businesscompanion
trading standards law explained

Part 3. Complaints and redress

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Consumer Rights Act 2015

The Consumer Rights Act 2015 (CRA) is a lengthy but significant piece of legislation that consolidated existing consumer protection laws, giving consumers a number of new rights and remedies. One of the major changes was to do away with the long-established Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 insofar as they applied to ordinary consumers.

A better understanding of the law will help businesses to serve their customers well. For example, if a customer is demanding a refund, the business will be able to explain clearly whether their rights entitle them to one. And if a problem arises in how a business provides a service, it can be certain what it may be required to do about it.

This guide has been written in relation to the way that businesses deal with consumers. A consumer is defined in the CRA as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession". In a nutshell, anybody paying for something that will be used in their personal life is a 'consumer', and the relevant rules will need to be followed. The rules when dealing with businesses will be different; see 'Business-to-business marketing' for more information.

When dealing with measures installed in domestic properties, it is important to break down the contract into 'goods' and 'services'. The 'goods' part of a contract might be, for example, a heat pump unit or a solar panel, and the 'services' part of a contract covers what a business does to install or fit those goods into a property. There may even be a 'digital' aspect if any of the measures include digital components.

An understanding by businesses of Part One of the CRA is really very important. In relation to the 'goods', they should normally be:

- of satisfactory quality
- fit for their intended purpose
- as described

In relation to the 'services' that a business provides, they must be carried out:

- with reasonable care and skill
- at a reasonable price

- within a reasonable time

Comprehensive guidance on these rules, as well as the different remedies that may be available to consumers where problems arise, are already covered in Business Companion.

Goods are covered in 'Selling and supplying goods', which includes detailed guidance created by the Department for Business, Innovation and Skills (a predecessor of the Department for Business and Trade): *Consumer Rights Act: Goods - Guidance for Business*.

Services are covered in 'Supplying services', which again includes detailed Government guidance: *Consumer Rights Act: Services - Guidance for Business*.

Digital aspects of these products are another matter. The Consumer Rights Act introduced the concept of 'digital' into consumer law, as something distinct from goods or services. However, any digital component is likely to be embedded within the goods or be related to them (such as an app that can be used to operate them) rather than existing in isolation. This then becomes what is known as a 'mixed contract', which also includes how the law deals with goods and services being supplied as part of the same contract. See 'Mixed contracts' for more information.

The rules in relation to goods and services are complicated. It is useful for a business to think of itself in the position of one of its own customers. Consumers should be made aware of the business's obligations and be given clear and comprehensive information at all times.

Complaints handling

It is advisable for any business to have an established process for handling complaints and consumers should be made aware of this process.

Dealing with complaints is a daunting prospect for any business. However, it must be recognised that in the renewable energy sector, complaints are possibly more likely to arise due to the complexity of products that are being installed. It must also be recognised that some of the technology is relatively new. Further still, the expectations of consumers may be very high, based on promises that have been made during the sales process for saving money on energy bills.

In some cases, complaints may be based on simple consumer operator error, and they can be quickly resolved. The way that a business handles complaints can be very important. If complaints are handled quickly and efficiently, it can save a long drawn out and expensive dispute developing, which might have the capacity to damage the reputation of a business and have a detrimental impact on future profitability.

In some cases, consumers may be completely unreasonable and vexatious, and a business may feel that it is being treated unfairly. However, a business needs to behave professionally and try to get to the root of any complaint, and take responsibility if it is to blame. There may already be an established complaints process in a consumer code or trader approval scheme that the business is obliged to follow, if the consumer wishes to do so. There may also be expert help available that can lead to an inspection of measures that have been installed in order to determine what the problem is and where any fault lies.

If a business is responsible for a problem that arises, it needs to take steps to put the problem right. In most cases, this might involve carrying out remedial work or replacing faulty components at its own expense. It is not acceptable for a business to pass the blame on to the supplier of faulty goods where the business has itself supplied those goods to the consumer. For example, if a faulty solar panel is fitted by a business, the consumer cannot be fobbed off and told to pursue the wholesaler or manufacturer of the faulty panel; it is the responsibility of the business that installed it. In some extreme cases, it may be necessary to remove any measures that have been installed and provide a full or partial refund of the

contract price.

In a case where complaints cannot be resolved, the consumer might decide to take their own action through the civil courts. They would normally be expected to have some evidence to support any claim and would normally be expected to give the business the opportunity to make things right. At this stage, it is a good idea for a business to get some independent legal advice.

The role of Trading Standards

Consumers from England and Wales who have cause to make a complaint may do so via the Citizens Advice consumer service, which handles all calls that are made to Trading Standards. For those living in Scotland, complaints can be made to Advice Direct Scotland.

Trading Standards is a local authority function and Trading Standards officers have the ability to take action under the criminal legislation mentioned in this guide. Trading Standards monitor complaints that are made about businesses and may contact a business to try and resolve any particular issues.

In the case of complaints that allege a consumer has been misled about a product or perhaps where a consumer's vulnerability has been exploited, Trading Standards have strong powers to investigate in order to see if the law has been broken. These powers allow entry on to business premises without a warrant in order to gather evidence about business practices. Trading Standards sometimes take criminal prosecutions against businesses where breaches of the law have been identified. This is more likely in the renewable energy sector, particularly where fraudulent traders are taking significant amounts of money and where consumer vulnerability is being exploited.

By following the guidance in this Business Companion guide, it is highly unlikely that a business will come on to the radar of Trading Standards.

Some local authority Trading Standards services can offer business advice, which is increasingly on a 'paid for' basis. Alternatively, a business that wants a more formal arrangement where assured business advice can be provided, can consider entering into a Primary Authority partnership. See 'Primary Authority' for more information on how the partnerships work.

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> Part 4. Additional information

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Source URL:
https://businesscompanion.owastaging.co.uk/focus/domestic-energy-saving/part-3-complaints-and-redress