



Constituency casework: consumer protection

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Members of Parliament receive a significant number of enquiries from constituents concerning consumer problems. For example, they may receive enquiries about the purchase of a faulty good, a dispute with a tradesman over the standard of service provided, or an unfair trading practice. Many of these enquiries are straightforward and can be answered using information that is readily available on the internet, in particular, from guidance published by Citizens Advice, the Office of Fair Trading or the Department for Business, Innovation and Skills (BIS). Others are more complex and may require proper legal advice from a solicitor or other professional adviser.

This note provides a brief introduction to UK consumer protection law. Most importantly, it refers to sources of information that may be helpful to Members' staff when dealing with straightforward questions.

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1 Introduction

Consumer protection is a complicated area of the law. Many people think of it as simply meaning a consumer's rights when buying a good in a shop. However, consumer protection covers many other areas, such as unfair contract terms; distance selling; timeshares; the safety of goods; and consumer credit. In effect, 'consumer protection' is used as a generic term to mean all laws and measures to protect the consumer.

The consumer protection policy framework in the UK relies on a combination of private and public enforcement of a considerable body of law. Consumer rights have evolved over the centuries in terms of basic law. However, it is worth noting that in the last thirty years a significant number of the UK's consumer protection laws have come from Europe and this development is likely to continue.

2 Consumer protection law in the UK

In the UK, there is a large body of legislation that deals directly with consumer protection. It would be impossible, within the confines of this note, to provide an outline of all legislation that may be relevant to a constituent's consumer enquiry. However, in order to illustrate how legislation can significantly improve a consumer's legal position, three important pieces of legislation are considered here. These are:

- *Supply of Goods and Services Act 1979* (as amended)
- *Consumer Protection Act 1987* and
- *Consumer Protection from Unfair Trading Regulations 2008*

2.1 Supply of Goods Act 1979

The *Sale of Goods Act 1979* (SGA 1979), as amended by the *Supply of Goods and Services Act 1982*, the *Sale and Supply of Goods Act 1994* and the *Sale and Supply of Goods to Consumers Regulations 2002*. In summary, this Act implies certain statutory rights in to the consumer contract. In every transaction for the transfer of goods, the goods must:

- correspond with the description given
- be of satisfactory quality; and
- be fit for purpose

If the implied conditions are breached (for example, the goods are faulty or do not correspond with the description or are not fit for purpose) the customer can usually reject the goods and demand a refund. The consumer may, in certain circumstances, also be entitled to compensation for any losses or expenses incurred. Where faulty goods are returned within the first six months of purchase, the consumer is entitled to a remedy unless it is clear that the defect did not exist at the time of purchase. After the first six months and for up to six years, consumers are entitled to a remedy if they can show that the defect existed *at the time* of delivery. These rights are enforceable against the retailer, not the manufacturer. The SGA 1979 works on a chain system. If someone claims against a retailer, they, in turn, may claim against the wholesaler, who can claim against the manufacturer. However, consumers cannot expect a legal remedy where goods have faults that they knew about before the sale or that should have been evident on reasonable inspection.

Once goods have been 'accepted' the customer loses his/her right to reject them and therefore claim back what he/she has paid. Acceptance can be either by an explicit acknowledgement or by keeping them for more than a reasonable time after their defective nature has become apparent. However, the buyer may still have a claim for damages, repair or replacement of the product.

2.2 Consumer Protection Act 1987

The aim of the *Consumer Protection Act 1987* (CPA 1987) is to safeguard the consumer from products that do not reach a reasonable level of safety.

In respect of product liability, the Act allows injured persons to sue producers, importers and own-branders for death, personal injury or loss to private property (valued above £275). The injured party must be able to show that the defect in the product caused the damage. For the purposes of the Act, defective products are defined as being those where the safety of the product is not such as persons generally are entitled to expect. In considering a case, a court must take into account all relevant circumstances, including:

- the way in which the product was marketed
- any instructions or warnings that accompanied the product
- what might reasonably expect to be done with it
- the 'state of the art' at the time that the producer supplied the product and
- any contributory negligence by the consumer (e.g. if the consumer was reckless in their use of the product)

In respect of consumer safety, the CPA 1987 has been substantially changed by the *General Product Safety Regulations* introduced in 1994. In a nutshell, the Regulations require producers and distributors to take steps to ensure that the products they supply are safe, that

they provide consumers with relevant information and warnings, and that they keep themselves informed about risks.

Safe products are defined as being products which under normal or reasonably foreseeable conditions of use, present no risk or only the minimum risk compatible with the product's use, and which is consistent with a high level of protection for consumers. Offences against the Act can incur penalties of up to a £5,000 fine or a maximum prison term of six months, or both.

2.3 Consumer Protection from Unfair Trading Regulations 2008

The *Consumer Protection from Unfair Trading Regulations 2008*, which came into force on 26 May 2008, implements in the UK the *Unfair Commercial Practices Directive* (UCPD). In introducing a basic concept that '*businesses should not trade unfairly*', the UCPD, adopted on 11 May 2005, is arguably the most important consumer protection directive drafted in the last forty years. The overriding aim of the UCPD is to deliver a European-wide consumer protection charter. The Directive:

- harmonises unfair trading laws in all EU Member States; and
- introduces a general prohibition on traders not to treat consumers unfairly.

The Directive is deliberately wide in scope in order to cover gaps in existing EU consumer protection legislation. It is also intended that the Directive will set standards against which new practices will be judged. The Directive can be viewed in full at:

<http://www.berr.gov.uk/files/file27194.pdf>

The *Consumer Protection from Unfair Trading Regulations 2008*, which are enforced by the Office of Fair Trading (OFT), introduce a general prohibition on traders in all sectors engaging in unfair commercial practices against consumers. It is for the OFT to decide if a particular business activity constitutes an unfair commercial practice. In reaching this decision, the OFT must take into account a number of factors, including:

- the substance of the information given to the consumer before and after the contract was made;
- the conduct of the seller in his dealings with the consumer, whether he acted honestly and in good faith;
- whether the seller used misleading practices or omissions to secure the sale; and
- whether the seller used aggressive sales techniques (such as undue influence) to secure the sale.

Further information on the Regulations is available from the OFT website at:

http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

3 European Consumer Agenda 2012

In framing its consumer protection policy, the EU has consistently pursued one overriding aim: to encourage traders, particularly small and medium sized enterprises (SMEs), and consumers to treat the market as a genuinely single market.

A new European Consumer Agenda was adopted on 22 May 2012. This presents measures designed to achieve the objectives of the EU's growth strategy, 'Europe 2020'. The aim of this strategic agenda is to: "*boost confidence and growth by putting consumers at the heart of the single market*". The Agenda is built around four main objectives designed to increase consumer confidence. They are:

- Reinforcing consumer safety: for goods, services and food, strengthening the regulatory framework and making market surveillance more efficient.
- Enhancing knowledge: to cope with the increasing complexity of markets, where consumers need the right tools and information to understand everything from the real cost of consumer credit to finding the right place to complain. This is considered to be important for both consumers and traders, and the role of consumer organisations is key.
- Improving enforcement and securing redress, without which rights cannot exist in practice. This is all the more relevant given that the detriment suffered by European consumers incurred from problems causing complaint is estimated at about 0.4 % of EU GDP.¹ The role of consumer enforcement networks is central.
- Aligning policy to societal change and making it relevant to daily life: to adapt consumer law to the digital age and tackle problems consumers face online; to factor in the needs of vulnerable consumers; to make sustainable choices easy.

The Agenda supports consumer interests in the following key sectors:

- Food: to ensure sustainability and safety.
- Energy: so that consumers can get the best value for money in the liberalised market and better manage their energy consumption.
- Financial: to protect consumers' financial interests and give them the tools to manage their finances.
- Transport: to adapt legislation to modern patterns of travel and to support sustainable mobility.
- Digital: with a view to tackling problems faced by consumers and ensuring their protection online.

Further information on the Agenda can be obtained from the Europa website at:

http://ec.europa.eu/consumers/strategy/index_en.htm#agenda

4 Online guides to consumer protection law

4.1 Citizens Advice

Citizens Advice publishes 'Fact Sheets' on its web site which provides information on a range of consumer related subjects including: money matters, energy and the legal systems in England, Wales, Scotland and Northern Ireland.

The 'Fact Sheets' are available at: <http://www.adviceguide.org.uk/england.htm>

4.2 Trading Standards

Various local authority Trading Standards Offices provide guidance notes on issues connected to consumer protection law. This information can be viewed on their respective websites. The Trading Standards Institute (TSI) also publishes useful consumer guidance on its website at: <http://www.tradingstandards.gov.uk/advice/consumer-advice.cfm>

¹ 'A New European Consumer Agenda: Boosting Confidence and Growth by Putting Consumers at the Heart of the Single Market', EC Press notice, 22 May 2012, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/491#footnote-1>

5 Where to go for advice

5.1 Citizens Advice

New proposals to make the Citizens Advice service a champion for consumer information across a range of sectors and a new National Trading Standards Board (NTSB) were announced on 11 April 2012 by the Department of Business Innovation and Skills (BIS). Citizens Advice and Citizens Advice Scotland will take on responsibilities and resources from the Office of Fair Trading (OFT) and Consumer Focus. The process has already started, and a new advice line succeeding Consumer Direct was launched by the Citizens Advice service on 2 April 2012.

The Citizens Advice consumer service provides free, confidential and impartial advice on consumer issues. Citizens Advice can be contacted by telephone using its helpline on: 08454 04 05 06 or by visiting: http://www.adviceguide.org.uk/england/consumer_e.htm

It should be noted that consumer information collected by the consumer service is shared with the OFT and other enforcement partners, including Local Authority Trading Standards Services.

5.2 Local authority Trading Standards services

Trading Standards services are set-up, run and financed by local authorities. Trading standards Officers (TSOs) give legal advice and support to consumers and small businesses and ensure compliance with the law. They now work in partnership with Citizens Advice to provide front-line advice to consumers. TSOs also investigate complaints about doubtful trading practices and check the quality of goods and services and will, if necessary, enforce legislation through prosecution where there has been a criminal offence. The main consumer protection areas covered by TSOs are:

- Fair Trading
- Food Safety and Labelling
- Trade Descriptions
- Weights and Measures

Most importantly, TSOs have responsibility for the enforcement of a large number of acts of Parliament and sets of orders and regulations made under those acts. Specifically, they enforce the following consumer protection legislation:

- Children and Young Persons Act 1933 (s.7)
- Children and Young Persons (Protection from Tobacco) Act 1991
- Consumer Credit Act 1974
- Consumer Protection (Distance Selling) Regulations 2000
- Consumer Protection Act 1987 (Parts II & III)
- Enterprise Act 2002
- Estate Agents Act 1979
- Fair Trading Act 1973
- Fireworks Act 2003
- Hallmarking Act 1973
- Intoxicating Substances Supply Act 1985
- Prices Acts 1974 and 1975
- Timeshare Act 1992

- Tobacco Advertising and Promotion Act 2002
- Trade Descriptions Act 1968
- Trade Marks Act 1994
- Unfair Terms in Consumer Contracts Regulations 1999
- Unsolicited Goods and Services Acts 1971 and 1975
- Weights and Measures Acts 1976 and 1985

TSOs will have various powers under the different acts and regulations. For example, some acts may give officers extensive powers to enter premises, inspect and confiscate documents and bring prosecutions, other acts may not.

In addition, a new National Trading Standards Board (NTSB) will bring together representatives of Trading Standards from England and Wales to prioritise, fund and coordinate national and regional enforcement cases. The NTSB will be responsible for gathering important intelligence to combat rogue traders, and tackle priorities such as internet scams, illegal money lending and other enforcement issues that go beyond local authority boundaries.

Further information is available from individual local authority Trading Standards offices (all are accessible online) or from <http://www.tradingstandards.gov.uk/>

5.3 Law Centres

Law Centres were set up to help people access free independent legal advice within their local community. They are staffed by lawyers and non-lawyers with different ranges of experience. The Law Centres Federation (LCF) was established in 1978 and acts as a co-ordinating body for Law Centres in the UK. <http://www.lawcentres.org.uk/>

The LCF website provides a searchable database to find local Law Centres, as well as information on what services a particular Law Centre can offer. Details of Law Centres can also be found in local telephone directories.

5.4 Trade bodies

There are a number of different types of trade bodies operating in the UK; many reputable tradesmen will belong to a trade body and abide by its membership rules. A recognised trade body can provide a consumer with the confidence of knowing that a particular tradesman has been approved by them as competent in his/her trade. Most associations are able to provide consumers with a list of registered members that work in their area. Importantly, many trade bodies provide consumers with access to a free or low-cost conflict resolution scheme in the event of a dispute between a member tradesman and the consumer.

By way of illustration only, the following organisations are all trade bodies:

- Federation of Master Builders (FMB), <http://www.fmb.org.uk/>
- The National Association of Estate Agents (NAEA), <http://www.naea.co.uk/>
- Advertising Standards Authority (ASA), <http://www.asa.org.uk/>
- Association of British travel Agents (ABTA), <http://www.abta.com/about>