

CONSUMERS & CONSUMER RIGHTS

Please note: this guidance ONLY covers transactions where the Trader is a business and the buyer is a Consumer.

A 'Consumer' is someone who mainly buys goods and services for their own use. However on some occasions, the line can be a bit blurred. For example, if a carpenter buys a door, is it for him, or his business, and how will the seller know?

Business-to-business transactions where the buyer is a business are subject to different rules.

Furthermore, sales where the seller is not in business, for example an individual selling their own car, are also not caught by these laws. These rules apply to business sellers (Traders).

RIGHTS TO CANCEL

It's believed that consumers always have a right to cancel, or a cooling-off period but this is a popular misconception.

In fact, this only generally applies in certain limited circumstances:

- The contract is entered into at the consumer's home, their place of work, the home of another individual, or on an excursion organised by the Trader away from the Trader's business premises
- The contract is entered into exclusively by distance, for example via the internet, digital television, mail order (including catalogues), and phone and fax communications
- When there is any consumer credit involved

In these cases the consumer will normally get a 14-day cooling-off period, with few exceptions.

With face-to-face transactions (for example a shop purchase) there is no cooling-off period unless specifically agreed.

CONSUMER RIGHTS

Goods must:

- Be of satisfactory quality. This includes the appearance and finish, with freedom from minor defects, safety and durability

- Be fit for purpose. This includes the purpose that they are usually intended for, but also any other purpose which the consumer tells the seller
- Match the description or sample
- Where installed by the trader, must be installed correctly
- Unless agreed, be delivered without undue delay, and in any event not later than 30 days later
- Remain at the trader's risk until they come into the physical possession of the consumer

Services must:

- Be done with good care and skill
- Any information said or written to the consumer is binding where the consumer relies on it – If a price is not agreed upon, the service must then be provided for a reasonable price
- The service must be carried out within a reasonable time. Often, a contract will specify a date or time for the service to be performed or completed

WITH REGARD TO GOODS, HOW IS SATISFACTORY QUALITY ASSESSED?

This is a matter of opinion, and would be for a Judge to decide. The law is establishing what a 'reasonable person' might properly expect as satisfactory quality in regards to the goods in question.

The logic is that a reasonable person should, for example, expect that a second-hand car will be of lesser quality than a brand new one, and also would expect that a more expensive watch might last longer than a cheaper alternative. Even so, they would still be entitled to expect an appropriate amount of quality taking everything relevant into account.

What one can expect depends on a number of things like the product's age, its price, and any representations made about it by the seller/manufacturer.

WHAT IS MEANT BY REASONABLE CARE AND SKILL WHEN PROVIDING A SERVICE?

Likewise with services, there is no specific definition of 'reasonable care and skill' so each case will be decided on its own facts.

The explanatory notes to the Act give the following example "If an individual engages a high-cost, specialised gardener to landscape his garden, that gardening service must be provided with reasonable care and skill.

If the gardener does not cut and treat the grass to the industry standard, it is likely that a court would find that the gardener did not exercise reasonable care and skill and the consumer would have the right to the remedies explained in the Act. A consumer might expect a lower standard of care and skill from a quick and cheap repair service than a more expensive and thorough one".

WHAT GOODS DOES THE ACT APPLY TO?

All goods, including:

- New goods
- Second-hand goods
- Bespoke goods

Factors like the age, condition and price of the goods will impact on what exactly constitutes satisfactory quality. A consumer cannot simply purchase a 20-year-old car and expect it to be up to standard as if it was bought new.

CONSUMER REMEDIES FOR FAULTY GOODS

Short-Term Right To Reject

This usually lasts for 30 days unless the expected life of the goods is shorter, as with highly perishable goods. When a consumer rejects goods in this way, he can claim a full refund which must be given without undue delay, and in any event within 14 days of the trader agreeing that the consumer is entitled to a refund.

A refund cannot be reduced for the use of the goods by the consumer within the 30 days.

Right To Repair Or Replacement

When there is a breach of contract, but the consumer's short-term right to reject has expired, he can claim a repair or replacement. The trader must do this at no cost to the consumer, within a reasonable time and without causing any significant inconvenience.

Right To Price Reduction Or Final Right To Reject

If after one attempt at repair or replacement and the goods are still faulty, the consumer is entitled to ask for a price reduction or to reject the goods. The consumer does not have to give the trader multiple opportunities to repair or replace the goods.

If the consumer wants to keep the goods, then his claim will be for a reduction in price; if he returns them, he is rejecting them and is entitled to a refund, however, this refund may be reduced to take account of any use the consumer has had from the goods.

No deduction can be made from the refund, where goods are rejected within 6 months of supply, except where the goods are a motor vehicle.

ADDITIONAL CLAIMS

The Consumer may also be able to claim compensation for losses that have been incurred, for example:

- The cost of any property damage caused by the goods
- Compensation for any personal injury
- Compensation for the additional cost of buying equivalent goods if they are more expensive elsewhere
- Other remedies may include, but are not limited to, claiming damages, seeking specific performance of the contract (i.e. forcing the trader to comply), and exercising a right to treat the contract as at an end.

WHO IS RESPONSIBLE FOR THE GOODS?

The goods remain at the trader's risk until they come into the physical possession of either (a) the consumer or (b) a person identified by the consumer to take possession of the goods. If the goods are delivered to a carrier commissioned by the consumer (and not one offered by the trader) then risk passes to the consumer on delivery to that carrier.

CONSUMER REMEDIES FOR DEFECTIVE SERVICES

Right To Repeat Performance

If the trader breaches the contract by failing to meet the required standards for the supply of services, the consumer can expect the trader to make things right. Repeat performance work must be done at no additional cost to the consumer, within a reasonable time and without causing any significant inconvenience to the consumer.

Often a consumer will not want to give the service provider a second opportunity to rectify their work. This is a risky approach unless the consumer can demonstrate that not only have they lost complete faith and confidence in the service-provider's ability to do the job, but also that it is reasonable for them to have reached this conclusion.

Right To Price Reduction / Refund

The consumer can claim a price reduction where repeat performance is impossible or can't be done within a reasonable time and without causing any significant inconvenience. A price reduction can also be claimed where the service is not done within a reasonable time. The price reduction can, where appropriate, equate to a full refund in certain circumstances.

DIGITAL CONTENT

Digital content refers to 'data that is produced and supplied in digital form'. This includes:

- Computer games
- Virtual items purchased within computer games
- Television programmes
- Films
- Digital books
- Computer software
- Mobile phone apps
- Systems software for operating goods – for example, domestic appliances, toys, motor vehicles, etc.

Digital content must be:

- Of satisfactory quality
- Fit for a particular purpose
- As described

EXCLUDING A CONSUMER'S RIGHT AND REMEDIES

The law clearly states that a trader cannot exclude or limit its liability with regard to any of the terms which the law requires to be part of a consumer contract.

As such, the statutory rights contained in the Act, relating to the quality etc. of the goods and the standard of the service are ring-fenced and protected, and cannot be reduced or taken away by the trader.

Any signs or terms purporting to do this will be unfair, and of no effect, and are likely to get the trader in trouble with Trading Standards.

TERMS & CONDITIONS

When a trader is dealing with a consumer, any terms and conditions which they use need to be fair, balanced, proportionate, written in plain English, and adequately brought to the consumer's attention. Failing to do this may render the trader's terms and conditions invalid and unenforceable.

Examples may be where a Trader has extensive rights to cancel the contract but the consumer does not, or where the financial consequences of a breach of contract by the consumer are excessive.

ALTERNATIVE DISPUTE RESOLUTION

Dealing with consumer complaints can be a difficult process for traders and there are options available for resolving customer disputes, without the need of involving the court. These options are often called Alternative dispute resolution (ADR) processes.

ADR is not mandatory for most Traders but the regulations do require almost all businesses which sell directly to consumers to point the consumer to a certified ADR scheme once they have exhausted their own internal complaints procedure, and declare whether or not they intend to use that scheme.

COMMON QUERIES / FAQs

I'm Only The Retailer – Surely I'm Not Responsible For Faulty Goods?

This is incorrect. The Act governs the contract between the trade and the consumer, regardless of whether it feels fair. If the trader feels that they themselves have been sold faulty goods, they must take this up with their supplier.

The Goods Are Perfectly Fine – Can The Consumer Reject?

Generally, the answer is, 'no'. However, this is subject to exceptions, such as sales that do have a cooling-off period (see above). Although some stores will replace goods as a matter of policy, the law states that Consumers can only reject goods which are either faulty or not of a satisfactory quality. If the Consumer selects goods and later decides they are the wrong colour or not the size they wanted, as the goods themselves are of a satisfactory quality, they will have no legal right to reject the goods or recover damages.

The Consumer Signed For The Goods – Can They Still Reject?

Yes, they potentially still can as the law would expect the consumer to have had a genuine opportunity to properly inspect the goods. For example, if a consumer signs for a delivery of a large quantity of flat-packed furniture, clearly he will have had no proper opportunity to check that everything is correct and undamaged at the time he is asked to sign.

What If The Trader Does Not Think The Consumer Has A Genuine Complaint?

Often, there will be a dispute as to whether the goods actually are faulty. The trader may not accept that the goods are faulty or defective, and may, for example, believe that the consumer has damaged them.

In order to exercise the short-term right to reject (i.e. within the initial 30 days) the burden of proof is on the consumer to prove that the goods are not of satisfactory quality, fit for purpose, etc.

With other subsequent remedies (set out above), the position changes, and for the first 6 months after delivery the burden of proof is on the trader to show that the goods are not defective.

After the first 6 months the burden of proof switches back and it is for the consumer to show that the goods are defective. In civil law, the burden of proof is 'on the balance of probabilities'.

How Does A Trader Handle Arguments Regarding Whether Goods Are Faulty?

Where there are technical issues involved, a report from an independent expert would be a good start to either support or rebut any claim that goods were faulty. Alternatively, the trader could work together with the consumer and agree to appoint a joint expert who will be able to provide a report which both parties agree to be bound by and accept the outcome. This may also have the advantage of possibly avoiding unnecessary court action.

Ultimately a court would have to decide whether the goods were faulty or had been misused/damaged by the consumer, and will be guided by the evidence the parties can produce in this regard.

What If The Trader Has Marked The Price Incorrectly?

This is not legally part of the contract, and it is only when the trader actually agrees to sell the product to a specific consumer that this price potentially becomes legally binding. As such one needs to look carefully as to when, if at all, the contract was formed, and also whether the error was in fact so obvious that the consumer must have known. In such cases the trader would not generally be bound by their error.

Does A Trader Have To Return A Deposit?

Once a contract is formed, it is legally binding. Whether any deposit must be returned if the consumer cancels depends on the circumstances. If the amount of the deposit is reasonable, it can generally be retained by the trader if the consumer does not proceed. However, if the amount taken is larger than a reasonable amount (generally a deposit should be around 10%), the law could instead consider it to either be a part-payment, a penalty, or an unfair term under the Act. If this is the case, the consumer may be entitled to have some or all of the 'deposit' returned to him, especially if the trader cannot justify how it actually compensates him for his losses.

Can A Trader Offer A Credit Note Instead Of A Refund If The Goods Are Faulty?

A consumer does not have to accept a credit note and can insist on a refund or exchange (if appropriate). Nevertheless, if a consumer is willing to accept a credit note, it may be a useful way of resolving a dispute.

With Goods, What Is The Position If The Goods Develop A Fault After 12 Months?

Because more than 6 months has passed since the consumer bought the goods, the burden of proof is on the consumer to show that they are faulty. If they can do this, the consumer is, at that point, only entitled to ask for a repair or a replacement.

The trader can refuse either one of these if they can show it is disproportionately expensive compared to the other remedy. Once the remedy has been agreed, the trader must do it within a reasonable time.

The consumer is entitled to either reject the goods or seek a price reduction if the trader is either:

- a) not able to do so within a reasonable period of time
- b) not able to do so at all, or
- c) if the repair or replacement proves unsuccessful,

If the Consumer rejects the goods, they must hand them back to the Trader, and any refund they receive will be reduced by an amount to reflect the fact that they've had 12 months' worth of use out of the goods.

If the consumer doesn't want to return the goods, they will instead receive an appropriate and reasonable price reduction, taking into account the fact that the Consumer is keeping the goods.

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