

Is it ‘curtains’ for selling to people in their homes?

It would come as no surprise to many readers if I was to say that the law favours consumers over traders. However, a recent change in the law relating to one sales medium in particular which many readers will use – visiting consumers in their own homes – weights the scales of fairness dramatically in favour of the consumer.

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The Doorstep Selling Regulations, or to use their full name ‘The Cancellation of Contracts in a Consumer’s Home or Place of Work etc. Regulations 2008’(!), came into force in October 2008. They have been introduced particularly to protect vulnerable people from rogue traders taking advantage of them once they ‘get the foot in the door’. I’m sure you will have seen this sort of thing on TV programmes like Watchdog. Unfortunately, these regulations will affect genuine traders selling in people’s homes as well as the rogues.

Many readers will know that for some time any contract with a consumer during an unsolicited visit to their home, (aka cold call), for the purchase of goods can be cancelled by them within 7 days without needing to give a reason. Traders (particularly those who made bespoke or custom-made goods) simply adjusted their sales tactics to ensure that every visit made to a consumer’s house was at their request – thus avoiding the risk of a consumer deciding 5 days later when the curtains are ready that they’re not happy with the shade of green in the fabric. The big change is that consumers have a 7 day cooling off period irrespective of whether the visit was requested or a cold call – even if the goods have been custom-made! You may want to read that last sentence again; it isn’t a typo.

To give effect to this, the new regulations demand not only that you allow a consumer to cancel a contract during the cooling off period, but that you clearly inform them of their right to do so before they enter into one! In particular, there is a statutory form of wording you now MUST include on your order forms which explains consumers’ rights and remedies clearly. If you don’t comply (put simply) the contract is unenforceable. Furthermore, you can expect a

visit from the OFT/Trading Standards which can result not just in hassle and bad publicity for you, but also a fine of £5,000 and even an injunction to stop you trading!

Don’t confuse these regulations with the Distance Selling Regulations, where you can ask consumers to waive their rights to cancel during the cooling off period if you are making bespoke items for them without ever having seen the customer face-to-face. Such a contract term has no effect if you sell in peoples’ houses.

Although there is no way to stop customers from being able to cancel contracts during the cooling off period, if you are making items bespoke for them you can ask them to accept that they will be responsible for any loss you suffer as a result of them cancelling. The exact manner of how to go about doing this, and the form it should take are not clear in the regulations. Even a District Judge who works part time for us couldn’t get to the bottom of it! So on behalf of the BBSA I approached Trading Standards with some proposals for their approval. The result of this is that we now have some best practice for the industry, and, more importantly, an approved way of continuing to

sell bespoke products in consumers’ homes without traders shouldering the huge risk of them simply changing their mind.

I presented on this matter at the recent BBSA AGM, as well as providing some other hints and tips to help traders navigate through the maelstrom that is contract law. One thing that struck me when I was there was just how encouraging it is to see an association fighting hard for its members to make sure that they are not just setting the standard for the industry, but also being proactive in looking after their interests. Members not only benefit from access to this approved mechanism, they also benefit from regular legal updates on matters like this affecting the industry, and even discounted legal services through Chadwick Lawrence LLP.

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Customers are more familiar with their consumer rights than ever before, (thanks largely to the internet), and the OFT/Trading Standards are becoming increasingly zealous. If you visit and sell to customers in their own home don’t put your head in the sand! Take the following approach:



1 GET UP TO SPEED on how these changes impact on your business: check out www.berr.gov.uk or ask your solicitor

2 ASK the BBSA for details of how to take advantage of the approved mechanism for reducing your risk if you make bespoke items (BBSA members only)

3 CHANGE your sales practice, order forms and terms and conditions to reflect the regulatory change