

Consumers and extensions, renovation and maintenance (including the 'owner-builder')

Contractual problems when consumers are construction employers

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Francesca Kaye

Introduction

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Consumer construction projects

- Limit on consumer construction operations
- The range of consumer construction projects
 - Minor repair or maintenance work
 - Multimillion pound refurbishments / extensions (including basements)
 - Construction of new dwellings or external buildings (including pool houses)
- Comparison with equivalent commercial projects
 - Professional team and contractual arrangements

Consumer rights regime

- Consumer Rights Act 2015 (1 October 2015)
 - Contracts for goods and/or services
 - Consumer
 - individual acting for purposes wholly or mainly outside their trade, business, craft or profession
 - Trader
 - acting for purposes relating to trade, business, craft or profession
- No *general* exception for construction services

Consumer legal regime

- Fairness and reasonableness
- Good faith?
- Targeted approach
 - Statutory rights for contracts for goods, services and “mixed” contracts
 - Legal control of unfair terms
 - Mandatory provisions for certain consumer contracts, in particular the right to cancel

Consumer legal regime - Statutory rights

- Goods
 - CRA 2015 Part 1, Chapter 2
 - Satisfactory quality
 - Fit for particular purpose
 - As described and match sample
 - Pre-contract information included in contract
 - Correct installation
 - Rules on delivery and passing of risk
 - Statutory remedies of rejection, repair, replacement or price reduction

Consumer legal regime - Statutory rights

- Services
 - CRA 2015 Part 1, Chapter 4
 - Performed with reasonable care and skill
 - Information about the trader or service binding if taken into account by the consumer
 - Reasonable price and time default provisions
 - Statutory remedies of repeat performance and price reduction

Consumer legal regime – Unfair terms

- CRA 2015 Part 2 and Schedule 2
 - General rule that terms must be fair, with a term unfair if:
 - Contrary to requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer
 - Determined taking into account the subject matter of the contract and all the circumstances when the term was agreed
 - Indicative and non-exhaustive list of terms: limits of liability; increase price without right to cancel

Consumer legal regime – Mandatory provisions

- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
 - Do not apply to construction of new / substantially new buildings
 - Mandatory information before consumer is bound
 - On-premises:
 - Main characteristics of goods/services; identity of trader, total price or manner of calculation; arrangements for payment, delivery, performance and time

Consumer legal regime – Mandatory provisions

- Off-premises (and distance contracts)
 - Simultaneous physical presence in a place which is not the business premises of the trade
 - Mandatory information before consumer is bound
 - Cancellation period of 14 days, extended by 12 months
 - Model cancellation form must be given
 - Right to reimbursement
 - No cost for the supply of service during the cancellation period unless given notice of the right to cancel and made an express request
- Criminal offence

Construction contract regime

- Housing Grants, Construction and Regeneration Act 1996, Part II
 - Construction operations: includes alteration, repair, maintenance, extension, demolition or dismantling of buildings
 - Right to refer disputes to adjudication
 - Party carrying out work: entitled to periodic payments, payment of notified sums (notices), suspending performance

Construction contract regime

- “Residential occupier” exclusion
 - Contract which principally relates to operations on a dwelling which one of the parties to the contract occupies, or intends to occupy, as his residence
 - Consumer ≠ residential occupier
 - Not intend to occupy
 - Not principally relate to a dwelling
 - Commercial element
- Mandatory terms ≠ unfair terms (CRA s.73)

The building contract

- Balancing competing legal regimes
- Standard form contracts
- No formal written agreement
 - Still a contract if offer, acceptance, consideration and intention to create legal relations
- Standard form contract
 - Unsuitable / inappropriate form (partnering contracts)
 - Out of date (return of withholding notices)

The project

- Consumer employers and disputes
- Contractual arrangements
 - “Construction contract” / mandatory requirement terms
 - The scope of the works
 - Variations
 - Delay
 - Time and allocation of risks
- Multiple contractors
 - Causation issues

Conclusion

- Current legal position
- Uncertainty
- Fairness and reasonableness
- Scope of works, payment terms, timeframes and variations
- Stay ahead of disputes

Contact details

Francesca Kaye, Partner

T: +44 (0) 20 8394 6477

Francesca.Kaye@russell-cooke.co.uk

Mark Fletcher, Associate

T: +44 (0)20 8394 6466

Mark.Fletcher@russell-cooke.co.uk

Ricky Cella, Associate

T: +44 (0)20 8394 6479

Ricky.Cella@russell-cooke.co.uk