

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux
www.cas.org.uk



Consumer Rights Bill

Fraser Sutherland & Sarah Beattie-Smith

Consumer Policy Team

September 2013

- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using nearly 250 service points throughout Scotland, from the islands to city centres.
- In 2012/13, the Citizens Advice Service helped consumers in Scotland with almost 207,000 consumer issues. That is 826 consumer issues for every working day. Just over a quarter of these were addressed by the Citizens Advice Consumer Service, handling nearly 57,000 issues, including 3856 about energy or post.
- Scottish citizens advice bureaux helped consumers with 150,000 consumer issues, covering topics as diverse as payday loans and car maintenance.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.



Draft Consumer Rights Bill – Comments Proforma

We welcome any further comments either on the proposals set out in the Government Response or the draft Bill. If you would like to comment, please complete this form.

Name: Fraser Sutherland & Sarah Beattie-Smith

Organisation (if applicable): Citizens Advice Scotland

Address: 1st Floor, Spectrum House,
2 Powderhall Road,
Edinburgh,
EH7 4GB

Please return completed forms to:

Consumer Bill Team
Consumer and Competition Policy
Department for Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Or email: consumerbill@bis.gsi.gov.uk

Please tick a box from the list of options that best describes you as a respondent.

| | |
|----------|---|
| | Business representative organisation/trade body |
| | Central government |
| X | Charity or social enterprise |
| | Individual |
| | Large business (over 250 staff) |
| | Legal representative |
| | Local Government |
| | Medium business (50 to 250 staff) |
| | Micro business (up to 9 staff) |
| | Small business (10 to 49 staff) |
| | Trade union or staff association |
| | Other (please describe) |

Comments

Please use this table for any comments that you may have either on the overall content and coverage of the proposals, the structure of the draft Bill or detailed comments on specific areas covered by the proposals.

| Proposed Measures | Comments on the Draft Bill or Government Response |
|---|--|
| Overall Content, Structure and Coverage | <p>Citizens Advice Scotland welcomes the chance to respond to this bill. Our sister organisation, Citizens Advice (England and Wales) are responding separately.</p> <p>The Consumer Rights Bill provides a welcome alignment of rights for goods and services contracts as well as redress for consumers. In addition, whilst there are some exceptions, the bill is largely written in clear language.</p> <p>In our response, we suggest amendments in the following areas within goods and services:</p> <ul style="list-style-type: none"> ○ Exceptional circumstances where an extension of the short-term right to reject should be included in statutory rights of goods. ○ Where a repair or replacement of goods is arranged, the 30 day right to reject clock should be restarted from that point rather than be replaced with a period of seven days from the repair. ○ Service contract rights should include a right to terminate a continuing contract as a ‘Tier 2’ remedy. <p>With regard to the provisions for digital content, CAS is of the view that this is often unclear and not streamlined with rights for goods and services. This bill leaves consumers lacking in minimum expected rights for redress for faulty digital content and may allow for significant consumer detriment. Our main contentions with this section are:</p> <ul style="list-style-type: none"> ○ Free digital content is not covered by the bill despite the increasing frequency of free apps. ○ Some of the detail in the digital rights chapter is difficult to understand and fails to provide |

| | |
|--------------|---|
| | <p>clear instructions for consumers.</p> <ul style="list-style-type: none"> ○ The burden of proof falling on the consumer rather than retailer is concerning given that digital content or IT functionality can be confusing or difficult to understand for consumers. ○ Consumers must be allowed the same right to refund, repair or replacement no matter if that content is provided digitally or physically. There is no benefit to an exemption for digital except to retailers of faulty content. ○ What is 'reasonable' is undefined and despite being removed elsewhere in the bill is given prominence for digital content. <p>Finally, it is very clear to us that strong and effective consumer and business education must be a priority for the Government given the wide ranging changes to statutory rights. As the publicly-funded voice of consumers, the Citizens Advice Service across Great Britain is perfectly placed to deliver such an education programme and we would welcome early dialogue with the Government on this.</p> |
| <p>Goods</p> | <p>Chapter 2: Goods</p> <p><i>Types of contracts</i></p> <p>CAS welcomes the alignment of consumer legislation covering differing contracts for the supply of goods. In particular, we welcome the alignment of remedies regardless of whether a product was purchased by cash, credit agreement or hire purchase.</p> <p>At present, consumers who do not have the means to afford payment in full may choose to buy goods by hire purchase; however they are less well protected than their better off counterparts. The alignment of remedies regardless of purchase method will ensure that consumers will be given a much more streamlined and simpler to understand set of remedies no matter how they have bought a product.</p> <p>CAS agrees with clause 5 that in hire contracts, where ownership is not being transferred to the consumer, that the</p> |

consumer cannot claim back any payments towards periods of hire that they have already had before an item of goods becomes faulty. However, we would advocate that if a period of hire has included time where the goods were faulty that the consumer should be entitled to a refund for this period. Additionally this should be allowed outside the short term right to reject period in the case of hire or hire purchase given the nature of this purchase method.

Right to reject

CAS supports a period of 30 days for the early right to reject as this sets out for the first time a clearly defined time limit on the right to reject faulty goods. We would however envisage that amendments are made to cover exceptional cases where the 30 day limits could be waived. This would be in cases where the product was not expected to be used for a reasonable period after 30 days, for example seasonal items where the product may not be used for several months after purchase.

Example: Barbeque purchase in winter

- *A consumer buys a gas barbeque from a trader in their January sale.*
- *She does not use the product until May when the weather allows for use of the product.*
- *There is a fault with the electric ignition spark meaning it won't ignite.*
- *The consumer returns the faulty barbeque to the retailer but they will not accept the return as it is out with the short term time period to reject.*

We would welcome the addition of provisions to allow retailers and consumers to mutually agree an extended right to reject at the point of sale, whether in person or via distance selling. In the example given above, this mutual agreement could take the form of additional information given to the consumer with their receipt or preferably in advance of the purchase being completed.

Repairs and replacements

CAS has some concerns around clause 21 (4) which means

that the right to reject repaired faulty goods will only extend to 7 days. We do not agree that a consumer should lose the right to reject a fault due to poor repair or faulty replacement which may only become apparent after the seven day period. CAS would recommend that the right to reject after repair or replacement is amended to be a further 30 days thus 'restarting' the clock after a repair or replacement.

Example: Bicycle with loose handlebars

- *A consumer purchases a bicycle but after using it for two weeks to cycle to work he notices the handlebar column has become loosened giving poor control over steering.*
- *He returns the bicycle to the retailer who repairs the fault and tightens the steering column.*
- *After a further three weeks the same fault re-occurs. He returns to the retailer but they refuse to give him a refund as it is over seven days since the repair so he can no longer exercise his right to reject.*

We agree that a consumer must be given the option of a single 'Tier 1' remedy (repair or replace, clause 23) after the 30 day right to early rejection allowing the trader the opportunity to put right the fault with the goods that were sold. This best meets the needs of a consumer who has bought goods that become faulty and allows them a refund or a partial refund if a repair or replacement is not successful or not possible. The consumer will also be aware that it is the trader's responsibility to organise for a repair or replacement within the first six months and this should end the 'ping-pong' effect of passing consumers between traders and manufacturers. However the Government needs to invest in strong business education to ensure that traders are aware of their responsibilities regarding repairing or replacing faulty goods.

CAS welcomes the Government's decision to include clause 24 which will ensure that traders cannot reduce the value of a refund to take account of a period of time that the consumer has had the goods in the first six months. We also welcome the clear commitment that no reduction can be made unless the trader can provide robust, clear, third party,

independent evidence that a second hand market exists and that the goods are therefore worth a different amount to when originally purchased.

Transfer of risk and liability

Clause 26 is the cause of some concern for CAS as the consumer's rights and responsibilities are not sufficiently clear. For example, if a consumer signs for a parcel when a carrier delivers it, but discovers upon opening it that they have been sent either a larger or smaller quantity than the trader was contracted to supply, it is unclear whether the consumer's signature means that they have accepted the goods. The lack of clarity in this section of the bill could potentially lead to disputes between consumers and traders if a packaging error has been made. This clause would benefit from a definition of what constitutes acceptance on the consumer's part.

CAS welcomes clause 30 for its clarity but we have some concerns that it could limit consumer choice. As shown by extensive research by Citizens Advice Scotlandⁱ, Consumer Focus Scotlandⁱⁱ, the Office of Fair Tradingⁱⁱⁱ and Highland Council Trading Standards^{iv}, consumers in remote and rural areas in Scotland and across the UK often face excessive surcharges, late delivery or even non-delivery of goods when purchasing goods online or via catalogue. One of the possible solutions to the various delivery-related problems faced by consumers is to ensure that consumers can choose between several delivery options.

For example, consumers who live in particularly remote areas often find that the retailer they wish to shop with has a contract with a carrier which does not deliver to that area. In the interests of both consumer choice and economic growth, a potential solution could be an option for consumers to choose another carrier to deliver the goods to them. However clause 30 apportions all the risk of such an action to the consumer. This risk could lead to consumers avoiding this option and therefore choosing not to buy the goods at all. We would suggest the addition of a line under 30 (4) that allows for the risk to remain with the trader by agreement between the consumer and the trader, should the consumer choose to use an alternative carrier.

| | |
|------------------------|---|
| <p>Digital Content</p> | <p>CAS is pleased that the Government will legislate to cover digital content rights for consumers, given that this is an area that is not sufficiently covered by current legislation. However we are concerned about the poor provision in the bill for rights to redress in this area, given the extent to which the rest of the bill strengthens consumer rights. This is particularly concerning given the exponential growth in the use of digital content by UK consumers.</p> <p>We welcome the fact that the Government has set out the levels of quality expected mirroring the legislation on goods in clauses 36 to 43. This will ensure that consumers have one easy to understand set of expectations against faults no matter whether the fault is with goods or digital content.</p> <p><i>Free content</i></p> <p>CAS recommends that the bill is amended to include free digital content as well as paid for content given the rise in free applications for smart phones and tablets. While there may be no direct financial loss through a fault in digital content it may be possible for faulty free digital content to cause detriment to a consumer both financial and otherwise.</p> <p><i>Example: Free application that faults</i></p> <ul style="list-style-type: none"> • <i>A consumer downloads a free email application for her smartphone. Like a growing number of consumers in the UK her smartphone is the only access to the internet she has^v.</i> • <i>She checks her email but due to a fault in the app she does not receive an e-bill from her utility company.</i> • <i>She gets charged a late payment penalty by her utility company as a result of not making payment.</i> <p>Under the current bill as it stands, the consumer in the above example has no recourse against the fault as the digital app was supplied for free.</p> <p>We believe that clause 41 should be clarified regarding transmission or delivery of content through a third party. The Government have indicated that this bill's aim is to provide clear rights to consumers and we are concerned that clause 41 is ambiguous and unnecessarily complex in language.</p> |
|------------------------|---|

Damaged devices

CAS supports clause 48 on compensation where damage is done to a device as a result of the digital content. This section does however put the burden of proof on the consumer to prove that the trader did not exercise 'reasonable care and skill'. We consider that this, for many consumers, will be extremely difficult to ascertain and while the legislation has a good intention it may in reality not protect consumers without lengthy and costly legal redress. We therefore call for the Government to remove the burden of proof from the consumer for damage done to their device.

Example: Vulnerability to malware in computer game content

- *A consumer plays a multiplayer online game through her laptop for which she pays a monthly subscription.*
- *She pays the subscription fee and buys additional in-game content with her debit card within the game program.*
- *Due to a vulnerability in the game software code it has been infected by Trojan horse malware by another user.*
- *A hacker is then able to gain her debit card details through keystroke logging.*
- *The game provider denies they can be held responsible and say they took all steps they could to prevent a malware attack.*

As the bill stands, the consumer in this example would have to prove that the trader did not use reasonable skill and care to prevent a malware attack on their software. This would most likely mean the consumer would need advice and support from a computer specialist, potentially at substantial cost.

Faulty content

CAS is concerned that the provisions for remedies for faulty digital content (clauses 44 to 47) are not fully streamlined with that of goods. This is disappointing given that it goes against the government's intention for the consumer bill of

rights: to make consumer rights easier to understand.

In addition, clause 66 (5) in the Unfair Terms section of the bill suggests that placing a burden of proof upon a consumer could constitute an unfair term. This could mean confusion for consumers with a differing set of rights depending on if they are dealing with goods or with digital media. This is especially true of digital content on a tangible medium, such as a CD, where the rules on goods apply meaning a consumer can get a refund up to the 30 day period.

However for downloadable content, consumers can only receive a repair, a replacement or a reduction in price.

CAS believes that there should be a right to reject faulty digital content in the short-term 30 day period, reflecting the enhanced consumer rights when buying goods. A consumer should maintain the same rights no matter how the delivery of digital content is managed, whether by tangible media or digitally. We reject the argument that because digital content cannot be physically returned that the impact of the fault on the consumer is any less. We are also concerned that the 'one repair / one replacement' commitment made in Chapter 2: Goods is not repeated for digital content. This means a trader could keep offering multiple repairs without the consumer having the right to reject after a repair/replacement has been attempted and failed.

Example: Faulty installation software

- *A consumer purchases a HD film editing suite that is downloadable from the manufacturer's website.*
- *Due to the program having a large file size the download takes over two and a half hours to complete.*
- *When the consumer tries to install the program there is a fault and it doesn't complete.*
- *She contacts the supplier who offers to send her a replacement download but the consumer would prefer a refund given the time taken to download the program again.*

Under the proposed bill the trader is under no obligation to provide a refund despite the original downloaded software

being faulty.

Example: MP3 album download

- *A consumer purchases a music album in MP3 format from an online retailer.*
- *When it is downloaded it will not play one song from the album.*
- *He contacts the trader who offers him a repeat download, but this still has the faulty song that will not play.*
- *He asks for a refund but the trader refuses and offers another repeat download.*

In such a case, unlike with goods, the trader can repeatedly repair or replace digital content and the consumer has no right to a refund. In addition, a consumer's impression of a "reasonable time" (clause 45 (2)) may be significantly different when dealing with a supplier of digital content from what might constitute a reasonable time for repairing or replacing goods. The Government recognises throughout the bill that consumers and businesses find it hard to know what the term "reasonable time" means. Whilst clause 45 (5) does say that the nature of the digital content should be taken into account when determining "reasonable time" it is still far from clear for the consumer. We therefore recommend that the Government clarify this, in line with the rest of the bill.

Reductions

CAS is of the view that the bill would benefit from clarity on what constitutes a "reasonable" price reduction. We foresee potential problems for businesses and consumers in determining what price reduction is deemed as "reasonable". For example, in the case of subscription services for digital content such as online film streaming or personalised music radio, it is very challenging for either party to determine what level of price reduction to apply, given that each unit of this content does not carry a specific value.

Example: Unlimited music streaming service

- *A consumer pays a monthly fee of £4 to listen to*

| | |
|----------|---|
| | <p><i>unlimited music streamed to her smartphone. She only uses this service once a week when attending a local gym.</i></p> <ul style="list-style-type: none"> • <i>On one occasion the service has a fault and is down for 24 hours on the day of the week the consumer uses the service.</i> • <i>The consumer contacts the service provider to get a reduction in the price paid for the service.</i> • <i>The supplier offers her 1/30 of the monthly subscription (13p) given the fault only affected one day in that subscription period but she believes she should receive 1/4 (£1) given her usage profile of the service.</i> <p>The draft bill is not sufficiently clear as to what level of price reduction is acceptable in such a scenario, leading to potential confusion and disputes.</p> <p>As with goods, the new rules around digital content will require substantial consumer education to ensure that this new legislation is well understood and consumers are aware of their rights. We recommend that the Government initiate planning of consumer education now to ensure there is no gap between the legislation being passed and consumer education beginning.</p> |
| Services | <p>CAS strongly supports the introduction of a set of statutory rights for consumers covering service contracts to bring these in line with contracts for goods. We especially welcome the move to ensure that these rights apply even where a business attempts to render them inapplicable in contract terms and conditions or even if they are not explicitly included in a contract. This will further strengthen the consumers' confidence in being protected from unscrupulous traders. Clarity brought through clause 53 and 54 in terms of price and timescale of contracts for consumers is also greatly welcomed.</p> <p>CAS supports the two courses of redress available to consumers (repeat performance and price reduction) in cases where a service is not supplied to the level agreed. We believe that Chapter 4 is very clear as to the rights a consumer will have and their options for redress. We would</p> |

| | |
|-----------------------|---|
| | <p>support the right to terminate a contract in cases where a supplier had failed to act upon a complaint to a consumer's satisfaction. The example below demonstrates why an amendment to the bill to this effect would benefit consumers.</p> <p><i>Example: Multiple service failures</i></p> <ul style="list-style-type: none"> • <i>A consumer pays a monthly fee to watch as many films as he likes at a local cinema as part of the contract he agrees to a minimum 12 month commitment.</i> • <i>He attends to watch a showing but it is cancelled due to a fault with the projector. The trader agrees to a partial refund of that month's subscription with which the consumer agrees.</i> • <i>The next month he attends a further two film showings but again there is a fault with the equipment, the trader offers another refund but the consumer is now losing confidence in the traders' ability to keep to the service contract but he is tied into paying for 12 months.</i> <p>In the bill, as it stands, there is no right to terminate a continuing contract despite multiple service failings leading to a loss of consumer confidence.</p> <p>As with other parts of the bill we would urge the Government to consider how they will educate both consumers and traders of these changes as this chapter includes substantial improvements to consumer rights with contracts. We would also welcome more detail as to how an ADR system would be advertised to consumers. We consider that ADR may play a significant role in upholding consumer rights.</p> |
| Unfair Contract Terms | <p>CAS broadly welcomes Part 2 of the Consumer Rights Bill as it adds some clarity to what constitutes an unfair term. In particular, we welcome sections 68 and 72 for the clear language and well defined rights for consumers.</p> <p>We do, however, have comments on section 67. Although we understand that the definition of the "average consumer" is one which is fairly well established in consumer law, it assumes a great deal about consumer behaviour, education and vigilance which may not be borne out in practice. For</p> |

| | |
|--------------|---|
| | <p>example, recent research^{vi} showed that just 7% of consumers actually read the terms and conditions of consumer contracts. In addition, Audit Scotland’s 2013 report <i>Protecting Consumers</i> showed that very few consumers are aware of their rights or how to exercise them, despite 1.3 million Scottish consumers believing they have cause to complain about something they have bought.^{vii}</p> <p>We would therefore suggest that the description of an average consumer being “reasonably well-informed, observant and circumspect” does not accurately reflect the reality described above. This could potentially disadvantage consumers who were less well-informed, observant and circumspect than the law assumes. For example in situations where a term in a contract is described as “prominent” for the “average consumer” but which is not obvious to many other consumers, it is possible that a large proportion of consumers could be detrimentally affected. In addition, there is potential for traders to take advantage of consumers’ lack of knowledge by making terms “prominent” in such a way that consumers who are less well-informed, observant and circumspect would still struggle to understand.</p> <p>Furthermore, this aspect of the bill pays no heed to the needs of vulnerable consumers. Whilst CAS recognises that to have a definition of vulnerability in the bill may be restrictive, as it stands, the bill provides very little protection from unfair terms for consumers who are vulnerable.</p> <p>CAS would welcome the inclusion of further protection for consumers who are vulnerable, whether through ill health, disability or circumstance. Ofgem, the gas and electricity markets regulator has published a consumer vulnerability strategy^{viii} which the bill team may find helpful in constructing a workable definition.</p> <p>Finally, as with the other aspects of the bill, this section highlights the need for extensive consumer and business education. CAS recognises that the Citizens Advice Service has a key role to play in this and we would welcome early dialogue with the Government on how to take this forward.</p> |
| Consumer Law | CAS has some concerns around section 20 of Part 3 of the bill around the power to enter premises without a warrant. |

| | |
|---------------------------|---|
| <p>Enforcement Powers</p> | <p>We would support the position put forward by the Trading Standards community in Scotland and across the rest of the UK that this section is unduly restrictive upon enforcers and could lead to benefits for rogue or substandard traders at the expense of both consumers and legitimate traders. We believe that the requirement to give businesses two working days notice unless the enforcer has “reasonable cause” to suspect a legislative breach has occurred would limit the capacity of enforcement bodies such as Trading Standards services to carry out their duties.</p> <p>CAS would argue that consumers feel protected when enforcers are able to conduct their role in full, whether or not individual consumers have had cause to, or have chosen to, complain. To require a suspicion of a legislative breach before an inspection can take place without giving 48 hours notice places too large a burden upon consumers and legitimate traders and does not allow for previous intelligence and experience gained by enforcers to be applied. It is well documented that consumers often choose not to complain formally about poor service, faulty goods or a breach of contract, particularly where small amounts of money are involved. Indeed Audit Scotland found that 1.3 million consumers in Scotland thought they had cause to complain about something they had purchased in 2011/12, yet a far smaller of consumers actually complained. Therefore it is perfectly possible for a trader to be causing small amounts for detriment for a significant number of consumers without a single complaint being lodged. However in such cases, enforcers would potentially be unable to prove that they had “reasonable cause” to suspect a breach of the law and would be forced to give 48 hours notice before inspecting a trader’s premises. In such cases, rogue or substandard traders could have time to amend records, dispose of illegal or dangerous goods or otherwise create a false impression of their practice when the inspection was carried out.</p> <p>Such an occurrence is not by any means unlikely and could lead to detriment for consumers and businesses and therefore to economic growth.</p> <p>We would strongly urge the Government to reconsider their proposals in this area to ensure that consumers are</p> |
|---------------------------|---|

| | |
|--|--|
| | protected and that businesses are supported. |
|--|--|

Thank you for taking the time to provide feedback on the draft Consumer Rights Bill. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply X

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would you be content if we were to contact you again either for research or to send through consultation documents?

Yes

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ This publication is also available on our website at www.gov.uk/bis

BIS/13/925RF

References

- i <http://www.cas.org.uk/publications/postcode-penalty>
- ii <http://www.consumerfutures.org.uk/reports/effective-parcel-delivery-in-the-online-era-what-consumers-in-scotland-need>
- iii <http://www.ofcom.gov.uk/OFTwork/consultations/remote-communities/#.UjgqzcYp8gk>
- iv <http://www.highland.gov.uk/livinghere/consumeradvice/consumerinformation/internet-trading.htm>
- v http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/UK_4.pdf
- vi <http://www.theguardian.com/money/2011/may/11/terms-conditions-small-print-big-problems>
- vii http://www.audit-scotland.gov.uk/docs/local/2013/nr_130131_protecting_consumers.pdf
- viii <https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy.pdf>