

PROVIDING GUIDANCE TO MANUFACTURERS AND USER COMMUNITIES

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# GUIDANCE ON THE MISREPRESENTATION ACT 1967



## Introduction

ARTSM is proactive in ensuring that standards in industry are applied to maintain safety levels across the sector. Similarly, where standards no longer meet requirements, due to changes in technology or environment, then we lobby for change.

In respect of products this is a simple issue – either standards are met, or they are not. Where they are not, ARTSM has an effective dispute resolution process which supports manufacturers and user communities in achieving improvement.

When it comes to contractual obligations, ARTSM relies on our members always undertaking best practice. We cannot however always be aware of how they conduct business. We do require as part of our audit process, sight of business policies in relation to UK requirements such as health and safety, anti bribery & corruption, anti slavery and application of the competition rules.

From time to time we also offer guidance on aspects of law which are introduced, for example GDPR.

This guidance relates to misrepresentation. It is written to assist our members and procurers to be aware of common errors in communications and what can constitute a legal misrepresentation.

## A brief review of the law

The laws relating to misrepresentation are the Misrepresentation Act 1967 and the Fraud Act 2006, respectively civil law and criminal law. There are other laws relating to the buying and selling of goods – Consumer Credit Act 1974 and the Sale of Goods & Supply of Services Act 2018, but this Guidance relates only to misrepresentation.

The Misrepresentation Act exists to protect consumers from false or fraudulent claims that induce you into buying something or entering into a contract. It also allows you to claim damages.

Below is a very brief summary of the law, it does not go into depth regarding defences or possible outcomes, nor does it cover all the requirements of evidence. It is merely a prompt to ensure that we do our best to ensure that misrepresentation does not happen.

## Legal definition under the Act

A misrepresentation is a statement of fact (not opinion) which is made by a seller before a contract is made. If you relied on that statement when deciding whether or not to go ahead with your purchase, and this then turns out to be wrong, you may be able to claim compensation.

Statements made by or on behalf of a company by a representative or agent of that company are generally accepted as being statements of the company.

## Meaning of Statement

Statements of fact may be implied from words or conduct, or a combination of the two. That is, express representations and/or implied representations.

The misrepresentation:

- must be of **present fact or law**; and
- may be made by words or conduct.

Statements of fact may in certain circumstances include:

- **statements of opinion**: where the relevant fact is that the statement giver holds an opinion, the opinion must be intended to be relied on. It is relied upon by the receiver of the statement who suffers damage as a result a dishonestly expressed opinion. That's usually sufficient.
- **statements of present intention**:

Say you and I are in dispute. We enter a settlement agreement. I have no intention of performing what is required of me in the contract.

- **statements of future intention:** are usually enough where:
  - the person's intention is proved to be false at the time the statement was made, or
  - a person promises to do an act, when they have no intention of fulfilling the obligation.
- **support for a third party statement of fact:** approval or support for a false representation made by some third person can form the basis of a statement of fact provided the required fraudulent subjective intention exists
- **statements of fact implying other facts:** it's possible to interpret an express or implied statement as implying certain other facts. And those facts would be misleading unless the statement is amplified or corrected.
- **multiple statements of fact:** Different statements at different times are usually considered together over a timeline to draw out their combined effect as a representation of fact

They may take the form of a fragmented or partial version of the truth or a misstatement of fact: **the key is whether the withheld material makes that which was stated false.**

Also, the representation does not need to be made directly to an individual, it may be directed to a class of people intended to act on the representation.

## Types of misrepresentation

There are three types of misrepresentation with different routes of redress which will depend on whether the statement was made fraudulently, negligently or innocently.

Remedies available include financial damages and unwinding of contracts.

### Fraudulent Misrepresentation

A fraudulent misrepresentation occurs when someone makes a statement that:

They know is untrue; or

They make without believing it is true; or

They make it recklessly (do not care whether it is true or not)

If you enter into a contract as a result of a fraudulent misrepresentation then you can unwind the contract, claim damages, or both.

### **Negligent Misrepresentation**

A negligent misrepresentation occurs where a statement is made carelessly or without reasonable grounds for believing its truth. In this case, the person who made the misrepresentation has to disprove the negligence. Since this is a civil matter rather than a criminal one the burden of proof is on the person making the statement. So the person making the statement must prove that they had reasonable grounds to believe the statement and that they believed the facts represented were true.

### **Innocent Misrepresentation**

This is where a person making a misrepresentation, when entering into a contract, has reasonable grounds for believing that his or her statement was true. In other words, entirely without fault. Again, the person making the statement must prove such reasonable grounds.

### **Limitations of a Misrepresentation**

There are certain limitations in claims for misrepresentation. If the person receiving the misrepresentation is aware or becomes aware of this but chooses to continue with the contract then you are deemed to have "affirmed" the contract and there will be no remedy at a later date. Similarly, if there has been a considerable lapse of time from the discovery of the misrepresentation and taking action, this can prevent any remedy being available.

### **The lighter touch**

When we are all at the next trade event selling or buying wares, please do also remember that laudatory statements cannot be misrepresentation are clearly intended as puffery!

They're the ones such as:

"We've got the best pies in London"

"You won't find better rates anywhere else"

"Cheapest cars this side of The Black Stump"

From a legal perspective, the way the civil law says it:

There is no misrepresentation in law in the case of mere exaggerated praise by a vendor of his wares, as the vendor is entitled to assume that his statement will be construed as mere puffing.

At ARTSM however, we do stand by our statement that our Association does what it says it does. We represent our members in an impartial manner and manage a dispute resolution process which is non partisan and effective. We challenge non members and members alike when we are approached in issues of non compliance.

We do not advise on matters of law and anyone seeking advice relating to misrepresentation or fraud or other contract issues should seek independent legal advice. Nor do we provide advice on marketing or sale. However, we take seriously claims made against our members or others and we will investigate where it is deemed appropriate to do so in relation to misrepresentation of products and services which amount to non-compliance of standards. This Guidance is part of our process.

Kealie Franklin

General Secretary

August 2021

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