

The Consumer Rights Act 2015 – an overview for charities

The bulk of the Consumer Rights Act 2015 (the CRA) came into effect on 1 October 2015. To the extent they are not already doing so, charities which sell products or services directly to consumers need to ensure they comply. We highlight important points to note and key changes brought in by this overhaul of UK consumer rights law.

With sourcing of funding becoming ever more scarce, and traditional forms of fund-raising becoming more challenging in light of media scare stories about undue pressure on vulnerable people, concerns about appropriate and lawful use of donor databases and a general change in the public attitude towards cold-calling and door-to-door collections, charities are increasingly turning to trading as a way of supplementing their income. Whether it is selling Christmas cards or branded merchandise, operating charity shops, or providing consultancy, support or similar services directly to consumers, charities will have to comply with the CRA.

The CRA is a major new piece of legislation. Consumer-facing charities should make sure they are familiar with the aspects most relevant to them. While many of the rights given to consumers are the same as before, some are completely new. There are major changes to the remedies available to consumers where a product or service falls short of expectations. For this reason, updating returns and complaints handling policies will be particularly important.

We do not cover every aspect of the CRA in this note but aim to provide a useful overview and highlight key points. Government guidance providing more detail on specific areas can be accessed here: <http://www.businesscompanion.info/en/news-and-updates/consumer-rights-act>.

What is the purpose of the CRA?

The objective of the new law is to establish a single framework for the key consumer rights in **contracts for goods, digital content, services**, and the law relating to **unfair terms** in consumer contracts and notices.

What does the CRA cover?

The CRA sets out the statutory rights and remedies available to consumers who buy **goods, digital content** and **services**. The category of **digital content** is new.

Some key definitions used in the CRA:

A **trader** is "a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf." Note that "**business**" includes the activities of government departments and local or public authorities. Although the

definition of **trader** in the CRA itself does not specifically refer to charities, the Explanatory Notes provided with the CRA include the following statement: “*Not-for-profit organisations, such as charities, mutuals and cooperatives, may also come within the definition of a trader, for example, if a charity shop sells t-shirts or mugs, they would be acting within the meaning of trader*”. Therefore, it is clear that charities providing goods or services directly to consumers will be traders for these purposes and will have to comply with the CRA.

A **consumer** is “*an individual acting for purposes that are **wholly or mainly** outside that individual's trade, business, craft or profession.*”

Digital content is “*data which are produced and supplied in digital form.*”

While the CRA collects together most of a consumer’s rights and remedies, you should be aware that some are left elsewhere. For example, a consumer can still sue for damages under contract law. Other important statutory rules remain in place. For example:

- The formation of a contract between a trader and a consumer is still governed by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the **Consumer Contracts Regulations**). In most distance and off-premises contracts these give the consumer a **14-day cancellation right**, even when there is nothing wrong with the goods, digital content or services. They also set out requirements about the information to be given to consumers and how the contract is formed.
- Certain types of behaviour towards consumers are outlawed under the Consumer Protection from Unfair Trading Regulations 2008. A salesperson putting pressure on a consumer in their own home, for example, or persuading a consumer to make a purchase based on false information, can amount to a criminal offence as well as enabling the consumer to make a claim.

Supply of goods

The CRA brings together and updates the rules on the supply of goods to consumers. The **core goods rights** promise the consumer that:

- the goods are:
 - of **satisfactory quality**;
 - **fit for a particular purpose** made known to the trader by the consumer; and
 - **as described** (including information about the main characteristics of the goods required by the Consumer Contracts Regulations); and
- the goods match a **sample** or **model** that is seen or examined by the consumer.

The CRA sets out the **statutory remedies** available to a consumer where there has been a breach of the consumer's statutory rights. For the core goods rights these include:

- a **short term (30 day) right to reject** the goods for a full refund;
- the right to a **repair or a replacement**; and
- the right to a **price reduction** or **final rejection** in some situations.

These statutory rights cannot be limited or excluded by the charity trader.

Supply of digital content

The CRA introduces a completely new set of rights and remedies for consumers purchasing digital content. Any of the following in digital format would be classed as digital content: books, computer software, audiovisual content, mobile apps and computer games. Also covered are software programmes incorporated into goods, such as music on a CD, or built-in vehicle or domestic appliance software. In contrast, digital content does not include an online shop selling goods, or a mobile service contract.

Although provision of digital content to consumers by charities is perhaps fairly unusual at the moment, there are clearly some charities that do provide digital content and this is likely to become increasingly common in the future.

Digital content previously fell into an uncertain area. However, the rapid growth of this type of purchase persuaded legislators to come up with a tailored set of rules, and specific provisions dealing with situations where a combination of digital content with goods or services is supplied.

As with goods, the CRA gives consumers a set of statutory rights that cannot be excluded. The digital content must be:

- o of **satisfactory quality**;
- o **fit for any particular purpose** made known to the trader; and
- o **as described**.

In addition, the **pre-contract information** provided by a trader under the Consumer Contracts Regulations is imported as a term of the contract.

The CRA sets out the **statutory remedies** available to a consumer where there has been a breach of the consumer's statutory rights:

- o the consumer may request a **repair or replacement**, where possible. This must be done promptly and without inconveniencing the consumer; and
- o failing this, the back-up remedy of a **price reduction** up to the full amount paid is available.

Unlike a goods contract, there is **no right to reject** digital content under the CRA. Although in a mixed supply of digital content and goods, such as a music CD, defects in the digital content will trigger the remedies available for goods.

An additional remedy is available for digital content which entitles the consumer to claim for **damage caused to his or her own hardware or software** by the digital content. This can be called on by a consumer even where the digital content is supplied for free.

Supply of services

The CRA brings together and updates the statutory rights and remedies for the supply of services to consumers. In summary, the statutory rights for consumers are:

- o the service is to be performed with **reasonable care and skill**;

- **information** provided about the trader or the service that **influences the consumer's decision-making** is binding;
- **pre-contract information** provided under the Consumer Contracts Regulations is binding;
- a **reasonable price** is to be paid if the price has not been fixed; and
- the service is to be performed within a **reasonable time**, if the timing has not been fixed.

The CRA gives a consumer **statutory remedies**, if the service falls short. These are:

- a right to **repeat performance** of the service within a reasonable time and without inconvenience to the consumer. This remedy is only available where the service has not been performed with reasonable care and skill, or the information terms have been breached in a way that relates to the service itself; and
- a right to a **price reduction** by an appropriate amount. The amount of the reduction is left for negotiation between trader and consumer and would normally be the difference between the value of the service the consumer paid for and the value of what was received. Where incorrect information about the trader has been given, the service provided may be of the same value, but the guidance accompanying the CRA indicates that the trader should still negotiate a price reduction.

The statutory rights cannot be excluded, and a trader cannot limit its liability for breach of the statutory rights to an amount that is less than the contract price.

Unfair terms in contracts and unfair notices

The CRA updates and clarifies existing laws on **unfair contractual terms**, removing some long-standing uncertainty and confusion. Contractual terms that are deemed unfair will not be binding on a consumer, unless the consumer chooses to be bound. For the first time, the CRA imposes equivalent standards on **notices** addressed to consumers where they affect the rights and obligations between a consumer and trader or seek to exclude the trader's liability. The discussion below applies to both terms and notices.

A term will be unfair if, contrary to the requirement of **good faith**, it causes a **significant imbalance** in the parties' rights and obligations to the **detriment of the consumer**. Whether a term is fair is assessed:

- taking into account the nature of the subject matter of the contract; and
- by reference to all the circumstances when the term was agreed including any other related contract/notices.

As under the previous law, the CRA includes an indicative list of terms which **may** be regarded as unfair – the **"grey list"**. This is in contrast to the **"black list"** of terms that are never allowed, such as excluding or restricting liability for death or personal injury resulting from negligence, or the consumer's statutory rights and remedies. Grey list terms range from exclusion of the trader's responsibility to fulfil its obligations under the contract to disproportionate charges for early termination by the consumer.

Certain terms are **excluded from the assessment of fairness**, namely:

- terms which specify the **main subject matter** of the contract; and
- the appropriateness of the **price** the consumer pays for the goods, digital content or services supplied.

However, this exclusion can only apply if the term is both **transparent** and **prominent**. These terms have specific legal definitions.

The CRA requires traders to ensure that all their written terms in consumer contracts and consumer notices are transparent, and provides that any **ambiguous terms** will be interpreted in the way most favourable to the consumer.

Where a contract comes before a court, the CRA requires fairness to be considered, even if it is not raised by the consumer. Regulatory bodies such as Trading Standards and the CMA also have enforcement powers to deal with breaches of the unfair terms rules.

Next steps for charities

Charities which provide goods, services or digital content directly to consumers, and have not already done so, will need to review the terms and conditions they use when dealing with consumers to ensure they comply with the CRA.

However, what should be clear from the information provided above is that compliance with the CRA is not simply a matter of getting the “small print” of the legal terms and conditions right. Charities will need to consider how they describe their goods and services, what information is provided to the consumer before a contract is formed and how they deal with after sales care, returns policies and complaints procedures.

Although this may seem daunting in the first instance, once suitable documentation, processes and procedures are in place, compliance with the CRA should not be too onerous. The benefits that charities are likely to gain from dealing directly with consumers, both in terms of revenue generation and profile-raising, are likely to outweigh the short term cost of compliance with the new legislation.



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