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THE CONSUMER RIGHTS ACT 2015 – CHANGING THE BALANCE OF POWER BETWEEN BUSINESS AND CONSUMERS

The legislation

This new law is set to come into force on 1 October 2015. It represents the most significant change in consumer protection legislation for a generation yet has received surprisingly little publicity until now.

Impact on your business trading terms and conditions

The changes apply to *business-to-consumer* dealings only and do not impact on purely *business-to-business* transactions. However....

- Business includes all of manufacturers, importers, retailers and branders. Local authorities too are deemed to be businesses in respect of contractual services provided
- The burden of proof is placed on business to disprove the counter-party's status as a consumer. The term "consumer" is widely defined
- The new legislation now applies consumer protection to electronic "goods" such as IT and software in addition to the traditional areas of the supply of physical goods and services (which includes professional services)
- This list of matters for which liability cannot be excluded or limited is considerably expanded. From now on there will be a potential claim whenever *it doesn't do what it says on the tin*
- The new rules apply to *all* business-to-consumer agreements and not just those agreements made on or by reference to standard t's & c's (although these will still be in the majority)

Application to E-commerce

The rules will apply to *all* contracts, however formed. This includes wholly on-line trading. Business will no longer be able to feel quite so sure that the check-box method of acceptance of t's & c's will be sufficient to protect them.

Limitations of liability

The limitation or exclusion clause is usually a key element of any business t's & c's. Under the new legislation there will still be an important role for limitation clauses, but....

- They must be written in plain and intelligible language
- Be transparent and prominent, such that a reasonably well-informed, observant and circumspect individual would be aware

These provisions will also now be applied to pricing clauses for secondary services *eg* default charges and to contractual claims procedures that are deemed to be restrictive or obstructive. If these requirements are not met the applicability of the exclusion will be subject to a stringent and consumer-focused fairness test.

What does it mean for your business?

- We recommend an urgent review of your business t's & c's to ensure compliance with the new legislation before the implementation date of 1 October 2015. You should also be prepared to be able to explain any exclusions or limitations of liability that you think appropriate to your business. This can be achieved by some or all of reference to industry norms, internal documentation and published information (for example on your website). All these measures will help you to justify an exclusion clause in the event of challenge. Remember the burden of justifying your t's & c's rests with you!
- You should also review your public liability insurances to ensure the new risks are adequately covered
- Consider the need to increase your accounting provisions for future claims *ie* self-insurance
- Where possible, review your pricing structure and margins in the light of the added trading risks
- Review procurement procedures. As far as possible ensure your own procurement contracts offer indemnity protection in respect of consumer claims made against you
- Review your own quality control systems. Remember the cost of a claim is not limited to making redress to a customer. Often the cost of reputational harm far exceeds the monetary value of the complaint
- Consider joining or establishing an alternative dispute resolution (ADR) scheme for complaint handling. ADR schemes can achieve considerable cost-savings over litigated dispute resolution as well as significantly reducing reputational harm

How can we help?

Recognizing the additional burden on business, until 31 August **we are offering a fixed-fee review** and, if necessary, amendment of your t's & c's to meet the new legal requirements. Please contact us with more details of your business and needs.

Through our partner organization London Dispute Mediation (LDM) we can provide **accredited mediation services** either on a case-by-case basis or as part of an ADR scheme. Please ask for more details

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