

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 SEPTEMBER 2015
ALL WARDS

THE CONSUMER RIGHTS ACT 2015

1. Summary

- 1.1 The report outlines developments in consumer rights reforms, principally the Consumer Rights Act 2015.
- 1.2 The Act consolidates amends and replaces existing legislation covering consumer rights and remedies. It summarises other provisions consolidating and amending investigating powers of officers, amending powers of entry in relation to routine visits and also the ability of officers to investigate breaches of legislation outside their own Local Authority.

2. Recommendation

- 2.1 That Committee makes representations to Government urging funding for the Trading Standards service to be able to meet likely extra demand for business advice from local traders, and also for enforcing the provisions relating to letting agencies.
- 2.2 That Committee expresses its disappointment that Government has chosen to go ahead with introduction of a two day notice for routine inspections and that the offence of obstruction has been reduced to a level 3 offence.

Contact Officer: Vir Ahluwalia, Operations Manager, Trading Standards
Telephone: 0121 303 9370
Email: vir.ahluwalia@birmingham.gov.uk

3. Background

- 3.1 Over the last four years the Government has been carrying out a review of the Consumer Protection landscape and also introducing a Bill to implement the Consumer Rights Directive.
- 3.2 In September 2013 a report was presented to Committee outlining what was at that stage a draft Bill at consultation stage. At that stage concern was expressed at the proposal to introduce a 48 hour notice before inspections are carried out, and at the proposal to reduce the penalty for the offence of obstruction to level 3.
- 3.3 The Consumer Rights Act 2015 seeks to consolidate consumer rights which are contained in different pieces of legislation, and update it to cater for digital technology in consumer goods.
- 3.4 Other measures affecting “distance” or online selling, principally cooling off periods and provision of prescribed information have already been implemented via the Consumer Contract Regulations.
- 3.5 The Government is seeking in this Act to consolidate officers’ investigatory powers which are currently spread over 60 different pieces of legislation.
- 3.6 It has consulted on officers’ powers of entry and how to reduce burdens on businesses. Consequently measures are being introduced to reduce the number of routine unannounced inspections by the Trading Standards service.
- 3.7 At the same time the effectiveness of the Trading Standards service is being strengthened by allowing officers to investigate offences occurring outside their own Local Authority without the need for delegated authority from the authority where offences take place.
- 3.8 Other measures in the Act require property letting agents to display charges at their premises or website.

4. Consumer Rights and Remedies

- 4.1 The Act replaces existing consumer civil law, principally the Sale of Goods Act 1979 and Supply of Goods and Services Act 1982. The new measures under the Act echo many of the existing provisions with some additional rights for consumers. The following measures effecting consumer rights and remedies all come into force from 1st October 2015.

4.2 **Sale of Goods**

- 4.2.1 Goods supplied as part of a trader to consumer contract must

- be of satisfactory quality;

- be fit for their purpose;
- match description, sample or model.

4.2.2 Where goods do not meet the above requirements, there will be a short 30 day period during which consumers have a right to reject the goods. The consumer can also ask for repair or replacement during this period.

4.2.3 This right to reject within 30 days if a fault occurs is likely to have significant impact in particular with car sales. Currently car traders generally offer to correct faults appearing shortly after purchase. However, under the new legislation, a consumer will be able to reject a car if a fault develops in the first 30 days. Car traders dealing with new cars could be faced with giving the consumer a full refund whilst the value of the car will have reduced significantly.

4.2.4 Further provisions for faults occurring after 30 days but within 6 months allow the trader one chance of repair, however, thereafter the consumer can reject the goods. The only exception allowed for car traders is that in this case the refund will be reduced to allow for use of the vehicle whereas with other goods consumers can still request a full refund. The impact of this measure is to avoid consumers repeatedly having to go back to the car trader where the fault is not rectified or there are repeated faults within the first 6 months

4.2.5 This particular aspect is likely to generate more trader advice requests from local car traders where consumers seek to exert their rights to reject the car rather than accept a repair.

4.3 **Supply of Services**

4.3.1 When a consumer enters into a contract for supply of services the trader must meet the following standard:

- the service must be carried out with reasonable care and skill;
- information said or written to the consumer is binding where the consumer relies on it;
- the service must be done for a reasonable price;
- the service must be carried out within a reasonable time.

4.3.2 Where the trader fails to meet the above standards the consumer can expect the trader to put things right or be entitled to a price reduction. The level of the price reduction would depend upon the seriousness of the breach. The Act does not prevent consumers claiming compensation.

4.4 **Digital Content**

4.4.1 For the first time legislation will specifically cover supply of digital content such as computer software, films, downloaded music or mobile phone applications (apps).

4.4.2 Under the Act, the digital content must be:

- of satisfactory quality;
- fit for a particular purpose;
- as described.

4.4.3 The minimum remedies include right to a repair or replacement and to a price reduction. Any agreed price reduction must be refunded within 14 days.

4.4.4 Where the digital content causes damage to a device then consumers can request repair of the damage or payment of compensation.

4.5 **Unfair Contract Terms**

4.5.1 Part 2 of The Act will cover the use of unfair terms in consumer contracts. The Competition and Markets Authority has lead responsibility for providing guidance to businesses. The Act replaces and consolidates the provisions previously contained in the Unfair Terms in Consumer Contracts Regulation 1999 and the Unfair Contracts Terms 1977.

4.5.2 The Act applies tests of fairness and transparency to all terms in consumer contracts used by traders. Terms are viewed as unfair if they cause significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

5. Letting Agents

5.1 One of the provisions already recently enacted, under Part 3 of the Act is for letting agents and property management businesses to clearly display their fees and charges to clients.

5.2 This should allow both landlords and tenants to make effective comparisons of charges when selecting letting agencies and reduce the possibility of unexpected charges arising during the tenancy.

5.3 The fees must be displayed at Letting agent's premises and on their website if applicable. The types of fees include fees for:

- introducing tenants to landlords;
- arranging assured tenancy agreements;
- managing rented properties.

5.4 The requirement does not apply to the rental charge or tenancy deposit.

5.5 The Chartered Trading Standards Institute has produced a guidance document for businesses. The Association of Residential Letting Agents has also produced templates for landlords and tenants showing charges that can be faced.

- 5.6 The Trading Standards service is empowered to enforce these new provisions with letting agents facing penalties of up to £5,000 for failing to comply. However, no additional funding or resources have been provided for local authorities to enforce these new provisions.

6. Investigatory Powers

- 6.1 Currently powers of Trading Standards officers to investigate offences are contained in 60 different pieces of consumer protection legislation.
- 6.2 Under Part 3, Chapter 1 and Schedule 5 of the Consumer Rights Act most of the officers' investigatory powers are consolidated into this one piece of legislation. The powers generally reflect those currently contained in the Consumer Protection from Unfair Trading Regulations 2008.
- 6.3 Certain exception will still continue such as specific powers under the Weights and Measures Act 1985 and product safety legislation which contains provisions for suspending unsafe goods.
- 6.4 An additional measure that has been introduced is the requirement to give a notice in writing at least two days in advance of an inspection stating why entry is necessary. This will apply to "routine" inspections. This is despite representations made by Committee following a report in September 2013, expressing concern at the requirement to give 48 hours notice before an inspection. This measure also needs to be considered with the Protection of Freedoms Act 2012 under which the Home Office has recently introduced a Code of Practice which reiterates the need to give 48 hours notice of entry where practical to do so.
- 6.5 The requirement to give the two day notice does not apply where:
- the officer has reason to suspect a breach of legislation enforced by Trading Standards has taken place.
 - Giving notice would defeat the purpose of entry.
 - It is not practical because the officer suspects there is an imminent risk to public health or safety.
- 6.6 The Trading Standards service currently works on an intelligence based model, consequently the vast majority of inspections or visits to traders are as a result of intelligence or complaints indicating there may be a breach of consumer legislation. However, the measures will require Trading Standards to produce and serve standard explanatory notices on businesses with the required information in good time where the exemptions do not apply.
- 6.7 The power of officers have been extended officers to exercise their powers in a part of England or Wales which are outside the authority's area and bring proceedings for consumer offences.
- 6.8 This will result in not needing to seek permission or delegated authority or memorandums of understanding from one or more other authorities where a

trader commits an offence in more than one authority. This will address issues for example with rogue itinerant traders who travel from one area to the next wherever they feel they can find victims. Authorities will still liaise with each other to ensure the most appropriate authority investigates and instigates proceedings.

- 6.9 The report to Committee in September 2013 also raised concerns at the Government's intention to reduce the penalty for obstruction to level 3 (£1,000) whereas obstruction could prevent officers obtaining evidence of serious offences (e.g. level 5 incurring unlimited fines). Despite representations from Committee and the Trading Standards Institute Government has not increased the penalty for obstruction. Consequently unscrupulous traders could deliberately choose to obstruct officers from obtaining evidence of serious offences risking only the lower penalty.

7. Enhanced Consumer Measures

- 7.1 Currently under part 8 of the Enterprise Act 2002 Trading Standards can seek civil injunctions (undertakings or Court Orders) against businesses persistently breaching consumer protection legislation. The Consumer Rights Act (Part 3 and Schedule 7) widens the orders that can be sought to include redress for consumers who have suffered loss from breaches of consumer law.
- 7.2 Consequently, not only can Trading Standards seek an order from the Court instructing a trader to cease practices detrimental to consumers, but the Order can be widened to order compensation to be paid to victims.
- 7.3 Individual traders or directors of a company who breach a Court Order can be committed to Crown Court for contempt of court which is punishable by up to 2 years imprisonment.

8. Raising Awareness

- 8.1 The Chartered Trading Standards Institute (CTSI), in conjunction with local Trading Standards services are tasked with informing traders of the changes being implemented. The CTSI has already drafted trader guidance documents and they are available on its website, www.businesscompanion.info. Birmingham City Council Trading Standards' website has a link to this website.
- 8.2 Later in the year CTSI in conjunction with local Trading Standards services will hold an annual National Consumers Week which this year will focus on raising awareness of the Consumer Rights Act.
- 8.3 The Department for Business, Innovation and Skills (BIS) is drafting Point of Sale posters that businesses can display at their premises.

- 8.4 All civil advice to consumers is now provided by Citizens Advice National Consumer Helpline. This, along with their website, will act to inform consumers of their consumer rights.

9. Implications for Resources

- 9.1 No additional funding has been provided for Local Authority Trading Standards services to proactively engage with businesses to raise awareness and ensure compliance. It remains to be seen whether small businesses will be satisfied with the guidance documents prepared by CTSI. Larger companies are likely to arrange their own in house training. Car traders in particular are likely to request further business advice as the implications of consumers' right to reject faulty vehicles is realised.

- 9.2 No funding or resources have been provided to enforce the new measures relating to letting agencies displaying fees. This is not identified as a service plan priority in the 2015/2016 Trading Standards service plan.

10. Implication for Policy Priorities

- 10.1 Compliance with the Act and associated provisions will help businesses succeed economically and ensure traders conduct their business in a fair and equitable trading environment. The provisions of the Act will also protect the economic interest of consumers

11. Implications for Equality and Diversity

- 11.1 No specific implications have been identified.

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Background Papers: nil