

ROLE OF AGENTS IN CONSUMER PROTECTION

This paper examines the role of agents in the supply of goods subject to Consumer Protection legislation as enforced by District Councils in Northern Ireland. The paper does not attempt to provide an insight into the role of authorized representatives in accordance with Article 100A directives, which is dealt with the paper 'Understanding European Legislation'.

Types of Agent

Agents may act in various roles which involve the supply of retail goods from a manufacturer to the ultimate consumer.

Examples would include

- (1) Auctioneers - arranging supply of goods normally by auction ; they may or may not own the goods.
- (2) Representatives of manufacturers or importers - putting people (usually retailers/wholesalers) in touch with manufacturers or importers; taking no active part in the supply of the goods; probably receiving commission on contracts established or on orders made.
- (3) Agents of manufacturers/importers or others - acting as an intermediary, dealing with paperwork, invoices etc. but often not actually seeing the goods or; delivery direct to wholesaler/retailer which may be in a different area or a different country.
- (4) Agents of the consumer - acting as a sourcing agent for a consumer obtaining goods on their behalf, usually involving a profit element from the sale or possibly commission.
- (5) Catalogue Agents - Persons acting on behalf of a catalogue company; scale may be very small or more substantial; for example involving party hosting. May also include pyramid type selling where those at the foot of the pyramid supply to a consumer but may not be 'acting in the course of business'. Those higher up the pyramid are more likely to be acting in the course of a business.
- (6) Shipping/transport agents - generally having no other distinct involvement with the goods.
- (7) Agents involved in hire purchase or conditional sales.

Legal Position

Section 46 of the Consumer Protection Act defines supply as follows.

46 Meaning of 'supply'

- (1) Subject to the following provision of this section, references in this Act to supplying goods shall be construed as references to doing any of the following, whether as principal or agent, that is to say -
 - (a) selling, hiring out or lending the goods;
 - (b) entering into a hire-purchase agreement to furnish the goods;
 - (c) the performance of any contract for work and materials to furnish the goods;
 - (d) providing the goods in exchange for any consideration (including trading stamps) other than money;
 - (e) providing the goods in or in connection with the performance of any statutory function; or
 - (f) giving the goods as a prize or otherwise making a gift of the goods;and, in relation to gas or water, those references shall be construed as including references to providing the service by which the gas or water is made available for use.
- (2) For the purposes of any reference in this Act to supplying goods, where a person ('the ostensible supplier') supplies goods to another person ('the customer') under a hire-purchase agreement, conditional sale agreement or credit-sale agreement or under an agreement for the hiring of goods (other than a hire-purchase agreement) and the ostensible supplier -
 - (g) carries on the business of financing the provision of goods for others by means of such agreements; and

- (h) in the course of that business acquired his interest in the goods supplied to the customer as a means of financing the provision of them for the customer by a further person ('the effective supplier'), the effective supplier and not the ostensible supplier shall be treated as supplying the goods to the customer.

This definition of 'supply' is vital to considering the role of the District Council in investigating the supply of unsafe goods.

It is of particular note that the reference in 46(1) specifically refers to 'whether as principal or agent' in the activities listed from (a) to (f) of Section 46(1). This definition of supply relates to all regulations made or deemed to be made under the Consumer Protection Act 1987.

It does not, however, relate to supply to goods under the General Product Safety Regulations 1994. To constitute supply under the General Product Safety Regulations, ownership must be with a person, even for the briefest of times to constitute supply. (DTI Guide and LACOTS paper 14/8/98 refer).

The major caveat to both these definitions of supply is that the supplier must be acting in the course of a business (or profession in the case of GPSR).

Implications and Applications

Each instance of an agent's involvement in the supply of goods and the use of enforcement authority powers must be considered on its merits. It will depend on the goods and the precise role of the agent and the relationships between the parties in the supply chain including any contractual relations established.

Subject to the above, the examples of agents identified may be expected to be suppliers, or otherwise

- (1) Auctioneers - suppliers of goods regulated under the Consumer Protection Act 1987. Not suppliers for goods regulated under General Product Safety Regulations 1994 unless obtaining ownership of these goods for a period of time (e.g. a house clearance where the auctioneer purchases the goods). Charity auctioneers may not be liable subject to the level of activity.
- (2) Representatives of manufacturers/importers - very dependent on their precise role. Generally activities may not fall within the definition of supply but careful investigation of their role is essential to reach a conclusive opinion.
- (3) Agents of manufacturers/importers or others - these would be expected to be suppliers, in terms of Consumer Protection Act 1987 and probably also in relation to General Product Safety Regulations 1994.

Enforcement difficulties may occur in that there may be no goods to examine. Paperwork can be examined and liaison with other authorities in line with the Home Authority Principle may be necessary.

- (4) Agents of the consumer - these agents would usually be expected to obtain ownership of the goods and pass that ownership on, therefore most likely suppliers.
- (5) Catalogue agents - scale of their business is of significance to decide if acting in the course of a business. Goods regulated by Consumer Protection Act 1987 would be supplied subject to the scale of businesses; goods regulated by General Product Safety Regulations 1994 would not unless ownership at a stage is established.
- (6) Shipping/transport agents - Not expected to be suppliers.
- (7) Finance agents - by section 46(2) (see above) not suppliers, also not producers or distributors by General Product Safety Regulations.

The foregoing is to be used as a guide only. Legal advice may be necessary if the circumstances of supply are not clear or circumstances other than those outlined occur.