



The Consumer Rights Act 2015 and personal injury litigation

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The Consumer Rights Act 2015 ("the Act") which came into force on 1st October 2015 is primarily a consolidating piece of legislation in the area of consumer protection although it does make substantial changes in some areas of consumer law, for example in relation to contracts for digital content. This practice note is confined to the impact of the Act on personal injury litigation.

Consumer protection legislation is important in relation to personal injury litigation in a number of overlapping areas:

- (a) Strict liability provisions arising from the Sale of Goods Act 1979, eg food poisoning cases.
- (b) Concurrent tortious and contractual liability in relation to the provision of services arising from the Supply of Goods and Services Act 1982, eg reasonable provision of hair and beauty services, a reasonable chair in a restaurant.
- (c) Holiday claims especially where the provider denies applicability of the Package Travel, Package Holidays and Package Tours Regulations 1992 ("the Package Holiday Regulations")
- (d) Product liability cases even where there is no contract. In this regard, the Consumer Protection Act 1987, which makes provisions relevant to

sustaining injury arising out of a faulty product, remains in force and should be referred to and cited in personal injury litigation as before.

Part 1 of the Act deals with consumer contracts for goods and services (as well as digital content). The Act provides for broadly similar requirements as is provided for in the Sale of Goods Act 1979 that goods be of satisfactory quality and fit for purpose. Section 9(1), (2) and (3) of the Act provide:

9 Goods to be of satisfactory quality

(1) Every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.

(2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of—

- (a) any description of the goods,*
- (b) the price or other consideration for the goods (if relevant), and*
- (c) all the other relevant circumstances (see subsection (5)).*

(3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—

- (a) fitness for all the purposes for which goods of that kind are usually supplied;*
- (b) appearance and finish;*
- (c) freedom from minor defects;*
- (d) safety;*
- (e) durability.*

Section 10 of the Act stipulates that the contract is to be treated as including a term that the goods are reasonably fit for a purpose if before the contract is made the consumer makes known to the trader that particular purpose.

In claims relating to faulty products where a contract can be relied upon instead of citing that "*the provisions of the Sale of Goods Act 1979 applied*" it should now be cited that "*the provisions of the Consumer Rights Act 2015 applied*".

In relation to services, section 49(1) of the Act provides:

49 Service to be performed with reasonable care and skill

(1) Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.

Section 50 of the Act provides:

50 Information about the trader or service to be binding

(1) Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if—

- (a) it is taken into account by the consumer when deciding to enter into the contract, or*
- (b) it is taken into account by the consumer when making any decision about the service after entering into the contract.*

If a Particulars of Claim cited previously that "*the provisions of the Supply of Goods and Services Act 1982 applied*" then it should now cite that "*the provisions of the Consumer Rights Act 2015*" applied. It would be wise to include within the Particulars of Claim any assurance given to a consumer that a particular activity is safe, for example, if a customer is told by a trader that it is impossible to fall off a Segway and a customer relies on that before falling off sustaining injury.

Part 2 of the Act deals with unfair terms replacing the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999.

The provision of section 2(1) of the Unfair Contract Terms Act 1977, that a trader cannot limit liability for death or personal injury resulting from negligence, is carried over into the Act; section 65(1) of the Act.

The Unfair Terms in Consumer Contracts Regulations 1999 had relevance to holiday claims where the provider attempts to escape the provisions of the Package Holiday Regulations which Regulations make the Defendant liable to the Claimant for any damage sustained as a result of the improper performance of the services comprising part of the package irrespective of whether those services were provided by the Defendant or one of its suppliers or subcontractors. There are a growing number of providers who seek to avoid the Package Holiday Regulations by asserting that separate

contracts are made between the consumer and the provider of the holiday components, typically transport and accommodation.

In many cases the consumer would not enter such contracts if they knew that the intention was that they separately contract with a hotel in, say, Turkey of which they know nothing. Such disputes involved reference (generally in the Reply) to the Unfair Terms in Consumer Contracts Regulations 1999 in relation to any and all terms which exclude liability pursuant to the Package Holiday Regulations, which exclusion could be deemed to be unfair pursuant to Schedule 2 of the Unfair Terms in Consumer Contracts Regulations 1999.

The Act treats consumer notices, an announcement or other communication intended to be read by a consumer (for example on a website), as broadly equivalent to terms. Section 62(4) provides 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*". There is a like provision for notices. Terms and notices must also be transparent which requires that they be expressed in plain and intelligible language; sections 64 and 68.

As with the Unfair Terms in Consumer Contracts Regulations 1999 there is an indicative, non-exhaustive list of terms which may be regarded as unfair; Schedule 2, Part 1 of the Act. Consider, for example, in the context of holiday claims where the provider asserts that the consumer's contract is with the hotel in Turkey indicative term 10:

A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract.

There is a new EU Package Travel Directive (2015/2302) which attempts to deal with some of the difficulties arising out of current legislation in this area. The directive does

not come into force until 1st July 2018 and presumably the UK will enact new package holiday regulations prior to that date.

As with the pre-existing legislation the provisions of the Act so far as they relate to personal injury cannot be excluded.

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