

Consumer Rights Act, do your Ts & Cs comply?



If your business deals with consumers or sells over the internet, you need to know about the Consumer Rights Act 2015 and make sure your business Terms and Conditions (Ts and Cs) comply with the latest consumer rights laws. These laws came into force on 1 October 2015. If you haven't reviewed your Ts and Cs in recent years, or were unaware of the changes in consumer rights laws, this Q & A will bring you up to date and explain what changes you must make to ensure your Business Terms and Conditions comply.

These new laws increase consumers' rights, most notably giving consumers the **right to a 30-day refund**.

From 1st October 2015, everyone selling goods, services, digital content to consumers must comply with new laws protecting Consumer Rights.

Regardless of your company status, sole trader, company, partnership etc, you must honour the consumer's rights in your terms and conditions and in your dealings with customers.

To shortcut the whole process, we have created a Consumer Rights Act toolkit which includes reviewing and updating your Ts and Cs to ensure you comply with the new laws, consultation and advice. Find details [here](#), or at the [Consumer Rights Act 2015](#).

When did the Consumer Rights Act 2015 start?

1 October 2015. It applies to all consumer contracts and transactions from that date.

The old law applies to transactions and contracts before 1st October 2015.

Where can I get a copy of the Consumer Rights Act 2015?

Find it [here](#).

What are the penalties for failing to comply with the CRA 2015?

Consumers can claim compensation at the Court as well as writing unhelpful reviews online, complain to Trading Standards and other enforcement bodies. They can seek a court order and bring civil and criminal provisions under the Consumer Rights Act 2015. If the trader fails to comply with a court order it can lead to a maximum penalty on conviction of an unlimited fine and 2 years' imprisonment.

Who is a trader under the Consumer Rights Act 2015?

All businesses will be a "trader" under the CRA and have to comply. A "trader" covers anyone in business as an individual, sole trader, company, partnership, multi-national or Government department.

Are Business to Business contracts affected by the CRA 2015?

The CRA does not affect business to business (B2B) contracts or business to business (B2B) deals.

Are consumers' statutory rights affected by the CRA 2015?

Yes. Consumers shopping online, in store, by telephone or by mail order have rights which are often called "statutory rights" and the CRA increases consumers' statutory rights.

What must I do to comply with the CRA when I am selling goods?

If your business is selling goods you must ensure the goods meet these 5 Tests.

The goods must be:

1. yours to sell
2. of a satisfactory quality eg:
(1) fit for all the purposes for which goods of that kind are usually supplied (2) have a satisfactory appearance and finish (3) be free from minor defects (4) be safe and/or (5) be durable

The law assesses "quality" by looking at all relevant circumstances including price, description and your or the manufacturer's advertising

3. fit for a particular purpose. Eg where the consumer indicates that goods are required for a particular purpose, or where it is obvious that goods are intended for a particular purpose
4. match the description, sample or model.
5. installed correctly, where installation has been agreed as part of the contract

What can a consumer do if there is a problem with goods?

If the goods do not meet any of the 5 Tests above the consumer can:

1. reject them within 30 days of purchase – this is referred to as the **right to a 30-day refund under the Consumer Rights Act 2015**
2. return the goods
3. claim a refund and be paid the refund within 14 days.

The consumer is released from any other obligations under a contract e.g. released from paying further instalments under a hire purchase agreement.

For online purchases: the trader is responsible for the reasonable cost of returning the goods

For shop purchases: the customer must incur the costs of returning them unless the consumer has unexpected costs eg where a motor vehicle breaks down and the consumer has to pay for a recovery service to return it.

What are the consumers' rights to repair or replacement of faulty goods under the Consumer Rights Act 2015?

After 30 days if the goods fail any of the 5 Tests the consumer can claim a repair or replacement. The trader must do this at no cost to the consumer, within a reasonable time and without causing significant inconvenience.

Where repair or replacement fail, the consumer is entitled to further repairs or replacements or he can

claim a price reduction or reject the goods and claim his money back.

What are the consumers rights to a price reduction or to reject the faulty goods under the Consumer Rights Act 2015?

If repair or replacement is not available or is unsuccessful, or is not provided within a reasonable time and without significant inconvenience to the consumer, then the consumer can claim a price reduction or reject the goods and claim his money back.

If the consumer keeps the goods, then his claim will be for a reduction in price; if he returns them, he is rejecting them and entitled to some or all of his money back.

A price reduction must be an appropriate amount, which will depend on all the circumstances of the claim. It can be any amount up to the whole price.

If the consumer rejects the goods, then he/she is entitled to a refund. This refund may be reduced to take account of any use the consumer has had from the goods. However, no deduction can be made for the consumer having the goods simply because the trader has delayed in collecting them. Nor can a deduction be made where goods are rejected within six months of supply, except where the goods are a motor vehicle.

What can a consumer claim under the Consumer Rights Act 2015 if goods are lost or damaged in transit?

If the trader arranges for goods to be delivered to a consumer, the goods remain at the trader's risk until delivery. Therefore it is the trader's responsibility to ensure that goods are not lost or damaged in transit and/or to take out appropriate insurance.

What additional compensation can a consumer claim for faulty goods under the Consumer Rights Act 2015?

Whatever remedy the consumer chooses or ends up with, he may also be able to claim compensation for losses that have been incurred. These losses might include the cost of any property damage caused by the goods, compensation for personal injury and compensation for the additional cost of buying equivalent goods if they are more expensive elsewhere.

What evidence is needed to claim compensation?

If the consumer chooses repair, replacement, price reduction or the final right to reject, and if the defect is discovered within six months of delivery, it is assumed that the fault was there at the time of delivery unless the trader can prove otherwise or unless this assumption is inconsistent with the circumstances (for example, obvious signs of misuse).

If more than six months have passed, the consumer has to prove the defect was there at the time of delivery. He must also prove the defect was there at the time of delivery if he exercises the short-term right to reject goods. Some defects do not become apparent until some time after delivery, and in these cases it is enough to prove that there was an underlying or hidden defect at that time.

What should a trader do if the goods have defects when they are sold?

A consumer cannot claim for defects that are brought to his attention before the sale, or if the consumer examines the goods before purchase and any defects should have been obvious. The trader should make any defects clear to the consumer.

What rights does a consumer have under the Consumer Rights Act 2015 if he changes his mind?

A consumer cannot claim for damage if he simply changes his mind about wanting the goods. He should have cancelled the contract within 14 days of purchase

Where can I get more information about the Consumer Rights Act 2015 for faulty goods?

Find more information

Consumers also have additional rights under these existing laws.

What are the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013?

They give all consumers 14 days to change their mind and cancel the contract for goods, services or digital content. They will need to return the goods.

What are the other rules affecting consumer contracts?

Misrepresentation

A misrepresentation is a false statement of fact made by a person or their agent that induces someone else to make a contract with them.

Dependent upon whether the misrepresentation was made fraudulently, negligently or innocently, the party who has relied on the misrepresentation will be entitled to a remedy that may include rescission (which means unwinding or cancelling the contract), refund and/or compensation.

What is consumer protection under the Unfair Trading Regulations 2008?

Since 1 October 2014, these Regulations have provided an additional and alternative right of redress for consumers. Where a trader has used misleading or aggressive selling practices, the consumer may be entitled to claim compensation and/or a reduction in price or to cancel the contract completely.

What is Consumer Protection Act 1987?

This law allows a person to claim compensation if he is injured by a defective product. Depending on the circumstances, a claim might be made against anyone in the supply chain from manufacturer / importer to retailer.

Compensation can also be claimed under this Act for damage to personal property (but not damage to business property).

What is the Contracts (Rights of Third Parties) Act 1999 and why does it matter?

This law gives rights to anyone who was intended to benefit from the transaction. For example, if someone buys a gift for a friend and the gift proves to be faulty, either the recipient or the buyer of the gift can take action for breach of contract (as long as it was made clear that the goods were to be given as a gift). Traders can use contract terms to exclude the rights of third parties, but in practice it will often be simpler (and provide a better customer experience) for the trader to deal directly with the recipient of a gift. The Ts and Cs produced by The Legal Partners give this protection to the trader.

How can consumers find a trader's identity?

The consumer needs to know, or be able to find out, who he is dealing with. A trader's identity and address must be displayed at their place of business, on key business documents and on websites. This information must also be made available to consumers before a contract is made and whenever a consumer requests it.

If a trader fails to disclose that they are a limited company and there is then a breach of contract, the consumer may be able to claim against the directors of the business as individuals. If a trader fails to disclose that they are acting as an agent for someone else, then the consumer may be able to make any claim directly against that trader.

What are consumers' rights when they buy services under the Consumer Rights Act 2015?

A trader supplying a service must meet the following 4 Service Standards:

1. The service must be carried out with reasonable care and skill eg as a competent person in that trade or profession would do. Note: The law does not imply that any particular result will be achieved (for example, a competent doctor will not necessarily be able to treat every patient successfully) but many contracts will have express terms as to what result the customer can expect from the service. To minimise the risk of disagreement, it is advisable to state clearly where a particular result has been agreed and where there is a risk of the desired result not being achieved.
2. Information said or written and given to the consumer is binding where the consumer relies on it. This will include quotations and any promises about timescales or about the results to be achieved. This applies if the consumer takes account of this information in deciding whether to buy the service, or to make any decision about the service subsequently.
3. The service must be done for a reasonable price. A contract will often specify a price, or it will be clear about how the price will be calculated (for example, an hourly rate). Where the price is not agreed beforehand, the price must be reasonable. Typically, this will be judged against the prices that other similar traders might have charged.
4. The service must be carried out within a reasonable time. Often, a contract will specify a date or time for the service to be performed or completed. Where there is no agreement about time, the timescale must nevertheless be reasonable. What is reasonable depends on the type of service and all other relevant circumstances

What are a consumer's rights if the service is poor?

If the trader fails to meet any of the 4 Service Standards the consumer can demand that the service is performed again or there is a price reduction.

What is the "right to repeat performance" of a service under the Consumer Rights act 2015?

This remedy is available where either of the 1st 2 Service Standards is not met.

The consumer can require the trader to repeat the service in order to complete it properly. This work

must be done at no cost to the consumer, within a reasonable time and without causing significant inconvenience to the consumer.

The consumer cannot ask for repeat performance where it would be impossible to finish providing the service to the required standard

What is the right to a price reduction for poor service under the Consumer Rights Act 2015?

The consumer can claim a price reduction where repeat performance is impossible or cannot be done within a reasonable time and without causing significant inconvenience. A price reduction can also be claimed where the service is not done within a reasonable time or where the trader breaches a requirement arising from information they have given about something other than the service itself.

The amount of the price reduction will depend on how serious the breaches were, and it can be anything up to 100% of the price. If the consumer has already paid in full or in part for the service, he may therefore be entitled to some money back.

Where can I get more information under the Consumer Rights Act 2015 about poor service?

Find more information on poor service under the CRA [here](#).

How must a trader deal with consumer complaints?

Under the Provision of Services Regulations 2009, traders are under a legal duty to respond to consumer complaints for service problems as quickly as possible, and to make their best efforts to resolve those complaints. This means that traders must respond to emails and letters of complaint and that they must return phone calls. Where a complaint appears to be valid, the trader should put things right promptly. If the trader disputes liability, they should give a clear explanation of their reasons.

What is negligence and how can consumers claim against a negligent supplier?

Where a trader supplies a service, they owe a duty of care to the consumer and to others who might be affected by their work. If their work is substandard, the duty of care may be breached and the person who suffers a loss may be able to make a claim. This applies even where there is no direct contract between the parties – for example, where the claim is made by one of the consumer’s friends or relatives, or where the trader is a subcontractor who is not working directly for the consumer. The duty of care is similar to the standard of ‘reasonable care and skill’, and it applies to the standard of work rather than guaranteeing a particular outcome.

What are consumers rights under the Consumer Rights Act 2015 for faulty ‘digital content’?

This is a brand new right to ensure consumers are protected when they buy digital content.

What is digital content in the Consumer Rights Act 2015?

Digital content is ‘data which are produced and supplied in digital form’.

It includes:

- computer games

- virtual items purchased within computer games
- television programmes
- films
- books and ebooks
- computer software
- mobile phone apps
- systems software for operating goods – for example, computers, phones, domestic appliances, toys, motor vehicles, etc

In many cases digital content is supplied in a format that can be physically touched such as a Blu-ray disc containing a film. Increasingly, however, digital content does not have a tangible form – for example, a film downloaded to a computer or a virtual car purchased when playing a computer game.

Digital content is not to be confused with the ways by which digital content or goods and services are chosen, purchased, supplied or transmitted. If a trader sells products online using a website, the use of the website to sell those products is not digital content, it is just a virtual shopping place. The supply, for example, of a mobile telephone contract (calls, texts and data) is not digital content. It is a service for customers to use.

Of course digital content, such as a mobile ringtone, may be sold on a website; once purchased that digital ringtone product will then be transmitted and downloaded into the consumer's mobile phone.

What are a consumer's statutory rights for faulty digital content under the Consumer Rights Act 2015?

The digital content must satisfy these 3 Tests and be:

1. satisfactory quality
2. fit for a particular purpose
3. as described

What is "satisfactory quality" under the Consumer Rights Act 2015 ?

Satisfactory quality is determined by the Courts who decide what a reasonable person would expect is 'satisfactory' by looking at:

- any description of the digital content
- the price paid
- all other relevant circumstances, but in particular public statements in advertising and labelling fitness for all the purposes for which digital content of that kind is usually supplied
- freedom from minor defects
- safety
- durability

Quality does not include the consumer's subjective judgements such as whether he liked a downloaded

piece of music or not.

Most computer systems' software, games and apps have minor defects that are corrected over time with fixes or upgrades. Therefore a 'reasonable person' might expect the defects to be present and judge any items containing them to be of satisfactory quality.

A trader is not liable for the unsatisfactory quality of a product if any of the following circumstances apply:

- The customer's attention was drawn to an unsatisfactory aspect of the digital content before a contract was made
- The consumer examines the digital content before the contract is made and that examination ought to reveal the unsatisfactory aspect
- A trial version is examined by the consumer before the contract is made and a reasonable examination of the trial product ought to make the unsatisfactory aspect apparent.

What is fit for a particular purpose under the Consumer Rights Act 2015?

Where, before a contract is made, a consumer makes known to the trader a particular purpose that he intends to use the digital content for, this becomes a contract term. The consumer may make this particular purpose known to the trader directly or by implication. This fitness for purpose is the case whether or not that purpose is one for which that digital content is usually supplied. Similar requirements ensure that where digital content is hired or purchased on credit, the creditor or hirer is liable for fitness for purpose.

There is an exemption to this requirement if it can be shown that the consumer did not rely on, or it was unreasonable for the consumer to rely on, the skill or judgement of the trader – for example, if a consumer emails the trader and then immediately downloads the app before the trader has had the opportunity to reply to him.

What does “as described” mean when you buy digital content under the Consumer Rights Act 2015?

Digital content must match any description the trader gives to the consumer about it. Every contract to supply digital content has 'as described' as a contract term.

It does not matter if the consumer examines a trial version of the product before the contract is made and the final product matches the trial product or is even better – it is the description that is given to the original digital content that is important.

Certain digital products are upgraded over time. The digital content must continue to match the description but it can contain additional or enhanced features that are not part of that description.

Certain specific information about the main characteristics, functionality and compatibility of digital products must be given to consumers before they buy. Where information needs to be provided it is to be treated as a term of the contract and effectively becomes part of the product description.

How is 'free' digital content regulated under the Consumer Rights Act

2015?

All of the statutory rights for the supply or intended supply of digital content apply only if the consumer has to pay a monetary price as part of the contract.

Payment may be directly made using money or indirectly by means of some other facility for which money has been paid – for example, a gift voucher, a token or virtual money in a game. Digital content can be sold as an item requiring a single payment or by means of an ongoing subscription allowing access to the digital content over a period of time.

If digital content is given away (for example, free computer system software) the statutory rights do not apply. This does not mean that the trader is not liable if the digital content causes damage – please see “What are a trader’s liabilities for digital content given away under the Consumer Rights Act 2015?” below

Some digital content may be described as ‘free’ but the way it is supplied means that the statutory rights will still apply to it. This is to cover situations where, for example, a £500 computer is supplied that contains free anti-virus software of poor quality.

If a trader supplies digital content to a consumer and both of the following conditions are met then the digital content is not ‘free’ and is part of the contract:

- the free digital content is supplied with goods or services or other digital content for which the consumer pays a price
- the free digital content is not generally available to consumers unless they have paid a price for it or for goods or services or other digital content

In the example given regarding the £500 computer with free anti-virus software included, the software (digital content) is supplied with the computer (goods). To obtain the software separately you would generally have to either buy it or buy other goods or services or other software with which it came ‘free’. For the purposes of the Act it is supplied as part of a contract costing £500.

What are the protections under the Consumer Rights Act 2015 if digital content is modified or updated?

If the original contract for the supply of digital content allows the trader or a third party to modify that content (for example, software upgrades, fixing minor glitches, etc) then the contract’s terms regarding quality, fitness for a particular purpose and description apply equally to the modified digital content as they did to that supplied after the original contract.

If an upgrade is not satisfactory quality, the problem is treated as occurring at the date of the original contract for supply and not the modification date. The importance of this is in relation to the six-year time limit that applies for breach of contract claims to be made.

Why must a trader check that it has the ‘right to supply’ under the Consumer Rights Act 2015?

For most digital content a consumer and trader do not own the product fully. The intellectual property rights in the digital content remain with the originator of the product, or someone else who has bought some or all of those rights. Therefore if you are a trader who does not have permission from the

intellectual property rights owner you do not have the 'right to supply' it. The Act creates a contract term that where digital content is supplied under a contract, and the consumer pays for it, it is as if the trader did have the 'right to supply' it, even if they do not.

There are severe criminal and civil sanctions for the breach of intellectual property rights so you should ensure that you do have the right to supply each particular piece of digital content before you do so.

What are consumers' rights for faulty digital content under the Consumer Rights Act 2015?

Depending on the nature of the problem the minimum remedies are, initially, the right to repair or replacement, and secondly, the right to a price reduction.

What are the rights to repair or replacement of faulty digital content under the Consumer Rights Act 2015?

This is the consumer's first step; if he decides that he wants the quality defect remedied by means of a repair or replacement the trader must:

- do so within a reasonable time and without significant inconvenience to the consumer
- bear any necessary costs incurred in doing so, including, in particular, the cost of any labour, materials or postage

However, the consumer does not have the right to remedy a quality defect by means of repair or replacement if it is either:

- impossible to do so; or
- disproportionate compared to another available remedy

For example, a consumer downloads a film on to his device, which has no sound, and the trader agrees that they are responsible for the quality defect and re-supplies.

For the consumer to request a repair to the digital content on his device it would be disproportionate compared to the trader providing a replacement download to resolve the problem.

The nature of the digital content and the purpose for which it was obtained or accessed by the consumer determines what is a 'reasonable time' and 'significant inconvenience'.

If a consumer has requested or agreed to a repair then he cannot request a replacement until a reasonable time has been given for the repair to be carried out, as long as significant inconvenience is not caused. The same logic applies if the consumer has requested or agreed to a replacement and then requests a repair.

If the consumer shows that the digital content is defective within six months of its supply, it is to be taken as being defective on the day it was supplied.

What are the rights to price reduction for faulty digital content under the

Consumer Rights Act 2015?

The ability for a consumer to have the right to require a price reduction is only triggered if either:

- the remedies of repair and replacement are not possible; or
- the remedy for either repair or replacement has been requested by the consumer but this has not been carried out within a reasonable time and without significant inconvenience to him

Where the right to a price reduction is triggered then this must be refunded without undue delay, and in any event within 14 days of the trader agreeing that the consumer is entitled to a refund.

The remedy must be an appropriate reduction in price and may be the full cost of the digital content in appropriate circumstances. If only part of the full price has been paid by the consumer then the refund would be any money already paid above the reduced price.

What are the other remedies a consumer can take for faulty digital content under the Consumer Rights Act 2015?

Provided the consumer is not claiming twice for the same loss, he can take any of the following remedies in addition to, or instead of, the remedies for breach of satisfactory quality and right to supply:

1. claim for compensation
2. receive a refund of money paid if he has not received the product
3. seek to force the trader to fulfil the contract
4. not pay for the product

However, a consumer is not able to treat a contract as ended purely on the basis of a breach of the statutory-quality or right-to-supply term in a contract.

In most cases the consumer is entitled to a full refund of all money paid for the digital content where there is a failure of the 'right to supply'. The requirements for this refund are the same as those for when a price reduction is triggered as detailed above.

The only exception to the above full-refund remedy is if the failure of the right to supply only affects some of the digital content purchased. For example, a consumer purchases access to 'streamed music' and the trader loses the right to supply music from a particular record label. The consumer would only be entitled to a refund proportionate to the amount of music that record label made up of the whole volume of streamed music originally provided.

What are a consumers rights where goods & digital content supplied together under the Consumer Rights Act 2015?

For the vast majority of retail transactions on the high street the digital content that is supplied is included with goods that can be physically handled – for example a car, washing machine, music CD, etc. The goods and digital content are mixed together as a 'mixed contract'.

Where this is the case the test to be applied is whether the digital content fails to meet the statutory

rights that apply to digital content as detailed above.

If the digital content does not meet the quality requirements then the goods and digital content are treated as a whole item that does not conform to the contract. The remedies that the trader should offer, and the consumer can request, then become the remedies that are provided for as if the item were goods. This is an important difference as the remedies for breach of quality requirements in relation to goods include the right to reject, which is not a remedy available for defective digital content alone.

What are a trader's liabilities for digital content given away under the Consumer Rights Act 2015?

There has always been liability for digital content that is either given away or paid for if that digital content causes damage because of negligence.

That option still exists if a consumer wishes to use it. For example, a free mobile phone app containing a virus that damages the consumer's mobile phone can lead to a claim of negligence against the trader who supplied the app.

However, the Consumer Rights Act 2015 enables a consumer to be able to rely directly on the remedies provided by it for faulty or damaging 'free' digital content without having to rely on civil law precedents. For the consumer to be able to do this the digital content must be supplied under a contract where the consumer has to pay for goods, services or other digital content to get the 'free' item - for example, a computer magazine that comes with free anti-virus software.

What are consumers rights under the consumer rights act 2015 if digital content causes damage to devices eg smart phones, i-pads, tablets etc?

Where digital content is supplied and all of the following apply:

- the digital content causes damage to a device or to other digital content
- the device or digital content that is damaged belongs to the consumer
- the damage is of a kind that would not have occurred if the trader had exercised reasonable care and skill

...the trader must offer, and the consumer can request, either of the following remedies:

1. repair of the damage, which must be done within a reasonable time, without significant inconvenience and without cost to the consumer
2. payment of compensation, which must be given without undue delay, and in any event within 14 days of the trader agreeing to pay the compensation. The trader cannot charge the consumer a fee for this.

If it is necessary, the Act gives the consumer the ability to take Court action to enforce these rights on the trader.

Where can I get more information under the Consumer Rights Act 2015

about remedies for faulty digital content?

Find more information about remedies for faulty digital content

What information must a trader supply before selling digital content?

The Act provides a term in every contract for digital content that the pre-contractual information required by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 be provided to consumers. If this information is not provided before the consumer enters into the contract he has the right to recover any costs that he has incurred as a result of the failure to provide the information.

The costs that can be recovered are the sterling value of the price paid for the digital content regardless of whether it was paid in real money or some payment facility for which money has been paid – for example, a token, virtual jewels, etc within a computer game. The refund must be in real money.

What terms can a trader put in B2C contracts? What are unfair contract terms?

The Consumer Rights Act 2015 also covers the use of unfair terms in consumer contracts.

Any attempt to mislead the consumer about his rights is an offence under the Consumer Protection from Unfair Trading Regulations 2008.

In particular, price/subject matter contract terms are only exempt if transparent and prominent. Prominent means brought to the consumer's attention in such a way that the average consumer (a consumer who is reasonably well-informed, observant and circumspect) would be aware of the term.

All written terms of a consumer contract must be transparent. Transparent means in plain and understandable language and (if written) legible.

The grey list set out in Part 1 of Schedule 2 of the Consumer Rights Act 2015 includes the following three new grey list terms which are outlawed:

1. Disproportionately high charges where the consumer decides not to conclude or perform the contract or for services which have not been supplied.
2. Terms which allow the trader to determine the characteristics of the goods, services or digital content to be delivered after the consumer has entered the contract.
3. Terms which allow the trader to determine the price after the consumer is bound.

If asked the Courts will review contract terms to determine if they are fair.

The CRA broadly restates stops a trader relying on any term or notice which excludes or restricts liability for death or personal injury resulting from negligence.

All written terms of a consumer contract must be "transparent". Transparent means legible, and in plain and understandable language.

The Ts & Cs should use ordinary language in its ordinary sense, and short sentences will help. The terms should be well organised under easily understood headings covering recognisably similar issues. Font size, colour, clarity and (where used) paper quality are all relevant.

Legibility and clarity of language are not enough to ensure compliance. Wording that is literally used and legally accurate may still fail the transparency test if it is vague or misleading or if it refers to legal concepts that would not be familiar to a non-lawyer. Words like “indemnity” and “statutory rights” fall within this description. The Ts & Cs should set out all rights and duties in a clear and comprehensible way, so the consumer can see how they relate to each other, and foresee and evaluate at the time of entering the contract the possible consequences of the terms. The aim is to ensure that consumers can make an informed choice. Other pre-contract information may be needed to achieve this, and time to read and understand the transaction.

Lack of transparency does not make a contract term unenforceable. Any ambiguity will be interpreted against the trader (except in regulatory action against the trader).

Under English law, there are two main types of contract term which the courts have considered to be unfair:

1. Limitations. Attempts to limit liability for breach of contract, or to exclude liability completely eg no liability for death or personal injury or no liability if the consumers rights under the Consumer Rights Act 2015 are breached.
2. Other unfairness. Contract terms which are unfair in a more general way, for example, a contract that is one-sided in terms of termination rights or tries to limit compensation below the price paid for the goods, service or digital content.

What rights do a consumer have for Alternative Dispute Resolution?

Consumers sometimes encounter problems in getting redress for unsatisfactory goods or services. Such problems are even more difficult for consumers to solve when they buy something in another EU country or online. Disputes of this kind can be settled quickly, effectively, and cheaply without going to court, through ADR entities. However, not all EU countries have ADR entities to cover all kinds of consumer disputes with traders, and some existing ADR entities do not meet minimum quality standards. As a result, consumers are not always able to resolve their disputes and may lose money unjustly. The UK is setting up and authorizing ADR agencies for each type of industry.

The Consumer Rights Act is complicated. For help and advice

You can also purchase our [Consumer Rights Act Toolkit](#) which will allow you to create or amend your Ts and Cs so that they comply with the new laws under the Act.

Our Consumer Rights Act Toolkit includes:



Initial consultation with one of our experienced lawyers

Review of your current ts & cs to check where they do not comply

Provision of new Ts & Cs which are fully compliant with the Consumer Rights Act 2015

The new ts & cs are written in plain English and satisfy the fairness and transparency tests now required under the Consumer Rights Act 2015

One hour's legal advice so you know what to do to comply with the Consumer Rights Act 2015

Point-of-sale wording to display in a shop or on-line

Price

£1,250 plus VAT

Contact me on 0203 755 5288 for more information, to discuss any issues concerns or to purchase your toolkit.