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Consumer Rights Directive

Chartered Trading Standards Institute response

September 2016

**About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website ( [www.businesscompanion.info](http://www.businesscompanion.info) ).

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme

( [www.tradingstandards.uk/advice/ConsumerCodes.cfm](http://www.tradingstandards.uk/advice/ConsumerCodes.cfm) ).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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***A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 46% in their budgets since 2010 and staff numbers have fallen by 53% in the same period.***

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This response has been composed by CTSI’s Lead Officers for Civil Law and E-Commerce with Peter Stonely as lead. Should you have any queries or wish to discuss the response please do not hesitate to contact Peter at locivillaw@tsi.org.uk

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**Consumer Rights Directive**

In the following submission CTSI has highlighted a number of ways in which the Consumer Rights Directive could be improved for frontline trading standards officers working to protect consumers on a daily basis. The position taken within this submission is based upon practical issues with the directive that have been specifically raised with CTSI’s Lead Officers.

From the outset, CTSI would like to emphasise that many of the problems with the existing Regulations could be solved, following Brexit, by domestic changes possibly even within the framework of the current Directive. We would like to work with the UK government to help make these changes, as and when this would be appropriate.

**How effective do you consider the CRD to be for consumer protection?**

* CTSI believe the CRD has improved consumer protection by providing a single set of rights to be given information and standard cancellation rules for distance and off-premises contracts.
* The CRD has balanced consumer and business rights by allowing businesses to have goods returned, and check that they are not damaged, before refunding the consumer following cancellation.
* The requirements regarding basic rate customer contact numbers have had a considerable impact by reducing the use of premium rate numbers for consumers who need to contact a business.

**Are you aware of any factors hindering the effectiveness of the CRD?**

CTSI believe there are a number of factors hindering the overall effectiveness of the CRD. These are identified under the relevant subheadings below.

**Resources for enforcement**

In the UK, trading standards’ role lies in ensuring a safe and fair trading environment where business growth is supported, fair competition is encouraged and consumers are protected.

However, in recent years austerity and a reduction in the number of resources allocated for market surveillance and consumer protection has limited the effectiveness of useful legal provisions such as the CRD. Since 2009, UK trading standards services have seen significant reductions in their staffing (53%) and budgets (46%).

The knock on impact of these shifts in resources has been a strict prioritisation in local services towards only the most urgent work. Consumer redress, outside of criminal activity, is something that many departments are unable to focus on under the current circumstances regardless of the powers provided by the Directive.

Furthermore, the current local authority trading standards service structure in the UK hinders cross border working, making it difficult to deliver consistent levels enforcement, especially in an increasingly digital marketplace.

Without urgent and decisive action on the future trajectory and structure of trading standards in the UK, CTSI fear that there will be an increase in dangerous products on Britain’s streets, unfair competition and market imbalances with serious and harmful consequences for consumers and businesses. At present, there is no adequate governance mechanism for the delivery of national priorities by local authority trading standards services. For consumers to be protected, businesses to thrive, and legislation such as the CRD to be used to its full effect, this needs to change.

Consequently, central government in the UK and EU policy makers must carefully consider whether there are appropriate resources available to trading standards when thinking about giving, already stretched services, additional legislative responsibilities.

**Article 2(9)**

The definition under Article 2(9) has caused some concern regarding exhibitions and trade fairs, which are clearly retail settings.

Although local authority trading standards services have taken a pragmatic approach to enforcing this element of the legislation, there has been some concern from major exhibition organisers that the Directive (and UK legislation) applies the test as to whether the trader has operated at the venue on a usual basis. This means that a trader attending the exhibition for the first time may not fall within the definition whereas a regular exhibitor would.

CTSI believes the test should be broadened to consider whether traders, in general, usually operate at movable retail premises. These are clearly not off-premises contracts and consumers would not expect to be given cancellation rights when visiting an exhibition or trade fair.

**Treating distance and off-premises contracts the same**

With regard to information and cancellation rights, although CTSI understands the logic behind treating off-premises and distance contracts in the same way, the Institute feel this approach has weakened protection for consumers buying off-premises. CTSI believe that, the psychological pressure (as stated in recital 37) that consumers can be under when contracting off-premises requires a greater, and different, level of consumer protection than distance contracts.

**Article 6 1(c)**

CTSI would like to see a re-draft of article 6 1(c) (“the geographical address at which the trader is established and the trader’s telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently”). We are concerned that the current wording is open to misinterpretation by traders who may interpret from the Directive that the provision of email is optional. EU guidance states that the Services Directive covers e-commerce businesses selling goods. Therefore all e-commerce businesses must provide a telephone number.  To remain consistent with other EU law, CTSI suggest that the article be re-drafted to read: “the geographical address at which the trader is established and the trader’s telephone number and e-mail address, and where available, a fax number”.

**Article 9**

Article 9 of the CRD has extended the consumer’s right of withdrawal by defining the final day up to which they can withdraw from a contract from the time that they receive the goods. This works well for distance contracts but, with most off-premises contracts likely to involve home improvement work, this leads to a final 14 day period which it is not practical for a consumer to use. A compliant trader can require the consumer to return goods at their own cost, to reduce any refund and to charge for the service element that has been provided. Therefore a consumer who has had a new bathroom fitted is unlikely to be able to use the last 14 days after the work has been completed - most traders will deliver the goods as the job progresses. CTSI believes that this, in practice, means that they have lost their right to cancel once the work has started.

CTSI would prefer to see a withdrawal period for goods incorporated into land which ends when the work starts, at this stage the consumer must sign an express permission for work to start with a clear statement advising them that their right to withdraw has ended.

**Article 16(c)**

Article 16(c) has caused greater concern and clearly represents a weakening in consumer protection in the UK where the *Cancellation of Contracts Made in a Consumer’s Home or Place of Work etc Regulations 2008 (implementing 85/577/EEC)* provided a cancellation period for all contacts agreed in the home with a cancellation period that could, with the consumer’s permission, be cut short if they required the work to be started within the (then) seven days from date of contract withdrawal period.

Article 16(c) is of particular relevance to the double-glazing industry and sellers of custom made chairs for consumers with disabilities or frailties due to their age. Both industries predominantly enter into contracts in consumer’s homes and are particularly strong at a psychological sales approach that can trap vulnerable consumers. Consumers are left with no right to cancel these products if they genuinely fall within the exemption. Some of the major trade associations in the UK require their members to offer a 7-day, from date of contract, withdrawal period because they are aware of the risks to consumers (and to the reputation of their industry) caused by the Article 16(c) exception.

Although we accept that exemptions from the right to withdrawal are appropriate when this can cause traders costs that they are unable to mitigate, CTSI do believe that sales contracts falling within Article’s 16(c) and (f) should have a 14-day, from the date of contract, withdrawal period. The nature of the goods involved means that, in most cases, there would be a lead in time for accurate specification and production of the product.

Article 2(3) does help the interpretation of Article 16(c) ‘goods made to the consumer’s specification’, as does the DG Justice Guidance Document, however CTSI believe that the definition should make it absolutely clear that the non-prefabricated goods should have been manufactured prior to delivery to the consumer.

Further, although the ‘bespoke’ goods exemption is predominantly a problem for off-premises home improvements, it does also pose a problem online. Queries over the exact meaning of what is ‘bespoke’ seem to have generated a growing interest among e-retailers to claim the exemption for their goods. The CRD does not provide the level of clarity that is needed on this topic and it is causing problems with both off-premises and distance sales.

**Article 16(I)**

CTSI would like to see further clarity on the application of the ‘leisure exemption’ from cancellation in article 16(I). While the Directive is clear on concert tickets, hotel rooms etc. the wording is quite broad and open to interpretation. CTSI feel that the looseness of the wording means that arguments can be made that the ‘leisure exemption’ applies much more widely than it was originally intended. One case CTSI has encountered involved a query regarding the hiring of jewellery. Recital 49 gives the concept of ‘setting aside capacity’ and the EU guidance does help to some extent, however CTSI would welcome a re-drafting of this definition to make its meaning clearer for enforcers and businesses.

**Delivery times: Recital 46 and Article 13(2)**

Although there is little research into this issue, CTSI are concerned that a minority of traders may be attempting to take advantage of the ‘least expensive and generally acceptable kind of delivery’ provision cited in the CRD. If a cross-border seller offers multiple delivery options, for example 3-5 days, 7-14 days and 30-45 days (by sea), at different prices, it is unclear whether the third option, delivery by sea, is considered a generally acceptable kind of delivery under the Directive. It is clear that the proportion of comparable customers using the method will be relevant.  So, for example, if 1% of overseas customers of that trader choose the sea option while 80% use the 7-14 days option then the sea option is unlikely to be “common” or (by implication) “generally acceptable”.

CTSI would like further clarity on when a delivery time/option/price becomes generally acceptable. Rather than any explicit amendment to the legislation, CTSI would like to see authoritative guidance published alongside the Directive to make requirements around what is ‘generally acceptable’ clearer to businesses and consumers.

**E-marketplace**

CTSI are concerned that there are significant levels of non-compliance from traders with regards to their obligations when operating via e-marketplaces. For example, with sellers omitting or hiding the information required under articles 6 (1)(b), (c), (d) of the CRD in obscure places. Although there is some implied reference to them, the CRD does not explicitly mention e-marketplaces. Given the increased prominence and popularity of trading in the digital arena, the Institute would like to see further clarity in the legislation regarding expectations placed upon the platform providers and individuals using these platforms.

**Article 19 – Fees for the use of means of payment**

CTSI believes the CRD is too limited in detail regarding Article 19. It states only that: ‘member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.’

There is some considerable confusion about which costs are permitted as allowable costs for cheque and credit/debit card payments. It is clear that the charges imposed by a trader’s bank for processing each cheque or card payment are included under the Directive. However, trading standards have encountered some traders who are adding in their own internal admin costs (full staff costs, fuel for a regular trip to the bank, car-parking etc). In some instances there have been charges of up to £2.50 per cheque where at least one bill per month is payable, where the trader says his bank charges are 30p per cheque but then adds £2.20 for his own internal admin costs. It is unclear from the current wording whether the inclusion of these costs by a trader is permissible.

CTSI feel that the article should either be expanded to make the allowable costs clearer or alternatively, we would welcome authoritative guidance from the EU as to how this article was intended to be used.

**Chartered Trading Standards Institute, September 2016**