

Distance Selling



Introduction

With the introduction of the lockdown, more and more businesses are considering selling goods and services at a distance. Whilst this is a good way of dealing with the restrictions placed upon business due to Coronavirus, it is important to ensure that businesses fully understand their obligations, the risks being undertaken and how to minimise them.

Distance Selling

The current protections for sales at a distance are the Consumer Contracts (Information Cancellation and Miscellaneous Charges) Regulations 2013 (Consumer Contracts Regulations or CCR).

Who do the CCR apply to?

The CCR apply to any distance and off-premises contracts (see below) between a 'Consumer' and a 'Trader'.

A Consumer is defined as

"an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession"

A Trader is defined as

"a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf."

To be a consumer a person must be 'an individual'. As such any corporate entities such as Limited Companies or Partnerships would never be able to be a consumer. Also, the CCR acknowledge that some transactions that are obliquely related to a business may still be covered.

If there is any dispute as to where someone was contracting as a Consumer for the CCR, the CCR assumes that they are a consumer until the Trader proves otherwise. It is therefore important to ensure that sufficient details are taken and kept during the sales transaction if there is any uncertainty as to the status of the contracting partners.

When do the CCR apply?

The CCR deal with more than just distance selling. The CCR divide transactions into 3 categories. The requirements the CCR places on a transaction will depend on which category a transaction falls into.

On-premises Contract

An on-premises contract is a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract. This will be the majority of contracts entered into in the motor industry where customers are able to view the vehicle at a showroom prior to buying it.

Off-premises Contract

This is a bit more complicated. This is designed to cover situations previously covered by the Doorstep Selling Regulations. An off-premises contract, is a contract which is either

- concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- where an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or,
- concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;

These contracts are rare in the motor industry generally, but can be found where it is common to attend trade events and shows such as for Caravans and Motorhomes. I do not plan on going into any further details regarding these. Members who are considering Off-premises sales should contact the RMI legal advice line for further advice as appropriate.

Distance Contract

Finally, a distance contract is where a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

Distance sales are not uncommon in the motor industry, but should not be confused with a contract where a deposit is taken over the telephone but the customer later visits the business premises to view the vehicle and finalise the contract. Provided the customer upon attending the business premises can still walk away from the deal then this will not be a distance sale.

What Protections do the CCR provide?

Where they apply the CCR will give the Consumer 2 main rights. The right to certain information at or before the date of the contract and a cooling off period, or a right to change their mind.

What Information do I need to provide in an On-premises contract

Before the consumer is bound by an on-premises contract, the trader must give or make available to the consumer

- the main characteristics of the goods or services;
- the identity of the trader (such as the trader's trading name), the geographical address at which the trader is established and the trader's telephone number;
- the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- all additional delivery charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the service;
- the trader's complaint handling policy;

- in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract;
- where applicable, the existence and the conditions of after-sales services and commercial guarantees;
- the duration of the contract, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- the functionality, including applicable technical protection measures, of digital content;
- any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

What Information do I need to provide in a Distance Contract

Before the consumer is bound by an off-premises or Distance contract, the trader must give or make available to the consumer:-

- the main characteristics of the goods or services;
- the identity of the trader (such as the trader's trading name);
- the geographical address at which the trader is established and, where available, the trader's telephone number, fax number and e-mail address, to enable the consumer to contact the trader quickly and communicate efficiently;
- where the trader is acting on behalf of another trader, the geographical address and identity of that other trader;
- the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated,
- all additional delivery charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- in the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total monthly costs;
- the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the services;
- where applicable, the trader's complaint handling policy;
- where a right to cancel exists, the conditions, time limit and procedures for exercising that right;
- where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
- that, if the consumer exercises the right to cancel, the consumer is to be liable to pay the trader reasonable costs;
- where under regulations 28, 36 or 37 there is no right to cancel or the right to cancel may be lost, the information that the consumer will not benefit from a right to cancel, or the circumstances under which the consumer loses the right to cancel;

- in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract;
- where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees;
- the existence of relevant codes of conduct, as defined in regulation 5(3)(b) of the Consumer Protection from Unfair Trading Regulations 2008, and how copies of them can be obtained, where applicable;
- the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- where applicable, the minimum duration of the consumer's obligations under the contract;
- where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- where applicable, the functionality, including applicable technical protection measures, of digital content;
- where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;
- where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

What is the Cooling off right?

Under the CCR Consumers have the right to 14 days from the date of delivery of the goods (or from ordering the services) to change their minds. A Trader is entitled to charge a fee for any use of the goods during this period but only if the correct information is provided at the time of delivery

What happens if I do not provide the correct information or tell Consumers of the cooling off right?

If Consumers are not provided the correct information then the contract is not binding. Furthermore, where consumers are not told of the rights of cooling off/cancellation or that there will be a deduction for the use of any goods then the Consumers are entitled to cancel the contract 14 days from when they are in fact told about the right in writing. If they are never told of the right in writing then they can cancel the contract up to 12 months and 14 days later.

If a Consumer is not told in writing that a deduction would be made for the use of the vehicle no such deduction can be made.

It is criminal offence under the CCRS not to provide the correct information or tell consumers of the cooling off rights

Conclusions

Distance and off-premises sales come with obligations that make them more complex. Most businesses are concerned about the cooling off/ cancellation rights, and with motor vehicles the costs of a cancellation can be high. However properly managed the risk will last for only 14 days from delivery and deduction for any use can be made. It is therefore vital that a business selling vehicles at a distance fully understand their obligations and that the contractual terms and conditions used for distance and off-premises sales are fit for purpose and provide the information required by the CCRs

This is not a definitive guide to the Consumer Contracts Regulations and how they apply to your business. Neither does this deal with all the changes. This advice is general in nature and will need to be tailored to any one particular situation. Should you find yourself in the situation above, contact us at any stage for advice and assistance as appropriate.

Motor Industry Legal Services

Motor Industry Legal Services (MILS Legal Ltd) provides fully comprehensive legal advice and representation to UK motor retailers for one annual fee. It is the only law firm in the UK which specialises in motor law and motor trade law. MILS currently advises over 1,000 individual businesses within the sector as well as the Retail Motor Industry Federation (RMI) and its members.