



London Arbitration Centre Case No. PS20001

In the matter of an Arbitration

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes
(Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award: 25th March 2020

Between

Meduza Medical Limited

Customer

And

Pegasus Shopfitting Limited

Trader

DECISION

Introduction

The case concerns a dispute over the construction of the reception desk and display unit carried out by the trader at the Customer's premises at 126 Richmond Road, London SW15 2SP. The Customer trades as "Retreat Medispa".

The claim

I repeat the text of the claim form in full to the extent it is material[sic]:-

“The man in charge was Charlie who is the director of the company. we have received an unacceptable standard of work and products from the company, and deem it a breach of contract under common law. You agreed to attend on 29th and 30th September 2019 to install a reception desk and display area and said it would all be completed in 2 days. We had agreed the design by the 3d images you sent previously and given you many weeks of preparation time. But You failed to attend on those 2 days, and instead attended in the evening of the 30th and 1st October. In addition to this you claimed the work would still be fully completed in those 2 evenings but it was still not completed, and you have not returned since then or made any effort to correct the issues. I sent you a formal email on 11th october, highlighting the issues and asking for a reply as to when you will return to rectify them. I have not had a reply back to my specific concerns. The problems concern the fit and finish and general standard of the units supplied in addition to the fact that much of the proposed works as stated on the estimate have not been completed. In addition, there have been some minor damages to our premises that occurred during the installation (scratches to floor and holes in wall, and damage to skirting) as well as loss of business due to unnecessary closure and being unable to display our products. The Consumer Rights Act 2015 says that reasonable care and skill must be used while working. In my opinion, you did not use reasonable care and skill when you carried out this work and you have broken your contract with me, and I do not trust your company to complete the work to a reasonable standard or within an acceptable time frame as you have already not returned for 3 weeks leaving us in a very awkward situation. (we have also contacted previous clients that we found listed on your website and they confirm they were also unhappy with your services as work was either never completed or to a poor standard)

The following issues were made clear to you:

Reception desk:

General poor quality, with large panel gaps on desk facing. Panel gaps on work surfaces.

Glue left in visible areas and on our wooden flooring.

Cracked corian top surface, and multiple scratches visible.

Visible joins on reception work surface.

Exposed and unfinished edging

Drawers do not open and close properly, and have a visible hand painted finish, and no locks.

No shelf made for cash register

No electrical routing to tidy visible cables. No holes in desk for routing cables.

No LED lighting placed at base.

3d logo on front of desk inaccurate and poorly made with paint that rubs off.

Display area:

Unit not fitting flush to wall

Damage to skirting and wall where skirting has been incorrectly cut.

Use of silicon to hide gaps/poor edging

No mirrors supplied

No shelving supplied

No cupboard doors supplied

No LED lighting

failing to provide me any information on proposed feature wall or pendant lighting despite requesting payment.

I therefore am requesting a percentage refund of the work done so I may get new units installed by a competent company and not have any more disruption to the business. I suggest a 90% refund to cover the costs you may have incurred.

We have had an independent assessment done which I can forward to you, stating the work is not of industry quality and will not be easy to rectify to an adequate standard. (we paid for all the work upfront before they attended).

Trader did not return to rectify despite endless calls and emails to try to arrange. Many meetings were cancelled at short notice which led to a total loss of faith and breakdown of communication. I decided that they will not be able to complete the job satisfactorily or within any sort of reasonable time frame. Eventually after much chasing they finally agreed to ADR resolution, but took weeks to supply us with any adr details . we want a refund of the money paid and so far have been very patient despite the trader not responding in the time frame specified to our letter. we prefer to avoid court action. we accept there is some costs involved with the carcasses made. so we would accept a refund of 90% of the 10440 paid. we will not claim for loss of business to try to come to a swift outcome. We also had inspections from 2 other independent shopfitters who said the existing reception desk and display unit cannot economically be rectified and we would need to start from scratch(I have forwarded these). therefore we need the money so that we can get brand new units made that are at least up to industry accepted standards. We have also incurred some damage to the premises while the work was being done. This includes damage to skirting, holes in wall that were not plugged and scratches to the reception floor when the old reception desk was removed by sliding it across the floor. We also have the cctv footage.

Payments made by bank transfer to pegasus:

01/08/19. £4716

30/08/19 £4716

09/09/19 £1008

(£10440)

Additional payments were also requested by Pegasus.

This case is amplified in their reply in which the Customer pleads:

“In response to the info supplied by Pegasus: I did not receive the terms and conditions. Please provide evidence that was sent with original estimate. I agreed and was happy with the original proposal. But what was delivered was very far from that and extremely amateur in the fit and finish not to mention the numerous delays and times when they simply didnt attend. Firstly due to RTA then many other times with multiple excuses. However irrespective of that i would like to make it very clear that on numerous occasions we tried to resolve by asking pegasus to complete the work. After 3 more meetings which pegasus failed to attend i lost any faith in them and decided that a refund would be the only possible solution. I also asked other companies not to complete the work- but merely to provide an opinion on the condition of the work supplied by Pegasus. Clearly in both of the independent shop fitters reports they state the finish is not up to industry standards. The was also damage that occured to our fittings. We have cctv footage of the old reception desk being moved across the wooden floor without any appropriate protection thus scratching the floor. The poor fit and finish of desk and display is very clear from the images i have supplied. Pegasus mention snagging- the work that remained was not snagging, because there were so many fundamental flaws and only the carcass of the display unit was provided. No shelves no doors no lighting etc despite having weeks in which to prepare these items offsite. Even the corian top (which i have been informed isnt corian) was cut and polished on our premises causing huge amounts of dust. The final finish is sctrached and uneven and cracked- images were supplied of that. It was after careful consideration of these independent reports and the continued procrastination and numerous failed meetings that i decided to ask pegasus to consider a refund. It was also clear that they would be incapable of a good acceptable

professional level of work. I will be forwarding text messages to you between myself and the pegasus director showing the numbers of times failed appointments occurred - these were arranged by sms and not by email. I hope we can come to a swift conclusion as I mentioned previously we have been operating now since october with a reception desk and display that is not fit for purpose.”

The claim has been supported by evidence.

I have seen a number of photographs of the work done.

I have seen a quotation from GS Contracts Limited dated 28th October 2019 which states “*We note you have asked us to look at making good your existing counter, however we do not feel that this is something that we want to put our name to, therefore we haven’t included for this option. Also we note that you have put into writing what is wrong with the existing counter, we can only say that this is an extremely poor quality unit, with a complete lack of understanding how to manufacture a reception desk to a decent standard”*.

They quote £7,514.72 excluding VAT to redo the work.

I have seen a quotation from Dental Build and Design Ltd dated 13th November 2019 which states “*Following our visit at Retreat Medispa clinic in putney we were asked to quote on making good the bespoke reception desk and display unit made by a third party. Unfortunately, after careful inspection we are unable to assist in this. The reception desk and display unit are poorly constructed and not fit for purpose. The issues of the desk and display unit are as follows: 1. Solid surface on counter top has been poorly fabricated. I would suggest you ask for certification of appropriate training from corian/hanex/himaacs. This would need to be redone. 2. Paintwork to the logo. This has been poorly performed and not retrievable 3. Edge banding of the MDF panels are extremely poor. Normally we would get these edge banded at factory. Any retrospective repair would be poorly performed and not something we would be willing to undertake. 4. Cutting of the panels are extremely poor. These do not look precision cut and look to have been cut on site. 5. The drawers within the desk have been poorly constructed. These do not open or close correctly. They also are not of the melamine finish interior of cabinetry normally would be constructed of. This appears to be made of MDF and poorly painted without being sanded. We as a company would not be willing to undertake these works in "making good" as there are too many fundamental issues with the manufacture of these items. We would be happy to quote for new cabinetry and desk should you require”*.

The Trader’s case

In response to the claim, the trader submitted

“We were contracted by the claimant to supply and fit a bespoke counter and wall feature, these works fell within the Pegasus terms and conditions as outlined on our invoices. Through out the construction of these units update pictures were sent to the client to ensure he was happy with the way that it was being built. We had initially agreed to attend site to begin fitting the counter on 29th and 30th September however the team were involved in an RTA on the day – something that was advised to the client and as a result of this the works were delayed until 30th and 1st October. Whilst we had intended on completing works in full

during this time, we had also advised the client that it may take longer. On realising that the works would take longer than planned the client was informed and he was assured that items not already on site would be delivered as part of the second phase of the fitting as they were too delicate to have on site whilst the counter was being fitted. We dispute that damage was caused by our fitters as every care was taken to ensure all items were moved out of the way to ensure they were not damaged and care was taken on ensuring the floor was not damaged during our works. Following the fitting we received communication from the client to the effect that he was not happy with the finish and asked when the items not on site would be delivered. He immediately asked for a refund and spoke very disrespectfully of our fitters requesting they were replaced and did not return to complete his works. We explained that the works were not yet completed and until we had achieved completion no talk of refunds would be discussed. We explained that it is impossible to snag a job which is still in the process of being completed. I attended site to talk through the works with Dr Eddin directly on 6th October 2019 and we made a comprehensive list of items that were outstanding in an attempt to put his mind at rest and reassured him that the works could easily be finished to the required standard. I offered solid surface frontage to replace the CNC in cut graphic – agreed on the original meetings, as he did not like this which he said he would consider. I have emails to support this. During our communications the client made it clear that he had already started the process of obtaining alternative quotes for the work – we have seen this and argue that we would also decline to complete another contractors work as it is more financially viable to create a new desk from scratch. During the works and following I have been intermittently off work due to health reasons and therefore we were slow in responding to Dr Eddins claims however it was clear from the initial trip to site with the unit that Dr Eddin intended on not completing the works and it my belief that whilst the drawings and finished were discussed extensively with the client, he did not like what he saw and took a dislike to the fitters and from there forth went about trying to obtain a refund for the counter. We invested labour, materials and delivery into the unit and would have happily completed the works had Dr Eddin not made it so clear that he intended on using another contractor. Additionally we would like to remind the client that we were operating under our terms and conditions to which he agreed on payment of the initial invoice. Additionally there would have been requests for payments in line with the interim payments as agreed in the terms and conditions – failure to make these payments would also have lead to a delay in the works being completed.”

The defence is supported by evidence comprising of an email, two photographs, SMS messages and the Trader’s terms and conditions.

The Procedural history

By notice dated 16th January 2020, the Customer formally consented to the dispute being resolved by the LAC in accordance with its rules. By notice dated 4th February 2020, the trader formally consented to the dispute being resolved by the LAC in accordance with its rules.

The law

The Customer's case is brought under the Consumer Rights Act 2015 and in common law breach of contract.

The Consumer Rights Act claim

This aspect of the case can be dealt with shortly. The Customer claims that the trader is in breach of their obligation to provide their services with reasonable care and skill. Section 49 Consumer Rights Act 2015 states:-

“Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.”

This term is implied into a contract for a trader to supply a service to consumer (section 48(1) Consumer Rights Act 2015). Section 2, Consumer Rights Act 2015 states:

““Consumer” means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.”

Thus, to rely on the Act a “consumer” must be an “individual” (that is, a natural person) – the Act's protection for consumers does not apply to small businesses or legally incorporated organisations (e.g. companies formed by groups of residents). The Customer is not an individual. It is a private limited company. It is not able to rely on the Act. **I therefore reject the Consumer Rights Act claim.**

The claim in common law

I believe it will be useful that I set out here the law and the test I have to carry out before a claim can be made out for damages. Briefly, there must be a breach of contract. This means there must be in breach of a contractual term.

Contractual terms are usually agreed between the parties when a contract is formed. In simple terms, a contract will be formed when there is an offer and acceptance. In typical contracts, the trader will have made an offer comprising items of work under the terms and conditions under which the work is to be carried out. There might be a works schedule specifying which works are to be completed over any particular phase. The parties might also typically agree a payment schedule. A contract is formed when the Customer accepts the offer.

Sometimes, contractual terms are incorporated into a contract by reference. This means the offer or acceptance itself will not list all the applicable terms but will make reference to the existence of a document evidencing the terms and conditions. The important point to note is that terms and conditions must be incorporated into the contract at the time of the formation of contract. A trader cannot rely on terms and conditions which have not been brought to the attention of the Customer before the contract was formed.

On the side of the Customer, the law may, in certain limited circumstances, imply additional terms into such contracts.

The Traders Terms & Conditions

Plainly there was a contract between the Trader and the Customer. Money was paid. Work was done. There was a meeting of minds.

The next question I have to determine is “What were the terms and conditions of the contract?” In particular, I have to determine whether the Trader’s terms and conditions were incorporated into the Contract between the Trader and Customer. The Customer says that they never received the terms and conditions. They put the Trader to proof that they served a copy of the quotation which expressly incorporate the Trader’s standard terms and conditions. However, I note that this was not the only document which expressly refer to the terms and conditions being incorporated. The invoices each expressly incorporate the standard terms and conditions into the contract. The Trader addressed these to the Customer’s address. The Customer plainly received these because they paid the money claimed on these invoices, on both parties cases, in full or substantially fully before the contract works were undertaken. **I therefore reject the Customer’s case on this issue; I find the Trader’s terms and conditions applied.**

I, therefore turn to the Trader’s terms and conditions. To the extent they are material to this case, I repeat them here:

“SERVICES

- 1.1 *We aim to provide a friendly, efficient and effective service and give you the best information possible about the likely cost of providing the service in advance.*
- 1.2 *We agree to carry out the Works requested by you in a good and workmanlike manner and in accordance with all requirements of Government in respect of the services provided.*
- 1.3 *We will exercise reasonable skill, care and diligence in the performance of our duties to you.*
- 1.5 *If you feel that the level of the service provided falls below the criteria outlined above or if you have any other cause for complaint you should raise your concern with Charlie Broomhall.*

FEES AND DISBURSEMENTS

- 2.1 *Fees will be charged on the basis of the initial and any subsequent quote agreed with you in advance which apply to the work in question.*
- 2.2 *Our charges are calculated generally depending on the complexity of the matter. We will require payment on account in advance of any disbursements payable such as materials and labour of sub contractors.*
- 2.3 *The time expended at hourly rates reflects the overhead costs and an element of commercial profit. The hourly rates vary depending upon the complexity of the matter and the seniority and experience of the person carrying out the work on your behalf.*
- 2.4 *Whilst undertaking work on your behalf we may incur a liability and make disbursements, examples of which are Materials, labour costs, travel costs and accommodation expenses. It is our policy to request from clients a payment in advance to cover any such disbursements before they are made or as soon after as is practical.*

- 2.5 *Unless your status allows for exemption or application of a zero rate, VAT will be payable, where applicable, on all fees and charges at the rate prevailing on the appropriate tax invoice date.*

PAYMENTS ON ACCOUNT

An initial payment on account will be requested at the commencement of your matter prior to commencing works.

This will be 30% of the contract price agreed.

Unless agreed otherwise in writing with you we will render invoices as follows;

20% of the contract price to be paid at the end of week one

20% of the contract price to be paid at the end of week two

*20% of the contract price to be paid at the end of week three
20% of the contract price to be paid at the end of week two*

5% of the contract price to be paid on completion

5% to be retained until all snagging is completed.

PAYMENT

- 4.1 *Each invoice so rendered before the completion of the transaction will be accepted as an “interim bill” in respect of work done during the period it covers and the last bill following the completion of the snagging will be accepted as a “final bill”.*
- 4.2 *Costs are payable whether or not the work is successfully concluded or completed unless otherwise agreed in writing. If any work does not proceed to completion for any reason then we shall be entitled to charge for all work done unless we have agreed otherwise in writing.....*
- 4.5 *You may request further works not included in the initial quote in writing at any time during the Works. We shall endeavour to give you a price in writing or verbally for the additional works. Any additional works requested will be invoiced on completion of the item and is payable within 7 days of the date of the invoice in accordance with our payment terms.*

TERMINATION OF INSTRUCTIONS

- 7.1 *You may withdraw your instructions at any time by written notice to us. We reserve the right to invoice you for any Works done up to the date of withdrawal and for any materials ordered or other costs incurred by us on your behalf at that date.*
- 7.2 *We may withdraw on giving you reasonable written notice where we have good reason to do so including any failure on your part to:-*

Make a requested payment on account;

Pay any interim bill;

To provide instructions following a request from us;

Conduct on your part which appears to us to be improper, dishonest or deliberately misleading.

- 7.3 *We reserve the right remove from the site any part of the Works completed and any materials while our costs remain unpaid and you grant to us the irrevocable right to access the site of the Works for this purpose.*
- 7.4 *Abortive transactions will be charged on a time cost basis up to but not exceeding the level of any fixed price quotation given.*

COMPLETION DATE

- 8.1 *We will provide an estimated completion date at the commencement of the Works. If it appears that the provisional completion date will not be met, we shall keep you advised but no guarantee will be given at any time in relation to the completion date and no compensation will be payable to you in respect of any delay.*
- 8.2 *If extra works are requested in accordance with clause 4.5 then an amended completion date will be estimated.*
- 8.3 *It is agreed that the works have reached practical completion when there are no apparent deficiencies or defects in the works which would prevent normal reasonable and beneficial use.*

I note also that the Terms and Conditions include a contractual limitation of liability, capping the Trader's liability to the level of the Trader's insurance.

9. INSURANCE

- 9.1 *We are required to have, for the protection of our clients, insurance in place to cover us against risks including but not necessarily limited to fire, lightning, explosion, storm, bursting or overflowing water tanks or pipes and potential claims for acts of negligence, breach of contract and breach of statutory duty.*

We will insure the works against the above risks

Our current insurer is Zurich and APC

And they can be contacted through our broker, Trade Direct Insurance

- 9.2 *As part of our retainer and agreement with you, it is a condition of the contract between us that you agree with us that in the unlikely event of any claim being made by you against us for any loss arising out of our relationship, that your claim will be limited to the amount insured.*

Please contact us if you wish to discuss this. Please note that by instructing us to act on your behalf the above arrangement will apply unless any other special terms are agreed in writing between us.

However, I note that the Trader does not expressly plead reliance on this term. There is no evidence of the actual level of this cap. I therefore mention this only for completeness and disregard it for the purposes of this claim.

My findings on the facts

It is helpful if I set out a brief chronology of the fact as I find them on the papers before me.

On 27th August 2019 the Trader sent to the Customer a quotation for the works which comprised of the building and installation of a bespoke display cabinet and reception desk.

I find that the Customer paid to the Trader between 1st August 2019 and 9th September 2019 on account of the works to be done £10,440.

The Trader agreed to undertake the works on 29th and 30th September 2019. The team did not start on 29th September. The Customer was told that the Trader's team had been involved in a road traffic accident. Works instead did started on 30th September and continued on the 1st October 2019.

It is will be plain from what follows that the works were not completed properly at this stage.

On 8th October 2019, Jennifer Brockley from the Trader sent an email stating "*Having met on Sunday and looked at the snags we have made a list of snags and will complete them at your convenience. We will also look at cost implication of covering the front of counter in solid surface. We will us a timescale study on how much the snags are % wise to the overall cost of counter and will not be happy until we have completed the snags. You mentioned that you were closed for 2 days to fit. As allocated. As agreed. We do however apologise for the delay in getting the counter to you and your time.*"

On 11th October 2019 at 10.47am, Jennifer Brockley from the Trader sent an email setting out the Trader's snag list including polishing countertop, silicon counter, taking the rough edge off the plinth, clean glue off the floor, fit unit back against the wall, make good paintwork and scuff mark, fix mirror, fit sockets, make two new drawers, fit new laminate to the front of counter, fit led lights, fit doors on display unit. She asked whether there was anything else that needed adding to the snag list. She offered to fit free of charge a solid surface finish to the front of the counter.

On 11th October 2019 at 2.48pm, Dr Eddin sent a lengthy email setting out a lengthy list of complaints. This range from requiring the consumer's premises to be closed and then attending for only 40 minutes to extensive complaints about the units delivered and their fitting. He complained, amongst other things, that the logo panel was "not adequate". The drawers do not open and close properly and did not have locks, the counter surface is scratched, the wall has been scuffed and damaged, the display unit was not flush and did not reach the ceiling, the wiring was not routed correctly, the mirror and the Sonos speakers were not fitted.

Dr Eddin then sent a number of chasing SMS messages to chivvy the Trader to return to the site. This appears not to take place.

On 14th October 2019, Jennifer Brockley emailed that she had forwarded the email to Charlie at the workshop for comment.

On 14th October 2019, Dr Eddin emailed the Trader saying that they were paid up to date. He complained that the fit and finish had been inadequate. He said that he would be unwilling to pay more until the issues had been put right and the desk and display area was functional.

On 14th October 2019, Jennifer Brockley emailed asking him to confirm that VAT element would be paid when he was happy with the desk and display unit and that they would need to quote for some of the additional work proposed.

It appears that the Trader then cancelled attending at the Customer's premises.

On 15th October 2019, Dr Eddin emailed asking when the rectification would start and stressing that income was being lost through the delays.

On 15th October 2019, Jennifer Brockley emailed *"I have just spoken to Charlie and apologies for the lack of response but he is currently struggling with a migraine that has taken him out of action. We will not be able to attend the site until Tuesday as the fitters needed are fully booked until then and I have told Charlie that you don't want the original fitter back. Sorry for the delay"*

On 16th October 2019, Dr Eddin emailed asking to confirm attendance on Thursday.

Dr Eddin then sent a number of chasing SMS to fix a site meeting. This appears not to take place.

On 4th November 2019, "Charlie" at the Trader sent a SMS explaining the fact he has not been able to attend the Customer's premises due to "minor stroke residual problems" but promises he is now fully recovered.

What followed were attempts by SMS to fix a meeting to resolve the snagging issues. The Customer explained that they now *"just want a refund"*. After an exchange of SMS messages, a meeting is then fixed for 11th November 2019.

On 12th November 2019, "Charlie" at the Trader sent a SMS cancelling the meeting, saying that he is "stuck on a train".

It was a term of the contract that the Trader would *"carry out the Works requested by you in a good and workmanlike manner"* (clause 1.2) and would exercise (clause 1.3) *"reasonable skill, care and diligence"* in the performance of the same. It is plain that the works contracted for were not completed and were not executed in a good and workman-like manner.

I remind myself that the reception desk would be prominent and client facing in the Customer's premises and that the poor finish is obvious even to my untrained eye. I remind myself of the Traders own lengthy snagging list on 11th October 2019, which set out what the Trader itself accepted as matters needing completion and correction. I remind myself that the Customer on the same day set out its own additions to that list and the Trader did not at the time or in evidence subsequently challenge. I remind myself of the quotation from GS Contracts Limited dated 28th October 2019 (which I accept) describing the work done as *"an extremely poor quality unit, with a complete lack of understanding how to manufacture a reception desk to a decent standard"*. I remind myself of the quotation from Dental Build and Design Ltd dated 13th November 2019 which states (and I accept) *"The reception desk*

and display unit are poorly constructed and not fit for purpose. The issues of the desk and display unit are as follows: 1. Solid surface on counter top has been poorly fabricated. This would need to be redone. 2. Paintwork to the logo. This has been poorly performed and not retrievable 3. Edge banding of the MDF panels are extremely poor. Normally we would get these edge banded at factory. Any retrospective repair would be poorly performed and not something we would be willing to undertake. 4. Cutting of the panels are extremely poor. These do not look precision cut and look to have been cut on site. 5. The drawers within the desk have been poorly constructed. These do not open or close correctly. They also are not of the melamine finish interior of cabinetry normally would be constructed of. This appears to be made of MDF and poorly painted without being sanded.”.

The Trader says that they were entitled to be afforded an opportunity to complete the works and correct the snagging. I agree. Indeed, I would even have been prepared to accept that the contract did afford them a degree of give over time. The point is that I find that the Customer did afford them an opportunity to complete and correct. Whilst their terms and conditions gave them a degree of flexibility, the one thing the Trader could not do is sit indefinitely on their hands. And this is precisely what the Trader did. The correspondence charts a protracted course of delays and excuses. I find that it was reasonable by November 2019 for the Customer to conclude that the Trader was not going to make good and to press instead for a refund. The Trader knew that the works undertaken were not satisfactory or complete as far back as 7 October 2019. Whatever the Trader may have said, the Trader’s striking lack of action to take any reasonable steps in the month that followed to put matters right spoke for itself.

I find the Trader to be in breach of its own contractual terms.

In so far as work is not carried out with reasonable skill, the Customer is entitled to be put in the position he would have been in had proper care been taken: *Philips v Ward* [1956] 1 All ER 874 at 875, [1956] 1 WLR 471 at 473, CA, per Denning LJ; *Swingcastle Ltd v Alastair Gibson* [1991] 2 AC 223 at 238, [1991] 2 All ER 353 at 365, HL, per Lord Lowry. That is to say, I should seek to make a financial award that might best equate to putting the Customer in the position it would have been in had the reception desk and display cabinet been properly made and finished. Here, however, the Customer has been unable to find an alternative trader prepared to quote for or even undertake the corrective works. I set out above the reasons why they are not prepared to do so. I am mindful, however, that the Trader has spent money and time undertaking the works and the Client has had the use of reception desk and display cabinet – albeit imperfect – so I am not prepared to order a full refund. The correct measure of damages is the costs of replacement. I assess these (on the basis of the quotation before me to be) £7,514.72. Unless the Customer can persuade me otherwise, I do not make an award for the VAT element on this. I note that the Customer is trading, and I have no evidence before me that the Customer could not deduct any VAT charged.

I am not prepared to award damages for the disruption to the Customer’s business. I find that such a claim is excluded through the operation of clause 8.1 of the Trader’s terms and conditions. If I am wrong on this, I would have reached the same conclusion on the basis that there is no sufficient evidence which could satisfy me of the loss suffered.

Summary

I reject the Consumer Rights Act claim. I find the Trader's terms and conditions did apply. I find that the Trader was in breach of those terms and conditions. I am ordering the Trader to pay compensation to the Customer in the sum of £7,514.72. Costs should follow the event and I order that the Trader should also pay the Customer's costs in the sum of £250.

IT IS HEREBY ORDERED that the trader pay the Customer the sum of £7,514.72 and the Customer's costs in the sum of £250 within 28 days of the date hereof.

Date 27th March 2020

A handwritten signature in black ink that reads "Mark Watson-Gandy". The signature is written in a cursive style and is positioned above a short horizontal line.

Signed

MARK WATSON-GANDY

ADR Official appointed by the London Arbitration Centre Limited