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A buyers' market?

What is the likely impact of the Consumer Rights Bill, ask [Katherine Buckle](#), [Eloise Emanuel](#) and [Laura Vignoles](#)

The Consumer Rights Bill was introduced to parliament in January 2014, and is currently being considered by the House of Lords. Should it pass through, it is expected to become law in October 2015.

The purpose of the Bill, as described by the Department for Business, Innovation and Skills (BIS), is to 'bring together, improve and update consumer law'. It will set out a 'simple, modern framework of consumer rights' – to aid consumer confidence, and make enforcement easier – which includes:

- The right to get what you pay for
- The right that goods and digital content be fit for purpose, and that services are provided with reasonable care and skill
- The right to have product faults put right free of charge, or to be provided with a refund or replacement
- A simplification of enforcement powers
- Making it easier to deal with rogue traders
- Making it easier for small businesses to take legal action against bigger companies that break competition laws

In many ways, however, the position of the consumer will remain the same; the new Bill will simply codify and consolidate the existing patchwork of EU-derived and UK-specific legislation and regulations into one statute. The easily recognisable terms implied into contracts for sale of goods and/or services – fitness for purpose, satisfactory quality, and goods corresponding with description – remain

LORD BEST AND BARONESS CRAWLEY PUT ACROSS THEIR VIEWS

“ The real problem for the trading standards sector is the startling decline in its manpower and budgets. These reductions mean that all face greater risk at the hands of rogue traders

Lord Best, House of Lords
October 2014

“ The budgets for trading standards at the local government level

unchanged.

One notable addition under the Bill is the introduction of regulations specific to digital content. As expected, the Bill differentiates digital content from goods and services, to resolve the grey area under current legislation.

Digital content (Chapter 3 of the Bill) is defined – in line with the 2011 EU Consumer Rights Directive – as ‘data produced and supplied in digital form’. The relevant statutory rights are largely the same as for physical goods, and are likely to be enforced in a similar way. So what changes can the consumer expect to see with the Bill?

Removing ambiguity...

Under the current provisions, the consumer has a reasonable period in which to reject goods if they discover a fault. The new Bill, however, will specify that this period be 30 days from the goods being received by the consumer, or – if they are perishable – the length of time the goods would reasonably be expected to last.

Overall, this clarification is to be welcomed, as the ambiguity of ‘reasonable period’ has been exploited by unscrupulous retailers to argue that such a period has passed, so that no refund is due. It will also make it easier to train customer-facing staff, thereby streamlining the resolution process.

...and putting it back in

Depending on the type of goods bought, consumers have – in the past – been forced to go through a series of purported repairs or replacements before they were entitled to a refund. The new Bill proposes that, if a consumer purchases a product that is faulty, they can request a repair or a replacement. However, if that repair or replacement is not successful – or if another fault occurs – they can then demand a refund, or a reduction in price.

If the consumer requests a refund more than six months after purchase, the retailer is entitled to reduce the amount refunded to take account of the use the consumer has had of the item. Furthermore, if there is an active business-to-consumer second-hand market for the item, the retailer can reduce the refund, even within six months of purchase.

The government maintains this will provide a more streamlined process for refund or repair. Nevertheless, there is considerable ambiguity in how ‘use’ is to be quantified for the purpose of a reduction in price, and it may be that a consumer finds themselves bound by the retailer’s interpretation, in a ‘take it or leave it’ situation.

Court as last resort

One of the obstacles, historically, to enforcing consumer rights has been the cost and inconvenience of taking traders to court. The new Bill will not remove or replace the legally enforceable remedies, but seeks to provide consumers – and businesses – with straightforward steps that can be taken without resorting to costly court proceedings.

Placing such remedies on a statutory basis will strengthen the consumer’s position in relation to substandard services, and will provide more options for redress. The consumer is, however, still reliant on the cooperation of the trader, and may find that court is still the most effective option.

Unfair contract terms

An enduring oddity in current consumer protection laws means that the subject matter and price of a contract are excluded from being

have, in some cases, cuts of up to 86 per cent since 2009. It is essential that we achieve that balance between the right to carry on a business unimpeded by official action and the right to protect consumers.

Baroness Crawley, Committee Stage 29 October 2014

assessed for fairness by a court. Traders such as banks and letting agencies have relied on this exclusion to charge high fees – or to hide additional fees while advertising low banner prices – leaving the court unable even to consider whether such a practice is fair.

A key provision of the new Bill seeks to remedy this. Subject matter and price will now only be excluded from a fairness assessment if they are ‘transparent and prominent’ (section 64(2)). Of course, not all disputes will be suitable for litigation.

The Bill aims to provide clarity over consumer protection rights, to avoid the need for court proceedings. It is to be hoped that there is a corresponding change in approach by traders, as the Bill will also enable a regulator to consider a complaint that a contract term is unfair, and apply for an injunction against the trader.

Enforcement

The new Bill includes schedules that set out clearly the powers and obligations of enforcement agencies, including powers to enter properties, demand the production of documents, and to seize goods.

There is also a recognition that trading standards operations are often compromised by the limits set by local authority boundaries: the Bill allows for enforcement action and prosecutions to take place outside of these boundaries. This clarification is expected to reduce the bureaucratic burden on trading standards, and make it easier for enforcement action to be taken.

Businesses

Retailers often claim that increasing the rights of consumers can only negatively impact upon their businesses. However, the Confederation of British Industry, the British Retail Consortium, and the Federation of Small Businesses have largely responded positively to the Bill, as their members recognise the benefits of greater clarity and certainty for both the consumer and businesses.

The new Bill proposes specific benefits for firms, including boosting the remedies available to businesses that are disadvantaged by breaches of competition law. It also requires enforcement agencies – such as trading standards – to give reasonable notice before carrying out routine inspections. However, given the importance of on-the-spot inspections, this provision may be amended.

Conclusion

Consumer rights law is challenging because of the need to craft laws that are sufficiently comprehensive and rigorous, as well as accessible to those without legal training or recourse to litigation. The Bill does not remove this tension entirely, but largely rises to the challenge.

It should, broadly speaking, be good news for responsible brands. While the proposals will increase consumers’ legal rights – and require suppliers to review their policies in the short term – in the long term, the revised regime should be much easier to navigate. The provision of remedies outside the court system will probably also prove very welcome in the current financial climate.

However, the true impact of the new Bill is hard to determine; after all – whatever its content – its impact depends on how well information about it is disseminated. Research by the Law Commission, and by Citizens Advice, suggests that consumers are generally well-informed, and have a good understanding of their rights, based on common sense – but enforcement bodies may also wish to publicise the new provisions.

IN REAL TIME

The impact will depend, too, on the resources available for enforcement; rights are meaningless if they cannot be enforced.

The Bill focuses mainly on UK-specific rules. However, much consumer protection law is EU-derived, and changes to rules on distance selling and misleading marketing are also in the pipeline. Watch this space. 

● For the latest developments on the Bill, visit TSI's blog [here](#).

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