

## Residential construction contracts and the right to cancel

### Consumer legislation and the residential construction industry

Over the last decade the EU has issued a number of directives aimed at protecting consumers across the continent. Parliament has implemented those directives by enacting a number of new laws, the most recent of which is the Consumer Rights Act 2015 (CRA 2015), the main provisions of which came into force on 1 October 2015.

Despite the growing significance of consumer rights legislation, many construction firms and sole traders have been slow to realise the potential impact the new laws may have on their businesses. Further, many have failed to adapt their terms and conditions and business practices to ensure that they do not fall foul of the new laws, which can often carry serious sanctions for non-compliance.

### The right to cancel

An important piece of the consumer rights framework is the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR 2013). Despite being enacted in 2013, the CCR 2013 only came into force on 13 June 2014. In any event, many in the residential construction industry are yet to adapt to the new rules, despite the fact that the majority of residential construction contracts (excluding contracts for the construction of new buildings) fall within the scope of the regulations.

Under the CCR 2013, consumers have a right to cancel certain contracts at any time within the 'cancellation period', without giving any reason, and without incurring any liability (other than in a small number of excepted cases).

The 'normal' cancellation period for a residential construction contract is 14 days after the contract is entered into. However, the cancellation period can be extended by up to a year if the contractor fails to provide the consumer with prescribed information about the consumer's right to cancel. That information must include the conditions, time limits, and procedures for exercising the right to cancel, as specified in the CCR 2013.

### The consequences of non-compliance

Many contractors fail to provide consumers with the prescribed information about their statutory right to cancel, and therefore the cancellation period is extended. However, failure to provide sufficient information about the right to cancel can have other serious consequences for the contractor. In particular:

- the contractor may be guilty of a criminal offence;
- the consumer may cancel the contract at any time up to one year and 14 days after the contract was entered into, without incurring any liability; and
- the contractor must reimburse all payments received from the consumer.

It is also worth noting that section 12 of the CRA 2015 provides that if the contractor *does* provide the consumer with the information regarding the right to cancel under the CCR 2013, that information is treated as a term of the contract. The consequences for a breach of that term are set out in section 19 of the CRA 2015.

## **Conclusion**

The impact of consumer rights legislation on the residential construction industry may be an unintended consequence, or at least an underestimated one. Nonetheless, it is vitally important that contractors, when dealing with consumers, ensure that their pre-contract information and business practices comply with the various requirements. A contractor's failure to do so may not only have a negative impact on their business, it may also result in criminal liability.

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