

The Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008

The latest tripwire for solicitors with CFA's and retainers generally.

The requirements of the regulations are relatively simple (for our purposes):

- They apply to a contract between a consumer and a trader (which includes a solicitor or anyone acting on their behalf) which is for the supply of goods or services and which is made during a visit by the trader to the consumer's home or place of work, or to the home of another individual
- The consumer has a right to cancel such a contract, including a CFA, within 7 days of receipt of the notice of right to cancellation
- The notice must be dated, indicate the right of the consumer to cancel the contract within the cancellation period, be easily legible and contain (inter alia)—
 - The identity of the trader including trading name if any.
 - The trader's reference number, code or other details to enable the contract or offer to be identified.
 - A statement that the consumer has a right to cancel the contract if he wishes and that this right can be exercised by delivering, or sending (including by electronic mail) a cancellation notice to the person mentioned in the next paragraph at any time within the period of 7 days starting with the day of receipt of a notice in writing of the right to cancel the contract.
 - The name and address, (including any electronic mail address as well as the postal address), of a person to whom a cancellation notice may be given.
 - A statement that notice of cancellation is deemed to be served as soon as it is posted or sent to a trader or in the case of an electronic communication from the day it is sent to the trader.

- o A statement that the consumer can use the cancellation form provided if he wishes.
 - o a cancellation form using specific wording set out in the Schedule, provided as a detachable slip and completed by or on behalf of the trader in accordance with the notes; and
- Where appropriate the notice must also state that the consumer may be required to pay for the goods or services supplied if the performance of the contract has begun with his written agreement before the end of the cancellation period (which a CFA commonly will – the client should be asked to sign a specific written waiver to this effect);
- Importantly, where the contract is wholly or partly in writing the notice must be incorporated in the same document (i.e. a CFA or terms of business) and be set out in a specific format.

Most importantly, and harking back to the bad old days of the CFA Regulations 2000, a contract to which the Regulations apply '*shall not be enforceable*' against the consumer unless the trader has given the consumer a notice of the right to cancel and the information required in accordance with the regulations (Regulation 7(6)).

In addition, a trader who enters into an agreement without giving the necessary right to cancel is at risk of a criminal conviction and a fine (Regulation 17).

As noted, these regulations apparently apply to all contracts of this type and therefore their scope is potentially wider than the CFA Regulations (though, for obvious reasons, they are likely to be particularly relevant to personal injury and clinical negligence CFA's).

The Law Society is to produce a practice note in relation to them and is expected to campaign both for a favourable resolution of the issue and for future consumers legislation to exempt solicitors retainers much in the same way as there is the Direct Professional Body exemption from the Financial Services & Markets Act 2000.

In the interim, expect a number of test cases exploring the scope of the regulations and, most likely, a further development of the concept of substantial compliance as seen with CFA's in Hollins v Russell [2003] 1 WLR 2487.