

## Comment: Revamped CRA will be good for consumers



The changes should make it easier for consumers and SMEs to claim damages as a group



by

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**The diesel emissions tribulations of Volkswagen have put the brand new Consumer Rights Act 2015 (CRA) squarely in the main beam. Some solicitors are already pondering a test drive of the class action provisions.**

Let's be clear – the CRA does not introduce blanket class action cases in the courts. The claim must be somehow tied back to a breach of competition law. Typically such claims allege abuse of a dominant position that affects trade in the UK or European Union. The CRA amends the Competition Act 1998 so that an individual or third party can now make a claim on behalf of a group of claimants for the recovery of damages before the little known – until now – UK Competition Appeal Tribunal. The changes should make it easier for consumers and SMEs to claim damages as a group without risking individual exposure to legal costs. The tribunal can do what it likes as regards costs, though “loser pays” remains the starting point.

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comments



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Collective proceedings are either “opt-in” (ie, claimants must actively do something to join the proceedings) or “opt-out” (claimants will be deemed to be part of the proceedings unless they say they do not want to join). The tribunal can award damages in opt-out collective proceedings without having to identify each claimant or value each individual loss – but the tribunal award will bind the entire class of claimants. The tribunal can also make an order approving a settlement of all claims in collective proceedings where it is satisfied the terms of such settlement are just and reasonable overall.

Beyond class actions, the CRA makes some significant additions and improvements to consumer rights and remedies as well as consolidating and simplifying the law relating to unfair contract terms. Traders must be aware of their new obligations when supplying goods, services and now digital content to consumers. Under the CRA, in addition to existing implied terms about satisfactory quality and being fit for purpose, new implied terms have been introduced such as, if goods have to be installed, they have to be installed correctly.

The CRA also clarifies rejection times. If goods are non-conforming, a consumer has 30 days in which to request a repair or replacement or to reject them. If rejected, the trader must refund the price within 14 days. In the case of repair or replacement, the trader must do this at its own cost within a reasonable time. If after repair or replacement the goods are still defective, the consumer may ask for a reduction in price or reject the goods and claim a refund of the price. Traders may need new contract terms, sales processes, cash/accounting procedures, and staff training to deal with this.

The Act does not substantially add to the rights already available but does provide that any information given by the trader to a consumer about services being offered or the trader itself will also form part of the terms of the contract. Traders must therefore be careful about the information they are including in publicity and advertising materials. Traders should also be aware that they will no longer be able to exclude their liability in relation to their services being performed with reasonable care and skill. Any contract term excluding such liability will be invalid.

Much heralded is the inclusion of digital content. For the first time, the Act provides clear guidelines on what rights and remedies a consumer has when buying with digital content. Digital content must be of satisfactory quality and fit for any particular purpose that was stated. If digital content does not conform to the contract, a consumer can ask for the content to be repaired or replaced, by the trader, within a reasonable time and at the trader’s expense. If the trader is unable to repair or replace the digital content, then the consumer may exercise its “secondary” right to ask for a reduction in price.

But the rules only relate to paid-for content. Therefore, trial version software and other free digital content will not be subject to the implied terms, rights and remedies provided for in the CRA. However, if after downloading free content, the consumer subsequently pays for anything (eg paying to unlock a new character in a game that was originally free), the digital content provisions will apply to the whole product.

The terms of consumer contracts and of notices given to consumers must be interpreted in the manner most favourable to the consumer. This is a draconian change to current thinking on contract interpretation. The CRA is a fundamental shift in bargaining power towards consumers. All business dealing with consumers should be taking a hard look at all their contracts and terms and conditions, to avoid being caught out. The CRA contains a long list of "unfair" terms regardless of whether goods, services or digital.

• *Paul Motion is a partner with BTO solicitors, Edinburgh and Glasgow. He wrote this article along with Muneeb Gill, a trainee solicitor with the firm.*