

Credit Hire Agreements - the importance of getting them right!

The recent case of *Wei v Cambridge Power and Light Ltd* considered the Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008 (the "Regulations").

The Regulations

The Regulations came into force on 1 October 2008 and apply to most consumer contracts including Credit Hire Agreements ("CHA"s).

The Regulations extend the existing law on cooling-off periods and cancellation rights for consumers, and cover contracts made during both solicited visits and unsolicited visits by traders.

The Regulations apply to any contract, including a Consumer Credit Agreement, between a consumer and trader which is for the supply of goods or services to the consumer and which is made:

- 1 during a visit by the trader to the consumer's home or place of work, or to the home of another individual;
or
- 2 during an excursion organised by the trader away from his business premises; or
- 3 after an offer made by the consumer during such a visit or excursion.

Under the Regulations, a trader is required to provide the consumer with:

- 1 a minimum cooling-off period of seven calendar days starting with the date of receipt by the consumer of written notice of the right to cancel;
- 2 the right within the cooling-off period to cancel the contract if the total payment value is more than £35.

These cancellation rights must be clearly and prominently displayed in any written contract, or displayed in writing if there is no written contract.

Failure to comply with the Regulations will render a contract unenforceable.

The case

While the facts of the *Wei v Cambridge Power* case may not appear relevant to many commercial entities, the findings of law and the impact of the Regulations should certainly be of interest to any company dealing with consumer credit agreements.

The claimant was an innocent party in a road accident and hired a replacement vehicle through Accident Exchange as a result of the damage caused to his vehicle in the incident. The vehicle was leased to the claimant as a consumer on “typical” credit hire terms at a total cost of £4,487. As with most vehicle hire agreements, the agreement was signed when the vehicle was delivered to the claimant’s home and, in breach of the Regulations, no cancellation notice was provided. The claimant subsequently sought to recover damages, including the cost of the replacement vehicle, from the defendant, who was the other party to the road accident.

The court considered four key issues:

- 1 could the court look into the enforceability of a consumer contract when the trader/provider was not a party to the proceedings?
- 2 at what point, including location, was the contract made?
- 3 if the Regulations did apply, had the defendant affirmed the contract by his actions – e.g. by making use of the vehicle under the CHA and thereby confirming the agreement’s validity?
- 4 if the agreement was invalid and therefore unenforceable, could the consumer still claim the costs of the agreement from the defendant who was not a party to the agreement?

On the first point, the court concluded that as this issue had been the subject of detailed argument in the litigation, the court was permitted to look into the validity of the contract, even though it was with a company that was not a party to the proceedings.

On the second issue, the judge, unsurprisingly, said that the point at which the agreement was concluded was a matter of fact and law. On balance, he concluded that the contract had been made at the time the agreement was signed and not during the course of an earlier telephone conversation. The claimant was entitled to see (and potentially reject) any of the terms and conditions that had not been discussed between himself and Accident Exchange prior to the agreement being signed.

On the third point, the court said that consumers should not be able to make bad contracts good by their actions, as this would render the Regulations redundant. Furthermore, the court concluded that the sanction of rendering an agreement unenforceable if a cancellation notice has not been correctly provided was designed to be punitive.

The court held that the agreement was unenforceable between Accident Exchange and the claimant and that the hire charges were therefore not recoverable from the defendant.

In summary

If a contract is caught by the Regulations then the requirements must be followed meticulously. Otherwise the trader risks the contract being unenforceable. Existing contracts, which were entered into after the Regulations came into force, should be scrutinised and fresh agreements entered into if necessary.

From a litigation perspective, the most interesting aspect of the case was that as the agreement was unenforceable between the claimant and Accident Exchange, the claimant was unable to recover from the defendant the payments that he had made.

While this was only an appeal to the County Court, the general points that the judge made about contractual formation, as well as the inability to override the specific requirements of the Regulations, are of some significance.



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