

The Consumer Rights Act 2015: A Summary of Key Changes

Robin Kingham, pupil

Introduction

The Consumer Rights Act 2015 ('the Act') received royal assent on 26 March 2015 and is expected to come into force on 1 October 2015. It serves as a consolidating Act, but also introduces some significant changes to consumer law. As part of the consolidation, many statutory provisions familiar to practitioners will either disappear or cease to apply in the business-to-consumer context. Amongst others, the Act replaces the Unfair Terms in Consumer Contracts Regulations 1999 ('the UTCCRs'), the Unfair Contract Terms Act 1977 ('UCTA') (in relation to consumer contracts), most of the Sale of Goods Act 1979 ('the SGA'), and the Supply of Goods and Services Act 1982 ('the SGSA') (in relation to consumer contracts). Consumers' rights in relation to the sale of goods and unfair terms remain broadly the same as under those statutes, but are clarified and enhanced in places. Significant changes have been made to consumer remedies in respect of faulty goods and the exclusion of price terms from scrutiny for unfairness.

The ambit of the Act is firmly in the business-to-consumer sector. Section 2(3) of the Act defines a 'consumer' as an *individual* acting for purposes that are wholly or mainly outside that individual's trade, business, craft, or profession. Small businesses (including sole traders) will have to look to existing legislation for protections against the purchase of defective goods or services.¹ The Act is divided into three parts. Part 1 deals with consumer contracts for goods, digital content, and services. Part 2 deals with unfair terms. Part 3 contains miscellaneous provisions, including enforcement powers. This article summarises some of the key changes introduced by Parts 1 and 2 of the Act.

¹ See '*Unfair Contract Terms Guidance – Draft for Consultation*', Competition & Markets Authority (26 January 2015), paragraph 1.10

THE CONSUMER RIGHTS ACT 2015: A SUMMARY OF KEY CHANGES
BY ROBIN KINGHAM

Part 1 – Consumer Contracts

Part 1 provides consumers with minimum rights in contracts for goods, services, and digital content. Consumers' rights in contracts for goods and services will be familiar to many as they are largely drawn from the SGA and the SGSA. For example, the Act includes broadly similar requirements that goods be of satisfactory quality, fit for particular purposes, and correspond with samples.

However, Part 1 also introduces many changes. The most significant of these is the inclusion of a chapter relating to digital content. This is a novel and welcome addition that removes a lacuna in the law. Previously, intangible digital property was not considered a good. This meant that a song was treated as a good if it was purchased on CD, but not if it was downloaded from the internet. Consequently, songs purchased from virtual retailers online were not subject to regulation by the SGA. Chapter 3 of Part 1 introduces a comprehensive regime relating to digital content which treats these transactions as a third category of regulated contract.

Buyers' remedies in respect of faulty goods have also been altered. Section 22 of the Act fixes a time period of 30 days within which a consumer may reject faulty goods. This 'short term right to reject' will provide greater certainty than the existing law, but it is complemented by additional remedies which include a 'final right to reject' once other remedies are exhausted. Sections 20 to 24 of the Act create this tiered system of remedies in respect of faulty goods. In essence, if a consumer does not reject faulty goods within the 30 day period, he or she may still require that the goods be repaired or replaced. If the goods are still faulty after repair or replacement, the consumer is then entitled to a higher tier of remedy, such as a price reduction or refund.

Part 2 – Unfair Terms

Practitioners will recognise much of Part 2 of the Act as a combination of UCTA and the UTCCR. Section 62(4) states that 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'. Such terms are not binding on consumers, but may be binding on traders. The 'grey list' of potentially unfair terms is imported in its entirety from the UTCCRs and three new terms are added to the list. The 'blacklisted' terms relating to exclusions of liability for death or personal injury resulting from negligence are also imported from UCTA.

However, a number of changes to the law have been introduced that significantly increase the court's ability to intervene in consumer contracts. One important change is that, unlike the UTCCRs, the new Act applies to all business to consumer contracts, whether or not those contracts were individually negotiated with the consumer.

Another important change has been made to the so-called ‘core terms’ exclusion. Since the decision of the Supreme Court in *Office of Fair Trading v Abbey National plc* [2009] UKSC 6, there has been much discussion about ‘ancillary charges’ that are often included in businesses’ terms and conditions. In that case, the court held that charges for unauthorised overdrafts were exempt from assessment for fairness because they were price terms (pursuant to regulation 6 of the UTCCR’s). However, the Law Commissions have since expressed their displeasure with this conclusion. In particular, they pointed out that price comparison websites encourage traders to advertise unrealistically low prices to attract consumers and then make a profit from ancillary charges that are included in traders’ ‘small print’.² It was seen as particularly unfair that such charges are usually not brought to the attention of consumers at the point of sale. In order to combat these practices, the Commissions recommended that:

- (i) the exclusion should only apply to aspects of terms that specify the main subject matter or price of the contract, but not to other aspects of those terms,³ and
- (ii) in order to qualify for the exclusion, all terms (including those dealing with the main subject matter or price) should be transparent and prominent.

Section 64 of the Act implements these recommendations:

‘(1) A term of a consumer contract may not be assessed for fairness under section 62 **to the extent that—**

- (a) it specifies the main subject matter of the contract, or
- (b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services supplied under it.

(2) Subsection (1) excludes a term from an assessment under section 62 only if it is **transparent and prominent...**’ (emphasis added)

The emphasised phrase in 64(1) implements the first Law Commission proposal. Although the price paid for a good is still not subject to a test of fairness, this new wording clarifies that other aspects of the payment may be subject to scrutiny. For example, the timing and method of payment may now fall within the court’s consideration of fairness.⁴

² *Unfair Terms in Consumer Contracts: Advice to the Department for Business, Innovation and Skills*, the Law Commission and Scottish Law Commission (March 2013), S.12

³ The BBA had advocated a different approach under which all aspects of a price term, such as time and method of payment, would be excluded from a fairness assessment so long as they were transparent and prominent (Ibid., paragraph 3.93)

⁴ See *Draft “What’s New” in Unfair Terms*, BIS (September 2014), paragraph 5.2

THE CONSUMER RIGHTS ACT 2015: A SUMMARY OF KEY CHANGES
BY ROBIN KINGHAM

The emphasised phrase in 64(2) reflects the second Law Commission proposal. The requirement for the term to be ‘prominent’ in order to benefit from the exclusion is intended to combat ancillary fees which are often buried in contractual small print. For example, unauthorised bank charges, such as those in the *Abbey National* case, will now be subject to a fairness assessment if they are not prominently displayed to consumers when the relevant agreement is made.

Finally, section 71 imposes an obligation on courts (which is in fact no more than a recognition of existing European case law)⁵, to consider the fairness of terms in consumer contracts even if it is not raised as an issue by the parties. However, the court must be satisfied that it has sufficient legal and factual material to do so.

Conclusion

Although the Consumer Rights Act 2015 serves primarily to consolidate much of the existing law in one statute, it does make significant changes to the law in some areas. Overall, the Act represents a substantial increase in the rights of consumers and in the powers of the court. In light of these changes, many businesses will need to revisit their standard terms and other sales documents before the Act comes into force in October 2015.

⁵ For references to the European decisions, see paragraphs 340 – 341 of the Explanatory Notes.