

# DEALING WITH BUILDERS

We frequently speak to callers who are unhappy with a builder or other tradesman and the standard of their work.

Problems with builders experienced by our callers include:

- the builder does not turn up when arranged
- the builder has walked off site
- the quality of the work is not satisfactory
- the quality of the goods supplied as part of the work is not satisfactory
- the work is taking too long

Most of the callers we speak to are unhappy due to the level of communication from the builder and difficulties getting the job finished - particularly when all the money has been paid.

When buying any services, the principal sets of legislation which apply are the Sale of Goods and Services Act 1982 (SGSA), where the contract for the service is before 1 October 2015, or the Consumer Rights Act 2015 (CRA) where the contract for the service is after 1 October 2015.

The Consumer Credit Act 1974 (CCA) may also apply for all purchases made with the help of credit and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR) for distance selling, online or away from a sellers' premises i.e. at home or at work.

In order to be able to use the rights contained in these pieces of legislation (often referred to as your statutory rights) you must be a private individual

buying the services for yourself and the trader must be a business trader. Getting a friend or relative to do the work will not provide the same protection - even if they are a builder by profession. If the work is done on a personal and private basis the legislation will not apply.

Unless using a friend or family member on a personal and private basis, by law the service provided must be:

- carried out with reasonable skill and care.
- provided at the cost agreed prior to the start of the work or at a reasonable cost if none is agreed.
- using materials which are fit for purpose and of satisfactory quality.

Where the contract has been made after 1 October 2015 the Consumer Rights Act 2015 applies and there are additional statutory rights:

- any information said or written by the builder is binding if you rely upon it, which will include any quotations or promises of the results to be achieved.
- the service must be carried out in a reasonable time. Where no time is stated it must be in a reasonable time and this will depend upon the type of service and all the relevant circumstances.

## **My builder's work is very poor. What can I do?**

If there are issues with the standard of the work supplied, and it has not been carried out using reasonable skill and care, it is important to tell the

builder straightaway. Discuss your concerns and give them the opportunity to put things right. It is useful to set your concerns out in writing and then arrange to meet and discuss them.

We frequently get callers who do not wish to discuss the matter with the builder, often where it has been done before and there has been no improvement or that they feel they have lost faith in the builder's ability. However, unless there are extreme circumstances, it is expected that the builder should be given the opportunity to put things right. If the matter proceeds to court it will be expected that some opportunity will have been given to resolve the dispute.

If the matter is not resolved and the poor workmanship is not remedied, you may wish to withhold money from payment. This needs to be done carefully and you need to inform the builder quickly that you are unhappy with the work and you have not accepted the quality of the work complained of. It may be, however, at that point your builder stops any work and/or threatens to make a claim against you for breach of the contract for non-payment of monies owed.

Where the contract for the work is after 1 October 2015 and falls under the Consumer Rights Act 2015 there are further statutory remedies where the builder fails to exercise reasonable skill and care. So if the work is not satisfactory you are entitled to repeat performance of the service or a price reduction.

Repeat performance is requesting the builder to correct any of the work which has not been done properly, although this does not include work that can never be finished to the required standard.

In other words, you cannot expect the work to be finished to a standard which exceeds the physical possibilities. Any repeat work must be done at the builder's expense and within a reasonable time.

The amount of any price reduction will depend upon the seriousness of the breaches and can be up to 100 per cent of the contract price.

If the builder cannot, or will not, put things right it may be possible to claim compensation for:

- the cost of someone else putting the work right.
- repairing or replacing items that have been damaged, such as wallpaper or carpets. The sums claimed do, however, have to be reasonable, taking into account the age and general condition of the goods.
- taking time off work to oversee the repairs.

### **My builder is taking such a long time to do the work, what can I do?**

You may have an agreement with your builder that the work should start and finish on agreed dates, subject to them finding anything which may delay matters. If this is a term of your contract your builder should, of course, stick to it. Where no time is stated then it should be done within a reasonable period of time.

In the event that no timescale is agreed, or the job takes longer than anticipated, a new date should be agreed. Often, we refer to a phrase known as making 'time of the essence'. In other words, agreeing a time for the completion of the works.

If it is the case that your builder does not turn up when it is agreed he should, or disappears for several days without reason, this is usually an operational matter and the builder is not managing his resources properly.

Where your builder misses deadlines, a further and final deadline should be set. In the event that future deadlines are also set it may be possible to bring the contract to an end. However, if considering this you also need to think of the practical aspect of whether or not it will be easy to arrange for a replacement builder to complete the work. It is very often better to try and work with the builder to get the work completed, although this is not always easy or possible.

If it is clear in the contract that the work should be finished by a certain date, failure to do so or to complete by another agreed date, can be a breach

of contract. If the delay causes loss it may be possible to recover damages from your builder.

Where the contract is under the Consumer Rights Act 2015 (after 1 October 2015) your builder will have a statutory duty to complete the work in a reasonable time. All of the above will remain relevant to try and resolve the matter and any further action will depend on the facts.

### **I have arranged for a builder to do some work but have changed my mind. Can I cancel?**

To understand your right to cancel an agreement you should first read your contract documentation if you have any.

If the contract was made off premises e.g. in your own home after a visit from the builder you will have the right to cancel under the CCCR. Under these regulations, your builder must give you notice of your cancellation rights where the value of the service exceeds £42.

Your builder should provide you with:

- a description of the work to be done.
- the total price of the work, or the manner in which the price will be calculated if this cannot be determined.
- details of any right to cancel. The builder also needs to provide, or make available, a standard cancellation form to make cancelling easy, although you aren't under any obligation to use it.
- information about themselves, including their geographical address and phone number.

Under the regulations, you have the right to cancel your order provide you do so within 14 days of the date the order is made. This right is available just because you change your mind and does not depend on the service being faulty in any way.

Generally the service should not start within that 14 day period. If it does you can still cancel but you may need to pay for the cost of the works completed within that time.

Failure of your builder to provide the right to cancel may make them liable to a criminal prosecution and potential fine.

### **Service and goods**

#### **I have paid for the work by credit card. Does that give me any extra rights?**

There are many different ways to pay for services including cash, debit/credit card or loan/hire purchase. Some of these can have important additional advantages and rights under the law.

#### **Debit card**

Where the service is paid for using a debit card and there is a problem it is sometimes possible to get a refund via the bank which issued the card. This is known as a chargeback application and is not something which is a statutory right but is part of the rules which banks subscribe to.

This is not the same as the section 75 application (below) and is only possible if there are funds in the seller's bank account to meet the cost. It cannot be used if you are seeking damages to repair work done. The chargeback remedy can be used for such things as when goods supplied are damaged or if the builder debits your account with more than the agreed amount.

There is generally a time limit of 120 days to make the claim and sometimes a cut-off time limit of 540 days. These times may vary from bank to bank. In the event that the bank refuses to do what you ask, you can request a letter of 'deadlock' to allow you to take your complaint to the Ombudsman.

#### **Credit Card**

Section 75 of the CCA provides additional security when paying for a service over £100. There is an upper limit on this of £30,000. It is not necessary to pay for all of it with the credit card providing part of it. For example, you may pay the deposit for the goods with your credit card and the balance with your debit card. For work valued at less than £100 paid for by debit card you can use the chargeback service (see above).

If the work is faulty, you may make a claim to your credit card company in the same way that you would to the builder. You are able to make a claim to the builder and the credit card company at the same time. This can be very useful if the builder has gone out of business, is refusing to compensate you or remedy the situation.

If your credit card provider will not deal with the issue and refuses to accept that there is a claim, the matter should be referred to the Financial Ombudsman Service (FOS). Where less than eight weeks have passed since the matter was referred to your card provider, you will need to obtain a letter of deadlock to give to the FOS.

Any complaints about a claim should be made to the Financial Ombudsman Service within six months of your claim to the bank. You can contact the service [here](#).

## Problems with goods supplied as part of building works

Goods supplied as part of a building service are often supplied at the same time by the builder undertaking the work. These are known as mixed contracts. For example, when having a bathroom fitted, the installation of the bathroom will be the service, the fittings supplied will be the goods.

The service and quality of the goods will fall under:

- Sale of Goods Act 1979 (SGA), where goods have been purchased before 1 October 2015, or the Consumer Rights Act 2015 (CRA) where goods are purchased after 1 October 2015.
- Consumer Credit Act 1974 (CCA) for all purchases made with the help of credit.
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR) for distance selling, online or away from a seller's premises i.e. at home or at work.

Generally your rights in relation to these goods are that they must:

### Be fit for a particular purpose

Any goods must be fit for the purpose for which they have been purchased.

- The goods must do what you would normally expect them to do, a fridge must keep things cold and an iron must heat up to the right temperature so you can iron clothes.
- The goods must be able to do what the seller says they should do. If you are concerned that the item you are considering will be able to do what you expect and the seller says it will, you should be able to rely upon that. For example, if you ask whether an oven has a certain feature and it does not then it will not be fit for purpose.
- The goods must be fit for the purpose you want to use them for even if that is not the usual use of the item. For example, if you buy an item because the seller recommends it will do a certain job, even though it may not be routinely used for that purpose.

The advice of the seller is a representation that the goods you are intending to purchase are fit for the stated purpose. You can rely upon that representation if it is reasonable to do so.

### Be of satisfactory quality

In addition to being fit for purpose, goods must also be of satisfactory quality for that purpose. It must be in a condition and of a standard that a reasonable person would consider acceptable. Therefore, they must be safe, of an acceptable appearance and finish when they arrive and they must be durable.

The issue of satisfactory quality is probably the most common cause of goods being returned to the seller. Your rights in this situation are detailed below.

### Match the description or sample

Any goods purchased should match the description given to you by the seller. The description can be written, in a picture or by a verbal representation made by the seller. The goods must match what you have been told about them.

### If goods are faulty

If your goods are not satisfactory for any of the reasons set out above it is possible that one of the following remedies may be available:

- reject the goods and have a full refund
- have the goods repaired

- have the goods replaced
- have the goods repaired, and if that does not work, have a refund

In any case, your rights will be against the seller/ builder who sold you the goods and not against the manufacturer. We frequently speak to callers who have been told by the seller that they must contact the manufacturer about the fault because it is under guarantee. This is not the case as your statutory rights are with the seller and any guarantees or warranties are additional to that.

## Rejection of goods

Where goods have been purchased before 1 October 2015 you only have a reasonable time (normally just a few weeks after the purchase) to reject something. However, a reputable seller may give you a refund as a goodwill gesture.

Under CRA there is a statutory right to reject faulty goods within 30 days of the contract (purchase). If the goods are subject to a repair during this time, then the period is paused and will resume again once the repair is complete.

The right to reject the goods is generally used for goods which perhaps cannot be repaired and for which a rejection is the only reasonable course of action. So if you have domestic appliances delivered which are faulty, scratched or ripped, it can, generally, be easy to reject the goods.

## Repair or replacement of goods

If you discover a fault with the goods within the first six months after the purchase there is a presumption the fault existed at the time of the purchase. In this case it is for the seller to prove the fault has been caused by your actions. So, if the fault is caused by something you have done, such as dropping the item or failing to keep it safe, the seller will not be responsible for this.

After the first six months, the situation is reversed and you will have to prove the goods are not satisfactory. In this situation, you will be looking at the durability of the item and the cause of the fault. Again, any damage which is as a result of your actions

will mean the seller is not liable.

For goods bought before 1 October 2015 it is generally for the seller to decide to repair or replace the item. For goods purchased after 1 October 2015, it is you, as the buyer, who can decide to have the item repaired or replaced, provided your choice is not disproportionately expensive compared to the alternative.

For goods bought after 1 October 2015 if a repair fails there is a statutory right for you to ask for a price reduction or to reject the goods at that point. Any price reduction could be up to 100 per cent of the value of the goods but an allowance will be made to reflect the use of the goods at that point.

## Exceptions to your consumer rights

There are some situations where your rights under CRA will not apply. These include where:

- The item is damaged by your actions. Probably one of the most common of these is water damage. Accidental damage is not included or covered by your consumer rights.
- Normal wear and tear. Where an item has been used and its condition has deteriorated in line with expectations provided it has lasted as long as would reasonably be expected.
- Second-hand goods cannot be returned for a fault pointed out at the time of purchase. Anything which subsequently develops as a fault may mean the goods can be returned.

## What happens next?

### Making a complaint

If the issues are difficult to sort out it may be possible to arrange mediation with the assistance of a trade body. Builders (and traders) are often members of a trade association such as Federation of Master Builders (FMB). Trade associations often offer a dispute resolution service that could assist in resolving any issues.

### Claiming damages

It is sometimes the case that relations break down to such an extent that you may be left with half-completed work or work that needs to be redone.

In these cases, in order to make a claim against the builder for the cost of any remedial work it will first be necessary to get another professional to inspect and report on the work and obtain quotes for the necessary works to be completed. It will be this report and the quotes which will form the basis of any claim. It is also very important to take photographs as a record of the work.

Once you have done this, and the sums to be claimed are reasonable, you need to identify who you are making the claim against. Is your builder a sole trader, operating within a partnership or in the name of a limited company?

Once you have identified the value of the claim you need to write to the builder setting it out. This is a new pre-action protocol. If that payment is not made within a specified time, usually 28 days, then you advise them you will be taking the matter to the Small Claims Court and in addition to the money owed you will also include in the claim the amount of the court fees and interest. There are rules concerning letters before action which were introduced on 1st October 2017. This is referred to as a debt recovery protocol and more details can be found [here](#), paragraph 3 details the facts to be contained in the letter.

Once identified, you are obliged to set out in writing what your claim is and give a period of time (usually 14 days) for the matter to be remedied or the sums claimed to be paid. Known as a letter before action, it must set out clearly the extent of the builder's

failure to carry out the terms of the contract as necessary and how the relevant claim is calculated. You can find an example of this type of letter [here](#) from Citizens Advice.

If it is not possible to reach a settlement at this stage, you may wish to consider an action in the small claims court to recover your loss and any compensation. You can bring an action in the small claims court if your loss is worth £10,000 or less. You can find out more about the small claims court [here](#) and by reading our Small Claims Court factsheet.

When considering any form of legal action it is worth checking whether you have any legal expenses insurance. These types of policies can often be part of your house or car insurance and may cover this type of action.

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