

THE CONSUMER RIGHTS ACT 2015

"A consumer is a shopper who is sore about something." - Harold Coffin

Members will have seen that there is a new Consumer Rights Act which has been in force since October 2015 (The Consumer Rights Act 2015 - "CRA"). Whilst its reach will include professional services firms, and hence brokers, it is only relevant to dealings with Consumers. The definition of a Consumer is an individual acting for purposes that are '*wholly or mainly outside that individual's trade, business, craft or profession*' and so is consistent with the definition used in recent legislation bringing in changes to insurance law. Any impact the CRA will have on Members' day to day practice is likely to be limited. Whilst it aims to modernise and simplify some key parts of the UK's consumer protection rules, it is largely re-stating the existing law as it relates to brokers, in particular reinforcing the existing Treating Customers Fairly message.

Marketing and Provision of Services

The CRA has introduced a new control over the way in which a broker markets itself and its services to a Consumer. Every services contract, (which would include a broking contract to place business on behalf of a Consumer), will now be treated as including, as a term, anything said or written to the Consumer about the broker, or the service it will provide, which the Consumer takes into account when:

- (i) deciding whether to enter into the contract; or
- (ii) making any decision about the service, having entered into the contract.

Members will therefore need to take particular care when making statements about the services that they will provide. Loose statements should always be avoided in any event, but one made to a Consumer could now lead to a Member being obliged to perform services that it mentioned "in passing" but had not meant to become part of the contract.

New Remedies for Breach of Contract

If the service provided to a Consumer falls short of the service it was entitled to receive the CRA now entitles the Consumer to require re-performance of that service or, where that may not be appropriate, a reduction in the price paid to the broker of up to 100% of the brokerage received. A right to price reduction will also be available where a service is not performed within a reasonable time.

So, where a broker performs a particular service, such as a valuation or survey, and the Consumer considers it hasn't been done to the standard that he/she had expected, re-performance of the contract may well be required. Where a Consumer feels that the cover it has was narrower than that it was told it was going to get, a return of brokerage is likely to be sought. The likelihood of a price reduction being sought for service not being performed by a broker in a reasonable time is low – if a policy is not in place in time, the consequences will probably be of a much more serious nature. However, this remedy could be sought where brokers offer other ancillary services.

Members already operate in a heavily regulated landscape and so the impact of the CRA, for those who do deal with Consumers, should be limited. However, these new remedies are additional to those which already exist such as damages for breach of contract and or negligence.

Risk Management Message

There will be genuine cases of poor performance, where these new remedies will be preferable to costly litigation. However, unless a careful record is kept of what is sent or said, the CRA's provisions will give unscrupulous Consumers an easy opportunity to maintain that they were led to believe a different service would be provided and that they are entitled to re-performance or, more likely, a return of some or all of the brokerage/commission paid.

- Members should review their TOBAs and marketing materials, including any digital content, to minimise the possibility of a Consumer being able to assert that more was promised to them at the marketing stage than was delivered.
- Good record keeping will, as always, assist a Member to establish what was told to a Consumer, and the quality of the service which was delivered.

This bulletin is for general information purposes only and does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. In addition, by its nature, this bulletin may be superseded by subsequent regulatory or legal developments. Professional advice should be sought where appropriate in relation to any particular circumstances.

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