

## A GUIDE FOR TRADESPEOPLE AND SERVICE PROVIDERS

This is a guide to the Consumer Guarantees Act for suppliers of consumer services. Information about goods is available in Business Note *Consumer Guarantees Act – A Guide for Retailers*.

The Consumer Guarantees Act 1993 sets out:

- guarantees that goods and services must meet when sold by someone in trade
- remedies that either the service provider, seller or manufacturer is required to provide if a guarantee is not met.

The Consumer Guarantees Act says that any work you do for a consumer must be:

- carried out with reasonable care and skill
- fit for any particular purpose that the customer has told you about
- carried out within a reasonable time, if the time for completing the work has not been agreed
- a reasonable price for the work done if the price for the work has not been agreed.

### Services covered by the Act

The Act covers any service that is normally bought for personal or household use – *eg, painting, hairdressing, car repairs*.

Most of the work done by tradespeople will be covered by the Act because it is work done for normal household use. This includes:

- professional services – *eg, dentists, doctors, architects, lawyers*
- entertainment services – *eg, concerts, movies*
- education services – *eg, night school, music lessons*
- accommodation
- banking and insurance services.

See page 7 for 2003 amendments to services covered by the Consumer Guarantees Act.

### FROM THE COURTS

A court decided that when a person (who is not in trade) contracts with a trader to sell an item on the person's behalf, this is a service covered by the Act – *eg, a boat dealer, recycled clothing trader*.

### Services not covered by the Act

These include services that are:

- normally carried out for a commercial purpose – *eg, installation of farm irrigation system, repairing machinery*
- gifted
- provided for by paying a statutory fee – *eg, rates*
- bought before 1 April 1994.

### How does the Consumer Guarantees Act relate to the Building Code?

Both the Building Code and the Consumer Guarantees Act offer protection to customers who are not happy with the durability of materials used in a new house. Where both the Consumer Guarantees Act and the Building Code apply, the one that offers the customer the most protection will prevail.

### Contracting out of the Act

You can choose to contract out of the Act when the services are being provided to a business. You can do this by providing a written agreement that says that the work will not be subject to the Consumer Guarantees Act. Schools, hospitals and government departments are considered to be businesses.

You cannot choose to opt out of this Act for any other reason. If you try to contract out you will be breaching the Fair Trading Act. The Fair Trading Act says that you must not mislead a customer about their rights. The penalties for doing so are substantial – up to \$60,000 for an individual, and up to \$200,000 for a company.

# GUARANTEES FOR SERVICES

## Reasonable care and skill

Reasonable care and skill will be judged by looking at the care and skill used by other competent people doing the same work. Your skills should be such that you can do the job and achieve the purpose the customer wanted. You should take the same care that other competent people take to do the job well and avoid causing any damage.

Examples of lack of reasonable care and skill include:

- a plumber installs new guttering and the next time it rains part of the guttering falls down
- a drycleaner ruins a duvet by using the wrong cleaning method
- a painter knocks over a can of paint which spills over the customer's driveway.

## FROM THE COURTS

In a recent case the courts decided that a service provider cannot avoid their responsibility to take reasonable care and skill simply by having all-risks insurance.

## Fit for a particular purpose

The work you do must achieve any particular result the customer wants and has told you about – *eg, John wants a drainage system that will stop his lawn flooding every time it rains.*

If you can't guarantee that the job you do will achieve the purpose or the result they want, you must tell the customer this before you start the job. Otherwise you will be liable under the Act for not having achieved the desired purpose.

## BE AWARE

This guarantee applies to particular purposes that the customer has told you about. Normal purposes for the work you are doing will be covered by the guarantee that you will use reasonable care and skill.

**Does the customer have to specifically tell me what they want?**

If the purpose they want to achieve is a normal purpose, then the customer does not have to specifically state it – *eg, if a customer wants a tap replaced, it is obvious that they will want the tap to turn on and off and to deliver a reasonable flow of water.*

Where the result wanted is less ordinary, the customer must let you know exactly what they want – *eg, if Rita wants a particular pattern for her paving stones, she must tell you exactly how she wants it done.*

Writing down in a written quote or contract exactly what you have agreed to do is a good way of avoiding any debate about what was agreed.

**What if I can't be expected to know if it will work?**

Sometimes it will be obvious that the customer can't expect to rely on your skill to achieve the desired result.

*Eg, Julie asks a painter to cut back a tree that will get in the way of the painting. The painter agrees and charges for the time it takes. The tree dies and Julie wants the painter to pay compensation. Julie knew that the painter was not a tree surgeon and that she couldn't rely on the painter having the skill to trim the tree successfully.*

Sometimes you may want to tell the customer that you can't guarantee that you have the skills to do the job.

*Eg, Fran's car has a recurrent problem with the generator. The mechanic at her local garage has looked at it once and told her it is a job for an auto-electrician. Fran asks him to have another look at it anyway as she doesn't want to have to take the car to an auto-electrician in town.*

In this case the mechanic has told the customer that they may not have the specialist skills needed. Fran will not be able to claim that the work was not fit for the purpose.

If you are in a similar situation, you must make it clear to your customers that you may not have the skills required.

**Can I warn the customer that I don't have enough experience to do the work?**

The extent of your liability will depend on the type of warning given and whether a trader using a reasonable level of skill could do the job.

*Eg, Hemi decides to go to a drycleaner that has just opened up in their town to get a shirt drycleaned. The drycleaner tells Hemi that they are not sure if the shirt will come out exactly the same colour. Hemi thinks the job should be straightforward as the shirt has been cleaned before. Later on he finds out that the cleaner does not have much experience.*

When you are inexperienced in your trade, you cannot contract out of your responsibilities under the Act to take reasonable care and skill by giving this type of warning.

**What if the customer has chosen the cheapest option?**

Sometimes the customer will ask you to use the cheapest option – *eg, Jan asks her painter to put only one top coat on her house as she plans to sell it.*

In this case the result may be less fit for its normal purpose than if the customer had been prepared to pay the extra money for the second coat of paint. You may want to get the customer's agreement in writing that they have chosen the cheaper option.

You must still guarantee the quality of the work done, but clearly there will be a lower expectation on the work. You should not use wording such as "This work is not guaranteed". This could be interpreted as an attempt to contract out of the Consumer Guarantees Act.

**What if the customer has unrealistic expectations?**

Sometimes you may think that the customer has caused the problem or is expecting too much of the work done.

*Eg, a mechanic tunes Sarah's car and Sarah comes back and complains that it is not accelerating fast enough. The mechanic goes for a drive with Sarah and discovers that she drives at 120 kph and expects the car to accelerate to pass other vehicles at 140 kph. The car is already over-revving at 120 kph.*

In this case the tune-up was clearly fit for the normal purpose. The engine is tuned. Unless Sarah has specified that she wanted to be able to pass cars at 140 kph she will not have a claim.

## Finishing the job in a reasonable time

This guarantee applies only if there is no agreement between you and the customer about when the job will be finished. If you have discussed when the work will be done, or written it into the quote or contract, then that is your agreement.

If there is no specific agreement with the customer about when the job will be completed, the Act says that the work will be completed within a reasonable time. A reasonable time will be judged on the average time that would be taken by other competent people doing the same job.

*Eg, Elena contracts a painter to paint her house. They agree that he will start work in January. The painter does the preparation work in January. In February he only does two days work on the house.*

Elena can ask the painter to get on with the job, as he is clearly not trying to finish the work in a reasonable time. Elena may be entitled to cancel the contract if the painter continues to delay working on her house. Elena may also have other costs as a result of the delay that she can recover from the painter. See pages 4 and 6 for more information on the customer's remedies and consequential loss.

## Charging a reasonable price

This guarantee applies only if no agreement has been made about the price. If you have given a quote or estimate, agreed an hourly rate, or agreed how the price will be worked out, then that is your agreement on the price.

If there is no agreement made about the price, the Act says that the price you charge must be reasonable. A reasonable price is an average price taken from the range most other competent people would charge for the same work.

If you had no agreement with the customer about the price, the customer can refuse to pay more than a reasonable price.

*Eg, Gary takes his washing machine to be repaired. The cost of the job is not discussed. The repairer puts in a new drum and charges \$150 labour costs. Gary thinks this is expensive and rings three other repairers. They all say that they would charge between \$70 and \$90. Gary tells the repairer he is only going to pay \$80 for the fitting of the drum.*

# RIGHTS AND REMEDIES WHEN A GUARANTEE IS BROKEN

## Problems that are minor or can be fixed

If the problem can be put right, the customer must ask you to put it right. At this stage, the customer is not entitled to cancel the contract or to get the work done elsewhere.

You must act within a reasonable time to fix the problem with the service and do this work free of charge.

If you refuse to fix the problem, or take more than a reasonable time to put it right, the customer can:

- employ someone else to put it right and claim the cost from you, or
- cancel the contract and refuse to pay for the work, or pay less than the agreed price. If they have already paid, they can claim all or some of their money back.

## Does the customer have to give me a chance to fix the problem?

Yes. The customer must give you the chance to fix the problem, unless it is serious. You must fix the problem within a reasonable time.

## What is a reasonable time to fix the problem?

This will depend on the nature of the problem. Sometimes a reasonable time will be a few hours – *eg, when a new roof is leaking badly*. In other cases a reasonable time may be a few days – *eg, when a window won't open after a house is painted*.

## How many opportunities do I have to fix the problem?

The customer needs to give you only one opportunity to fix the problem.

## What if the problem happens when the customer is out of town?

*Eg, the car you repaired a week ago has broken down while the customer is on holiday.*

If the problem is minor, the customer must still give you the opportunity to fix the problem. You can fix the problem by either arranging for a local service provider to do the repair, or allowing the customer to have the repair carried out by someone of their choice. You may ask for a worksheet from the other service provider to check that the work was necessary.

In our view, the customer must take reasonable steps to contact you to advise that a repair is necessary. If you cannot be reached, the customer may be able to

recover the cost of the repair if they can show that a repair was necessary, and the cost was reasonable.

## Do I have to pay if the customer gets someone else to fix the problem?

The customer must give you the chance to fix the problem first. If you have refused to fix it, or have taken longer than a reasonable time, the customer can ask someone else to fix the problem. The customer can ask you to meet the cost of the repair job. The cost must be reasonable.

## What is a reasonable cost for someone else to fix the job?

A reasonable cost will be a cost that is within the normal range of quotes the customer would get for the work. If you think the cost charged is too high, you will have to show that it is unreasonable. You can avoid having to pay for work done by someone else by solving any problems within a reasonable time. If you are too busy to do this, you can arrange for someone else to do it.

## BE AWARE

Remember that the customer can only ask you to pay for repairs done by someone else if they first gave you the chance to put it right and you have refused or delayed. If the customer did not give you an opportunity to fix the problem first, you may not have to compensate the customer for the cost of the repair work.

## Serious problems and problems that can't be fixed

If it is a serious problem **or** a problem that can't be put right, the customer can:

- cancel the contract and refuse to pay for the work, or pay less than the agreed price. If they have already paid they can claim all or some of their money back, or
- claim compensation because the work you have done is not worth the price they have paid for it.

The Act says a problem will be considered serious in these situations:

- the customer would not have had the job done if they had known what was going to happen – *eg, Piti gets a jacket drycleaned but when it comes back the dye has run and the jacket is streaked*.

- the work done is significantly unfit for its normal purpose and can't easily be put right or can't be put right within a reasonable time – *eg, a carpet cleaning service changes the colour of the carpet in some places.*
- a customer has told you of a specific purpose or result they wanted. The work you do does not achieve that purpose or result and can't easily or within a reasonable time be made to achieve it – *eg, a large family hires a station wagon for a weekend trip to visit relatives. The station wagon breaks down and needs a major repair which will take two days. The hire company doesn't have another station wagon available.*
- the work you have done is unsafe – *eg, an electrician wires a wall socket incorrectly.*

## Cancelling the contract

The customer has the right to cancel a contract in three situations:

- there is a serious problem with the service provided, or
- it is not possible to solve the problem by repairing it, or
- the customer has asked you to fix a problem and you have not done so within reasonable time.

## BE AWARE

The customer does not have to give you the chance to put it right in these situations. They can cancel the contract straight away.

### What does cancelling the contract mean?

Cancelling the contract gives the customer the right to ask for some or all of their money back, or to refuse to pay all or part of the bill. The contract does not need to have been in writing.

Cancelling the contract means that the agreement that you will do the work, and that the customer will pay, is cancelled.

### Does the customer have to tell me they are cancelling the contract?

Yes. They can do this in writing or by talking to you. If the customer can't contact you easily then they can use any reasonable means to notify you – *eg, a letter posted to your address.*

If you have a contract that requires written notice of cancellation, the customer must give this written notice.

### What if some of the work done was OK?

Sometimes a customer will cancel a contract when only some of the work done is of poor standard. You will need to reach an agreement with the customer that they will pay for the work that was done properly.

*Eg, Phil gets a garage to do a wheel balance and alignment and fit a new exhaust to his car. The exhaust works well but Phil is very unhappy with the wheel balance and alignment. The car is veering to the left all the time. Phil cancels his cheque.*

Phil clearly has a case for not paying for the balancing and alignment work, but he will be expected to pay for the parts and the labour involved in fitting the exhaust. The garage can take Phil to the Disputes Tribunal if he refuses to pay.

## Romalpa Clause (Title Retention)

A Romalpa clause is a clause that you can write into your contracts with your customers. It lets you keep ownership of parts or materials until the customer has paid in full for the work done. If they don't pay, you can repossess the parts or materials.

Romalpa clauses will be effective in cases where there is no problem with the work done and the customer does not pay. If the customer cancels the contract because the work or service has failed to meet one of the guarantees in the Consumer Guarantees Act, you cannot repossess the parts or materials until the dispute over the work done is settled.

### Using Romalpa clauses

The Act says that when you use a Romalpa clause you must:

- tell the customer that the parts and materials can be repossessed and get them to acknowledge this in writing
- tell the customer in a way that would make it clear to a reasonable person
- give the customer a copy of the repossession clause.

### Claiming for compensation

When the problem is serious or can't be fixed, the customer has the choice of claiming compensation or cancelling the contract and paying less for the work done. In some cases the customer may prefer to claim compensation from you.

*Eg, a builder lines a room with plasterboard but makes a bad job of the joins. The plasterer tells the customer they will have to charge more than their normal price as it will take longer to do because of the bad joins. The customer can claim compensation from the builder to cover the extra cost of the plastering.*

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## EXTRA LOSS OR DAMAGE (CONSEQUENTIAL LOSS)

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Extra loss is damage to property directly caused by faulty work or by a trader's failure to take reasonable care. This loss is called consequential loss.

You are responsible for compensating the customer for any damage or other losses that you cause – *eg, paint spilled on a driveway, or scratches on tiles caused by moving an appliance.*

### Is there a limit to my responsibility?

Yes. Responsibility is limited to loss or damage that a trader could reasonably foresee (predict) from a problem with the service – *eg, while repairing a toilet, a plumber causes the cistern to overflow. Water flows into the living room, soaking the carpet and damaging a box of valuable books that was being unpacked on the floor.*

The customer can ask the plumber to pay the costs to put right the damage to the carpet. But they will not be able to claim for the damage to the books because this is a loss the plumber would not reasonably have expected to happen.

You may not be liable for damage that the customer could have prevented or limited – *eg, if the customer sees water overflowing from the cistern but does not take action to remove items that could get wet, such as boxes on the floor.*

A customer should not be expected to move installed items such as fixed carpeting to prevent damage.

### Amount of compensation for loss

Compensation for damage is based on the value the goods had at the time of loss. To work out a reasonable value you should consider the age and condition of the goods before the loss.

*Eg, the carpet which was ruined by the toilet cistern overflowing is twenty years old and the customer was going to replace it in another few months anyway. The compensation will take into account the age and condition of the carpet.*

### Can I contract out of the responsibility for consequential loss?

No, unless you were selling goods or services to someone for use in their business and you contracted out of the Consumer Guarantees Act at the time of sale. In any other situation you may be breaching the Fair Trading Act by misleading the customer about their legal right to be compensated for consequential loss.

## GENERAL QUESTIONS

### What if materials I've supplied are faulty?

When you supply materials as part of the job and charge the customer for them, you will be responsible for any faults in those materials.

*Eg, a bricklayer paves a courtyard. The bricklayer buys the paving for the job and charges the customer. The paving stones have a high variation in colour and the customer wants them replaced. The customer can ask the bricklayer to put it right. If the bricklayer refuses to replace the paving, or doesn't do it within a reasonable time, the customer will have the right to claim a refund.*

If the problem with the materials you have supplied is a serious problem, or one that can't be fixed, then the customer will have the choice of a refund, replacement or compensation for the faulty materials.

### What if I install parts or items the customer has supplied and they are faulty?

*Eg, you lay a carpet that the customer bought themselves, or a mechanic fits a part that the customer bought at a wrecker's yard.*

If the customer is not happy with the quality of the carpet or the car part, they can make a claim to the person they bought the goods from. They cannot cancel their contract with you for installing the carpet or the part and must pay you for the work you have done. The customer will be able to claim the installation cost from the supplier of the goods.

### What if I didn't cause the problem?

You are not responsible if another person who is not working for you causes the problem – *eg, you have just put the top coat of paint on one side of the house when the neighbour lights a rubbish fire and ash blows over and sticks to the paint.*

You are not responsible if the weather, an earthquake or other event that is beyond human control causes the problem – *eg, the day after you finish building a sleepout for a customer, gale force winds lift two sheets of iron off the roof. Iron is also blown off the customer's house and other houses on the street.*

### What if the customer and I can't agree?

If you cannot agree with the customer about a problem covered by this Act, either you or the customer can take a case to the Disputes Tribunal or to court. For more information about the operation of the Disputes Tribunal contact your nearest District Court.

### Can the customer come back after several years to complain about work done?

The customer has six years from the time the problem appeared to take legal action. Whether or not

you will have a responsibility under the Act will depend on the nature of the problem and whether it is reasonable in the circumstances.

A long delay in complaining may affect the customer's remedies or make it difficult to prove the problem with the service. We recommend that customers advise of problems as soon as possible so that the service provider can record the complaint.

From 8 July 2003, the Consumer Guarantees Act covers services relating to the supply of electricity, gas, telecommunications, water, and the removal of wastewater.

This means that from 8 July 2003, if you supply these services to consumers, you must meet the guarantees under the Act. Consumers can seek a remedy from you where your services fail to meet one of these guarantees.

#### Non-Contracting Suppliers

The Act applies where you supply services to consumers under a contract with another firm to supply these services to consumers. There does not need to be a direct contract between you and the end consumer for the Act to apply.

If you are an electricity network company the Act applies even though you may not have a contract with those consumers served by your network. The Act will apply to any services you supply to consumers.

*Eg, A network electricity company is responsible for maintaining the lines and the power poles; you must use reasonable skill and care in carrying out these services.*

You may have a contract with the council to provide wastewater services to consumers, even though you do not have a contract with the consumers the Act will apply to any services you supply to consumers.

#### I am a non-contracting supplier, how do I exclude the provisions of the Consumer Guarantees Act where my services are acquired for a business purpose?

The Act says that you have the benefit of any liability exclusions contained in the contract of supply between the consumer and the contracting party. If the contract excludes the provisions of the Act where services are acquired for a business purpose, your supply of those services will also be covered by this exclusion.

*Eg, Most Supply contracts between electricity retailers and consumers exclude the CGA where goods or services are acquired for business purposes. If you are an electricity lines company, or an electricity contractor providing services to consumers on behalf of the electricity retailer, this exclusion will apply to any services you provide to business customers.*

You may want to check with the contracting supplier that their contracts contain these exclusions.

**Related Ministry resources:**

*Consumer Guarantees Act – A Guide for Retailers*  
*Consumer Guarantees Act – A Guide for Manufacturers  
and Importers*

**For more information you may wish to contact:**

**A lawyer**  
**Trader organisations**  
**Citizens Advice Bureau**

The purpose of this booklet is to provide a general explanation on the law relating to the purchases of motor vehicles. It is not intended as a source of specialist legal advice. You may wish to contact a lawyer for further advice. The Ministry does not accept any responsibility for the manner in which this information is interpreted or for the consequences of relying on it.

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