

relate

information for all

Vol. 32 No. 2
November 2004
ISSN 07904290

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Consumer Rights

Introduction

This issue of *Relate* is written to complement the Comhairle publication “Where to Complain”, a comprehensive guide to redress and enforcement agencies in Ireland. The Guide lists the various bodies to which you may complain or appeal if you have a problem with enforcing your rights. It covers the enforcement of rights to public services as well as what are more generally regarded as consumer rights – that is, the rights of consumers who buy goods and services in a commercial context. “Where to Complain” is concerned primarily with the enforcement of rights. Here we concentrate on the rights of consumers when they are buying goods and services.

Many consumers complain in a general way about prices and quality of service. For example, you may complain about the price of food in supermarkets or of hairdressing or dry cleaning services; you may complain about the price and quality of meals in restaurants or about the level of service provided by your bank. Very often you just complain but do not do anything else about it. This may be because you do not know where to complain or you do not think any action will be taken or the process of complaining is so time consuming that it is not worth the bother. In some cases, making a complaint may be difficult because there is no specific body to deal with your complaint.

There are various bodies which exist mainly to represent the interests of their members but will deal with complaints because they want to maintain and promote high standards of service. Even though dealing with complaints is only a minor aspect of their activities, they can be quite effective. Another reason you may not pursue a complaint is that there may be more than one body and it is not entirely clear which is the most appropriate. For example, if you have a complaint about a bank, the relevant body may be the Director of Consumer Affairs (if you are complaining about the bank’s advertisements), the Competition Authority (if you consider that the banks are all offering the same interest rates or



INSIDE: Small Claims Court p3; Sale of Goods and Supply of Services Acts p4;
Deposits p5

there is other evidence of cartel arrangements) or the Irish Financial Services Regulatory Authority (if you consider you have been overcharged). These are all statutory bodies. You may also be able to complain to the Ombudsman for Credit Institutions which is a voluntary arrangement put in place by the banks and other credit institutions (but it is expected that a statutory Financial Services Ombudsman will be put in place soon – see below). Sometimes the body to which you complain can grant you compensation but frequently that is not the case.

Here we outline general consumer rights in relation to information, prices, quality and safety and try to set out the roles of the main agencies involved in enforcing your rights. We are concerned only with dealings by consumers with businesses (what the EU calls C2B). The law may be different for business to

business transactions (what the EU calls B2B transactions). The law may also be different for transactions between individuals, neither of whom is in business. We are not concerned with such transactions here.

In general, consumer law is mainly concerned with ensuring that you, the consumer, have information about prices and quality in order to facilitate your making a choice about what to buy. It is also concerned with ensuring that goods and services are safe, that ingredients in food are listed and that unfair terms are not used in consumer contracts. Much of the consumer legislation in force in Ireland comes from EU law and there are a number of EU proposals for changes in the law which are expected to come into effect in the next few years.

Contracts

When you buy goods or services, you make a contract with the supplier. When you buy shoes or get a plumber to install a shower, you have a contract with the shopkeeper or the plumber. All contracts have some express terms – this means that the terms are stated. The terms do not have to be stated in writing. It is, of course, much easier to know what the terms of a contract are if it is in writing but an oral contract between adults for the supply of goods and services is valid and enforceable. The express terms of a contract to buy a pair of shoes are that the shopkeeper will supply the specific shoes you chose and you will pay for them. Contracts for services are usually more complex – for example, your contract with a plumber usually includes terms in relation to the price, the time scale and the quality of goods and workmanship.

Implied Terms

In general, if two parties freely make a contract, that contract is enforceable. However, there is a range of legislation governing consumer contracts which mean that certain terms may be included in the contract even if this is not specifically stated. For example, the legislation on safety and unfair terms in consumer contracts mean that there is what are called “implied terms” in consumer contracts that the product in question is safe and that terms which are unfair are not actually part of the contract – these are explained further below. So, your contract to buy shoes includes an implied term that the shoes are fit for their purpose; your contract to buy toys includes an implied term that the toys are safe.

Unfair terms in consumer contracts

Some written contracts include terms in what is often called the “small print”. Some such terms may be unlawful if they are unfair to the consumer. Certain terms are always considered unfair and others may be

unfair if they mean that there is a significant imbalance between you and the seller. You may complain to the Office of the Director of Consumer Affairs (ODCA) if you consider there is an unfair term in a consumer contract.

There is a proposed EU Directive on unfair commercial practices which has been agreed and is expected to come into effect in the next two years.

Enforcing contracts

Under the terms of the contract (the express terms and the implied terms), the supplier has various obligations to you and, if you have a problem, your first point of redress is the supplier. If the heels fall off the shoes very soon after you buy them, you should bring them back to the shop in order to get redress. If the newly installed shower leaks, you should try to get the plumber to do the job properly. If you fail to get satisfaction, you may have to take your complaint to another level. In some cases, there may be an

organisation or professional body which can help to resolve your complaint but, in others, you may have to go to court in order to ensure that the contract is enforced or that you get your money back or that you get compensation. There is a growing awareness of what are called “Alternative Dispute Resolution” (ADR) mechanisms. These are mechanisms by which a dispute may be resolved without going to court. The EU has been encouraging the development of such mechanisms especially for dealing with consumer complaints. There are a number of ADR networks which may help consumers to enforce their rights in other EU countries (they are listed in “Where to Complain”).

Small Claims Court

The Small Claims Court is particularly important for dealing with consumer complaints. It is not a

separate court but is a special procedure which is available in the District Court in cases where the claim is less than €1,269.74. The procedure involved is simple and you do not need legal assistance. You go to the Small Claims Registrar at your local District Court. You fill out an application form and you pay a fee of €9. The Registrar then tries to solve the dispute without a court hearing. If this does not succeed, the case goes to the District Court for a hearing. There is no further charge for a hearing and you do not need legal assistance for the hearing.

If the amount of money involved is more than the Small Claims Court limit, then you may have to take your case to the District Court (for amounts up to €6,348.69), the Circuit Court (for amounts up to €38,092.14) or the High Court (no limit).

Prices

In general, the prices of goods and services are not controlled. This means that retailers and service providers may charge any price. However, retailers are prevented from engaging in what is called “below cost” selling – this means they may not charge less than the cost of producing the item in question.

Some prices are regulated. This means that the providers must apply to the industry regulator for approval for any price increase. The most notable examples are electricity and gas. In these cases, the suppliers must apply to the Commission for Energy Regulation for approval for price changes. The suppliers may not charge more than the approved prices. Suppliers of financial services do not have to apply for approval for price changes (for example, bank charges, interest rates) but they do have to tell their regulator (the Irish Financial Services Regulatory Authority) about any such changes. (The role of regulators in relation to consumers is looked at further below).

If you consider that, for example, the price charged by a particular retailer is too high, you may complain to the retailer. Your most effective remedy is to refuse to shop there. There is no external body to which you can complain as there is no law being broken. If all the retailers are charging the same amount for a particular product, you may consider that they are acting in a non-competitive way and you can complain about that to the Competition Authority.

Display of Prices

The prices of most consumer goods must be displayed. The general principle behind the rules on displaying

prices is that you must know the price before you decide to buy and you must have the choice of refusing to buy.

The price shown – whether it is the actual price being charged, the “recommended” price or the previous price – must be accurate and not misleading. In the case of a sale, the previous price shown must be the price at which the goods were offered for at least 28 successive days in the three months before the sale.

Advertisements for goods must not be misleading. The prices shown must be accurate and not misleading. This means, for example, that there may not be any hidden extras which you must pay and the prices must not have unusual or unreasonable conditions attached.

In the case of products which are sold by weight, volume or measure (for example, vegetables, cloth) the unit price for a relevant unit – a kilogram, a litre, a metre, a square metre or a cubic metre must be displayed. This is the case for almost all goods. There are exceptions for traders who do not have equipment for printing shelf-edge labels or for point-of-sale scanning – in effect, people selling in open-air markets do not have to display unit prices.

Goods in Shops and Supermarkets

The price of products sold in shops and supermarkets must be displayed either on the product itself or on the shelf-edge label. In practice, as bar coding becomes more common, the price is usually displayed on the shelf in supermarkets.

Drink Prices

All drinking areas in pubs must have a clearly visible and easily read list of the prices of all drinks on sale. The prices of 16 of the most popular drinks must be on display immediately outside and immediately inside each entrance to the premises.

Again, there is no control over the price of drinks and it is legal to charge more in some areas than in others. It is also legal to charge different prices at different times, e.g. late at night, but the prices must be in accordance with the displayed prices.

Restaurants

Restaurants and other places where food is served (including pubs) must have comprehensive price list which is clearly visible and capable of being read by you when you go into the premises – it should be either outside the premises or immediately inside the

door. Charges such as minimum charges, service charges and cover charges must also be displayed.

Other Prices

Other prices which must be displayed include:

- ◆ Petrol and diesel prices (they must be displayed in large format and clearly visible from the road)
- ◆ Public concert and theatre performance (advertisements must show the admission price and any other charges)
- ◆ Hairdressing prices
- ◆ Airfares (must show the total price in advertisements and the currency involved).

If the price is not correctly displayed

If the price which is displayed is the wrong price, you may complain to the Office of the Director of Consumer Affairs and the ODCA may take action against the retailer. You are not necessarily entitled to get the product at the lower price. If you are told the correct price before you buy, then you have no redress. If you are not told the correct price before you buy, you may claim against the retailer (and complain to the ODCA). The ODCA's role is to ensure that the retailer displays the correct prices, it is not to get compensation for you.

Standards for Goods and Services

The Sale of Goods and Supply of Services Acts require that goods and services meet certain minimum conditions. These apply to virtually all goods. There is separate legislation setting safety standards for goods generally and for specific products.

General standards for goods

When you buy goods, they must be of merchantable quality, fit for their intended purpose and as described.

Merchantable quality means that they must be of an acceptable standard and as durable as is reasonable to expect in the circumstances. If the seller brought defects in the goods to your attention or if you had a chance to examine the goods and you should have noticed defects, but you still went ahead and bought them, then you cannot subsequently argue that they are not of merchantable quality.

Fit for their intended purpose – they must be able to do what they are supposed to do. If you tell the supplier that you intend to use the goods for a particular purpose, then there is an implied condition that they are reasonably fit for that purpose unless it

can be shown that you did not rely on the seller's skill or judgement or it would have been unreasonable for you to rely on it.

As described – the description must not be misleading or inaccurate. If there is a sample, then the goods must be in accordance with the sample. Labels must be accurate – some goods are required to have lists of contents and/or labels specifying safety standards.

There can be a dispute about whether or not these conditions are met. Sometimes the issue is very clearcut – if the new shoes fall apart the first time you wear them, they are clearly not of merchantable quality. If a food item is rancid, it is clearly not fit for its intended purpose. Other disputes are not nearly so clear – if the sweater shrinks when you wash it, did this happen because it was not of merchantable quality or because you used water which was too hot?

If something you bought does not meet these general conditions, you may be entitled to have it repaired or replaced or to get your money back. If the seller agrees that you are entitled to some redress, there may be a dispute about what form it should take. There are no absolute rules about which is the appropriate redress – it depends on the circumstances. If you have got a faulty version of a product that is generally reliable, then a replacement may be appropriate. If the product is generally faulty, then you should get a refund. It is always difficult to know whether or not to accept a repair. If you are entitled to a refund, you do not have to accept a credit note – you may choose to accept it but you are entitled to an unconditional refund. If you paid by credit card, you may get the refund by means of a credit to your credit card account. If you and the seller cannot agree, you can get further redress only by using some form of dispute resolution (if it exists) or by going to Court.

You are entitled to redress only if there is something wrong with the goods – you are not entitled to redress if you do not like the goods when you get home. Many shops operate a policy of taking back goods and giving you a refund or credit note in these circumstances but they are not obliged to do this.

Signs in shops such as “No refunds” followed by “This does not affect your statutory rights” are completely meaningless. If you have a statutory right to a refund, you must get one.

Goods which are sold in sales must meet the same general conditions and the seller may not refuse a refund just because they were sale goods.

It is advisable to keep receipts for goods in case you want to make a complaint. This is because you may need proof that you actually bought the item in a particular shop. If you have to make a complaint, it is wise to either make it in writing or keep a written record of it. This record should include the date you bought the goods, the date you first used the item in question, the basis of the complaint and the date you discovered the problem. Such written records are not absolutely essential but they make it easier to establish your case if you have to go to court or use some other redress mechanism.

Guarantees

Many goods have a guarantee for a set period. You may pursue the people who gave the guarantee if the goods do not perform in accordance with the guarantee. If the goods do not meet the general conditions set out above, you should bring them back

to the seller. You may also invoke the guarantee but the guarantee is not a substitute for your basic rights to receive quality goods.

Paying deposits

If you pay a deposit on goods, you should find out how long the shop proposes to keep the item for you, when you are expected to pay the balance and what happens if you fail to pay. You have a contract with the seller – the seller could sue you if you fail to pay the balance.

If you buy goods (or pay a deposit on them) and the seller goes out of business before they are delivered, you may have considerable difficulty in getting either the goods or your money back. Usually the seller in these circumstances owes money to a number of people so your claim is just one of many. There are rules for the priority to be given to the various debts in the case of the business going into liquidation or receivership. Generally, the individual customer is low in the order of priority. If you paid for the goods by credit card, it is worthwhile to contact the credit card company who may not have actually paid or may be able to cancel the payment – you do not have a right to have this done but the credit card company may be able to do it.

General Standards for Services

If you contract with someone to supply services – for example, an electrician or carpenter, then, in general, you are entitled to expect that the supplier:

- ◆ Has the skill to provide the service and to carry out the service properly
- ◆ Will provide the service with due care and diligence
- ◆ Will use materials that are sound and fit for their purpose, and
- ◆ Will use goods which are of merchantable quality.

If these conditions are not met, you are entitled to have the problem put right or to a refund or compensation. This is an area in which most consumers have problems in implementing their rights. If the new sockets fuse the whole house you are unlikely to have confidence in the electrician who installed them to put the matter right.

Many service providers do not belong to a professional or trade organisation to which you can complain. These organisations are listed in “Where to Complain”.

Safety standards

There is a range of EU Directives on product safety which have been brought into Irish law. These deal with general product safety and with the safety of specific products. There is also some specific Irish legislation on the safety of particular products. Food safety is dealt with separately – see below.

General Product Safety

Manufacturers, importers and traders are required to ensure that the products they put on the market are safe. This requirement applies when the products are used under reasonably foreseeable conditions. They are also required to tell the national authorities if it comes to their attention that any product is unsafe. Unsafe products must be recalled and taken off the market.

Specific product safety

There is a specific legislation on the safety requirements for a number of products. It is illegal to sell products which do not meet these requirements. The products concerned include:

- ◆ Toys
- ◆ Low voltage electrical equipment – this covers almost all electrical equipment used in the home or in offices

Food

There is a range of legislation governing food production – in particular, it deals with hygiene in the food production process and in the selling of food. There is also legislation dealing with the labelling of food. Much of this derives from EU legislation but there is also a range of specifically Irish legislation under the Health Acts.

The Food Safety Authority of Ireland (FSAI) is the principal body involved in implementing food safety legislation so, if you are not sure where to lodge your complaint, go to the FSAI. Its principal function is to take all reasonable steps to ensure that food produced, distributed or marketed in Ireland meets the highest standards of food safety and hygiene and complies with legal requirements or recognised codes of good practice. It co-ordinates the activities of all the food safety agencies – it has agreements about the implementation of food safety legislation with a large number of agencies. These agencies include:

- ◆ Health boards – they employ Environmental Health Officers who have a range of duties including food hygiene. If you want to complain about food you have bought or a premises in which food is sold or stored (including shops and restaurants), you

- ◆ Gas appliances, for example, cookers, patio heaters, gas fired barbecues
- ◆ Personal protective equipment – for example, bicycle helmets, life jackets
- ◆ Furniture must have specific labels for fire safety purposes – they must give information on how the fabric and other parts are resistant to fire.

The rules are detailed and technical. The ODCA is responsible for implementing product safety rules. (However, the Health and Safety Authority is responsible for personal protective equipment used at work.)

Liability for defective products

If goods are defective and the defect causes injury or damage, the manufacturer is liable for the damage caused. You do not have to prove that the manufacturer was negligent; you have to show that the product was defective and that the defect caused damage.

Labelling

There are specific regulations and standards covering the labelling of certain household and electrical goods including plugs, sockets and light fittings.

should contact an Environmental Health Inspector at your local health board

- ◆ The Office of the Director of Consumer Affairs - advertising of food
- ◆ The Department of Agriculture and Food - meat hygiene (including all the major abattoirs and meat manufacturing and processing plants), milk and milk products, egg and egg products, pesticide control service, animal identification and tracing, the National Beef Assurance Scheme and animal welfare generally
- ◆ The Department of Communications, Marine and Natural Resources and the Marine Institute – seafood.

Medicines are subject to a licensing system which requires that they go through various testing processes

before they are allowed to be sold. There is an EU system for the regulation of medicines – the relevant authority in Ireland is the Irish Medicines Board.

Food Labelling

The rules on food labelling apply to pre-packaged products. The rules are quite detailed but they deal mainly with listing the ingredients and quantities, stating the “best before” and “use by” dates and

giving information on the origin of the food. It is not illegal to sell products whose “sell before” date has passed unless they constitute a risk to health. Food containing genetically modified organisms (GMOs) must be clearly labelled. GMOs are subject to an EU licensing system.

Details of the food legislation are available on the FSAI website.

Regulation

Some industries are regulated and the Regulators have certain responsibilities towards consumers. The Regulators include the Commission for Energy Regulation (electricity and gas); ComReg (telecommunications); the Irish Financial Services Regulatory Authority (IFSRA) (Banks and other financial service providers).

The Regulators all have specific statutory obligations to consumers. The Regulators mentioned all have detailed consumer information and services available. IFSRA has a statutory Consumer Director.

Consumer protection is not the primary function of Regulators. Generally, their main functions relate to the promotion of competition and to ensuring standards. Consumer protection is often a subsidiary function.

Further Information

As we said, this issue should be read in conjunction with Comhairle’s publication ‘Where to Complain’, which lists the many organisations which can help consumers who have problems with goods and services.

Where to Complain

Printed copies are available from Citizens Information Centres, Comhairle Regional Offices and Comhairle Head Office. It is also available online at www.comhairle.ie/publications/publications_booklets.html

The following are among the most important bodies involved in consumer protection and they have extensive information available about your rights and the law. IFSRA conducts surveys of prices and charges and publishes these on its website so you can find out which financial institution will offer you the best deal.

Office of the Director of Consumer Affairs (ODCA)

4 Harcourt Road, Dublin 2.
Tel: (01) 402 5500 Fax: (01) 402 5501
Consumer enquiries: Tel: (01) 402 5555
LoCall: 1890 220 229
Email: odca@entemp.ie
Website: www.odca.ie

Food Safety Authority of Ireland (FSAI)

Abbey Court, Lower Abbey Street, Dublin 1.
Tel: (01) 817 1300 Fax: (01) 817 1301
Advice Line: 1890 336 677
Email: info@fsai.ie
Website: www.fsai.ie

Irish Financial Services Regulatory Authority (IFSRA)

PO Box 9138, College Green, Dublin 2.
Tel: (01) 410 4000 Fax: (01) 410 4900
Consumer Helpline: 1890 777 777
Email: info@ifsra.ie
Website: www.ifsra.ie

Comhairle Information Grants Scheme for Voluntary and Community Organisations 2004.

This Scheme supports innovative initiatives/measures to improve access to information, advice and advocacy services. It is Comhairle's primary fund at national level for supporting information initiatives in the wider community and voluntary sector. The focus of this year's scheme is information initiatives which pro-actively target groups who may experience social exclusion and are responses to emerging information needs arising from a range of social change.

Particular consideration was given to projects connected to national or regional networks. Evidence of on-going linkages and the capacity to replicate the initiative was also sought.

A total fund of €200,000 was available in 2004 for the scheme with maximum awards of €20,000 and minimum awards in the region of €6,000. The scheme was advertised in the national press in May with a closing date of the 30th of June. 244 applications were received. Grants have been awarded to the following organisations

Care for People Dying in Hospital Project:

Development of an information strategy and resources to meet the information needs of patients, families, communities of interest and hospital staff with regard to death and dying.

Catherine McAuley Centre:

Research, produce and disseminate an information manual in several languages to meet information needs of women refugees and asylum seekers.

Clár ICH:

The publication of a tenant handbook aimed at older people living in social housing schemes in the West Region.

Galway Youth Information Centre: the Junction Project:

Production of information on the Juvenile Justice System and Garda diversion projects in simple, everyday language.

Irish Traveller Movement:

Development of a 'legal pack' containing information on areas of law with particular impact on Travellers.

Longford Acorn CDP Project:

Active engagement with men in disadvantaged groups who have had little contact with services.

namhi:

Publication of a series of information booklets/fact sheets for people with intellectual disability.

National Adult Literacy Agency:

Production of an interactive reference guide to plain English for information providers on CD-ROM with accompanying booklet.

National Youth Federation:

Production of an information booklet for agencies working with young refugees, asylum seekers and minority groups.

SPIRASI:

Research and production of a training manual so as to extend the reach of their Health Information Programme service to other areas in the country.

The Immigrant Council of Ireland:

To recruit and train volunteers to provide information by phone, email and in person to immigrants and service providers.

Threshold:

Awareness campaign to publicise the top four changes being brought in by the new Private Residential Tenancies legislation.

Relate Subscription Rates:

Annual Subscription
(12 issues, January to December)
€15.85 post free

Each additional subscription sent
in the same envelope
€1.90 per year.

Published by:

Comhairle
7th Floor, Hume House
Ballsbridge, Dublin 4.
Tel: 01-6059000 Fax: 01-6059099
E-mail: comhairle@comhairle.ie
Website: www.comhairle.ie

Individual copies 75 cent



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