
Consumer Rights Bill

Second Reading, House of Commons

(28 January 2014)

Summary

Citizens Advice strongly welcomes the Consumer Rights Bill. The Bill, which consolidates and strengthens the wide range of consumer rights legislation currently in existence, has the potential to make it far easier for people to understand and use their rights when things go wrong. We would therefore like to see the Bill pass through the legislative process without major alteration.

There are, however, a few small changes we would make which have the potential to have a significant positive impact for consumers. These are:

- Changes to the requirements around the provision of point of sale information.
- Thirty day maximum time limits within which repairs, replacements and refunds must be carried out.
- The extension of collective redress provisions beyond competition cases, to include all instances of unfair practices.

Contact

See page 7 of this briefing for details of how to contact us for further information.

Introduction

Citizens Advice welcomes the introduction of the Consumer Rights Bill to the House. We have worked closely with officials at the Department of Business, Innovation and Skills (BIS) from the earliest development stages of the bill to ensure that the legislation meets the needs of consumers.

The primary purpose of the Bill is to bring together and rationalise the muddled array of consumer protection legislation which currently exists. This is crucial, as it will make it far simpler for people to understand their rights and responsibilities as consumers, and more importantly to exercise these rights affectively. This is currently not the case. A Citizens Advice survey of 1092 people found that 74 per cent of respondents had had a problem with something that they had bought in the last 12 months. Of those that had had a problem, 94 per cent said that they had complained, asked for a refund or tried to get the problem resolved. Only 10 per cent were successful.¹

Citizens Advice believes that the Consumer Rights Bill, with some minor adjustments, has the potential to meet its aims. We therefore strongly support the Bill and would like to see it pass through the legislative process without major alteration.

Provisions within the Bill which we believe have the potential to make a significant difference to consumers include:

- Consumers will only have to accept one repair or replacement before being entitled to a refund.
- Consumers will be entitled to require a trader to perform a service again if the initial result was not carried out to a satisfactory level, or receive a partial refund if this is not done.
- Consumers will have the right to receive a full refund when they return faulty goods within 30 days.

There are a few areas, however, in which we feel that minor adjustments to the Bill could have a significant positive impact for consumers, at a negligible additional cost to business. In summary these are:

- Changes to the requirements around the provision of point of sale information
- Thirty day maximum time limits within which repairs, replacements and refunds must be carried out
- The extension of collective redress provisions beyond competition cases, to include all instances of unfair practices

We outline the case for each of these changes in detail below.

¹ Citizens Advice. *Redressing the balance: Why consumers need better means of resolving problems with faulty goods and services.* (December 2012)
http://www.citizensadvice.org.uk/index/policy/policy_publications/er_consumertravelandtransport/redressing_the_balance.htm

Point of sale information

One of the key objectives of the Bill is for consumer law to be easy to use. In order for this to become a reality consumers and traders need to be aware of, and understand, what the new law means for them. Citizens Advice is calling for a requirement for traders to display point of sale information setting out key consumer rights.

A Citizens Advice report, *Redressing the Balance*, demonstrated that there is widespread misunderstanding amongst consumers and traders regarding their rights and obligations.² As the examples below demonstrate, this lack of understanding can cause considerable frustration and prevent people from exercising their rights effectively:

A CAB in the North West of England saw a 76 year old man who had bought a washing machine which stopped working less than 18 months later. He went to the shop which he had originally purchased the washing machine from but was told that there was nothing they could do as it was out of warranty. As a result the client paid an independent repairman to fix the washing machine at a cost of £150. The repairman said that the washing machine was of very poor quality and had a number of faults not consistent with 18 months wear and tear. Shortly before visiting the bureaux the client had seen a newspaper article which informed him that his consumer rights did not end when the warranty ends and that he should have been eligible for a repair, replacement or a partial refund. He was significantly out of pocket as a result of paying for the repair and upset as he felt that the shop had deliberately misled him about his rights.

A CAB in the South of England reported the case of a man who bought a tablet computer as a Christmas present for his son. After one use his son was not able to charge the tablet. The client returned the tablet to the shop from which he had purchased it but was told that as it had been more than 30 days since he had purchased the item he would have to contact the manufacturer directly. The client knew that this was not the case as he had recently seen media coverage about the company which highlighted similar problems experienced by other consumers. In this coverage a company representative had admitted that there was an issue with staff training and understanding of the issue. The issue did not seem to have been resolved in this particular store and the client was left frustrated and unable to exercise his rights.

Citizens Advice asked consumers taking part in a survey what would make resolving their consumer problems easier in the future. Forty three per cent of those responding said that information about their rights on receipts, at the till and on websites would help them to resolve problems with a trader.³ We believe that traders should be required by law to display point of sale information outlining to consumers the rights afforded to them under the Bill. We have provided examples of how such a notice could look in Appendix A.

Regular interaction with this information would promote familiarity and understanding of the new law amongst both traders and consumers. Furthermore, more widespread understanding of these rights and responsibilities would reduce the number of disputes between traders and consumers, saving both parties time and money. In addition, enforcement penalties for failures by traders to comply with the law are included in the draft Bill. A model notice setting out the rights and responsibilities of

² Citizens Advice *Redressing the balance* (2012)

³ Citizens Advice *Redressing the balance* (2012)

consumers and traders at the point of sale will help traders to avoid this pitfall by getting it right first time.

We believe that such a measure is provided for in the Consumer Rights Directive at articles 5.1(e) and 6.1(i) which deal with pre-contract information requirements. The clauses require that consumers are provided with a “reminder of a legal guarantee of conformity for goods”. Whilst the Consumer Rights Directive fails to define this term, the provision comes from the Directive on Sale of Goods and Associated Guarantees. Article 2 of this Directive provides a definition of when consumer goods are presumed to be in conformity with the contract for sale which includes:

- goods being as described;
- fit for purpose; and
- of satisfactory quality.

In our opinion the Consumer Rights Directive is logically conceding that this information is central to the pre-contract details consumers need.

The House of Commons Business, Innovation and Skills Committee supported this proposal in their pre-legislative report on the draft Consumer Rights Bill. The report stated:

“We support the recommendations of Citizens Advice for the inclusion of an express requirement in clauses 10 and 38 (Goods and Digital Content to be as described) and clause 52 of the draft Bill (information about the trader or service to be binding) for a trader to provide information about the relevant core statutory rights at the point of sale”

We are disappointed that the Government chose not to include this requirement in the Bill. We acknowledge that the Government have committed to exploring the proposal further within the implementation working group, of which Citizens Advice is a member. However, we remain convinced that this requirement, which is so crucial to the success of the bill, should be included within the legislation. We are concerned that this requirement will cease to be a priority during discussions around the implementation of the bill and risks being introduced in a significantly watered down form at an undetermined later date or not at all.

30 day time limits for repair/replacement and for refunds

We believe that traders should be required to carrying out repairs, replacements and refunds within 30 days unless the consumer agrees to a longer timeframe. This would provide valuable clarity and empower consumers to demand a better level of service when traders unduly prevaricate.

Repair/ redress

The Bill rightly aims to make complex consumer law easier to understand and we believe that in many aspects this goal is achieved. Where the Bill applies rights for goods, services and digital content, it makes use of the two tiered system outlined in the Sale of Goods and Associated Guarantees Directive, which has been transposed into UK legislation as the Sale and Supply of Goods to Consumers Regulations 2000. The tiers are repair or replacement followed (where the repair/ replacement fails to resolve things) by part or full refund.

These layers of redress include the requirement that repairs or replacements are done within a 'reasonable time' and without 'significant inconvenience'. Citizens Advice supports the inclusion in the Bill of a limit to the number of repairs and replacement that can be attempted to one. However, this fails to address the essential problem of how long a period of time is considered to be 'reasonable' for the execution of a repair or replacement. Elsewhere in the Bill, a limit of 30 days is placed on consumers for the rejection of a product. We therefore suggest that the same 30 day limit is imposed on the time within which a repair or replacement must be carried out by the trader.

Consumer research carried out by Citizens Advice supports this proposal. In a survey conducted by Ipsos MORI on our behalf a representative sample of consumers were asked how useful it would be to have a right to have problems resolved within a set time and a right to have some or all of their money back if it could not be done in this time. Ninety one per cent said that this would be very or fairly useful.⁴

The following examples, taken from calls made to the Citizens Advice Consumer Helpline, demonstrate that people often find that they face a long, indeterminate wait to receive the remedy they are entitled to:

A man called the helpline for advice about a mattress she had purchased which had sagged in the middle. The trader had been promising to replace it for a number of months but kept delaying. He had first reported the problem to the trader in March 2013 and still had not reached a resolution by the time he called on 18 November.

A woman called the helpline for advice about her bathroom suite. She had purchased the new suite from the trader in June 2013. On the day the bath was fitted she noticed a blue mark on the inside of the bath and reported this to the trader. A member of the trader's staff visited her house to try and polish the mark out. The member of staff made the mark bigger and it turned black. The trader agreed the bath was faulty and agreed to provide a replacement but the client was still waiting over five months later. The client had rung a number of times to complain but seemed no closer to arranging a date for the replacement to be delivered or for an alternative remedy being agreed upon.

We understand that in some cases repairs will take longer than 30 days to carry out, perhaps because parts need to be transported from a distant location. Our proposal would not prevent the trader and consumer agreeing a longer time scale for the repair where appropriate. We want to ensure that the new law avoids creating a loophole which allows unscrupulous traders to make consumers wait an unacceptably long time for a repair or replacement in the hope that they simply give up trying.

Refunds

The Bill offers consumers the right to reject goods and obtain a part or full refund where the repair or refund options have failed. We believe that the 30 day limit, as discussed above, should also be extended to include refunds. This would ensure that consumers do not face unreasonable delays to obtain the refund that they are entitled to. Calls to the Citizens Advice Consumer Helpline show that this is not always the case:

A man called for advice about a faulty speaker system. He had purchased the speaker system from the trader but had cancelled the order after 2 weeks as they still hadn't dispatched it. He was told that he would receive a refund. The client had called the company

⁴ Citizens Advice *Redressing the balance* (2012) p9

nearly every day for six weeks trying to get a refund. Each time he was told that it had been escalated and he should receive the refund in the next few days. One member of staff gave the client the managers email address and despite emailing and calling the manager a number of times nothing had happened.

A woman purchased some boots online in July 2013. When she received the goods they were not the size she had ordered. She sent the goods back and the trader agreed to refund within 30 days. The client was still waiting for her refund when she made the call on 30 September.

It is important to remember that the money owed to the consumer is recompense for the supply of a faulty or sub-standard product and so the consumer has already suffered a breach of contract and is unable to use the item they paid for. It is therefore in the interest of consumers, traders who abide by the law, and the wider economy that the consumer receives a refund within a timely manner so that they can then reinvest this money elsewhere. We can see no justifiable reason why a refund should not be paid to the consumer within 30 days.

Collective redress

When traders fail to meet their legal obligations, consumers often give up rather than take the case to court. The Bill recognises the need for a facility for collective actions for competition cases. We believe that access to collective redress should be widened to cover all unfair practice experienced by consumers.

Ninety four per cent of consumers taking part in a survey conducted by Citizens Advice told us that they had complained, attempted to get a refund or tried to get a problem put right. Only ten per cent were able to say that they had been successful. Seventy four per cent said that they were not successful at all and sixteen per cent said that they were only partially successful.⁵

The Bill recognises the need for a facility for collective actions for competition cases. It allows for cases to proceed on an opt-out basis so that any affected consumer who does not opt out from proceedings will be compensated if the collective action is successful. Citizens Advice welcomes these provisions. We are, however, disappointed by the narrowness of the scope and would like to see the collective redress model widened to include all cases of unfair practice experienced by consumers, not just anticompetitive practices.

Research carried out by the European Commission in 2011 found that there was considerable appetite for collective redress in the UK – 87 per cent said that they would be more willing to defend their rights in court if they could join with other consumers who were complaining about the same thing (see redressing the balance for reference).⁶ We believe that widening collective redress to cover all unfair practice experienced by consumers, following the opt out model provided for in the current Bill, would be good for consumers, good for traders who treat customers fairly and good for the economy.

Allowing collective redress on a wider scale would send a clear message to traders that they will be required to compensate all affected consumers when they are found to have fallen foul of consumer law and allow consumer to reinvest the refunded money into responsible traders and the wider economy, contributing to economic growth.

⁵ Citizens Advice *Redressing the balance* (2012) p6

⁶ Europeans, Development Aid and the Millennium Development Goals. Flash Barometer 299 Brussels: European Commission (2010)

Contact

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Simple version – reflecting the rights contained in the Bill as currently drafted

Your legal rights

Bought something faulty or sub-standard?

If something you buy is faulty or sub-standard:

- Within 30 days of purchase you can
 - **return it for a full refund**
 - OR**
 - **ask for it to be repaired or replaced.**
- After 30 days you can **get a repair or replacement for up to six years.**

Repair or replacement:

If after one repair or replacement the problem has still not been fixed then you can have a refund.

The refund will be in full if:

- it is less than six months since you bought it

After six months, the amount of the refund can be reduced to take account of the time you have been able to use it.

You have no legal right to money back just because you changed your mind. The trader may offer returns for any reason as part of their own returns policy if they choose to.

If you want to check up on your rights, get advice before you agree a solution with the trader. Go to your local CAB or visit the Adviceguide website at www.adviceguide.org.uk or contact the Citizens Advice consumer helpline on 0845 04 05 06.

Simple version including our suggested 30 day time limit on repairs, replacements and refunds

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If something you buy is faulty or sub-standard:

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 - **return it for a full refund**
 - OR**
 - **ask for it to be repaired or replaced.**
- After 30 days you can **get a repair or replacement for up to 6 years.**

Repair or replacement

The trader can attempt one repair or offer one replacement. This must be carried out within 30 days.

If the repair or replacement is not carried out within 30 days, or the problem has still not been fixed, you can have a refund

The refund will be in full if:

- it is less than six months since you bought it

After six months, the amount of the refund can be reduced to take account of the time you have been able to use the item.

Any refund must be provided within 30 days.

You have no legal right to money back just because you changed your mind. The shop may offer returns for any reason as part of their own returns policy if they choose to.

If you want to check up on your rights, get advice before you agree a solution with the trader. Contact your local CAB or visit the Adviceguide website at www.adviceguide.org.uk or contact the Citizens Advice consumer helpline on 0845 04 05 06.

Simple version including our suggested 30 day time limit on repairs, replacements and refunds plus the proposed sliding scale of minimum refunds

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Suggested wording for distance selling

Extra rights buying on line, over the phone, by post (distance selling).

- You can usually change your mind and cancel within 14 days of receiving the item
- If you haven't agreed to an earlier start you have 14 days from agreeing the service to change your mind and cancel.
- You must cancel in writing.

Check your cancellation rights form.

Your refund must be provided within 14 days.

Suggested wording for doorstep selling

Box to be added above the general information

Extra rights for buying in person from a person at home/ in the street/ at a sales promotion (doorstep selling).

- You can usually change your mind and cancel within 14 days of receiving the item
- If you haven't agreed to an earlier start you have 14 days from agreeing the service to change your mind and cancel.
- You must cancel in writing.

Check your cancellation rights form.

Your refund must be provided within 14 days.