

# Equal liability

## Section 75 of the Consumer Credit Act 1974

Buying or selling on credit - who is responsible if things go wrong? In certain circumstances under section 75 of the Consumer Credit Act 1974, the credit grantor may be equally responsible for any breach of contract or misrepresentation by the supplier.

When a trader says that he will supply a customer with goods or services at an agreed price, there is a legally binding contract (not necessarily in writing) between them. Many of the supplier's obligations are set out in legislation, such as the Sale of Goods Act 1979 which says, among other things, that any goods supplied must be of 'satisfactory quality' and 'as described' to the customer. Just as a supplier can sue a customer who refuses to pay, so a customer can sue a supplier who does not fulfil his obligations for **breach of contract**. A supplier can also be sued if he persuades a customer to enter a contract by making a false statement of fact - or **misrepresentation**. Under this head, a customer's right to damages is governed in England and Wales principally by the Misrepresentation Act 1967, in Northern Ireland by the Misrepresentation (Northern Ireland) Act 1967, and in Scotland by common law.

If credit is involved, the situation can be more complicated. Often a supplier does not provide the finance himself, but arranges for a bank or finance company to do so. Or he may accept a credit card or trading check. In these circumstances, under the Consumer Credit Act 1974, the **credit grantor** (whoever provides the credit) normally becomes equally responsible for any breach of contract or misrepresentation by the supplier.

### THE SUPPLIER/CREDIT GRANTOR RELATIONSHIP

To see whether the Consumer Credit Act provisions apply, it is first necessary to look at the relationship between the supplier and the credit grantor. This can take one of three forms:

when the supplier is also the credit grantor

when the supplier is not the credit grantor

when the credit grantor takes on the role of the supplier.

#### When the supplier is also the credit grantor

Where a shopkeeper or wholesaler finances credit to his customers out of his own resources, the supplier - as the credit grantor - is solely responsible for any breach of contract or misrepresentation. In this respect, the Act does not alter his liability.

#### When the supplier is not the credit grantor

Section 75 of the Act provides that the credit grantor is equally responsible with the supplier for any breach of contract or misrepresentation if all of the following four conditions are met.

- 1 **The cash price of the item being supplied is over £100 but not more than £30,000 (including any VAT).**

## **2 The credit agreement is 'regulated'.**

A regulated agreement is one where not more than £25,000 of credit is advanced to an **individual** - a term that covers sole traders, partnerships and unincorporated bodies besides private individuals - and which is not specifically exempt from regulation.

The £25,000 limit is set on the amount of credit, not on the cash price of the item.

Some agreements for credit of £25,000 or less, such as normal trade credit, are specifically exempted from regulation and are therefore not covered by the Act's equal liability provisions (see the OFT booklet *Regulated and exempt agreements*).

Unlike credit card agreements, where a card holder need pay only a fixed minimum amount each month, those for charge cards (such as American Express and Diner's Club) require monthly bills to be settled in full. There is no provision for equal liability. This also applies to debit cards.

## **3 The credit grantor is in the business of granting credit and the credit agreement is made in the course of that business.**

The credit grantor is not liable if the credit is advanced under a non-commercial agreement - such as a loan to a friend.

## **4 The credit is advanced under arrangements between the credit grantor and the supplier.**

A typical example is an agreement between a retailer and a credit card or trading check company. When a

customer buys goods using a credit card or a trading check within the issuing company's scheme, that company - as the credit grantor - assumes equal liability with the retailer. So would a finance company asked by a retailer or a doorstep salesman to arrange a personal loan for a customer to pay for goods or services.

A credit grantor does not share liability if a customer arranges to get credit independently of the supplier he is buying from - through his own bank, for example. Nor would a credit card company share liability if the customer uses his credit card to obtain cash to pay for his purchases.

Similarly anyone who finances the supplier's business but not his individual transactions with customers - such as a bank which allows him an overdraft - does not share liability.

## **When the credit grantor takes on the role of the supplier**

When a finance company undertakes to finance the hire purchase or conditional sale facilities a trade offers his customers, the credit or sale agreements are generally between individual customers and the finance company (not the trader). Such an agreement covers both the credit and the supply of the goods. In effect, the trader sells the goods to the finance company which then supplies them to the customer. As supplier as well as credit grantor, the finance company bears responsibility in **both capacities**. It is also responsible for what the trader says and does when he negotiates with the customer - as it is when a supplier acts as its agent (see next section).

## THE SUPPLIER AS THE CREDIT GRANTOR'S AGENT

Frequently, the supplier is the only person a customer has any contact with during negotiations. He provides information about the credit terms as well as about the goods, land, or services being financed by the credit - as when a furniture salesman explains to a prospective buyer the hire purchase terms on a piece of furniture. In this case (if it is a regulated agreement), under section 56 of the Act the supplier is taken to act on the credit grantor's behalf - as his agent - as well as his own. In effect, this makes the credit grantor responsible for the negotiations as if he had conducted them himself. This is an addition to any responsibility he may have under section 75.

## HOW EQUAL LIABILITY WORKS

Although section 75 is concerned with breach of contract or misrepresentation by a supplier (on goods, land or services financed by credit), it does not itself provide grounds for a claim against that supplier by a customer. (Such action must be taken under other law, such as the Sale of Goods Act or the Misrepresentation Act.) But if the customer has a claim against the supplier, under section 75 he has a like claim against the credit grantor. He can choose whether to sue the supplier, the credit grantor, or both, for the full amount of the claim. In most cases, it is sensible to claim from the supplier first if he is still in business.

Equal liability applies even if the customer has broken the agreement - although this might lead to a counterclaim by the credit grantor.

## SAFEGUARDS FOR THE CREDIT GRANTOR

Subject to any agreement to the contrary he may have with the supplier, under section 75 the credit grantor is entitled to be reimbursed by the supplier for any loss he suffers from the result of a claim. This includes all costs reasonably incurred in defending the claim, and the cost of meeting if the claim is upheld. The credit grantor can also have the supplier made a party to any proceedings brought against him by a customer.

If the supplier has gone into liquidation, however, or is otherwise unable to honour his obligations, the credit grantor will not, in practice, be able to recover money from him. (Credit grantors may like to consider whether to take out indemnity insurance to cover such a risk.)

## CONTRACTING OUT

A credit grantor cannot contract out of his obligations under section 75 or the effect of section 56. Any attempt to do so is void.

While a credit grantor is entitled to be reimbursed in full by a supplier for any loss sustained under action taken under section 75, they can mutually agree to vary that entitlement. Such an arrangement does not affect the customer's rights.

## AGREEMENTS MADE BEFORE 1 JULY 1977 AND CREDIT CARDS

Section 75 applies to credit agreements made on or after 1 July 1977.

Agreements made before that date and not subsequently varied mutually by creditor and customer may not be subject to the equal liability provisions of the Act. (See the free OFT booklet *Regulated and exempt agreements*.)

With regard to equal liability the legal position of credit card holders who took out their card under an agreement prior to 1 July 1977 is unclear, since it has not been tested in the courts. Although the major credit card issuers take the view that the protection provided under section 75 does not extend to such card holders, they have assured the Director General of Fair Trading that they are willing to accept liability for defective goods or services, such liability being limited to the amount of the transaction debited to the card holder's account.

Card holders with an agreement made before 1 July 1977 may like to consider ending it and taking out a new one with their card company to be certain of having full protection under section 75.

Also untested by court action is the liability of a credit card company when a purchase has been made by an 'additional card holder' (often the spouse of the account holder).

**Important:** this note can give general guidance only. It should not be taken as an authoritative view of the law. If you are uncertain how you are affected, please seek professional help.

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