

MINIMISING RISK OF LIABILITY – WHY AND HOW TO USE THE NEW KEY-HOLDING AND DELIVERY ROOM AGREEMENTS

Hopefully you will by now have started using the new version of the SSA UK standard form licence agreement (or something very close to it) with most of your customers. It has been remodelled to protect you and limit your liability to your customers where you, as operator, are just licensing a unit and not holding keys to a customer's unit or taking in deliveries of goods for customers. You may not realise it but, if you offer these services, then some of the protections in the standard licence agreement can become worthless, as you are likely to have gone beyond providing self storage and to have strayed into the territory of providing "warehousing". If so, you may unwittingly become what is called a "bailee" of the customer's goods.

Why does this make a difference?

If you are just licensing a unit using the SSA UK standard licence agreement and the customer is insured, you should not be liable for anything that happens to the customer's goods whilst they are stored in the unit unless you have been negligent. Even in circumstances where you have done something wrong (e.g. failed to repair a leaking roof) which amounts to negligence or the customer is not insured, the standard licence agreement seeks to limit your liability for loss of or damage to goods to £100.

If you decide to offer key-holding or delivery acceptance services, even if you don't charge extra for these services, you are agreeing to act as a bailee. As a matter of general law, this means you become liable for loss of or damage to the goods whilst they are within your control. This is a complete reversal of the liability position and the SSA UK standard licence on its own will not protect you from potential claims from customers. It is easy to see that goods are in your control if they come into your delivery room, but they are also in your control if you have access to them, for example, by holding a spare key.

How might I protect myself if I am offering these services?

It is possible to limit your liability as a bailee if the agreement you have with your customer makes it clear you are acting as a bailee and expressly limits your liability as bailee. If you wish to offer key-holding and/or delivery services, then you need to make sure your customer documentation is designed with this in mind. If you don't have specially adapted agreements to cover these services, then you are at risk of claims from customers if something happens to their goods whilst they are under your control. This is where the new key-holding and delivery room agreements come in.

Why are there two different agreements?

If you hold a key to the customer's unit, technically you can go into the unit at any time, which means that all of the goods in the unit are under your control at all times and you are a bailee of all of those goods. The standard licence agreement expressly states that you are not acting as a bailee of the goods, so this agreement operates as an amendment to the standard licence agreement for the time you provide the key-holding service.

Where you take delivery of customer goods into a delivery room, you only take control of the delivered goods for the time they are in the delivery room. This does not affect your liability for goods in the customer's unit. As you only become a bailee of the delivered goods and

(unless you hold a key) not the goods in the customer's unit, this is a stand-alone agreement that just covers goods which are delivered to you for your customer and which are held in the delivery room.

If the additional services are to be offered from the beginning of the relationship with the customer, then you need to get the customer to sign up the key-holding amendment or the delivery room agreement (as applicable) at the same time as they sign the standard licence agreement. If you agree to provide the additional services once the relationship is established, then you should ensure the customer signs up to the key-holding amendment or the delivery room agreement *before* you take possession of the key or accept any deliveries.

What does the key-holding agreement cover?

This agreement sets out the charge that will be made for the service and states that the service will terminate if the fees are not paid. It stipulates that the operator will have the same rights to sell the customer's goods if the customer does not pay for the key-holding service promptly. It acknowledges you will be taking control of the customer's goods as a bailee but contains a number of protections and limitations on liability. It states that the operator will not use the key to enter the customer's unit unless there is an emergency, or the operator is obliged to do so (by law, the Police, Fire Services, Trading Standards, HM Revenue & Customs, competent authority or by a Court Order), or the operator needs to exercise its right to sell the goods or to check for prohibited goods or to carry out repairs. It also covers how the operator will store and release the key. It stipulates that the operator will hold the key in a secure place - you will need to decide how this will be done. It provides that the operator will only release the key to the named customer or someone duly authorised by the customer. Again, you will need to set your own standards as to how authority may be communicated to you, for example, if you are holding keys to a unit which is to be accessed by different sales reps. When the service terminates, the agreement provides for the keys to be collected in person by the customer or forwarded by post to the last notified address. The agreement stipulates that the operator's liability for loss or damage to goods held in the unit when holding a key is limited to the lesser of market value of the goods and £500.

What does the delivery room agreement cover?

Again, this agreement acknowledges you will be taking control of the delivered goods as a bailee and then sets out what you will and will not be responsible for. It sets out the charge that will be made for the service. It expressly states that you are not obliged to check the condition of the goods on delivery and shall have no responsibility or liability to the customer for the condition of the goods on delivery, for example if they were faulty when they left the supplier or damaged in transit. It specifies that the goods will only be accepted during posted hours and will go into a holding unit. The operator will notify the customer by email or SMS when goods are delivered and customer must collect the goods within a certain time period (the default is seven days). If they are not collected within this period, a charge will be made for storing the goods at the operator's normal rates. If the goods are not collected within six months, then the operator will have the right to sell the delivered goods as abandoned.

The agreement also states that you will not accept items which you believe to be hazardous, dangerous, perishable, stolen, inflammable, explosive, illegal, or which are otherwise prohibited items described in the standard licence agreement. The agreement specifically states that the goods are stored at the customer's own risk and the operator shall have no liability for loss other than that caused by its negligence, in which case its liability is limited

to the lesser of the market value of the goods and the fees paid for the delivery service over the past 12 months.

What else do I need to know?

As with the standard licence agreement, the customer's attention will need to be drawn specifically to the limitations on liability to minimise the risk that they can be overturned by a court as unreasonable if there is any litigation in the future.

You will also need to make sure you adopt proper procedures to keep the goods stored in any delivery room secure. You will need to have CCTV to monitor who goes in and out of the room and what they do when they are in the room. You will also need adequate staff to ensure delivery drivers or other unauthorised persons do not have access to the room unaccompanied.

In terms of risk generally, you will need to inform your insurer that you are offering these additional services and arrange cover for the additional risks you are taking on. The fees you are charging ought to be high enough to cover these insurance costs and the costs of keeping a unit aside for use as a delivery room.

Further information

This is only a brief overview of the subject - if you have any questions in relation to this or any other matter, please do not hesitate to contact Lindsey Hemingway who heads the Corporate Team at Rooks Rider Solicitors LLP. Rooks Rider provides a full range of legal services for business to deliver practical solutions to commercial problems.

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