

## Non Legislative methods of solving consumer conflicts:

When buying, a basic rule applies; “Caveat emptor” - let the buyer beware.

**Contact the retailer:** The consumer should contact the retailer and outline their complaint and problem with the product/service. When it is in writing it tends to be taken more seriously.

**Talk:** Discuss the problem to clarify any difficulties

**Negotiation:** This is the process of bargaining to try and reach a mutually acceptable solution to the conflict. Both parties must outline their position with regards to the issue and make a compromise - a solution that both can live with.

### Third Parties:

**Ombudsman for public services;** this office investigates complaints about the activities of government, local authorities, the Health Service Executive and An Post. It only investigates the complaint if the person has exhausted all other avenues in trying to resolve it. The complaint must be made within a year and if the ombudsman decides that it is justified to investigate, they make a recommendation to the public body. This is NOT legally binding on either party involved in the dispute.

**Financial services ombudsman:** Investigate claims relating to financial service providers such as banks, building societies and insurance companies.

**Consumer Association of Ireland:** An interest group for consumers aiming to ensure that consumers get good quality products and services and good value and that they know their rights. Any consumer can contact the CAI if they experience a problem in purchasing goods and services and they are provided with free expert advice as to how to deal with the dispute/ problem and their rights.

CAI also publishes “*Consumer Choice magazine*” which publishes articles about consumers rights and helps them make good buying decisions.

It lobbies the government on issues such as consumer laws and the availability of consumer advice services.

**Trade Associations:** Set standards for their own members to ensure that customers get the best possible service.

SIMI, ITAA

## Legislative methods of solving consumer conflicts

If consumers and retailers cannot reach a satisfactory agreement through non legislative procedure then a legislative procedure is pursued. This involves referring to laws of Ireland or by using a legal organisation.

### **Sale of Goods and Supply of services act 1980:**

#### **Rights of buyer in relation to goods sold:**

**Merchantable Quality:** The product must be of reasonable standard and quality taking into account what they are meant to do, their durability and their price.

**Fit for their purpose:** Goods must be reasonably fit for the purpose they were intended to serve as indicated by the buyer.

**Corresponding to sample:** If the sale is by sample then the bulk of goods must correspond to the sample.

**Sale by description:** goods must be sold as described by the seller in advertisements, brochures or as stated by a sales person and must match description on package, i.e. does what it says on the tin.

#### **Rights of buyer in relation to services sold:**

The supplier must have the necessary skill to provide service.

The service must be provided with due diligence and proper care

Any materials used in the service must be of good quality and fit for purpose

Any goods supplied as part of the service are of merchantable quality.

#### **The retailer/seller is responsible:**

The seller or service provider is responsible for putting right defective goods or services. The manufacturer may be at fault but the contract is with the seller and the duty to put things right lies with the seller.

### **Signs limiting liability are illegal**

They cannot put up any sign that gives the impression that a consumer has no legal rights, e.g. "No Refunds on Sale Items", "Credit Notes Only", "No Refunds".

### **Guarantee**

Cannot limit the rights of the consumer. A guarantee is a bonus in addition to a consumer's normal legal rights.

### **Unsolicited goods**

This refers to sending goods to people who have not ordered them and seeking payment later. Person can keep them after 30 days written notice that the goods aren't required

**I think this law does a good job in protecting consumers because:**

**It ensures consumers get a refund if they are victims of buying faulty products. While the law cannot do away with faulty products themselves, it can ensure that consumers don't lose out financially if they buy a faulty product.**

**Furthermore, consumers cannot be fooled into thinking that they have to accept credit notes etc.. by retailers putting up such signs. By banning illegal signs it protects consumers who don't know rights.**

### **Redress:**

**Refund:** If goods are not found to be of merchantable quality from the beginning and the consumer acts within a reasonable time of the sale, the goods can be rejected by buyer and a full refund should be issued.

**Partial refund, repair or replacement:** This can be provided by the seller if the consumer has used the product or has delayed in acting.

# Consumer Protection Act 2007

**Establishes the National Consumer Agency on a statutory basis**

**it updates and modernizes consumer law**

**It deals with unfair commercial practices**

**The National Consumer Agency:**

**Informs consumers of their rights:**

It does this through publishing a shopper's rights card, which summarizes and explains consumer rights to them, it runs a consumer phone service where they give advice on consumer problems, they have a website - [www.consumerconnect.ie](http://www.consumerconnect.ie) which provides lots of consumer info.

**Having a good understanding of consumer rights empowers Irish consumers to make informed consumer choices and it encourages them to seek quality products and services.**

**Investigates breaches of consumer law**

They investigate businesses that breach the relevant consumer law

They have the power to enter business premises, take evidence, bring the Gardaí and apply to courts for search warrants.

**Real power to investigate businesses that break law**

**Enforce relevant consumer laws**

They can issue on the spot fines to businesses that break the law about **price displays**.

Can name and shame businesses that break consumer law in their consumer protection list

It can apply to the courts for a prohibition order to stop businesses engaging in illegal practices.

They can refer cases to the DPP

**If Irish consumers are lied to or misled they have a government backed organisation to ensure they get redressed, it never happens again and the business gets punished**

**Conducts research into consumer issues:**

Carries out research to find out what the most important issues to Irish consumers are, what areas of consumer laws need to be improved and what areas consumers need information about.

**This ensures that the consumers and the government are aware of the latest scams, ensures consumers won't be fooled.**

**Advocates for consumers**

The advise and make recommendations on any policy that involves or is likely to impact consumer welfare and protection, they make proposals for new legislation, consults with other agencies to assess the impact their decisions have on consumers

**Irish consumers have a powerful organisation to stand up for them and ensure there welfare is protected.**

## **2. Consumer Protection**

deals with unfair business to consumer commercial practices.

Prohibits misleading advertisements

Information in advertisements is fair and accurate

Prohibits advertiser from making false or misleading claims about the product or service

## **3. Unfair commercial practices**

**Misleading Practices** - misleading information and with holding material information

**Aggressive practices** - Harassment, coercion, putting unfair pressure on someone, taking advantage of a consumer's misfortune and using threatening or abusive behaviour.

**Prohibited Practices** - Making false claims regarding cures for illnesses, offering free prizes when it costs money to claim the prize, persistent cold calling having been asked to stop, pyramid schemes ( where a person pays money but the primary benefit is derived from other people being introduced into the scheme rather than the product), demanding payment for unsolicited goods, running competitions and promotions when the top prize isn't available.

## **4. Other Areas of CPA 2007**

### **Price Display Regulations**

CPA 2007 gives the government minister power to regulate prices of certain products to be displayed in a specific manner, eg. inclusive of charges, fees and tax.

### **Price Controls**

An emergency measure must be decided by government and not just by minister of enterprise trade and employment.

### **Codes of Practice**

provides for the recognition of codes of practice drawn up by traders and groups of traders and for the NCA to approve them.

### **Enforcement**

**Written Undertaking:** Can accept a written undertaking from a trader saying that the prohibited practice will cease, if they renege the NCA may apply for a prohibition order.

**Prohibition Order:** NCA may apply for a prohibition order from High Court/ Circuit court prohibiting a trader from engaging in a prohibited practice.

**Compliance Notice:** NCA can serve a compliance notice on a trader whom it considers to have engaged in an illegal practice. The trader has 14 days to appeal and if they fail to comply, NCA make issue criminal proceedings.

**Fixed payment notes:** NCA can issue on the spot fines to businesses who breach pricing regulations

**Consumer Protection List:** NCA publish a consumer protection list in which they name all of the traders that have been convicted of criminal offenses, subject to court orders, bound by an undertaking, served with a compliance notice or subject to a fixed payment note.

**Consumers get honest information about the products and services they wish to buy and the price they will have to pay, this allows them to make informed consumer decisions.**

**If they are misled the law ensures that action can be taken against seller**

**Protected from unfair commercial practices**

**Allows consumers to apply to courts for damages if they suffer loss due to misleading practices.**

# Small Claims Court

Deals with consumer complaints in relation to goods and services purchased for private use by somebody selling them in the course of business. Claims can be made for bad workmanship, faulty goods and minor damage to privately owned property.

Maximum claim is €2,000

A claim is made either through the internet by downloading an application form or registering with your local district court for €25

Both sides make their case and are encouraged to reach a settlement

A decision made by the registrar of the court is not legally binding but usually accepted, appeals can be made through the district court and can be heard before a judge there.

Since January 2010, made available to businesses claiming against other businesses.

**Fast, informal and easy way for consumers to resolve disputes**

**Inexpensive and no solicitors are required**

**Unbiased and fair judgement**

**convenient - online service**

**high success rate approximately 75% cases settled.**

# Industrial Relations Conflict

**Industrial relations** refers to the relationship that exists between the employer and employee. Industrial relations can be good or bad, covers issues such as how they work together, communicate with each other and generally how they get along.

## **Importance of good industrial relations:**

**Moral and Productivity** - Employees will be happier in their jobs, their willingness to do their best for their employer who treats them well increases which leads to an increase in morale, the fact they are more likely to put in more effort also increases business productivity.

**Contribution** - The employer will delegate work to employees because they trust them. This gives them the power to make decisions on behalf of the business and means the employee will make a useful contribution to the success of the business.

**Labour Turnover/ Absenteeism** - decreases because employees are more likely to stay in a job that they are happy with and less likely to take days off - absenteeism. This saves money in recruiting, selecting, training and so on.

**Less chance of strikes** - strikes are bad for the business due to loss of reputation, sales etc.. and for the employee due to loss of wages.

## **Non Legislative Methods**

**The employer and employee try to solve the conflict themselves or with the help of others but without reference to any Irish laws.**

### **1. Negotiations**

**The process of bargaining to try and reach a mutually acceptable solution to the conflict.**

The first step is to direct negotiations between employer and employees, this involves both parties sitting down and discussing and outlining their position in the conflict. The employee may be represented by their trade union and the employer by the management. They delineate what they think the problem is and how it should be solved, they try and reach a solution they can both accept, often through compromise.

When both side agree on a deal it is called a **collective agreement** and is not legally binding.

## **Trade Unions**

**A trade union is an interest group set up to represent employee's views and interests.** An annual subscription fee is paid and the employee enjoys all of the benefits of being a member of a trade union.

The union will fight to get better working conditions and rates of pay for their members. They may have professional negotiators who will bargain with an employer on behalf of union members.

They may get a better deal than if the employee negotiated for themselves

If an individual employee has a dispute with the employer the union takes up their case and represent and negotiate on their behalf and cover all legal bills necessary.

Represent employees in national pay agreements between social partners. The union tells the ICTU what it's members think and the ICTU uses this to negotiate a deal that gives union members what they want.

Fights to protect members interest. Uses strength and power to fight for members to keep their jobs, if redundancy need be, they fight for the best possible redundancy package. If members are in a dispute the union may publicise their cause. eg. INO put posters up on billboards showing the importance of nurses.

**Shop steward:** A spokesperson elected by employees as their official union representative in the work place.

Recruit new members for the union

represent members in negotiations with management

inform union head office of member's concerns

keep members up to date with information from the union office.

## **ICTU**

**An interest group representing almost all of the trade unions in Ireland. They have a lot of power and ensure that workers are listened to by speaking for almost the entire trade union movement.**

**National Pay Agreements** - They negotiate on behalf of Irish workers in the government held national pay agreements between social partners. It tries to secure the best possible deal for Irish workers. e.g. "Towards 2016" - 10% pay rise over 27 months for all workers

**Permission for all out strikes** - If all of the workers in a business want to go on strike they need permission from the ICTU to do so.

**Settles disputes between unions** - If 2 unions are having a dispute the ICTU mediates in it to help them sort out differences.

**Provide training to unions** - train shop stewards and other union officials in the skills necessary to run a union - negotiation skills, employee rights etc..

**Promote the cause of the trade union movement** - They represent over 750,000 workers in Ireland and uses PR techniques to put forward the arguments of workers and win public support for their cause. They also make submissions to Minister of Finance each year on behalf of working people.

## **2. Conciliation**

**This is when a third party or conciliator assists the parties in a dispute to try and resolve it through continued negotiations.**

The conciliation process gets both parties to listen to each other's points of view, discuss issues and negotiate an agreed settlement before the dispute grows into a serious one. An agreement if reached is not legally binding. Conciliator does not tell them what they must do but may offer a formula in solving the problem or suggestions to help them reach an agreement they can both live with.

## **3. Arbitration**

**This where the settlement of a dispute is sent before a neutral third part or Arbitrator for adjudication.**

Listens to both sides and makes a recommendation for settlement. This is usually binding on both parties as they agree in advance to the process and decision being binding.

**Legislative methods of solving industrial relations conflicts.**

### **Industrial Relations Act 1990**

**Defines the term trade dispute - Any dispute between employers and workers connected with the employment, non employment or the terms and conditions of the employment of any person.**

**Secret Balloting and 1 week's notice**

Employees must hold a secret ballot, and if a majority votes for a strike they must give their employer 1 week's notice.

Secret ballot ensures that no one is intimidated into voting a certain way by not using "show of hands in public"

### Primary Picketing

If employees have the secret ballot and give the employee 1 week's notice they can picket peacefully outside the business premises. This involves employees walking around premises with placards in hand to draw attention to and get public sympathy for their case and discourage

Legitimate Trade Dispute	Illegitimate Trade Dispute
1. Pay and conditions of employment - employees are entitled to take industrial action if they are arguing with their employer about pay, rates for over time, holidays, working conditions etc..	1. Closed shop agreements - when the employee only has the choice of one union to represent them. The management will only speak to that union
2. Dismissal or suspension of an employee - If an employee is dismissed or suspended via disciplinary procedure employees can take action if they disagree with their employer	2. Political issues - employees are entitled to protest against the government but not while they're supposed to be working, it is not fair to punish employer for government actions
3. Refusal to recognize trade unions - They can take action if the employer refuses to talk to their trade unions	3. Disagreement between management and employees as to how business should be run
4. Discrimination - employees can take action if their employer treats some less favorably than others	
5. Duties required of employees - they can take action if they feel that their employer asks them to do more than what is on their job description/if they disagree with what employer asks them to do	

customers from entry.

### Secondary Picketing

The employees can picket outside the premises of another employer only if he is helping their boss break up the peaceful picket.

## **Striking workers cannot be stopped or arrested or sued**

The employer cannot sue for damages or apply to the court to get a judge to stop employees picketing provided they had secret ballot and gave 1 week's notice. Gardaí cannot stop or arrest or move on employees who are picketing peacefully.

## **Establishes the Labour Relations Commission**

**Set up to promote better industrial relations and help solve disputes.** 7 members - 2 employer reps, 2 employee reps, 2 government reps and a chairperson.

It provides a conciliation service. An industrial relations officer helps disputing employees and employers negotiate a mutually acceptable solution in order to resolve the dispute. She offers advice, assistance and even possible solutions but doesn't tell them what to do. **Free service, for both parties and over 80% cases are settled here.**

It provides an advisory service for employers and employees on how to behave in order to have and maintain good industrial relations, offers free and professional advice on how to get on better.

### **Helps prevent disputes**

Draws up codes of practice to be used by employers and employees in certain industrial relation situations. These are a set of rules designed to minimise problems in employment, e.g. addressing bullying. **Better relationships, promotes IR and less disputes**

It conducts research into Industrial relations and monitors current developments in IR. It tries to develop new ways of solving problems or new problems that may arise. **Helps identify possible future solutions in IR and come up with solutions before they arise**

**Rights Commissioner** - Investigates disputes involving single employees or small groups of employees in relation to unfair dismissals, maternity leave, disciplinary procedures and suspension. Both the employer and employee must agree to the services of the rights commissioner. Private hearing held, both parties set out case and may bring witnesses and can comment on what the other has said about them. Rights commissioner will try reach a mutually acceptable solution, if this doesn't work they issue a recommendation. This can be appealed by either party via Labour Court. **It provides a place where a single employee can go, if they feel victimised and get justice while still protecting their privacy and minimising distress. Also it is free and any recommendation is not legally binding so there's nothing to lose.**

## **2. The Labour Court**

**The court of last resort, not a court of law and issues recommendations which are only legally binding if they involve a breach in Employment Equality Act 1998.**

1 chairperson, 3 employee representatives and 3 employer representatives.

Investigates industrial disputes and issues non binding agreements. They first ask the parties to submit their case in writing before the actual hearing. At the hearing they have the power to summon witnesses under oath.**it has the power to get the truth in the conflict and therefore make a fair recommendation**

Hears appeals from employers and employees against the recommendation of the equality officer in discrimination case. They consider the matter and make a legally binding judgement. **Deals with workplace discrimination very thoroughly in that its ruling is legally binding.**

Interpret LRC's codes of practice. It gives its opinion as to how LRC's codes of good practice should be interpreted, utilised and implemented and it investigates breaches of these codes by either employee or employer. **By investigating breaches it ensures employers and employees obey the best IR practice.**

Registers collective agreements made between employers and employees. In this way, they make the agreement legally binding, so if either breaks their terms or conditions the other party can bring them to the labour court and have it investigated. **It gives both sides the confidence in knowing that the agreement they reached cannot be broken once registered.**

### 3. Unfair Dismissals Act 1977/93

**Protects employees from being unfairly dismissed and establishes the burden of proof as being the employer's. i.e. the employer must prove that they had substantial grounds in justifying the dismissal.** Every dismissal is presumed unfair until they can show this. The Acts do not apply to a person who has been working for less than a year under the contract EXCEPT in the cases of certain leaves; parental, maternity, carer, adoptive and or trade union membership or rights under the minimum wage act 2000.

Fair dismissal	Unfair Dismissal
1. Incapable of doing the job - physically cannot do work expected of them because of lateness, absenteeism, persistent absence through illness	1. Pregnancy - an employee cannot be sacked because they are pregnant or because of issues relating to pregnancy

Fair dismissal	Unfair Dismissal
2. Incompetent - an employee who consistently fails to meet standards of work expected of them	2. Beliefs - Cannot be sacked due to religious or political beliefs
3. Not qualified - if they lied about their qualifications in their CV and does not in fact have qualifications needed for job	3. Race, colour or sexual orientation
4. Misconduct - An employee who engages in illegal or inappropriate activity at work such as drinking, stealing, fighting etc...	4. Their membership of the travelling community
5. Redundancies - If the employer cannot afford to keep them on and has to make them redundant	5. If they are suing the boss or standing as witness against the boss in a case
	6. Union activities - cannot be sacked because they are in or about to join a trade union or engage in union activities

**Constructive dismissal** - where the person's conditions of work are so difficult for them that they feel obliged to leave - burden of proof on EMPLOYEE.

If they feel they have been unfairly dismissed they must submit a written notice of claim for redress within 6 months of the dismissal under the acts to either a rights commissioner or employment appeals tribunal (where they can issue a determination - binding)

**Re - instatement:** They are given back their job and arrears of their salary.

**Re - engagement:** Employee is offered a different though comparable job to the one from which they had been dismissed. Used when employee contributed to the dismissal though still unfair. No back pay.

**Compensation:** maximum of 2 years remuneration where financial loss has been sustained by employee.

This act is very effective in protecting employees because the burden of proof lies with the employer in justifying the dismissal and if an employee is dismissed they can get justice, their job back or compensation.

#### 4. Employment Equality Act 1998

This law defines and prohibits discrimination at the work place; *“The treatment of one person less favorably than another person is, has or would be treated”*. 9 grounds -

**Gender** - you cannot treat women, men or transsexuals less favorably than each other

**Marital Status** - you cannot treat single, widowed, divorced, separated or married people less favorably than each other

**Family Status** - you cannot treat employees who are parents, carers for relatives or childless less favorably

**Age** - You cannot treat younger or older employees less favorably than each other

**Disability** - you cannot treat those that are disabled either emotionally, intellectually or physically less favorably than able bodied people

**Race** - Different skin colour, nationality or ethnic origin

**Sexuality** - gay, lesbian, bisexual or heterosexual

**Religious beliefs** - different religions or no religion

**Traveller** - travellers less favourably

This law makes it illegal to discriminate when hiring, promoting, training employees, in conditions of employment and in advertising for employees.

Makes equal pay for equal work a legal requirement

Positive discrimination is allowed to promote equal opportunities for the members of the 9 categories to achieve full equality

Set up **Equality Authority** - eliminate discrimination in work place, draw up codes of practice to help with discrimination and inequality, promote equal opportunities for those in any 9 categories, informs public about their progress in achieving aims.

#### Employment Equality Tribunal

Investigates cases of employee discrimination in work place. Victims must complain within 6 months of the discrimination.

If the discrimination is not very serious the director of employment equality tribunal will refer the case to an **employment mediation officer** who helps both parties to try and reach a solution in which both employer and employee are happy with. If a settlement is reached through mediation the terms ARE legally binding. **Totally confidential.**

If either party rejects to mediation or if it's unsuccessful it is referred to an **equality officer** for investigation. The officer hears both sides of the case and issues a legally binding decision which can be appealed to Labour court within 42 days.

It is the director themselves who makes the final decision in all cases and their ruling must be obeyed, has the power to end discrimination and reward up to 2 years back pay (3 years in equal pay cases).

**Cannot be treated badly due to a prejudice boss and your career cannot be hindered.**

**Deliberately sets out 9 categories and promotes equal opportunities - right the wrongs done.**

**Unlike many government backed officials the director's ruling must be obeyed.**

Pay Claims	Explanation
Comparability	Employee asks for a pay rise because other employees doing similar work got one.
Relativity	Pay of certain employees may be linked to the pay of others even though it's completely different jobs. e.g. civil service & TDs
Productivity	May ask for a rise to compensate them working more to cope with changes etc...
Cost of Living	If they can't afford to live on wages they get - inflation

Industrial Action	
Official Strike	Secret ballot and week's notice - legal
Unofficial Strike	no secret ballot and or no week's notice - illegal
Wildcat Strike	go on strike without any notice at all - illegal
All Out Strike	all employees of the firm goes on strike with permission of ICTU even though some may not be involved in dispute
Sympathetic Strike	employees go on strike to show support for a different dispute - illegal
Work - to - Rule	only do work assigned to them on job description. Completely inflexible and refuse to do anything else, slows business productivity down, e.g. nurses
Overtime Ban	Refuse to do overtime to put pressure on employer when business is very busy
Lockout	employer refuses employees entry to work, not sacked, just refused entry