

Legal and Regulatory Framework

HNC assignment

For Paula Reily

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1.0

Dear LMC,

I am writing this report regarding Mrs Davis who took delivery of two computers and a host of other equipment on 17th of July. The customer has stated that one of the computers is damaged and there is also a problem with interference with the other.

As Mrs Davis and you entered a contract which is legally binding and enforceable and was accepted by Mrs Davis, the issues that have been raised by Mrs Davies need to be resolved. The Sale of Goods Act 1979 which was introduced as a “remedy for any breach of a contract between the seller and the buyer” (Blake 1996) needs to be mentioned as section 14 of the act states that “the goods supplied must be of satisfactory quality”. It is clear from the letter that the computers supplied were damaged and the software may be faulty. As a result the act has been breached. Although Mrs Davis has lost her cancellation right which is 14 days, she is not entitled to a full refund of her deposit and will be made aware of this. However she will have been given a guarantee and it would be in your best interests to replace the damaged computer and provide the customer with suitable software to stop the interference. By “satisfactory quality” or under the Sale of Goods Act 1994 “merchantable quality” refers to quality as goods that are fit for all purposes, free from minor defects and appearance and finish is free from any damage. As Mrs Davies brought the computers from you it is your obligation to the customer to replace the items under no cost to the customer. For LMC I think this is the best way forward.

The Consumer Credit Act 1974 was introduced to provide fair legislations to protect the consumer from sellers and suppliers. The act places certain restrictions on companies who offer credit to customers they deal with. Sections 44-47 of the act specifies that specific information relating to a good being purchased be made in the advertisement. Section 55-59 relates to the information that should be provided to the customer in the credit agreement. This should include the cash price, APR, total amount repayable by the customer, etc. As I am aware the customer is happy with the credit agreement but wants to cancel the agreement due to the problems with the computers. Section 62 relates to the cancellation rights of the customer and seller or supplier. In total the customer has 14 days from the date of signing the contract to cancel the agreement. Although section 99 of the act states if an agreement is “cancelled the buyer must return the goods and any monies paid should be refunded” (Needham 1999). However it only stands if customer cancels within 14 days. As a result Mrs Davies will lose her deposit of £365 if she cancels the credit agreement which can be done

but at her expense. My advice to Mrs Davies would be to think carefully regarding her credit agreement. Is she prepared to lose her deposit even though the matter in hand can be solved?

The best way forward is for LMC to replace the computers and provide new software or even modem for Mrs Davies under her 1 year guarantee. As for Mrs Davies she should take the replaced goods and check them before accepting them. As for her credit agreement she should continue providing the goods she receives are fit for purpose.

2.0

At the moment LMC is a partnership between two individuals however due to the expansion of the firm, the owners are thinking of turning the partnership into a limited company. In the paragraphs below I have provided key information regarding the decisions you face.

A business partnership is more regulated due to the fact that the relationship can be volatile in sense of frequent disputes between partners. As a result it is important to be aware of the **Partnership Act 1890**: section 1 of the act defines partnership as “the relation that subsists between persons carrying on a business with a view to profit”. In addition to this it is important to note that section 45 states that a “partnership can be any trade, Profession or occupation”. As the partnership consists of two partners neither being the sleeping partner it is also important to be aware of section 24(1) of the act which states “all partners are entitled to share equally in the capital and profits in the business and must contribute equally towards the losses”. I have outlined some of the laws which LMC should be aware of. However in addition to the above I would also recommend for LMC to obtain a copy of the Partnership Act 1890 and look at sections 19 – 31. With regards to the partnership agreement, the partners in the business can decide among themselves the terms of the agreement. The terms may include hours of work, holidays and financial decisions.

Section 32-44 of the Partnership Act 1890 shows what procedures must be followed if the partners decide to dissolve the formal partnership. “Reasons for dissolution must be included in the partnership agreement” (Needham 2001). The Partnership Act of 1890 states the following reasons that can dissolve the partnership. These are: if one partner gives notice to all other partners that he or she wants to end the partnership, the end of a fixed business term e.g. two partners agreed to keep the partnership for two years. In addition to this, events that cannot be foreseen like death can also cause dissolution. It is worth also remembering that by the order of the court a partner can dissolve the partnership if one partner is incapable of

performing his/her part of the contract. Furthermore bankruptcy of one of the partners can also lead to end of the partnership. There are also other reasons that can cause partnerships to cease. However once it has been decided to end the partnership, sections 37-44 of the Partnership Act 1890 “sets out the rules for distribution of the assets” (Blake 1996). What this means is that the assets and money will be divided between partners equally.

The advantages of a partnership are that the burden of having to run a partnership can be shared equally among the partners. Furthermore the profits and losses are shared equally. The disadvantage to this is joint liability for debts. What this means is that both partners can face the risk of losing personal assets like houses, cars, etc to pay for any outstanding debt. Also a partner can be isolated from the business and be sued individually by a creditor. The advantages for a limited company are that it has more cash to invest due to shareholders. Furthermore the owners of the company face limited liability where personal assets cannot be used to pay for debts. Also the company can continue to operate as it is not affected by resignation or death of one or more of the owners. The disadvantage of a Limited company is that profits are shared among more people, must submit audited accounts and must comply with more laws and regulations.

Section 1 of the Companies Act 1985 states “a company must be registered as a public limited company or a private limited company” (Blake 1996). In terms of setting up a Public Limited Company it must have Plc or PLC at the end of the company name. Also a certificate of trading is required prior to trading and the company must have at least two directors and two members. Furthermore a minimal investment of £50,000 capital is required. In contrast a Private Limited Company must end its name with Plc or PLC and have a certificate of incorporation prior to trading. Furthermore it must produce a set of audited accounts within ten months before the financial year ends. The registration procedures for both a Public and Private Limited Company are the same. Two basic documents are required: one is called The Memorandum of Association which should contain details of the name of the company, address of the registered office of the company, the amount of liability of the owners, any authorised capital and the company objectives. The second document required is The Articles of Association which basically covers the internal administration of areas in the company like the appointment of directors, types of shares to be issued and when the meetings will be held. In addition a contract between the company and each member of the company is represented by the article. In terms of running the company section 282 of The Companies Act 1985 outlines a company “must have a board of directors who essentially run the company for the owners of the company” (Needham 2001). Directors are individuals who are fee paid to act as trustees for the shareholders. In addition it also worth remembering Regulation 84 of the act states directors can appoint fellow directors to particular executive positions such as the

company accountant or financial advisor. Directors have many duties in terms of running the business. They have a fiduciary duty which is to report any personal profits they make whilst with the company and ensure they achieve maximum benefits for the company and shareholders. They also must not disclose confidential information while with the company and after they leave. Directors must also provide a high duty of care and skill in terms of dealing with company matters. Most importantly directors must not act negligently to injure or cause loss to people outside of the company. The above are the basic duties directors are required to do however under the 1985 Act directors also have a duty to shareholders, creditors and employees. A full list of duties can be seen under the sections of the Companies Act 1985.

3.0

The Employment Rights Act 1996 is the main legislation covering employment protection. It offers employees protection under the sex discrimination act, race relations act and health and safety act. In addition the employer is liable for employees. What this means is “he or she will be liable to any other person who suffers harm or injury caused by the negligent act of an employee” (Needham 2001). The main requirement of this act is to provide an employee with written terms and conditions of their employment

I have written a user guide for you answering the questions provide:

An employment contract is an “agreement entered into between an employer and an employee at the commencement of the period of employment” (Employment Law 2006). The following written terms and conditions must be provided to the employee:

The names of you and your employer

The date you started work

The amount of pay and how often you will be paid, for example, weekly or monthly

The hours of work

Your holiday entitlement, including how many days off you are entitled to and what your holiday pay will be

How much warning (notice) you are entitled to if you are dismissed and how much warning you must give the employer if you want to leave the job

The title of the job

Where the job is based, for example, whether you will have to work in more than one location

What the disciplinary, dismissal and grievance procedures are in the workplace

What sick pay you are entitled to.

The contract of employment will usually be made up of two types of contractual terms. These are express terms which are terms agreed between the employer and employee and can include the amount of wages, including any overtime or bonus pay the employer is entitled to. Also the hours of work, including overtime hours that they can do bearing in mind there is a legal limit for most employees on how many hours they can work in a week. This also includes how much time off you are entitled to during your employment. By law nearly all workers are entitled to four weeks paid holiday - they may be entitled to more under their contract and must ask their employers.

The second are implied terms in an employment contract which are those not specifically agreed between the employer and employee. These implied terms are general and will be the following which are the employee and employer have a duty of trust to each other in terms of confidential information. The employer and employee have a “duty of care towards each other and other employees.” This means, for example, “that the employer should provide a safe working environment for the employee and that the employee should use machinery safely” (Employment Law 2006)

It is worth remembering that you do not have to include the above information in the written terms and conditions. You can give the information in a staff handbook for which all employees can access.

As I can see you are a small business that deals with computers it may be worthwhile explaining to your employees in what circumstances they are entitled to have time off. The following are acceptable to carry out duties as part of jury service or to carry out duties as a trade union health and safety representative. In addition to have a baby, to take paternity leave or to ask for flexible working hours are reasonable grounds for an employee to ask for time off.

The law says that most workers should not have to work more than 48 hours in a week including overtime. However a worker can choose to work more than 48 hours in a week as long as they have agreed this with their employer. However I must advise you that as an employer you are not allowed to force an employee to work more than 48 hours in a week as you will be breaking the law and as a result may be fined. It is also remembering that if you have employees who are aged 18 or under, can only work 40 hours a week and must not exceed these hours.

By law all women are entitled to take time off work should they fall pregnant. The minimum maternity leave for women is 26 weeks off work but a woman can also have an additional 26 weeks off making it a total of 52 weeks of work. However to qualify for the additional maternity leave a woman must have worked for the company at least for 26 weeks and for some companies it has to be a year before she can have additional maternity leave. In terms of the law you are required to give any female employee who falls pregnant 26 weeks leave and when she returns to work, try to give her the same job back. In some cases the job may be filled but then you must give her a job which has the same rights as in pay, working hours and holidays as her last role.

4.0

The Health and Safety at Work 1974 sets out the duties of employers to the employees. Certain sections of the act outline specific compliances that an employer must carry out. Section 2 (A) of the act outlines the employer has a duty of care to ensure the safety of all employees in the work place. In addition to this section 2 (B) states that an employer must provide a safe system of the work place by providing safe entrances and exits. Furthermore employees must be given relevant information and training regarding health and safety. Under section 7 of the act employees must take "reasonable care for their own health and safety at work" (Blake 1996). Under the Work Place Regulations 1992 act employees must take a break every two and a half hours from their computer and go away from their desktop. By taking a break away from the computer will reduce the suffering of headaches. The term for this break is called a DSL break and all companies that operate computers by law must give a DSL break to employees. Under the Health and Safety Act if you have not been given training to carry out a specific task, tell your manager you are not trained to do the task. In return the manager will allocate the task to someone who has been trained. In no circumstances can a manager force you to do the task. In this case you state you have not been trained to lift boxes. As a result the owners of LMC should give you training on the correct way to lift boxes or use an employee who

is trained to lift boxes. In addition the Work Place regulations 1992 states that “facilities for rest and to eat meals” (Needham 2001) must be provided away from the desktop area in the workplace. Due to this the owners have a right to there employees to provide them with somewhere to eat. Regulation 6 of the Management of Health and Safety at Work makes it clear that a safety officer should be appointed to advice the company of any new health and safety issues and carry out safety checks to ensure the workplace is safe. In addition to provide the right- training to employees and managers regarding health and safety.

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Needham, D et al (2001) *Business for Higher Awards*. Second Edition, Oxford, Heinemann

Other:

Having worked for companies where I have offered customers credit to buy goods I have used some of my own knowledge regarding the credit agreement in this essay. Furthermore as I am currently working in HR for BT I am aware of employee rights and the health and safety issues. I have also included some of my information in essays.