

A photograph of a busy street in a town, likely in the UK. The street is lined with multi-story buildings, many of which are white with blue accents. Various signs are visible, including a large sign for 'The 1066' featuring a knight on horseback, a clock face, and a sign for 'the GEORGE HOTEL'. A large crowd of people is walking along the sidewalk, and several cars are parked or driving on the street. The scene is captured from a low angle, looking down the street.

dti

A TRADER'S GUIDE:

The Law Relating to the Supply of Goods and Services

APRIL 2005



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Introduction

As a trader you need to know how the law relating to the supply of goods and services affects you and your customers. This Guide attempts to explain the operation of the law in the UK.

UK law on sale of goods has evolved over many years. It is now principally set out in the Sale of Goods Act 1979 which has been amended by the Sale and Supply of Goods Act 1994 and more recently by the Sale and Supply of Goods to Consumers Regulations 2002.

However, the Supply of Goods and Services Act 1982 applies similar remedies to those in the sale of goods legislation where the seller installs the goods or a contract is agreed for goods to be manufactured or produced (see "installation" on page 19 and "goods to be manufactured" on page 20).

The Supply of Goods and Services Act 1982 and the Supply of Goods (Implied Terms) Act 1973 provides protection for those who hire goods, or acquire them under hire purchase, or conditional sale, agreements (see page 10).

All buyers are entitled to remedies under the legislation but consumers are entitled to a greater range of remedies. "Consumers" are defined as people who are buying for purposes not related to their trade, business or profession. Please bear this in mind throughout the Guide.

A consumer's rights in relation to the sale and supply of goods cannot be curtailed in any way by a term in the contract. Restrictions might be possible in business-to-business contracts but any restriction is subject to the provisions of the Unfair Contract Terms Act 1977 (see pages 20 & 21).

When goods are faulty, buyers can generally only obtain a legal remedy against the retailer. Buyers are not usually able to claim directly against the manufacturer. Consumers may have additional rights under any guarantee supplied with the goods (see pages 17 & 18) or against a credit card company or finance house if the goods are purchased by means of credit and cost more than £100.

This Guide is concerned mainly with the supply of goods but you should also be aware that in England, Wales and Northern Ireland the Supply of Goods and Services Act 1982 provides the customer with basic rights which apply in most contracts for services. Customers in Scotland enjoy similar rights under the common law. Throughout the United Kingdom, nevertheless, a trader and a customer can agree that these rights do not apply to a particular transaction for the provision of a service or should only apply to a limited extent. Any such exclusion or restriction will however be subject to the provision of the Unfair Contract Terms Act 1977. See page 20 ("Services") and 20&21 ("Unfair Contract Terms Act 1977").

If you sell goods at a distance, e.g. by mail order or over the internet, you should note that there is additional legislation that applies to such sales which is not covered in this guide. There are additional guides for business on the Consumer Protection (Distance Selling) Regulations 2000 produced by the Department of Trade and Industry and the Office of Fair Trading. Details are on websites www.dti.gov.uk and www.oft.gov.uk.

Please note that this Guide attempts to explain the civil law as it relates to the supply of goods but does not include

the criminal law such as, for example, matters covered by the Trade Descriptions Act. Of necessity some matters are over simplified so neither the general guidance nor the examples that appear throughout to illustrate particular points should be taken as legally authoritative.

Summary of rights and remedies

Buyers are entitled to goods of satisfactory quality, taking account of any description, the price and other relevant circumstances. If an item has a fault that is present at the time of sale (sometimes referred to in this guidance as a "latent" or "inherent" fault), the consumer can complain once it is discovered.

But buyers cannot expect a legal remedy in respect of:

- fair wear and tear;
- misuse or accidental damage; or
- if they decide they no longer want the item.

Similarly, buyers cannot expect a legal remedy where goods have faults that they knew about before the sale or that should have been evident on reasonable inspection.

Remedies

If a product that was faulty at the time of sale is returned to the retailer, the buyer is legally entitled to:

- **a full refund**, if this is within a reasonable time of the sale ("reasonable time" is not defined in law but is often quite short); or

- **a reasonable amount of compensation (or "damages")** for up to six years from the date of sale (five years after discovery of the problem in Scotland).

This does not mean all goods have to last six years! It is the limit for making a claim in respect of a fault that was present at the time of sale. It is not equivalent to a guarantee.

Additional rights for consumers

Alternatively, consumers (see definition in the "Introduction") can choose to request instead:

- a repair or replacement.

The retailer can decline either of these if he can show that they are disproportionately costly in comparison with the alternative. However, any remedy must also be completed without significant inconvenience to the consumer. If neither repair nor replacement is realistically possible, consumers can request instead:

- **a partial or full refund**, depending on what is reasonable in the circumstances.

It may be the case that a full refund is not the reasonable option because the consumer will have enjoyed some benefit from the goods before the problem appeared. This needs to be taken into account before a reasonable partial refund can be assessed.

As illustrated in the flow chart on page 6, consumers can switch between certain remedies if they find they are getting nowhere down the route originally selected. However, they would have to give a retailer a reasonable time to honour a request before they tried to switch, and they could never pursue two remedies at the same time.

Proving the fault

Generally, the buyer needs to demonstrate the goods were faulty at the time of sale. This is so if he chooses to request an immediate refund or compensation (damages).

There is one exception. This is when the buyer is a consumer and returns the goods in the first six months from the date of the sale, and requests a repair or replacement or, thereafter, a partial or full refund. In that case, the consumer does not have to prove the goods were faulty at the time of the sale. It is assumed that they were. If the retailer does not agree, it is for him to prove that the goods were satisfactory at the time of sale. For goods returned after six months the normal rules apply so that it would be for the consumer to demonstrate they were faulty when sold.

Other situations covered

The remedies of repair, replacement, partial refund and full refund are also available to consumers:

- where installation by the retailer is not satisfactory;
- where installation instructions have serious shortcomings;
- generally where a good does not match the public statements made about it by the retailer, manufacturer, importer or producer; and
- where a specially commissioned product has relevant failings.

These are greatly simplified explanations and they are expanded on below.

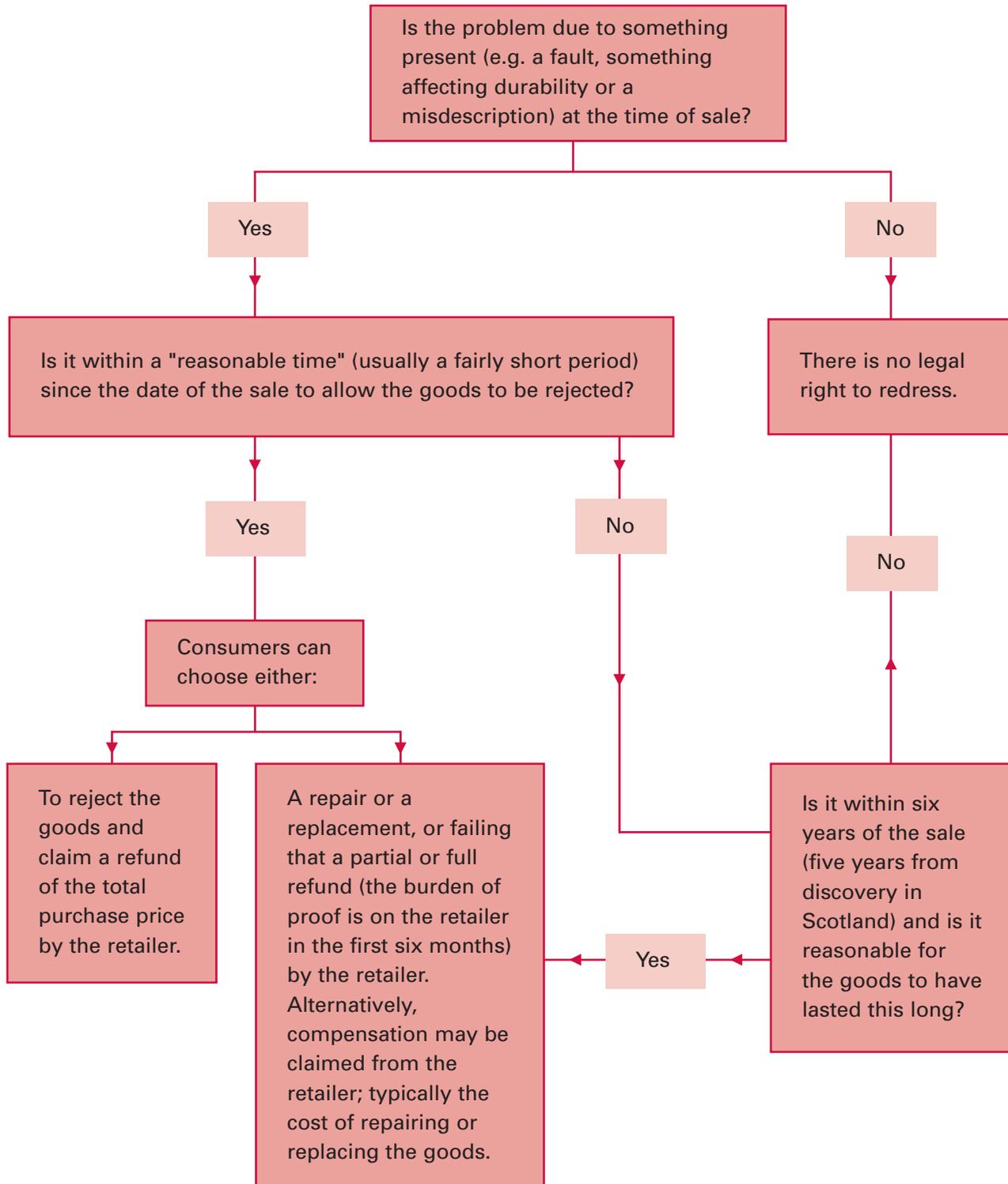
Alternative dispute resolution

Although buyers do sometimes take court action, in day-to-day practice this is a rare event. In the vast majority of cases, the buyer and retailer are able to reach a satisfactory solution without any need to consider going to court. Where this is not possible, use of an alternative dispute resolution procedure or trade association scheme can be considered. Buyers can seek details from the retailer, the Community Legal Service or a Citizens Advice Bureau.

Advice

Buyers can obtain free advice from their local Citizens Advice Bureau (<http://www.citizensadvice.org.uk/>); their local council's Trading Standards Department (<http://www.tradingstandards.gov.uk/>); the Community Legal Service (<http://www.clsdirect.org.uk/>); the Which? Online Legal Service (<http://www.which.net/>); the OFT's Shoppers Guide (<http://www.of.gov.uk/News/Publications/Leaflet+Ordering.htm>); and solicitors (who may charge). The DTI is not able to intervene in individual disputes.

Sale of Goods – simple summary of consumers' rights and remedies



Conforming to Contract

(The Implied Terms)

When buyers complain about goods they frequently say that they are "faulty". What this means, in legal terms, is that the goods do not conform to contract, although this is not the language that is usually used in this situation.

Goods would not conform to contract (would be faulty) if they failed to work immediately from the time of sale. Indeed, goods might not conform to contract if they failed to work later, even after a number of years, due to an inherent fault – i.e. one that could be said to exist at the time of sale. Goods also do not conform to contract if they do not comply with any description given by the retailer prior to sale.

The Sale of Goods Act 1979

Conforming to contract

The Sale of Goods Act, which governs whether there is a lack of conformity with the contract, says that:

- Goods should match any description given to them;
- Goods should be of satisfactory quality i.e. they should meet the standard a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all other relevant circumstances;
- The quality of goods includes their state and condition and the following (among others) are, in appropriate cases, aspects of the quality of goods -

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied;
- (b) appearance and finish;
- (c) freedom from minor defects;
- (d) safety; and
- (e) durability.

- Goods should be reasonably fit for any particular purpose that was made known to the retailer (unless the retailer disputed their appropriateness for that purpose at the time).

If a dish is described as ovenproof but shatters when used under the normal conditions for making a casserole it would have been misdescribed and so would not conform to contract.

If someone buys a self-assembly wardrobe and a panel is missing then the goods are incomplete and would not conform to the contract.

Description

In practice nearly every transaction involves a description of some kind. Even where the customer selects goods without assistance, as in a self-service store, that is usually still a sale by description – for example, that on the label. When someone is supplied with goods and he relies on the description given of them, the goods must be as described. For example, a car described as a 2003 registered 1200cc car must have been registered in that year and be of that capacity.

Satisfactory quality

To be of satisfactory quality, goods must be of a standard that a reasonable person would regard as satisfactory at the time of sale (having regard to any description applied to them, the price and all other relevant circumstances).

In deciding whether goods are satisfactory the various aspects of quality which may be taken into account include fitness for all the purposes for which goods of the kind in question are commonly supplied, appearance and finish, freedom from minor defects, safety and durability. But in some circumstances other characteristics may also be relevant.

Because appearance and finish and freedom from minor defects are relevant factors, in appropriate cases the buyer is entitled to expect that the goods will be free from even small imperfections. The durability requirement suggests that the goods should last for a reasonable time but it does not mean that they remain of satisfactory quality for this time (see "Fair Wear and Tear" and "Durability" below).

Someone buying a new pair of shoes would clearly not expect the soles to come away from the uppers after wearing them in normal conditions for a few days.

On the other hand, someone buying a 10-year-old car from a dealer could not reasonably expect it to perform like a new car, although he could expect it to give the kind of service that the average car of that mileage and model would give.

Particular purpose

If a customer says – or when it should be obvious to the retailer – that the goods are wanted for a particular purpose, even if that is a purpose for which those goods are not usually supplied, and the retailer agrees that the goods will meet the requirement, then they have to be reasonably fit for that purpose. If the retailer is not confident that the goods will meet the customer's particular requirements, he should make this clear, perhaps on the receipt, to protect himself against future claims.

If a consumer was told that certain software generally used on Apple computers was compatible with a PC and it was not, it would not conform to contract. If no mention had been made about the PC and the software was bought on the assumption that it was compatible then the consumer would not be likely to have grounds for complaint.

Fair Wear and Tear

Goods cannot always be expected to work fault-free. They can break down through normal use. Buyers cannot, therefore, expect to hold the seller responsible for fair wear and tear. There needs to be a fault that was present on the day of sale even though it only became apparent later on, or a misdescription of the goods, or a lack of durability that suggests the goods were not of satisfactory quality to start with.

If a central heating system stopped working – because of its pump failing – four years after the sale, having had average usage, then it might not be due to an inherent fault (latently there on the day of the sale) but due to it expiring at the end of its normally accepted working life. This is especially so if the relevant trade association had advised that such pumps only worked for an average of four years. If, however, the pump had only lasted half its expected life, having been subject to average usage, then the consumer would, no doubt, wish to seek an opinion as to whether the item had contained a latent fault or been constructed with sub-standard parts that made it not durable enough to pass the satisfactory quality test.

Durability

Durability can be a difficult concept, but, as indicated in the “Fair Wear and Tear” example above, it is something that can be considered when evaluating whether goods conform to contract. For example, if a product which should have a long life develops a major fault and cannot be repaired after a comparatively short period then it may well fail the durability test. Everything has a finite life and this needs to be borne in mind when considering durability. Factors that could be taken into consideration in assessing durability might include:

- the price (a £200 tyre might be expected to last longer than a £50 one);
- inappropriate use (a small engine mower used to service a very large garden); or
- whether the product was subject to greater use than normal (domestic washing machine used to regularly wash several families clothes’).

Additional Requirements for Consumer Sales

Public statements

Any public statements made by manufacturers, importers or producers (in addition to retailers) about the specific characteristics of the goods, particularly in advertising or on labelling, have to be factually correct – and form part of the retailer's contract with the consumer. However, the retailer is not responsible for the statement, and the consumer is not entitled to redress, if the retailer shows:

- that for good reasons he was not aware of the statement;
- that it had been corrected in public before the conclusion of the sale; or
- that the consumer could not have been influenced by the statement.

If a manufacturer ran UK advertising that a particular jet ski could run on unleaded fuel but it could not, the consumer could require redress from the retailer.

However, if a retailer could show that he was, for good reason, ignorant of the manufacturer's claims then the consumer would not be able to seek redress from the retailer over the specific characteristic. An example could be erroneous claims made in a manufacturer's foreign, or regional, advertising campaign that the retailer could not reasonably be expected to have come across.

If the retailer argued that the claim had been corrected but the only evidence was a notice in an obscure trade magazine, then this would probably not prove convincing. More effective publicity would be needed to alert consumers.

Redress up the Supply Chain

Any public statements made by manufacturers, importers or producers (in addition to retailers) on the specific characteristics of the goods, particularly in advertising or on labelling, have to be truthful. We have seen above that (i) if the retailer could show that he was reasonably not aware of the statement, or (ii) that it had been corrected by the conclusion of the sale, or (iii) that the consumer could not have been influenced by the statement, then it can be disregarded.

In circumstances where the retailer did not enjoy any of these defences, the consumer could pursue him for redress for statements that the others had made. However, the retailer might have the right to pursue the manufacturer, importer or producer for equivalent compensation and costs under the law of contract, depending on the precise contractual arrangements in place. Where there is no contractual link between the seller and the other party, the seller may, in certain circumstances, be entitled to recover his losses from them on the basis of the law of negligence.

Hiring Goods

The customer is entitled to expect the goods to be as described, of satisfactory quality and fit for their purpose in the same way as if he had bought the goods. Traders cannot deprive consumers of their rights by reference to a contract term but they may be able to do so for non-consumers although any restriction or exclusion is subject to a test of reasonableness (see page 21).

Hire-Purchase and

Conditional Sale

Agreements

In the case of hire-purchase agreements, the buyer's rights will be against the finance company. Buyers can, in appropriate circumstances, reject goods or claim compensation (see below).

In the case of conditional sale agreements, the buyer's rights are against the seller of the goods. Buyers can, in appropriate circumstances, reject the goods or claim compensation. Additionally, consumers can request a repair or replacement (see below).

Remedies

The buyer has a number of remedies if goods do not conform to contract. All buyers can pursue the first two remedies below – the remainder are only available to consumers (that is "people who are buying for purposes not related to their trade, business or profession"). The rights of consumers are simply illustrated in the flow chart on page 6.

Rejection of Goods

Buyers can reject the goods and require their money back provided they complain within "a reasonable time" (usually a short period).

The Sale of Goods Act does not define what amounts to a "reasonable time" but buyers have to be given a reasonable time to examine the goods to see if they were satisfactory. Ultimately, the matter can only be decided by a court after taking into account all the circumstances. An important factor might be that the buyer was not in a position to check the goods for a longer time after the sale than usual, because, for example, he was admitted to hospital immediately after he purchased them.

Where a buyer is entitled to reject the goods, he must tell the retailer immediately. He is not obliged to send them back but must make them available for collection. However, most buyers would return goods they had themselves taken away to assist them convince the retailer their claim was legitimate and so speed things up.

Where the buyer is not a consumer and the problem is a slight one (e.g. there is only a minor defect) then the goods cannot be rejected although compensation can be claimed (see below).

Claim for Compensation

Buyers can instead claim compensation known as "damages", if they are not entitled to reject the goods, or if they choose not to request this.

Compensation by way of damages is designed to compensate for actual losses and so normally amounts to the cost of repair or replacement (with goods of a

similar age). Any direct and predictable expense arising as a result of being supplied with faulty goods can also be claimed by the customer (see "Consequential Loss" on page 16).

This could include the cost of returning the goods, for example. In some instances the customer could get the defect remedied by someone else and claim the cost from the retailer as compensation for breach of contract. However, this is not advised as it might make it difficult to prove the problem dated from the time of the sale.

For a broken four-year-old clock with an inherent fault, a claim would typically be for the amount necessary to have it repaired or to purchase a similar four-year-old model (but in working order, of course).

Repair and Replacement

Consumers (see definition above) can, if purchases do not conform to contract and they do not wish (or are not entitled) to reject the goods or claim compensation, specifically request a repair or a replacement.

Confronted with a five-year-old piano with an inherent fault, the consumer can request that it be repaired rather than pursuing compensation to pay for a repair that he then has to arrange himself. Alternatively, he could request a replacement five-year-old piano of the same/similar specification, assuming that finding one was practicable (perhaps only so for a dealer of both new and second-hand products).

"Reasonable time" and "significant inconvenience"

Repair and replacement have to be carried out within a reasonable time and without significant inconvenience for the consumer (if this is not possible the consumer should select an alternative remedy). The retailer has to bear any costs such as transporting the goods. Complaints have to be judged on a case-by-case basis and take account of all the circumstances including:

- the nature of the goods;
- the purpose for which they were bought; and
- their importance to that particular customer.

It is difficult to define "reasonable time" here just as it is to specify the "reasonable time" for rejecting a good. In the case of a wedding dress, there is clearly a crucial date in relation to which the number of days involved may become critical and that may be the main deciding factor. Repair might then not be feasible but a replacement might be appropriate.

In the case of an electric drill the number of days may be less critical than with a wedding dress. The possibility of using a hand drill needs to be considered.

With a fridge, the lack of an alternative would weigh heavily in the analysis of this crucial household item but the provision of a loaned item might prove part of a successful remedy and so avoid "significant inconvenience".

"Disproportionate cost"

A retailer can decline the repair remedy if the cost would be disproportionately higher than the cost of replacement – or vice versa. A decision on the cost being disproportionate should take account of the value of the goods if they were to conform to contract; the significance of the lack of conformity and whether the alternative remedy could be completed without significant inconvenience to the consumer.

If a four-year-old table was only worth £50 and a repair would cost £75 then the retailer could decline such a request and offer a replacement, assuming he had a similar four-year-old model in stock or had prompt access to one. If he had neither of the latter, then he could refuse both repair and replacement and would move onto the partial refund remedy.

If the stitching had gone on a pair of trousers the customer would not be entitled to a replacement if the inherent fault could be repaired within a reasonable time and at little inconvenience.

Partial and Full Refund

If repair or replacement are not practicable options, the legislation provides for the alternative remedies of partial, or full, reduction in the price (a refund, in other words). In considering whether a full, or partial, refund is to be given, account needs to be taken of the benefit provided by the good to the consumer, just as it is when determining compensation.

If a spin dryer had cost £99 four years before and was two thirds of the way through its average length of life – when an inherent fault showed itself – then the retailer might offer around £33 as an adequate reduction in price bearing in mind that the consumer was being deprived of one third of the typical period for which he should have enjoyed the good. Account might also need to be taken of the fact that goods tend to depreciate more quickly in the early years of their life-span.

If a consumer had had constant problems with a product, from the time of the sale, to such an extent that he had never enjoyed any normal benefit from the product then the retailer might be expected to offer him a full refund of his money.

Non-Consumer Claims

Non-consumers are not entitled under the legislation to a repair or replacement if they have purchased goods that do not conform to contract but they are still entitled to redress. However, if buyers prefer not to reject the goods or ask for compensation

there is nothing to prevent retailers offering a repair or replacement.

If a computer was purchased for business use and has a fault it might be more convenient for the business to try and come to an arrangement with the retailer for a simple repair or a replacement rather than formally rejecting the computer or seeking compensation.

Suspending the Right to Reject

It is important to note that, within the reasonable period after the sale (see "Remedies" on page 4 and "Rejection of Goods" on page 11), buyers (both consumers and business buyers) do not lose their right to reject the goods/require their money back merely by agreeing to let the retailer try to repair them. This is made clear by s.35(6) of the Sale of Goods Act.

If the buyer returns the goods as not conforming to contract, and asks for his money back within a reasonable time, he may decide/be persuaded to let the retailer make an attempt at repair. After he had given the retailer a reasonable time to complete this, with no success, he could fall back on requiring the return of the price paid. This might be because the repair was not carried out promptly enough or because it was not repaired to an adequate standard.

Sales Receipts

In providing redress to a buyer, a retailer is entitled to satisfy himself that the product was purchased at his store and on the date claimed. A sales receipt is a good way of providing such proof (as is a detailed credit card statement). Although sales receipts are not a legal requirement, buyers are advised to request them where they might later be needed and to keep them safe.

Credit Notes

Buyers do not have to accept credit notes if goods do not conform to the contract. However, they may be offered where the buyer has no legal right to any redress but the retailer wishes to be helpful e.g. the purchaser has a change of mind.

The essential point is that credit notes are voluntary items. Retailers do not have to offer them and buyers do not have to accept them but it is sometimes beneficial for both parties to use them. The particular Terms and Conditions will explain the detail of how they are to operate.

Time Limit – Six Years

Maximum to Bring a Claim or Complaint

Complaints can be brought to court up to six years after a sale in England, Wales and Northern Ireland (and five years after the time of the discovery of the problem in Scotland). After that time, the Limitation Act 1980 generally prevents court cases being brought. This does not mean that goods have to last six years; it is not a durability requirement.

A buyer could bring a case against a retailer, alleging non-conformity of contract, for up to six years after the sale. However, he would find a court unsympathetic in the latter years for low cost items that it was reasonable to expect to last only a short period (a £5 watch might not last many years but a £500 one should) or for consumables like oil filters which have a specified limited lifespan. Similarly, when a watch stops because a battery has come to the end of its life – assuming it had lasted a reasonable time – there are no grounds for complaint that the watch is not conforming to contract.

The Burden of Proof and the First Six Months

In any dispute, it is usually for the buyer to prove that the goods do not conform to contract. This is the case where buyers wish to pursue their right to reject goods, within a reasonable period, or seek compensation.

"Reversed burden of proof"

However, in the first six months after the sale, when a consumer seeks the remedies of repair or replacement, or when these are not practicable, partial or full refund, it is for the retailer to prove that the goods conformed with the contract in disputed cases. This is known as a "reversed burden of proof". After six months, however, it falls to the consumer to prove that the lack of conformity existed at the time of the sale.

In the first six months a consumer could claim that a fault was present at the time of the sale and hence argue that the good was not of satisfactory quality and so seek redress. If the retailer rejected this view, the consumer could take the matter to court where the judge would look to the retailer to refute the presumption of unsatisfactory quality with reasonable evidence. The retailer might attempt this by, for example, expertly analysing the good to show it was damaged by the consumer e.g. where leather shoes had not been cleaned, so causing the leather to crack.

For faults that become apparent after six months, it is for the consumer to provide evidence that the item did not conform to contract at the time of the sale. Often the consumer and retailer are able to negotiate an acceptable solution but, ultimately, if the retailer believed that the good had conformed to contract at the time of sale, then the consumer would need to present enough evidence in a court to substantiate his own claims. One way to do this, particularly in a high-value claim, might be to obtain the views of an expert that suggested the item was poorly manufactured or designed, such that it contained a fault that was likely or certain to make the product break down at some future date. Other factors would also need to be considered e.g. the price and nature of the goods.

If the consumer reported a fault after the first six months, the onus would be on them to prove that the fault exhibited itself within the six months if they wanted to enjoy the six months reversed burden of proof. Since proving the date of discovery of a fault is a difficult and unwanted hurdle for the consumer, the simple solution is to report faults as soon as they become known – indeed, consumers may lose out if they do not do so (see next section).

Minimising Losses

Buyers should act reasonably when seeking redress and not add unnecessary costs.

This means they should:

- (i) Report faults as soon as possible. If they do not:
 - it becomes more difficult for them, as time goes by, to prove that the goods were inherently faulty at the time of sale; and
 - it is possible that the goods can deteriorate more than otherwise, especially if attempts are made to repair or to continue using them. The retailer would not be responsible for correcting this aspect.
- (ii) Make sure that they service the goods as appropriate, follow any user instructions and look after them, so as not to undermine their claim by contributing to any problem.

Buyers cannot expect retailers to provide redress where they have:

- accidentally damaged the goods;
- misused them and caused a fault, perhaps through the use of incompatible accessories; or
- tried their own repair, or had someone else attempt a repair, which has damaged the goods.

Consequential Loss

When a buyer suffers loss as a direct consequence of a faulty product, the buyer may be able to claim damages. In extreme cases, buyers might suffer injury or damage to other property which is directly attributable to the faulty product, and these losses might be recoverable as consequential losses. In less serious situations, the buyer might find that he incurs extra expense as a direct result of buying faulty goods. Claims for consequential loss do not normally cover distress, inconvenience or disappointment.

A specialist outdoor tank might be purchased to recycle spent water to help the environment and reduce metered water charges. If it began leaking or stopped working in some other way (because of a fault present at the time of sale), the higher water charges levied thereafter until repair could be claimed. Also, any phone costs involved in trying to fix the problem, e.g. via technical lines provided, could be claimed.

In claiming any consequential costs the buyer would be expected to have acted reasonably with regard to how they were accrued e.g. approaching the retailer for a solution immediately rather than first incurring expenditure hiring alternative equipment from elsewhere.

Free Guarantees/Warranties

In addition to having their legal rights a consumer may be offered a guarantee (e.g. by a manufacturer or retailer) on a voluntary basis. Guarantees – sometimes called warranties – do not have to be offered but if they are, those given free of charge with the product:

- will be legally binding on the person offering the guarantee;
- will have to be written in English and in plain intelligible words;
- must be available for viewing by consumers before purchase, e.g. by advising where they may be seen such as on the internet for those with access; and
- state that they do not affect the consumer's legal rights.

If a manufacturer reneged on a free guarantee then the consumer could enforce it in a small claims court. The retailer would not be involved.

If the consumer wishes to inspect a free guarantee, to help make a purchasing decision, then the person offering it has to make it available – if they cannot do so immediately, they should follow up promptly with a copy which is posted or sent via email etc.

Translation of free guarantees

Where those offering free guarantees do not translate them into English, or habitually refuse to make them available for viewing, the Office of Fair Trading and Trading Standards have the power to seek an injunction requiring them to comply.

Duration of free guarantees

It is up to the company offering free guarantees to decide on their duration. Many products come with a free one-year guarantee; some have two or three years while others have none. This is entirely legal.

Retailers and their

"Returns" Policies

Some retailers offer "returns" policies (also known as "satisfaction" guarantees) such as promising the full money back for undamaged goods, for up to a set number of weeks, for whatever reason. These are useful additional rights to those the buyer has under the law. The terms and conditions would spell out exactly how these were to work.

Second-hand Goods

The buyer has exactly the same rights with second-hand goods as he does with new. However, with older goods, it is increasingly difficult for the buyer to prove that a fault was inherent at the time of the sale. The conformity criteria also allow second-hand goods to be judged less rigorously than new, where reasonable.

In judging whether a recently bought seven-year-old car conformed to contract it would be reasonable to take account of the price paid. This could be far less than for a new vehicle and so expectations should be lower. It would also be reasonable to assume that the performance might not be as good and the quality of the finish could fall far short of A1 condition.

However, it would still need to conform to any express description given to it and should be judged in accordance with the standard/performance that was reasonable to expect in a similar car of that age.

Auctions

Some goods sold at auction can be exempted (subject to a reasonableness test) from the requirements (implied terms) in the Sale of Goods Act as to description, quality and fitness. Notices can be put up excluding these specified sale of goods rights, subject to any such exclusions satisfying a reasonableness test. This is covered by the Unfair Contract Terms Act 1977.

Notices can be used to exclude or restrict statutory rights in relation to all goods when buyers are other than consumers (business buyers, companies) – although any such exclusion or restriction must be reasonable. The rights of consumers in respect of **new goods** cannot be excluded in any auction. The rights of consumers in relation to **second-hand** goods extend only to rejection or compensation if goods are faulty or

misdescribed; but, these rights can (subject to a reasonableness test) be excluded or restricted. However, they can only be excluded or restricted where consumers have the opportunity of attending the auction in person.

Consumers will therefore enjoy their full statutory rights which cannot be excluded when purchasing from an internet or other auction which they do not have the opportunity to attend in person. This would also extend for example to auctions that barred consumers from attending but accepted their telephone bids. It should be noted however, that many internet sellers are individuals and, as with any sale, the consumer's full rights only apply when purchasing from trade sellers.

The remedies of repair or replacement, or failing these, partial refund and full refund will not apply for second-hand items at auctions where consumers have the opportunity to attend in person. In this situation, unless the auction house put up clear signage indicating that these rights had been excluded, the buyer would enjoy the basic Sale of Goods Act rights to initially reject the goods or to request compensation.

If the auction house stopped consumers attending in person then their full redress rights would be available to them – assuming they could buy from a distance, e.g. via a telephone bid or an internet auction.

Installation and Installation Instructions

Where the retailer agrees installation for a consumer by himself or his agent, as part of the sales contract, the consumer can, where a lack of conformity arises, call on the redress rights of repair, replacement or failing that partial or full refund. Any losses suffered as a result of the lack of conformity can be claimed as consequential losses. A consumer, or a buyer who is not a consumer, can alternatively seek a full refund of the money paid or adequate compensation including any consequential losses. Naturally, there are practical considerations as to what is possible in terms of repair and replacement with some installations.

If a new kitchen was installed and the cupboard doors all opened the wrong way (contrary to the agreed plans), it would be possible alternatively for a consumer to seek a repair, replacement etc, rather than pursue cash compensation.

Retailers are liable for claims where they have been paid for both the goods and the installation regardless of whether their own workers or their sub-contractors installed the goods. They are not responsible for the installation aspect if a third party, arranged and paid for by the consumer, installed the goods.

If the purchase of a carpet included installation by the retailer (or his sub-contractors) then he would have to offer redress regardless of whether it was the product or the installation that was faulty. If, however, the consumer had paid a separate third party to install the carpet then the retailer would not have to offer any remedy for problems arising from the installation work. The consumer would pursue the installer for suitable redress.

It is open to purchasers of goods sold with inadequate self-installation/self-assembly instructions to pursue a claim that they had been sold in breach of section 14 of the Sale of Goods Act, which deals with conformity with the contract as to quality and fitness requirements.

Where the installation or assembly instructions were written with shortcomings that resulted in a consumer not being able to use them adequately, then he could point out that the goods sold were not fit for purpose and hence claim the full redress rights under the Sale of Goods Act.

Goods to be Manufactured or Produced

The Supply of Goods and Services Act 1982 classifies as "contracts of sale" certain contracts for work and materials. Where such work results in a lack of conformity the consumer is able to call on the redress rights of repair, replacement or, if they are not possible, partial or full refund. A non-consumer buyer could claim compensation.

When an item of furniture is commissioned but turns out not to conform to contract then the buyer is entitled to appropriate redress. However, if the lack of conformity is due to any materials, or designs, provided by the buyer then the redress sought would need to be curtailed suitably or declined outright.

Services

In addition to the requirements about installation (page 19) and contracts for the supply of consumer goods to be manufactured or produced (see above) there are specific requirements in the Supply of Goods and Services Act 1982 about the provision of services.

The Supply of Goods and Services Act 1982 requires that a service be provided with reasonable care and skill, within a reasonable time and, where no price is agreed, cost no more than a reasonable charge in England, Wales and Northern Ireland. The Act does not apply to certain sectors which are governed by specific

statutes (e.g. the carriage of passengers and goods). The Act does not extend to Scotland, but common law there has similar effect, and suppliers of services or their customers should obtain legal advice.

Exclusion Clauses

Unfair Contract Terms Act 1977

Consumer Sale of Goods Contracts

Consumers cannot have their legal rights removed in sale of goods contracts. Furthermore, it can be an offence to mislead consumers about their legal rights. To do so could result in a criminal prosecution. For example, notices such as "We do not give refunds" are misleading and cannot be used. Enforcement is undertaken by local Trading Standards Departments.

Other Contracts

A trader dealing with a consumer, or dealing with any customer on his own written standard terms of business, cannot exclude or restrict his liability for breach of contract or allow himself to provide an inadequate service unless he can show that the clause satisfies the "test of reasonableness" (see below). Nor can he require a consumer to indemnify him against any loss the consumer may incur through negligence or breach of contract unless he can show that the clause satisfies the same test. "Negligence" includes breach of any contractual or common law duty to take reasonable care or exercise reasonable skill.

These provisions generally extend to contracts for the supply of services as well as to contracts for the sale or other supply of goods (but see "Consumer Sale of Goods Contracts" above). They are, however, subject to certain exceptions (for example, where the right to limit liability is given by statute, as in the case of innkeepers and carriers).

In other areas, the Unfair Contract Terms Act 1977 says that a trader cannot exclude or limit his liability for death or personal injury arising from negligence. He can exclude or restrict his liability for other loss or damage resulting from negligence only if the exclusion clause meets the "test of reasonableness" (see below).

Test of reasonableness

The 1977 Act provides that an exclusion clause is valid only if the trader can show that it is fair and reasonable. This is called the "test of reasonableness". In deciding whether a clause meets this test a court would consider:

- the circumstances that were (or ought reasonably to have been) known to the parties when the contract was made, paying particular attention to such matters as the relative bargaining strength of the parties;
- whether the customer received any special inducement to accept the exclusion clause (such as a special discount);
- whether the goods or suitable alternatives could be obtained elsewhere without the exclusion clause;
- whether the customer knew or ought reasonably to have known of the clause; and

- whether the goods were made to the customer's specification.

Where a trader seeks to limit his liability, under an exclusion clause, to a specified sum of money, the courts are required to have regard to the resources which he could expect to be available to him to meet such liability and how far it was open to him to cover himself by insurance. The "test of reasonableness" requires the trader to prove that the clause was reasonable; the customer is not required to prove that it was unreasonable.

Unfair Terms in Consumer Contracts Regulations 1999

The Unfair Terms in Consumer Contracts Regulations 1999 also apply to most terms which have not been individually negotiated in contracts with consumers. Terms which create a significant imbalance in the rights and obligations of the parties to the detriment of the consumer are regarded as unfair. Unfair terms are not binding on the consumer.

Although the tests in the Regulations and the Unfair Contract Terms Act 1977 are not identical it is likely that, in most cases, where it is possible to apply both, the same result will occur. In other words, a term which is fair is likely to be reasonable and vice versa.



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