Business law and using a solicitor

Whatever commercial activity you are engaged in — from buying supplies to selling your product — you need to be aware of the legal issues involved.

While the full range of business law is vast, the key points the owner of a start-up business needs to know are relatively straightforward. Understanding the basics will help you avoid any legal difficulties. This briefing:

- Provides an overview of some of the key aspects of business law that may affect you.
- Outlines the principles of contracts and how to use them to your advantage.
- Highlights the key trading laws you need to be aware of.
- Explains how to choose and use a solicitor.

1 Which laws affect you?

1.1 At the **heart** of business law are the laws covering two key areas:

- Contracts — between yourself and your suppliers and customers.
- Trade — how you are allowed to sell, and what restrictions apply. Selling to members of the public is particularly heavily regulated.

1.2 A solicitor can advise you on which **other laws** may apply to your situation (see 7).

2 What is a contract?

2.1 A contract **exists** when three conditions are met:

- Both buyer and seller are capable of making and intend to make a contract.
- An offer is made and accepted.
  A customer may offer to buy — and you can then accept the customer's offer. (Just displaying your product in a brochure or in your shop is not an offer, but an invitation to the customer to make an offer).
- Something of value is exchanged.
  For example, the seller's product for the buyer's money (or commitment to pay).

2.2 A contract can exist whether there is anything in **writing or not**.

For example, every time a customer buys something in a shop, there is a contract.

- Some particular kinds of contract (eg property leases over three years) must be in writing.

2.3 Only **terms** which have been agreed before or at the time of making the contract apply.

- But there are also implied terms (see **3**).

2.4 The terms of the contract govern what the seller and buyer are **obliged** to do.

- Legal action can be taken if one party fails to perform his or her part of the contract.

3 Statutory rights

Even though they are not spelled out, every contract has implied terms. By agreement, some of these terms can be specifically excluded from the contract, but not unreasonably.

These are often called 'statutory rights'. If they are breached, the private consumer normally has the right to return the goods and get the

money back, or claim damages, or both.

3.1 The seller must be **entitled to sell**.

- If you buy something from someone who does not own it, you have the right to a refund from the seller.
  You probably will not be allowed to keep the goods.

3.2 The goods must match their **description**.

- Descriptions on labels, or claims made by the seller, must be accurate.

3.3 Goods must be of **satisfactory quality**.

3.4 Goods must be fit for the **purpose**.

- So if a customer asks for a component to use in a piece of equipment, your component must be suitable.

3.5 The goods must match any **sample** provided.

In practice, the implied terms are extremely important (see **5** and **6**). For example, a contract clause stating that no goods can be returned will not usually prevent a customer from returning faulty goods — and may also be illegal.

Keeping an eye on the bill

Solicitors usually charge in two parts — their fees, plus any money they have had to spend on your behalf ('disbursements').

A Work done by **partners** will be more expensive than work done by assistants.

- Make sure you know in advance the hourly rate you will be charged.

B Remember that you will usually be **charged** for advice given by telephone.

C Give your solicitor clear **instructions** about what you want done.

D **Prepare** in advance for meetings.

- Draw up a written agenda.

E Never **pay** a bill until you understand it.

- If you feel you have been overcharged, tell the solicitor.
- If you cannot agree a reduction in the bill, you can usually require the solicitor to obtain a certificate from the Law Society saying that the bill is fair.
- You can also ask for the bill to be 'taxed' (assessed by a court).

4 Other contract terms

4.1 A business can produce '**terms of trading**' setting out contract conditions.

Common clauses include:

- Description/specification of the products or services being sold.
- Details of the price, payment date, payment method and delivery.
- A guarantee for a limited time period (in addition to the buyer's statutory rights).
- A clause giving the seller the right to retain legal ownership of the goods until they have been fully paid for.
- A clause giving the seller the right to delay delivery, when this is due to circumstances beyond his or her control.
- Clauses limiting the seller's liability (but see **4.2**).
- A clause stating that nobody apart from the buyer and seller is to have any rights under the contract.

4.2 You cannot change a consumer's **statutory rights**.

- Signs which try to deny private consumers' statutory rights are invalid.
  Always add 'This does not affect your statutory rights' to notices about your terms of trade.

5 Contract tactics for sellers

5.1 Use a **solicitor** to draw up standard terms of trade. When selling to consumers, terms must always be 'fair' and in plain English.

Make sure the buyer is aware of, and agrees to, the terms before the deal is made.

- If the contract is in writing, it should expressly refer to your terms of trade.
- In most cases, any reference to your terms in an invoice will not be effective.
  An invoice is usually only seen after the contract has been made.

5.2 Reduce the **risk** of breaching the implied terms by describing your product or service accurately.

- State tolerances in technical specifications, to give yourself practical margins for error.

➨The law is complex and can change rapidly. This briefing covers just some of the many laws and regulations that could affect your business. Always consult your solicitor or legal adviser on your own specific circumstances.

- Explain to the buyer what to expect of goods of that age, or price.
- Let the buyer know of any limitations and defects. Do not make exaggerated claims.
- Allow the buyer to examine the product.
- Make sure any safety instructions are clear and accurate.
- Make sure that any samples you provide are typical.
  Give the buyer time to examine your samples, and point out any likely differences in the final product.

5.3 If someone buys against your advice, ask the buyer to sign a written **confirmation**.

5.4 If the buyer asks if the product is **suitable** for a specific need, say you do not know — unless you are very sure of your facts.

- From a legal point of view, it is unwise to ask buyers what they are going to use your product for, as you may be liable if it is not suitable.
- If a buyer orders customised goods, you may be liable if they do not fit their purpose.

5.5 If you are selling your goods and services **online** or by other distance methods, you must provide customers with certain information.

- Your business name and address.
- A description of the goods or service.
- The price including taxes, any delivery costs, arrangements and payment terms.
- The duration of the contract.
- Any cancellation rights and how to go about it.
- An order confirmation.

6 Contract tactics for buyers

6.1 Use a **solicitor** to draw up standard terms of trade to enclose with your order.

- If possible, make sure it is agreed that your terms will apply, not the seller's terms.

6.2 Protect your **rights** under the implied terms.

- Ask for detailed product specifications.
- Ask lots of questions — as if you do not know much about the product.
  Ideally, get written answers.
- Insist, at the time of ordering, that the product must match the specification.
- State what quality levels and standards you expect.
- Tell the seller what you will use the product for.
- Keep a record of claims made by the seller.

6.3 **Examine** the product thoroughly — or not at all, if you want to examine it later.

Otherwise, you may lose your right to reject it if you then find a defect.

- Keep samples you examine for reference.
- Do not sign delivery notes saying the goods were satisfactory until you have thoroughly inspected them.
  If you have to sign, make a note of any reservations you have (eg 'goods not checked') and let the seller know.

6.4 Ask the seller to **inform** you of any hidden dangers, limitations or quality changes.

6.5 If **prompt delivery** is important, tell the seller and confirm it in writing.

7 Other trading laws

There are several other aspects of the law you should be aware of.

7.1 The seller is likely to be liable for death, injury or loss to property caused by **defective** products or services.

- This includes design, manufacture and marketing defects.
- Everyone involved in the supply chain (eg retailer, manufacturer etc) can be liable.
- Third party liability insurance is essential.

7.2 Products must meet **safety** regulations.

- Ask your local Trading Standards Officer for advice (www.tradingstandards.gov.uk).

7.3 False **descriptions** are illegal.

- A customer can take action against you if he or she buys as a result of a false description (see **3.2**).

7.4 Misleading **prices** are illegal. You must not:

- Display goods at a low price, and then charge more.
- Claim to offer a sale price or a discount, when the price has not been genuinely reduced.

7.5 Certain types of business, including businesses which offer credit (other than trade credit), may require a **licence**.

7.6 Some businesses are subject to extra **regulation** (eg those selling financial services, food or goods online).

- For example, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 place restrictions on telephone sales and give online buyers some extra rights.
  You must present certain key information clearly.

7.7 Keeping information about individuals (including staff) on a **computer** means you probably need to notify the Information Commissioner's Office (0303 123 0113).

- The Data Protection Act applies to all personal records (including those not on computer) and in particular to any on the internet. Registration costs £35 for a year.
- You may need to notify the Commissioner even if you record only basic information (eg names and addresses), though there are some strictly-defined exemptions.
  Ask for a leaflet or go to www.ico.org.uk.

8 Do you need a solicitor?

8.1 Start by getting a basic understanding of **which laws** are likely to affect you.

- You can find an accredited solicitor who can help you to understand the basics on the Law Society website (www.lawsociety.org.uk/find-a-solicitor).
- Your trade association should be able to give you information relevant to your industry.

8.2 You may need help with a **particular** task.

For example, to:

- Set up your new company or partnership, or to advise you on taking up a franchise.
- Buy, sell or rent premises.
- Collect debts.
- Draw up a standard employment contract for your employees.
- Draw up standard terms of trade, or a specific contract for a major piece of work.
- Advise you on protecting your rights to new ideas and designs.
- Act for you in a legal dispute, and if you have to go to court.

9 Choosing a solicitor

9.1 Start with the basic **information sources**.

- Friends and other business contacts, who can recommend solicitors they have used.
- Professionals, such as bank managers and accountants.
- Your local business support organisation, Chamber of Commerce or Enterprise Agency.
- Print and online directories and advertisements.

9.2 Personal **recommendations** are usually the best source. Always ask:

- What was the solicitor hired to do?
- Is the solicitor a specialist?
- Was the solicitor approachable, effective and easy to get on with?
- How much did it cost?
  Be prepared to pay extra for a more experienced and effective solicitor.

9.3 Most small businesses find it preferable to use a **small firm** of solicitors.

- Your business will be a valued client.
- Costs are usually lower.
- It may be easier to build up a good relationship with the individuals.

9.4 Even good small business solicitors will not be able to do everything, and will recognise their **limitations**.

- Ask how much experience your solicitor has of your particular problem.
  Would a specialist be better? Can they recommend someone suitable?

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