rather than rejection of the goods and you choose to dispute the decision the burden of proof will be on you to show that the goods do comply with the contract.

Any repair or replacement you arrange must not cause the consumer too much inconvenience, and must be done within a reasonable time. What is a reasonable time will depend on the type of item needing repair, and the nature and extent of repair needed.

You may have to pay for other costs such as transportation. However, if a replacement is impossible and the goods cannot be repaired economically, or vice versa, then you can offer a full or partial refund.

If you repair or replace the item, and the repaired or replaced item still does not conform to the contract, the consumer has the right to then either reject the goods and demand a refund, or demand a reduction in the price.

## The Rights of Customers: Services

Customers have a number of rights under the Consumer Rights Act 2015 if they are not satisfied with a service you have provided.

If a customer justifiably believes that you haven't used 'reasonable' care and skill, you must put the work right at no extra cost. Failing this, they can ask another supplier to put the work right and then claim the cost from you.

If you charge a customer more for the service than was agreed, the customer is only obliged to pay the price you quoted them. If no price was agreed they must pay you a 'reasonable' price.

If you don't complete a service by an agreed deadline, you are in breach of contract. In these circumstances the customer can claim compensation for any losses. If no time was specified in the contract, they are legally entitled to have the work done in a 'reasonable' time.

What is considered to be 'reasonable' will vary depending on the circumstances.

## **What do I have to do if a Customer Complains?**

If a customer complains about goods or services they have purchased from you, it is essential to establish what your responsibilities are under the Consumer Rights Act. Ask yourself whether the goods are not as you described them, unfit for their purpose, or of unsatisfactory quality. Ask if the services you have provided have been delivered with reasonable care and skill within a reasonable time for a reasonable charge.

If the customer does have a valid claim under one of the above conditions, then your next step depends on whether goods or services are involved and whether they are consumers or other traders.

If faulty goods are involved and the purchase was made a reasonably short time ago, you should offer a refund. The customer may claim compensation from you - either immediately following the sale or at any time up to six years afterwards. If they do so and it is a reasonable claim, you can either offer to repair or replace the goods, or to provide an appropriate sum in redress.

We recommend that members put in place a formal complaints procedure to deal with any complaints received. If you have in place a formal complaints procedure, you should provide the details of this when entering into a contract with a consumer.

## **What happens if I can't resolve a complaint?**

If you have tried to resolve a customer's complaint but the situation is 'deadlocked', then what happens next will depend on whether you have acted properly and on whether the customer decides to pursue the matter.

If you accept that the customer's claim was valid under the Consumer Rights Act 2015 - but are confident that you have offered the necessary refund, repair or replacement - you may have discharged your legal obligations even if the customer refuses to accept that.

However, if you are uncertain that what you have offered is sufficient, you should seek advice – call the BWF on 0207 637 2646.

If your business has signed up to a scheme run by a dispute resolution service, this may be the stage at which you or the consumer choose to involve them.

## **Alternative Dispute Resolution (“ADR”)**

The Consumer ADR Directive sets up a framework for ADR (alternative dispute resolution), for all traders dealing with consumers. Alternative Dispute Resolution is an umbrella term for methods of dispute resolution, such as independent ombudsman services, which aim to resolve disputes without recourse to the Courts. It is generally quicker and less expensive than taking a dispute to Court, even in the Small Claims Court. Another advantage is that the process is generally much more amicable, and may therefore be better for retaining the goodwill of your customers.

The aim of the Directive is to make access to ADR easier for consumers and to therefore help consumer complaints to be dealt with effectively and efficiently. Under the ADR Regulations a trader must advise the details of an ADR body and also state whether they submit to ADR or not.

The two main ADR bodies which deal with disputes in our sector are the Furniture & Home Improvement Ombudsman and the Federation of Master Builders. There are also a number of ADR bodies which deal with disputes across a range of sectors, e.g. Small Claims Mediation or the Centre for Effective Dispute Resolution.



ADR bodies are approved and regulated by the Trading Standards Institute, and a full list of approved ADR bodies can be found through their website:  
[www.tradingstandards.uk](http://www.tradingstandards.uk)

Regardless of whether or not you sign up to the use of an approved ADR body for the resolution of consumer disputes, if a consumer makes a complaint and this is not resolved through your own internal complaints procedure, you must inform the consumer in writing of the existence of a relevant ADR body, and confirm whether or not you have opted into the scheme run by that ADR body.