

Assessment on the impact of changing consumer rights legislation on AMS

Trillions of transactions take place throughout the world every day with each having both a buyer and a seller. To protect buyers around the world there are numerous consumer laws and regulations. Should there be the need for these to be enforced due to an infringement of the rules, they can be in a number of different ways, including through the courts if necessary. There is also sometimes a 'moral' law where a company or individual may reimburse, swap or replace goods or services as they feel it is the right thing to do. This can be a point of differentiation but also can be done to avoid negative publicity. Some countries, such as Mali, do not have consumer rights laws or regulations in place. Here it would be down to the morals of the sellers to do the right thing should there be a problem. In some countries where bartering is commonplace, goods or services bought through these means are often not covered by regulations such as in Hong Kong.¹

What are consumer rights?

To define consumer rights we must first define consumers.

The definition of a consumer is **"a person that buys goods and services."**²

The Consumer International group has defined consumer rights as:

- **The right to satisfaction of basic needs** - To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
- **The right to safety** - To be protected against products, production processes and services that are hazardous to health or life.
- **The right to be informed** - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
- **The right to choose** - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
- **The right to be heard** - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.
- **The right to redress** - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
- **The right to consumer education** - To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.
- **The right to a healthy environment** - To live and work in an environment that is non-threatening to the well-being of present and future generations.³

Global Consumer Rights

Throughout the world there are a multitude of consumer protection laws enforced by country and also sometimes by state, county or province. The level to which consumers are covered varies between countries with the lesser developed countries having fewer laws in place. It should be noted however that it is only where the laws are enforced that they provide protection. Some countries that have no laws have few problems whilst some that do and don't enforce them encounter many issues.

¹ http://www.hkcllc.org/en/topics/consumer_complaints/consumer_protection/

² <http://www.yourdictionary.com>

³ <http://www.consumersinternational.org/who-we-are/consumer-rights>

In the United States a variety of laws at both the federal and state levels regulate consumer affairs. Amongst them are the Federal Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm-Leach-Bliley Act. These are enforced by the Federal Trade Commission, the Consumer Financial Protection Bureau, and the U.S. Department of Justice. At state level many states have adopted the Uniform Deceptive Trade Practices Act although there are a number of other similar laws.⁴

The Consumer Protection Law in Taiwan protects the interests and safety of consumers using the products or services provided by business operators. The Consumer Protection Commission of Executive Yuan serves as an ombudsman supervising, coordinating, reporting any unsafe products/services and periodically reviewing the legislation.⁵

As well as the problem of enforcement there are other problems associated with Consumer Protection Laws including ambiguous terminology, favoritism towards consumer protection groups, and the compensation liability defense. All of these points must be addressed before the law becomes an effective piece of legislation that will protect consumers.

Europe is also covered by an EU Directive released in 2011. Under this directive, the window in which consumers are able to cancel an order was extended from seven working days to 14 days. The aim of the EU directive is to standardise the rights across all 28 member states. It also aims to strengthen and clarify those consumer rights. Member countries implemented the directive at different times with France doing so in January 2014, the UK in June 2014.

Why does the Consumer Rights Law need changing in the UK?

Consumer law has developed in various acts and regulations over the last thirty years. The Government decided that consumer law is now unnecessarily complex, ambiguous in places and has not kept up with technological developments. There are also overlaps and inconsistencies between some EU and pre-existing UK legislation. As a result, consumers and businesses find it difficult to understand their legal rights and obligations. This potentially undermines competitiveness and growth in the economy as a whole. In the UK, there are currently the following acts and regulations in place:

- Supply of Goods Act 1973
- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982
- Sale and Supply of Goods Act 1994
- Sale and Supply of Goods to consumers Regulations 2002
- Unfair Contract Terms Act 1977
- Unfair Terms in Consumer Contracts Regulations 1999
- Unfair Terms in Consumer Contracts (Amendment) Regulations 2001
- Competition Act 1998
- Enterprise Act 2002

The education of both the consumers and the business organisations who are affected by the new bill is going to be one of the major challenges. This may not have been done effectively in the past but as this is the biggest change in decades emphasis will be put on raising awareness. Without the education, the bill will be irrelevant. From the perspective of businesses, they will need to be ready to adapt quickly to implement changes and educate their staff in the new rights.

Another reason is consumers are even less confident that they understand their rights. In a survey by uSwitch published in August 2013 almost half of those surveyed said they had a weak grasp of their rights and a third of them were relying on trial and error when they had a consumer problem. This came through stronger and was further highlighted in a 2015 survey by Teleplan International who found that 98% of Britons were unaware of their full consumer rights.⁶

⁴ The State of Consumer Protection Around the World. www.consumersinternational.org

⁵ The State of Consumer Protection Around the World. www.consumersinternational.org

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274912/bis-14-566-consumer-rights-bill-statement-on-policy-reform-and-responses-to-pre-legislative-scrutiny.pdf

Another problem with the current laws are that there is currently nothing to specifically cover digital content. As well as offering the same remedies as physical goods the bill also contains an additional compensation mechanism where digital content causes damage to a device or other digital content owned by a consumer (e.g. through a virus). If that damage would not have occurred had reasonable care and skill been exercised by the trader in the provision of the digital content, the trader must either repair the damage (within a reasonable time and without significant inconvenience) or failing that pay compensation - this payment would be required to cover the cost of replacing the device and/or any digital content that is damaged. An additional term for digital content is that the trader must have the right to sell it. This may seem obvious however when it comes to things that are copyrighted such as music this is an important protection. This applies to both downloads and data provided in a physical form. ⁷

Consumer Rights in the UK

The new consumer rights draft bill is in the final stages of pre-legislative scrutiny and it will be a matter of months before the new Consumer Rights Bill comes into force in the UK.

For decades the European Union has been legislating in favor of consumers and has published – and continues to amend – several directives aimed at protecting them. The UK has long been a champion of consumer rights, – not just by law but also on a voluntary and commercial basis, and has one of the most pro-consumer market environments in the Union.

Anticipated changes and challenges

All companies selling products to consumers in the UK will need to review their existing procedures and policies which may need to be adjusted as a result. In the context of the sale of goods to consumers (*) the main suggested changes can be summarized as follows:

Consumers would have statutory rights for the goods (and digital content they may include) to be:

1. of satisfactory quality
2. fit for particular purpose
3. as described, or match a sample or model seen or examined
4. installed correctly (where installation is part of the contract)

In case the above statutory rights are not met, consumers would have the right to enforce one of the new remedies. The '30 day short term right to reject' clause essentially means the 'no questions asked' returns policies become a legal standard. The problem would arise should a company plan to legally challenge any customer who claims within 30 days of purchasing a product they were sold did not meet his/her expectations. This would lead to not only the loss of a customer but the potential damage to the brand should any negative publicity arise from this.

It is still unclear how the 'right to repair or replacement' will practically impact goods already covered by the EU warranty legislation, if at all.

One of the most notable changes is within the 'Right to price reduction or final right to reject'. This means that the trader could only be given one opportunity to bring the product back to conformity (e.g. repair, refurbishment, swap), after which the consumer would be entitled to either ask for a price reduction or reject the product and claim a full refund. It remains to be seen how consumers would exercise this right although there are some increased expectations to explain such rights more clearly and directly to the consumer, but it will no doubt impact the way this exposure might be accounted for in the future. More scrutiny can be expected on what the industry refers to as overall 'return rate'.

Policies on after sales service options could be affected in a number of ways. As well as affecting inventory levels, this could also mean a higher refurbishment specification of returned product as cosmetic conformity could be more important than a same unit repair and return model.

⁷ <http://www.twobirds.com/en/news/articles/2014/uk/upcoming-changes-to-consumer-rights-legislation#Rights%20and%20remedies%20%E2%80%93%20goods>

(*) Note: the bill also addresses the supply of services, digital content and other hire purchase transactions

Solution

Many of the generous return policies are already pervasive in the UK retail landscape, so chances are you would not have to adjust much. It would be highly advisable to review your pre-contract information (and advertisements) to ensure they do not overstate any aspect of the product or expectations from this product.

It will become essential that there is a careful communication to a consumer of a product's realistic performance expectation over time as well as its intended use. For example, 'managing expectations' on battery performance would become critical otherwise consumers could be entitled (statutory rights) to claim non-conformity and request one of the appropriate remedies.

Customer's policies and sales contract's terms and conditions will almost certainly have to be adjusted, and it would also be wise to review pre-sale consumer information. Your customer service staff will also need to be specifically trained to fully understand the rights of the consumer and the intricacies of the new bill.

In the after sales service arena it may make sense to have clearer, more straightforward swap out policies in place which would lead to increased swap stock being more generally available. Expert advice and support can also be sought from leading After Market Service professionals.

Conclusion

This bill will deliver better clarity while giving consumers stronger rights and more options. This can be leveraged as a good thing for all. Based on this draft and given the current pro-consumer environment in place in the UK today, potential changes would appear to be subtle and as such would not be expected to have any major impact on B2C suppliers.

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Companies will no doubt place even greater emphasis on accelerating the development of their returns avoidance strategies investing more into self-help and remote support services. All of this in a bid to keep their customers happy with a positive experience through the continued use of their products in a market environment of increasing choice.

The new law can be seen as an opportunity for companies to differentiate themselves from their competitors. By being prepared and responsive to the new law a competitive advantage can be gained. Whilst it may not be a case of what you can gain, it will certainly be a case of what you cannot afford to lose by damaging your reputation through ignorance or lack of understanding.

One thing is certain: it always makes business sense to reduce returns and bounce rates therefore there is no need to wait until the law is passed to tackle these issues.

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