businesscompanion
trading standards law explained

Part 1. Legal requirements - the basics

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The Regulations

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 apply to contracts between trader and consumer, when contracts are formed at a distance (such as online or by phone) and goods are sent by courier or post. See 'Consumer contracts: distance sales' for more information on these regulations.

The key aspects of the regulations are captured in this best practice guide.

Information to give your customers

As a trader you should make key pieces of information available to your customers when they buy from you 'at a distance':

- a clear description of the goods being sold
- details of your identity, such as trading name, address, phone number, email address
- the total price of the goods, including VAT and delivery charges (if calculated in advance, otherwise it needs to be stated that this is payable later)
- where a charge applies for delivery or collection, the charge must be clear
- arrangements for payment and delivery
- your complaint-handling policy
- how a consumer may exercise their right to cancel
- your expectations of the consumer in the event of goods being returned (the consumer must bear the cost of returning the goods, unless stated otherwise by the trader)
- if the consumer exercises their right to cancel, reimbursement should be made within 14 days of getting the goods back

For more information, please see the 'Compulsory costs and charges: Delivery charges' guidance set out by the Advertising Standards Authority.

'At a distance' - what does this mean?

'At a distance' in this context means a contract made between a trader and a consumer where they are not together that is negotiated and agreed by one or more organised means of distance communication - for example, by phone, by post or over the internet.

Key aspects and FAQs

The price of a sale should include any delivery costs

Should this be expressed as GBP, including VAT? Should this include packaging costs too?

Yes, prices must be the final price the consumer pays including VAT and any other compulsory charges. Usually packaging is required too, so yes it should include everything.

'Collection only' arrangements or alternative delivery options must be clear

What should the buyer expect to read for collection only arrangements? What if the costs differ according to distance / location or method of sending?

If collection is expected (because delivery is not an option), then this should be made clear at the point of sale - for example 'collection from store only.' If the delivery cost varies according to distance or method of sending, then the cost may be given separately to the cost of the goods.

In this case, consumers should be made aware (for example, 'plus delivery') and if possible, the consumer should be able to find out what the charge will be. If different options are available (such as standard, next day or special delivery) the cost of each should be provided.

Customers should be told how long delivery is likely to take and this should be 'without undue delay'

Is it OK to say 'within 10 days' or should it be more specific, like 'on Tuesday 5th' ? Is there a maximum?

This can be given as a range of time, for example, '3 to 5 days' or 'within 10 days.' It must be within 30 days unless otherwise agreed in advance. With something like a sofa, which usually takes longer than 30 days, the delivery time should be clearly stated, for example, 'delivery takes up to 6-8 weeks.'
If further changes to delivery times should arise (because of delays to imported materials, for example), consumers must be told and must agree to this. If not delivered within 30 days (or the agreed timescale), then a consumer has the right to cancel.

Additional charges for 'difficult to reach' areas must be made clear at the beginning of the order process

Who decides which areas are 'difficult to reach'? Is there a standard set of postcodes, which includes NI, Scotland, Scilly Isles etc? Or is it up to each retailer to decide its own and then give appropriate timelines and costs for delivery?

Each trader decides where it is prepared to send its goods. Some will exclude some postcodes, some will exclude none. Charges may vary too; courier charges are negotiated with the trader and may be passed on by the trader (in whole or in part) to the consumer.

Postal costs are more transparent and calculated according to size, weight and speed, etc. Royal Mail offers a range of speeds and these are applicable to the vast majority of the UK.

However, its website lists several postcode prefixes which are outside of guarantees for '9am', '5.30pm' or 'Saturday' delivery:

For more information please see 'Royal Mail Special Delivery Guaranteed by 9am.'

For more information on the prices for Royal Mail, please see the 'Royal Mail guide on UK and International parcel and letter services.'

This Enforcement Notice issued by the Committee of Advertising Practice in 2018 provides some useful guidance.

The trader is responsible for not misleading consumers about the location to which goods will be sent, or the price of sending. Delivery 'to the UK' should mean the whole of the UK, including Scotland, Northern Ireland and islands that are not part of mainland Great Britain. If standard delivery rates do not cover the whole UK then areas covered/not covered should be made clear at the start of the ordering process.

Add delivery surcharges only when absolutely necessary (for example, for remote addresses), so as not to discriminate against consumers on the basis of their location.

For more information on delivery to consumers in less accessible parts of the UK, you can see the video 'Deliverylaw.uk - An introduction' published by the Highland Council.

Misleading statements should be avoided (for example, not adhering to stated delivery times)

What if a consumer buys from a trader who promises 'delivery by Christmas' but the item doesn't arrive by then?

When a trader states that an item will be 'delivered in time for Christmas' or 'next day delivery,' then such promises become a term of the contract between the two parties. Thus if the trader fails to honour it, the consumer has the right to cancel and obtain a refund. If the statement has induced the consumer into the purchase (for example, they really need the item tomorrow and have chosen to order from a trader who promises next day delivery) this could constitute a 'misleading action', which is a criminal offence.

Another example might be the delivery of fresh food, whereby the trader promises that it will 'arrive fresh' and will be 'delivered by our team to your door.' If the parcel arrives and is left at the end of the drive by a third party (local) company, then this could be misleading on two counts: it's no longer fresh, nor is it 'delivered by our team.'

Trader holds the risk until the goods are in the consumer's possession

What if the consumer gives instructions to the trader on where the parcel should be left, but the courier leaves it somewhere else and the consumer does not receive it?

Traders are responsible for the goods until they are in the possession of the consumer or their 'authorised representative'. If goods are damaged in delivery, it is the trader's responsibility to replace them or to provide a refund, not the courier's responsibility. This should be explicit in the contractual arrangements between trader and courier, so that costs may be claimed back from the courier if the courier is at fault.

If a consumer has added delivery instructions like 'leave in the shed' or 'leave with number 39,' this would fulfil the 'authorised representative' element. However, if the courier decides to take to a neighbour without that specific instruction from the consumer, then they haven't delivered it to the consumer. Nowadays it is customary for a courier to take a photograph of goods delivered in accordance with instructions (for example, shown in the shed or on the doorstep of number 39); this is thought to have

arisen from a growing number of cases where a neighbour has taken the delivery then claimed not to have, or where consumers claim they haven't received when they really have, before attempting to get a refund.

Contract between trader and courier protects the consumer

Is the contract between the trader and courier a document, or simply the requirements of the law? How does the consumer lodge a complaint if something goes wrong?

The consumer is protected because the legal contract between the trader and the consumer makes this the trader's responsibility. This means that the consumer is not left to 'fight it out' while the trader blames the courier. The consumer should not have to contact the courier; the trader's website should clearly host their complaints procedure and this is where the consumer should turn.

An expected response time should be included and should be reasonable; otherwise it could be considered an 'aggressive practice' and therefore a professional diligence offence under the Consumer Protection from Unfair Trading Regulations 2008.

The trader could provide a simple means of contact, such as a phone number or email address for customer services, along with an expected response time.

Failed delivery means a refund should be made, or the consumer has final say on the timing of the delivery

Does the consumer get to decide whether they're prepared to accept a delayed delivery, or to ask for a refund?

Delivery times are part of the terms of the contract. If there are going to be any changes to what was agreed before the consumer paid, then the trader should contact the consumer and explain that the stated delivery time cannot be met.

The new delivery time should be stated but the consumer doesn't have to accept it; instead they could cancel and ask for a refund at that point. If the consumer agrees to the new delivery time, then this becomes part of the terms of the contract and must be met; failure to do so would constitute a breach of contract.

Redress should be available for the consumer if the goods are not fit for purpose, or are not of satisfactory quality, or not as described, etc.

Could you provide some examples of the above? Misleading; what might constitute this?

This is covered by the Consumer Rights Act 2015. For more information please see the Business Companion guidance on 'Selling and supplying goods'.

If goods are faulty or damaged (making them not fit for purpose), or misdescribed, then the consumer has a 30-day right of withdrawal and can expect a full refund. After 30 days, the consumer may instead be offered a repair or replacement, or a refund if the goods cannot be repaired or replaced.

Examples:

If the goods have been damaged during delivery, then the consumer will have a 30-day right to withdraw (or they could use 14-day cancellation rights if purchased online or away from business premises).

If the product delivered isn't as described (for example, a consumer ordered a blue dress and received a

red one) then the above also applies.

If the product doesn't do what the description said it does (for example, a phone charger that is not compatible with the models stated in the description) then the above also applies.

Having high standards of professional diligence is to be expected

What does this look like? And what about pre-contract information?

Professional diligence can mean a host of things, like honest and fair practice, making sure products are described properly, delivering them on time, etc. The 'care and skill' aspect could include using a reputable courier and making sure products are adequately packaged and protected in transit; that the amount paid by the consumer includes all charges; that refunds or other forms of redress are processed swiftly; that products are safe and comply with legislation; and due diligence is carried out on suppliers.

This is a 'catch all' provision but failure to meet it is subject to a test of 'knowingly or recklessly' on the part of the retailer. Courts have interpreted the word 'recklessly' to mean that if a trader does not comply with the legal requirements for their type of business, an excuse of 'I didn't know' is not acceptable; the trader should have taken steps to find out and make sure they were compliant. Failure to do so demonstrates recklessness in running their business.

This is captured by the Consumer Protection from Unfair Trading Regulations 2008, which is explained further in the Business Companion guide 'Protection from unfair trading'.

Pre-contractual information on price and delivery is important too. This would include things like offering to collect parcels from consumers if a return is required, in which case any charges for the consumer should be made clear; if not, then the trader will have to cover the cost.

Pre-paid return labels are helpful in this situation. Pre-contractual information is covered by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, explained in the 'Consumer contracts: distance sales' guidance.

Choosing a reputable courier/postal service is important

Careful selection of a courier helps to demonstrate high standards of professional diligence by the trader. It's also important because customers often make a judgement about a trader based on the delivery experience, rather than the buying process itself.

What's the difference between a courier and a postal service?

It really comes down to speed, cost, service quality and tracking.

A courier service is a private company that facilitates the shipping of parcels and it might specialise in different types, such as time-sensitive, local same-day or international. Courier services offer a variety of delivery speeds, collections, price ranges, parcel sizes (large and bulky), tracking, drop-off locations (shops and lockers), UK-based call centres and insurance.

Online quotes are commonplace and comparison websites help traders choose the best for their needs. Larger traders will establish contractual arrangements with couriers and may choose to absorb some or all of the delivery cost, instead of passing it to consumers, or a trader may add a profit to the delivery cost.

A postal service (Royal Mail in the UK) has traditionally been a less sophisticated model and therefore a cheaper option, usually used for non-urgent deliveries. Royal Mail is the UK's sole designated universal

service provider for post. It offers a transparent 'one-price-goes-anywhere' service for letters and parcels throughout the UK, six days a week. It is governed by a regulatory framework which imposes obligations and restrictions on it, including the 'six days a week' requirement.

In recent years, the service has evolved to offer certificates of posting, a choice of delivery speeds, tracking, home collection and insurance cover for items and signature on delivery options, for consumers and business customers alike. Royal Mail has also developed an app to track on the go, receive notifications of delivery and enable redeliveries to be booked.

On the Royal Mail website, you can read more about the regulatory framework it operates under, which includes a number of obligations and restrictions. The site also has information on the exceptions to those obligations.

Parcelforce Worldwide is a division of Royal Mail which provides UK and international courier services. A range of courier services are provided, such as Europriority and Euroeconomy (for European destinations), Globalexpress and Globalpriority (urgent parcels), amongst others.

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> Part 2: Achieving great consumer service

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