

## THE CONSUMER RIGHTS ACT

## New consumer remedies: be prepared

**The Consumer Rights Act 2015, consolidating existing laws relating to consumers and introducing new rules, came into force on October 1. Here, PIERRE VALENTIN and AZMINA JASANI of law firm Constantine Cannon LLP set out its implications for the art and antiques business**

**Q: Does the act apply to art galleries and dealers?**

Yes it does. The Consumer Rights Act 2015 (CRA) is a long (150 pages) and fairly complex document, applying to the sale of goods and the provision of services, with the act defining goods as “any tangible moveable items”.

That includes washing machines, computers and cars but also art, antiques and collectibles.

Services include those provided by an agency (selling as agent for the seller, or buying on behalf of a client), and other services provided by galleries and dealers to sellers and buyers.

An art gallery or a dealer qualifies as a ‘trader’ if the sale is concluded, or services are provided, in the course of business. If your client is a consumer, you must comply with the act.

However, it is important to note that the CRA only applies to contracts between traders and consumers. It does not apply to contracts between consumers, or contracts between traders.

There are several permutations. If you sell stock to a consumer, the CRA applies. If you sell on behalf of the owner to a consumer-buyer, the CRA applies to the sale contract if the owner is a trader but not if he or she is a consumer.

However, if you sell as agent, you provide a service to the owner, and the CRA applies to the service contract if the owner is a consumer. Equally, if you provide services to the buyer, the CRA applies if the buyer is a consumer.

**Q: What are the act’s implications for art galleries and dealers?**

First, the CRA assumes that certain consumer rights form part of your contract with your consumer-client even if these rights are not recorded in writing (e.g. you sell on an invoice with no contractual terms other than a description of the property, the price and payment terms).

These rights include the right to the property being of satisfactory quality, fit for purpose and matching its description.



**Above:** Azmina Jasani, associate lawyer, and Pierre Valentin, partner, at Constantine Cannon LLP.

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These rights are not new, although there is a question mark over whether the language of the act increases your risk of liability if the artwork is misattributed or fake. Property sold in breach of consumer rights qualifies as ‘non-conforming’.

The CRA also makes it more difficult to escape liability arising from pre-contractual statements about the property being sold, or the services being rendered.

A key change is the introduction of tiered remedies available to consumers if their rights have been violated. The first consists of a 30-day right to reject non-conforming goods.

Once the 30-day period has expired, the trader must be given the opportunity to repair or replace the goods.

If the trader does not repair or replace within a reasonable time, or as is likely to be the case with unique objects, repair or replacement is simply impossible, the consumer has the right to reject the goods or obtain a price reduction. These remedies cannot be excluded or limited by contract.

You should note that a consumer’s right to reject non-conforming goods is distinct from the right to cancel the contract. The right to cancel amounts to the right to change one’s mind when buying goods or services online or away from the trader’s business premises.

The right to reject applies if the goods or services are non-conforming goods or services, whether or not the transaction

occurred face-to-face, online or away from business premises.

The CRA also changes the law on unfair terms in consumer contracts, for example by introducing new terms in the list of potentially unfair clauses. Terms in consumer contracts will be unenforceable if they fail to meet the fairness test.

**Q: Does the act apply equally to private sales and auction sales?**

No. The CRA provides that an individual is not treated as a consumer if he or she buys second-hand goods at public auction and could have attended the sale in person. Here again, a distinction must be made between the sale contract which is formed directly between the owner and the buyer at auction, and the service contract between the auction house and the seller and/or the buyer.

The CRA does not apply to the sale contract, if the auction is live. However, the act does apply to service agreements (cataloguing, marketing etc for sellers; storage, dealing with VAT and so on for buyers) with the auction house, if the seller and/or the buyer deal with the auction house as consumers.

**Q: Should I be reviewing my business practices and terms of business?**

Yes. Art galleries, art dealers, auction houses and professional advisors should review their standard terms and conditions to ensure that they comply with the act.

Importantly, when selling property to consumers, you should take advice on the terms the CRA implies in your contract with the buyer.

Your contract with owner-clients should be considered too. Contract terms should be reviewed by reference to the CRA’s ‘fairness’ test.

You should consider whether your marketing material, and the way in which you describe the property you sell, exposes you and your owner-client to unacceptable risks when selling to consumers.

**Q: What are the risks if I choose to ignore the act?**

The CRA introduces new enhanced consumer remedies, which, among other things, empower enforcers such as the Competition Market Authority and Trading Standards to investigate non-compliant traders, and seek undertakings from them to alter their business practices. Litigation is, of course, another risk.

The act also debuts consumer collective actions, allowing groups of consumers to seek redress for breaches of consumer law. This can have a catastrophic effect on a business, because potentially large groups of clients can club together and seek compensation for payments made by them over many years.

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**JIM BUCKLEY (1944-2015)**

We regret to announce the death of Philadelphia auctioneer **Jim Buckley**.

A stalwart of a generation of general auction valuers, he worked at Freeman’s for much of his career – a tenure punctuated only by the launch of his own firm Fine Arts Co of Philadelphia in 1981. They merged with Freemans in 1988.

Jim’s knowledge across the spectrum of disciplines was encyclopaedic and his passion for antiques equalled only by his love for blues and jazz.

He had started his working life as a radio DJ in the Deep South where he met his British wife Sheila.

Jim was considered, in every sense of the word, a gentleman and he will be greatly missed by all who knew him in the world of art and antiques on both sides of the Atlantic.

A memorial service will be held on Monday, October 26 at 3pm at St Martin-in-the-Fields Church in the Chestnut Hill section of Philadelphia.