

CONSUMER RIGHTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Consumer Contracts for Goods, Digital Content and Services

Chapter 4 Services

What statutory rights are there under a services contract?

Section 49: Service to be performed with reasonable care and skill

242. This Section corresponds to section 13 of the SGSA but, as with all the provisions in Part 1 of the Act, it only relates to contracts between traders and consumers, specifically here, where a trader supplies a service to a consumer. It removes the legalistic reference to an ‘implied term’ that is in the SGSA and simply says that every contract where a trader supplies a service to a consumer includes a term that the service must be performed with reasonable care and skill. The standard that the trader must meet in section 49 and in section 13 of the SGSA however is the same and if the trader does not meet the test of “reasonable care and skill”, the trader will be in breach of contract.
243. “Reasonable care and skill” focuses on the way a service has been carried out, rather than the end result of the service. This means that, if a trader has not provided a service with reasonable care and skill, they will be in breach of this right, whatever the end result.
244. This provision does not include a definition of “reasonable care and skill”. This is to allow the standard to be flexible between sectors and industries. It is also to reflect that current case law provides guidance on this meaning and, further, that future case law might elaborate on that guidance. It is generally accepted that relevant to whether a person has met the standard of reasonable care and skill are industry standards or codes of practice. The price paid for the service can also be a factor in determining the level of care and skill that needs to be exercised in order to be reasonable. For example, a consumer might expect a lower standard of care and skill from a quick and cheap repair service than from a more expensive and thorough one.
245. For example, if an individual engages a high-cost, specialized gardener to landscape his/her garden, that gardening service must be provided with reasonable care and skill. If the gardener does not cut and treat the grass to the industry standard, it is likely that a court would find that the gardener did not exercise reasonable care and skill and the consumer would have the right to remedies (explained below).