

## What are consumer's rights under the Consumer Rights Act 2015? How does it apply to gift cards?

The Consumer Rights Act 2015 (CRA) sets out core requirements in respect of goods and services that are provided to consumers. The CRA applies to both physical and digital gift cards.

The CRA identifies statutory standards (implied terms) that form a part of the sales contract for goods and services regardless that they are actually stated in the contract or not. These terms are that the goods are (i) of satisfactory quality, (ii) fit for purpose, and (iii) as described.

### What do these standards mean?

**Goods to be as described<sup>1</sup>:** Any description provided with the gift card shall be treated as an integral term of the sales contract.

**Fit for a particular purpose<sup>2</sup>:** This means that goods should be fit for the purpose they are supplied for, as well as any specific purpose a consumer made known to the retailer before the consumer agreed to buy the goods. In the case of gift cards, this would be that the gift card can be used to purchase the goods/services indicated from those merchants identified by the issuer of that gift card, or the trader selling it.

**Be of satisfactory quality<sup>3</sup>:** For the quality to be satisfactory, the CRA requires the goods meet the standard a reasonable person would consider satisfactory, taking account of:

- a) any description of the goods,
- b) the price or other consideration (form of payment) for the goods; and
- c) all the other relevant circumstances, for example, any public statement provided regarding the specific characteristics of the goods made by the gift card issuer, trader or any of their representatives. This could include statements made in advertising or labelling.

The quality of goods includes their state and condition, and the following aspects (among others) are in appropriate cases aspects of the quality of goods:

- a) fitness for all the purposes for which goods of that kind are usually supplied;
- b) appearance and finish;
- c) freedom from minor defects;
- d) safety;
- e) durability.

The quality of the goods is not deemed unsatisfactory if anything:

- a) relating to the good is specifically drawn to the consumer's attention before the consumer enters into the sales contract (e.g. when the gift card is purchased)
- b) where the consumer examines the goods before entering into the sales contract, that examination ought to reveal, or
- c) in the case where the goods (gift cards) supplied are based on a sample provided, anything would have been apparent on a reasonable examination of that sample.

### How do public statements have a bearing?

As stated above, public statements made in advertising, labelling or otherwise can be relevant when considering the quality of goods. But not all public statements will be relevant, for example, if the trader can show

- a) when the consumer purchased the gift card, the trader was not, and could not reasonably have been, aware of the statement,

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<sup>1</sup> Regulation 11

<sup>2</sup> Regulation 10

<sup>3</sup> Regulation 9

- b) before the consumer purchased the gift card, the statement had been publicly withdrawn or, if a part of it was incorrect or misleading, it had been publicly corrected, or
- c) the consumer's decision to purchase the gift card could not have been influenced by the statement.

### **Consumer's right to refund, repair or replacement**

If the goods (gift card) do not conform to the criteria above, the consumer has the right to a refund from the trader, a repair or replacement, depending on how long ago the consumer purchased the goods (gift card). These are set out below.

The time period starts from the first day after the gift card was purchased and has been delivered.

0 – 30 days<sup>4</sup>: The consumer has the right to get a full refund for the gift card from the trader, or replacement at the customer's choice.

31 days – 6 months<sup>5</sup>: The consumer must give the trader one opportunity to repair or replace it before they can claim a refund of the good.

6 months or longer: The consumer must give the retailer one opportunity to replace it before they can claim a partial refund, and the burden of proof is on consumer to prove the product is faulty.

### **How does the CRA relate to compromised gift cards?**

The GCVA is aware of gift cards being targeted (instore and remotely) by criminals to access funds loaded onto them without either the issuer, trader or the cardholder being aware. Often this only comes to light when the gift card holder attempts to use their gift card.

This is a serious issue. Gift card issuers and traders do have a range of systems in place to protect gift cards from being tampered with in store and online. But criminals are adopting new, novel ways to get round / attack these systems to access the gift card balance. Members are working closely together to identify the types of criminal activities as they occur and to share these typologies with other members so as to keep up with the ever evolving methods deployed.

Raising awareness and identifying the steps that can be deployed to reduce / eliminate these criminal activities are fundamental to maintaining consumer confidence in using gift card products. Unfortunately, no single step taken by an issuer, trader, or consumer is going to stop this criminal activity. It will take a combined effort, using education and implementing additional surveillance and security measures in collaboration with each other to tackle this effectively.

Gift cards, like other goods and services must meet the minimum standards; that they of satisfactory quality, are fit for purpose, and are as described. Gift cards per se do meet these standards and if the card is faulty, cannot be used in the manner it purports it can be then as per the CRA, the consumer has the right to claim a refund or replacement as appropriate. Each instance must be assessed on a case by case basis.

Just like any other good that has been tampered with or is compromised in some way, as soon as the gift card holder becomes aware, they must notify the trader or the gift card issuer (if the trader directs the consumer to do so) to look into the situation. Only once the facts of the situation are established can appropriate steps be taken to resolve the issue and where appropriate, refund the gift card holder or replace the gift card.

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<sup>4</sup> Regulation 22(3)

<sup>5</sup> Regulation 24 (11)