

CONSUMER RIGHTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Chapter 3 Digital Content

Compensation for damage to device or to other digital content

Section 46: Remedy for damage to device or to other digital content

219. Currently, if a consumer downloads some software that contains a virus, he/she could seek to make a negligence claim against the trader if the virus caused loss or damage to the consumer's device or other digital content; claiming that the trader breached a duty of care and skill which caused the consumer loss. This may not be obvious to consumers, however, and this type of negligence claim does not have statutory underpinning. The intention behind this section is therefore to engage the principles behind a negligence claim but limit the type of loss that can be claimed. This section applies to all digital content contractually supplied, whether paid for with money, or free (as long as it is provided pursuant to a contract).
220. If the consumer can demonstrate that the digital content caused damage to the consumer's device or other digital content and the damage was caused because trader failed to use reasonable care and skill to prevent it, then the consumer is entitled to a remedy. The trader can either offer either to repair the damage (as long as that can be done within a reasonable time and without significantly inconveniencing the consumer), or to financially compensate the consumer for the damage. Once the trader agrees the consumer is entitled to compensation, the payment must be made without undue delay and at the latest within 14 calendar days. The trader cannot charge the consumer a fee for the payment of the compensation
221. What constitutes "reasonable care and skill" will be judged against the standards of the profession. For example, it would not generally be reasonable to expect a trader to check every single possible configuration on a consumer's device before providing digital content. However, if the trader has not done something that other traders would do and this has caused damage, it is unlikely to meet the standard of reasonable care and skill. What is reasonable will also depend on the particular circumstances. For example, if an update is an emergency update in response to a security threat, then it may be that the necessary standard of care would be considered lower than the standard that would be reasonable for routine updates designed to fix bugs.
222. A negligence case could still be taken instead of the consumer claiming under this section.
223. In summary, the remedies that apply for breach of the consumer's statutory rights are as follows:

*These notes refer to the Consumer Rights Act 2015
(c.15) which received Royal Assent on 26 March 2015*

<i>Consumer's statutory rights being breached</i>	<i>Remedies that may apply</i>
Digital content to be of satisfactory quality (section 34)	<ul style="list-style-type: none"> • The right to repair or replacement (section 43) • If repair or replacement are not possible or do not resolve the fault within a reasonable time or without causing significant inconvenience to the consumer the right to a price reduction (section 44)
Digital content to be fit for particular purpose (section 35)	<ul style="list-style-type: none"> • The right to repair or replacement (section 43) • If repair or replacement are not possible or do not resolve the fault within a reasonable time or without causing significant inconvenience to the consumer, the right to a price reduction (section 44)
Digital content to be as described (section 36)	<ul style="list-style-type: none"> • The right to repair or replacement (section 43) • If repair or replacement are not possible or do not resolve the fault within a reasonable time or without causing significant inconvenience to the consumer, the right to a price reduction (section 44)
Other pre-contractual information (section 37)	<ul style="list-style-type: none"> • The right to recover costs incurred as a result of the breach (section 42)
Trader's right to supply digital content (section 41)	<ul style="list-style-type: none"> • The right to a refund (section 45)
Remedy for damage to device or other digital content (section 46)	<p>The trader must either:</p> <ul style="list-style-type: none"> • repair the damage; or • compensate the consumer with an appropriate payment (section 46)