



THE EQUINE LAW FIRM

A GUIDE TO AVOIDING LITIGATION AND MANAGING RISK WHEN SELLING HORSES

We aim to help you focus on the profitable parts of your equestrian business.

About Us

The Equine Law Firm is a specialist firm, established by equestrians to provide its clients with in-depth knowledge and perspective of the challenges which they face. This guide distils some of the knowledge and insight which our solicitors have gained over many years dealing with litigation involving horses.

Introduction

Buying and selling horses is almost uniquely risk laden from a litigation perspective. Traders are tightly regulated by legislation which was not drafted specifically to account for the sale of horses and their unpredictable ways.

The purchase of a horse often represents a significant emotional and financial investment for the buyer. For that reason, if something goes wrong after the purchase, a purchaser will often be particularly motivated to pursue what they perceive to be your wrongdoing.

The purpose of this booklet is to explain the legal position which regulates your industry, and to provide some key tips as to how you can protect yourself from disputes and litigation and focus on running your business from day to day.

Please note that this booklet covers only the sale of horses from a trader to a consumer (somebody acting outside of their business or trade) and the law applying to England and Wales.

For advice about the relevant law applicable to sales other than from a trader to a consumer or to international sales, please contact us.

The Law

Since 2015, the sale of any horse by a trader to a consumer in England and Wales has been regulated by The Consumer Rights Act (the Act).

Am I a trader?

If you are selling horses with a view to making a profit, then you are likely to be deemed as a trader by the Court.

This is a far reaching piece of legislation providing consumers with enhanced protection. Any horse sold to a consumer must be:-

- Of satisfactory quality
- Fit for its intended purpose
- As described by you

If the horse does not meet with any of these requirements, then you are required to offer a refund (if the buyer rejects the horse within 30 days of receiving it) or a replacement or repair, or if they are not possible, a refund (if the horse is rejected more than 30 days after the purchaser has received it)

The requirements of the Act are vague, broad and open to interpretation. We are often told by clients that if a horse so much as sneezes in the wrong way, then it will arguably be not of satisfactory quality!

There is no way to avoid these requirements. But, you can protect yourself by a) knowing the exceptions which apply to them and b) creating enough documentary evidence to rely on if a claim or dispute arises.

What if something arises after the sale?

The Act provides that a horse which does not conform to the requirements within 6 months from the time of the sale will be treated as not conforming on the day that the sale was made. This is obviously a very difficult piece of law for traders to deal with. You cannot predict what will happen to a horse in the 6 months after it has left your care. However, this assumption can be rebutted if the trader can prove that the horse did conform on the day that the contract was made (for example, by video evidence). See what we say about this later in this booklet.

What are the exceptions which we can rely on?

It is clear that the Act is strict and could create an unreasonably high burden on a trader. Thankfully for traders, there are some exceptions.

A horse will not be deemed as “unsatisfactory” even if it does have a defect:-

- a. if the defect was specifically drawn to the purchaser’s attention before the agreement was made (for example, where an advert discloses that a horse is not a novice ride, and the purchaser subsequently complains that the horse has acted in a naughty manner);
- b. where the purchaser has examined the horse before the purchase and that examination ought to have revealed the defect (for example, where a horse has a large splint which should have been visible to a purchaser).

“Repair or Replacement”

Where a horse is rejected by a purchaser because it does not meet the requirements of the Act, and the rejection occurs more than 30 days after they take possession of the horse, the trader is required to offer a “repair or replacement” of the horse, in the first instance. The trader will be allowed a “reasonable period of time” to provide a repair or replacement.

If a repair or replacement is not possible, or is unsuccessful, then the customer will have the right to reject the horse or to have a reduction in the price of the horse.

Advertising Horses

Advertisements are often cited when a purchaser wishes to establish that a horse is not as described by a trader. There is a delicate balance to be struck between attracting a buyer, and creating a document which could be used against you.

- Take care not to “oversell” the horse. Try to use only statements which you can keep factual evidence of, for example, video evidence to verify that a horse’s temperament or ability is as you say. Don’t use sweeping generalisations.
- Expressly disclose quirks or habits. This may put buyers off, but better to lose a buyer than be involved in litigation with them.

Distance Sales

Be aware that in the case of any horse sold “by distance”, for example over the internet, the buyer may have a right to cancel the contract for no reason, within 14 days (they may have to pay for the cost of the return). You may also be entitled to reduce the amount of any refund to reflect any reduction in the value of the horse caused by anything done by the purchaser.

Selling Horses and Your Terms

You cannot avoid the requirement to comply with the terms of the Act. You therefore need to have a foolproof system in place to manage the risk which you face each time you sell a horse.

Your Contractual Terms

Your terms of business should be carefully drafted to avoid criticism by the Court but to provide the maximum protection to you.

Examples of a few key issues which should be provided for in your terms are:-

- The purchaser should agree that they do not rely on any oral statements or representations made by you. Purchasers will often cite that you have told them something at a viewing. You may not have thought to be a binding statement at the time, but it could be used against you during a dispute.
- A statement providing for specific disclosure of known (current or historical) health issues, temperament issues, quirks or requirements of the horse.
- A statement to confirm the exact intended purpose for the horse is, to avoid a purchaser buying a "happy hacker" and later complaining that it is not suitable for competition.
- A requirement for the purchaser to confirm they have carried out adequate, thorough and appropriate inspections of the horse in order to satisfy themselves that the horse is (at the date of the sale) in terms of its conformation, temperament, training and ability fit for the purpose which they intend to use it and of satisfactory quality.

Usually purchasers will be required to say that they have read and understood your terms. Try to avoid using "off the shelf" contracts. They may be drafted for a different jurisdiction or without reference to the relevant legal requirements. They could have unintended consequences.

Retaining Evidence

You should keep (in permanent form- we recommended backing up electronically) evidence that the horse met with the requirements of the Act. This may include:-

- Videos of the horse being ridden
- Photographs of the horse
- Any veterinary reports held by you
- Any communications between you and the purchaser
- Any advertisement of the horse
- A photograph of the previous owners of the horse in its passport (in case you need to make contact with them)
- It may be an idea to routinely carry out check in with the purchaser soon after delivery as to how the horse is settling in. If the purchaser responds positively, it will be helpful evidence that the horse met the required terms at the time of the sale

Managing Disputes

Unfortunately, for all of those working in this industry, disputes will inevitably arise. Albeit that you would never knowingly sell a horse which was not the correct fit for the purchaser, horses can react badly to certain changes, they can become injured or can develop habits. Purchasers will be sceptical and panicked if a horse transpires not to be suitable for their needs, and of course, you will be their first port of call for redress.

We set out below our guidance in respect of how to deal with a complaint or claim.

- Always remember that anything which you write could end up being read by a Judge deciding your case. For that reason, you should not reply in anger or haste to any messages, e-mails or letters from a disgruntled customer. Consider the position carefully and respond in a measured and professional manner.
- Don't put off dealing with complaints, particularly if Court proceedings have been threatened, or have been issued. The purchaser could secure a County Court Judgment in default against you, which is more difficult to deal with.
- Know the potential implications for you. If a claim threatened is for less than £10,000, then the purchaser is unlikely to be able to recover legal fees from you, even if they are successful with their claim. This may be a significant factor for them in deciding whether to pursue you. If the claim is for more than £10,000 (note that the claim could include additional expenses, not just the price paid for the horse) then the purchaser's legal fees are also potentially recoverable from you.
- Gather and preserve evidence. Give consideration to what will be available to you in order to disprove any untrue allegations. You may wish to obtain clinical records from your veterinarian.
- Understand the requirements of the Court process, or seek legal advice. If you become involved in Court proceedings, a Judge is likely to issue a strict timetable, providing dates by which certain documents must be prepared and exchanged. Failure to meet these deadlines can have severe consequences.
- It may not always be proportionate or necessary to invest in legal representation. You may decide that you wish to represent yourself in respect of any claim made against you. We can offer cost effective unbundled packages to assist and advise you, including representation at hearings or preparation of Court documents.

Acting as an Agent

This is not a risk free activity.

Agents can face claims from their principal (seller) if they do not market or sell the horse in accordance with their exact instructions. You should therefore seek specific written instructions from your principal in relation to the horse, how it should be marketed, and what it should be sold for.

Agents are also potentially liable for any inaccurate statements made to the buyer for "negligent misstatement". Ensure that any statements made by you are factually correct. You may wish to seek an agreement from the principal that they will indemnify you (stand behind you financially) if any complaints or claims are directed to you in relation to the horse.

Make sure that it is crystal clear to the buyer (i.e: that you have disclosed in writing before the sale is made) that you are acting as an agent, and that you are not the owner of the horse.

Protecting your Reputation: Dealing with Slander and Libel

In the era of social media, one disgruntled customer can have a profound negative impact on your business. Customers may decide to vent their frustrations publicly, or leave a bad review about your services. This can be particularly devastating if the allegations simply are not true.

If you fall victim to a campaign of negative publicity, we recommend the following steps:-


- Most slander will happen when a purchaser feels that they are being ignored. Whilst you should not engage in quick fire debate, you should acknowledge correspondence sent by them, and advise that either you or your legal representative will revert to them.
- Establish practically what can be done by you to stop, remove or block the offending material. For example, social media site Facebook allows users of a business page to ban or block certain users or to report abusive material.
- If you are seriously concerned about the damaging nature of the statements, seek legal advice. A legal representative will usually be able to write to the host of defamatory material (such as a website) in order to request that it be taken down. They may also write to the individual in order to warn them of the risks involved with their conduct, or if necessary, commence a claim for defamation.

Whether you are involved in a dispute, or simply wish to protect your business, we are happy to discuss your specific needs, and to provide you with a proposal in relation how we can help you, and what it will cost.

We also have significant experience of dealing with disputes with other professionals, including vets and farriers, and with disciplinary and regulatory issues. We can prepare bespoke agreements and terms for training, stud services and agency services.

We will always be transparent and reasonable in respect of our fees, and we can usually provide a fixed fee quote, to give you peace of mind and certainty.

We are based primarily in the north west of England but have meeting rooms in the south of England, including in central London. We are happy to travel to meet with clients, or to carry out a consultation by telephone or video link.

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