

businesscompanion

trading standards law explained

The sale & supply of goods – before 1 October 2015

In the guide

Consumer Rights Act 2015

What is a trader?

What is a consumer?

Formation of a contract

 The contract

 How is the contract made?

 What happens when the consumer changes his mind?

The implied terms

Remedy for breach

 What are acceptance & affirmation?

 Remedies where the consumer cannot reject the goods

 Additional remedies for consumers

Exceptions - when the consumer cannot make a claim

Time limits for court action

Other rules affecting consumer contracts

 Consumer contracts (information, cancellation and additional charges) regulations 2013

 Loss or damage in transit

 Misrepresentation

 Consumer protection from unfair trading regulations 2008

 Unfair contract terms act 1977

 Unfair terms in consumer contracts regulations 1999

 Consumer protection act 1987 (part 1)

 Contracts (rights of third parties) act 1999

 The trader's identity

Common questions

Supplying services

Key legislation

This guidance is for England & Wales

This is a guide to the rights and obligations that arise when a consumer buys goods from a trader. It answers questions that are commonly raised by traders about their obligations towards the individual consumer.

This guidance only applies to contracts made before 1 October 2015.

Consumer Rights Act 2015

The rules relating to the supply of goods, services and digital content changed on 1 October 2015 for contracts made from that date. A single set of rules now apply to all contracts where goods are supplied, including sale, hire, hire-purchase and work / materials contracts. New rules also apply to the supply of services and the Act sets out, for the first time, specific rules relating to digital content.

Whilst the new legislation brings many changes, the overall picture is that consumers' rights in relation to the supply of goods and services remain similar to those that applied under the previous laws. For most traders, the most significant changes are increased clarity over the right to reject goods and when that right is lost, and the new presumption that consumers should not have to accept multiple attempts at repair or replacement. The right to reject is subject to a fixed 30-day period, and the existing remedies of repair, replacement, part refund and rescission remain in effect. Where a consumer who has lost the right to reject then asks for repair or replacement, the trader has just one chance to get this right before the right to reject is reinstated.

For more information please see:

- ['The sale & supply of goods'](#)
- ['The supply of services'](#)
- ['Digital content'](#)

What is a trader?

If you are a 'person' acting for purposes relating to your trade, business, craft or profession then you are a 'trader'.

A person can mean more than one individual - for example, if your business is a partnership of two or more people. A person can also be a company, a charity (or other not-for-profit organisation), a government department, a local authority or a public authority.

If you are a trader that allows another person to act in your name or on your behalf you would still be responsible for those contracts - for example, if you employ people to make contracts for selling cars to your customers or you sub-contract with someone else to supply labour when building a wall.

What is a consumer?

For the purposes of this guide, a consumer is an individual who, in his dealings with a trader, is not acting for the purposes of a business. Where a consumer presents himself as a business (for example, by buying goods for personal use from a trade outlet on a trade account) the law does not consider him to be a consumer.

Also, an individual is not considered to be a consumer when buying second-hand goods at a public auction where individuals can attend in person.

If the trader wants to claim that the buyer is not a consumer, and that the buyer's rights are therefore limited, it is for the trader to prove this.

Formation of a contract

The contract

When a consumer buys goods from a trader, both parties enter into a binding contract. A contract may be defined as an agreement between two or more parties that is intended to be legally binding. The contract may include various 'express terms' and 'implied terms'. Express terms are those that are specifically agreed between both parties - for example, the price in most contracts or an agreed delivery date. Implied terms are those that are deemed to exist even if they have not been specifically agreed, either because they reflect the parties' obvious intentions and are necessary for the contract to work, or because the law applies them to the contract. The terms implied by law are usually referred to as consumer or statutory rights and they cover issues such as quality, description and fitness for purpose.

In order for an express term to be binding it must clearly be part of the contract and be legal. Terms given to a consumer after the contract is made (for example, terms written only on the back of a receipt) are not part of the contract and they have no effect.

A contract does not have to be written down, but where there are key express terms it is advisable to detail these in writing so there can be no dispute later on.

Failure to comply with the terms of the contract is referred to as a breach of contract, and the person committing the breach normally has to correct it in some way.

How is the contract made?

The essential element in forming a contract is the agreement (consisting of an offer and acceptance). At least two parties are required (such as the trader and the consumer). One of them (the offeror) makes an offer, which the other (the offeree) accepts. An offer is an expression of willingness to contract made with the intention that it shall become binding on the offeror as soon as it is accepted by the offeree.

When a trader displays or advertises goods (for example, by displaying them on a shelf in a shop alongside a price ticket) it is usually giving consumers what is referred to as an 'invitation to treat'. The consumer can then make an offer to buy the goods. At this point the trader is under no obligation to accept the offer - a contract is made if and when the trader accepts.

Sometimes, the process works the other way round - that is, the trader makes an offer to the consumer and a contract is made when the consumer accepts the offer.

Under the contract, the consumer will agree to pay the trader a sum of money and/or to do something else in return for the goods the trader supplies. This commitment is known as the 'consideration' in the contract. If there is no consideration (that is, if a trader offers to supply goods completely free of any charge or other obligation) there is no contract at all.

What happens when the consumer changes his mind?

Normally a consumer has no automatic right to change his mind and to cancel a contract; therefore if this happens he is in breach of contract. However, there is an automatic right to cancel in some special cases, including most consumer contracts made at a distance (for example, mail order or internet) or at a consumer's home etc. See 'Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013' below.

If a consumer cancels the contract wrongfully, the trader can claim the reasonable costs incurred. Where the

trader cannot recover the lost sale (for example, by selling the item to someone else) they may be entitled to claim loss of profit too. If the consumer has made full- or part-payment up front, the trader can only retain enough to cover these losses and must refund the difference.

The implied terms

Certain terms are implied by law in every transaction for the sale and supply of goods (including hire purchase, hire, part exchange and contracts for work and materials).

Different types of contracts are covered by different acts:

- the Sale of Goods Act 1979 covers sales of goods
- the Supply of Goods (Implied Terms) Act 1973 covers hire purchase
- the Supply of Goods and Services Act 1982 covers other contracts under which goods are transferred, including hire, barter and work / materials

The person transferring or selling the goods must have the right to do so and the goods must:

- **correspond with the description.** Many transactions involve a description of some kind. When goods are supplied and the consumer relies on such a description, the goods must be 'as described'. If the description is false, an offence may also have been committed
- **be of a satisfactory quality.** Goods must be of a standard that a reasonable person would regard as satisfactory. Quality is a general term, which covers a number of matters including:
 - appearance and finish
 - freedom from minor defects
 - safety
 - durabilityIn assessing quality, all relevant circumstances must be considered, including price and description. In consumer contracts, the manufacturer's advertising can also be taken into account
- **be fit for purpose.** When a consumer indicates that goods are required for a particular purpose, or where it is obvious that goods are intended for a particular purpose and a trader supplies them to meet that requirement, the goods should be fit for that specified purpose

Remedy for breach

A consumer can reject goods, providing that he has not accepted them (in the case of a contract of sale) or that he has not affirmed the contract (in other contracts where goods are transferred such as hire, hire purchase or contracts for work and materials). Acceptance and affirmation are defined below.

When a consumer rejects goods he can claim compensation for his losses. This will normally amount to a full refund, plus compensation for any foreseeable losses that have been incurred. These losses might include the cost of any property damage caused by the goods, compensation for personal injury and compensation for the additional cost of buying equivalent goods if they are more expensive elsewhere. The consumer is also released from all his outstanding obligations under the contract - for example, the outstanding instalments in a contract of hire purchase.

What are acceptance & affirmation?

When acceptance or affirmation take place, the consumer loses the right to reject goods, although he may still retain a right to compensation or some other remedy.

Acceptance applies only in contracts for the sale of goods - for example, acceptance takes place if the consumer does any of the following:

- tells the trader that he has accepted the goods
- alters the goods in some way
- keeps the goods for more than a reasonable time without complaining (this time period may vary depending on the nature of the goods and is not strictly defined in law)
- uses the goods after complaining

A consumer is not considered to have accepted the goods just because he lets the trader attempt a repair or where he has merely signed an acceptance or delivery note. A consumer must have a reasonable opportunity to examine the goods to check that they conform with the contract before he is deemed to have accepted them.

Affirmation applies in other contracts for the transfer of goods, including hire, hire purchase and contracts for work and materials. Affirmation takes place when the consumer, knowing that there is a breach of contract, chooses to keep the goods and not to reject them. Affirmation can occur if the consumer becomes aware of a breach but fails to complain within a reasonable time.

Remedies where the consumer cannot reject the goods

When there is a breach of contract, but the consumer has lost his right to reject goods, he will be entitled to claim compensation from the trader. The same rules apply if the consumer is entitled to reject the goods but chooses not to do so. The amount of compensation will be the sum required to put right the breach. Usually, this will be the cost of repair or replacement - or a part refund plus compensation for any other losses suffered.

If a repair or replacement would put the breach right and the trader offers this, the consumer would normally be expected to accept it.

Additional remedies for consumers

Under Part 5A of the Sale of Goods Act 1979, there are additional remedies for consumers in contracts for the sale or supply of goods (but not in contracts of hire and hire purchase). In these circumstances, the consumer may be able to demand any of the following:

- a repair or replacement
- a price reduction to an appropriate amount taking the defect into account
- rescission of the contract (that is, return of the goods, part or full refund, and compensation, if appropriate)

If the consumer chooses one of these remedies, and if the defect is discovered within six months of delivery to the consumer, it is automatically assumed that the fault was there at the time of delivery unless the trader can prove otherwise. If more than six months have passed, the consumer has to prove the defect was there at the time of delivery (even if it was not apparent at that time).

If the consumer chooses the option of a repair or replacement, the trader must do this within a reasonable time and without significant inconvenience to the consumer. The trader must also pay all the relevant costs - for example, labour, postage, etc.

Where a consumer demands a repair or replacement, but that remedy would be disproportionate, then the

trader would be entitled to offer him one of the other remedies. For example, if a consumer demands a repair, but it would be cheaper to replace the item than to repair it, the trader could offer a replacement. The consumer can only require a price reduction or rescission where the cost of repair or replacement is disproportionate or where repair / replacement is not provided within a reasonable time. (Rescission unwinds the contract, so the consumer returns the goods and the trader makes a refund).

Exceptions - when the consumer cannot make a claim

A consumer cannot claim for defects that are brought to his attention before the sale, or if the consumer examines the goods before purchase and any defects should have been obvious.

A consumer cannot claim for damage he causes or if he simply changes his mind about wanting the goods.

Neither can a consumer claim if he chose the product himself for a purpose that is neither obvious nor made known to the trader and he then finds that the item is simply unsuitable for that purpose. For example, if a consumer buys a hedge trimmer and breaks it attempting to cut down a tree with it, he cannot make a claim unless the trader told him it would be suitable for tree-felling.

A consumer has no rights to claim for faults that appear as a result of fair wear and tear.

Time limits for court action

Consumers can expect goods not to fail prematurely, even if the reasonable life expectancy of those goods is several years. However, there is a time limit that eventually prevents consumers from making a claim through the courts.

A consumer cannot normally bring a claim to court more than six years after the breach of contract (usually the date of delivery in a contract for the sale of goods).

This does not mean all goods have to last this length of time, but this is the time limit that the law gives a consumer to take legal action.

Other rules affecting consumer contracts

Consumer contracts (information, cancellation and additional charges) regulations 2013

These Regulations provide consumers with a 14-day cooling-off period for most 'distance contracts' (those made via the internet etc) and 'off-premises contracts' (those made, for example, in a consumer's home). They also require certain information to be given to consumers, both for off-premises contracts and where consumers make an agreement on a trader's business premises. Traders cannot make hidden charges, and additional charges can only be made with the consumer's express agreement.

For more information see:

- ['Consumer contracts - distance sales'](#)
- ['Consumer contracts - off-premises sales'](#)
- ['Consumer contracts - on-premises sales'](#)

Loss or damage in transit

If the trader arranges for goods to be delivered to a consumer, the goods remain at the trader's risk until delivery. Therefore it is the trader's responsibility to ensure that goods are not lost or damaged in transit and/or to take out appropriate insurance.

Misrepresentation

A misrepresentation is a false statement of fact made by a person or their agent that induces someone else to make a contract with them.

Dependent upon whether the misrepresentation was made fraudulently, negligently or innocently, the party who has relied on the misrepresentation will be entitled to a remedy that may include rescission, refund and/or compensation.

Consumer protection from unfair trading regulations 2008

Since 1 October 2014, these Regulations have provided an additional and alternative right of redress for consumers. Where a trader has used misleading or aggressive selling practices, the consumer may be entitled to claim compensation and/or a reduction in price, or to cancel the contract completely.

The Department for Business, Innovation and Skills (BIS) has produced guidance on consumers' right to redress under the Regulations: [Misleading and aggressive commercial practices - New private rights for consumers](#).

Unfair contract terms act 1977

This legislation restricts a trader's ability to use contract terms to limit their legal and contractual liabilities. Traders cannot limit or exclude liability for death or personal injury arising from their negligence.

In consumer contracts, traders cannot limit or exclude liability for breaches of the implied terms as to description, quality and fitness for purpose of goods. In addition, any attempt to mislead the consumer about his rights is an offence under the Consumer Protection from Unfair Trading Regulations 2008. (These Regulations cover traders' duties towards consumers in general - see '[Consumer protection from unfair trading](#)'.)

Unfair terms in consumer contracts regulations 1999

These Regulations, which only apply to consumer contracts, state that a consumer is not bound by a standard term in a contract with a trader if that term is unfair. Examples of unfair terms would include the following:

- penalty clauses that allow the trader to claim more than their actual losses when a consumer breaches the contract
- terms that are unclear or unintelligible
- terms that exclude liability for breach of contract

- terms that deny consumers their legal rights if they do not comply with formalities as to the time or manner of making the claim (for example, making a complaint in writing by recorded delivery)
- giving the trader the right of final decision in a dispute

The Regulations do not apply to terms negotiated with individual consumers, nor do they apply to the core subject matter of the contract (such as the description of the goods and the price).

Consumer protection act 1987 (part 1)

This legislation allows a person to claim compensation if he is injured by a defective product. Depending on the circumstances, a claim might be made against anyone in the supply chain from manufacturer / importer to retailer.

Compensation can also be claimed under this Act for damage to personal property (but not damage to business property).

For more information, see '[Unsafe goods - liability](#)'.

Contracts (rights of third parties) act 1999

This law gives rights to anyone who was intended to benefit from the transaction. For example, if someone buys a gift for a friend and the gift proves to be faulty, either the recipient or the buyer of the gift can take action for breach of contract (as long as it was made clear that the goods were to be given as a gift). Traders can use contract terms to exclude the rights of third parties, but in practice it will often be simpler (and provide a better customer experience) for the trader to deal directly with the recipient of a gift.

The trader's identity

The consumer needs to know, or be able to find out, who he is dealing with. A trader's identity and address must be displayed at their place of business, on key business documents and on websites. This information must also be made available to consumers before a contract is made and whenever a consumer requests it. See '[Company & business names](#)' for more information.

If a trader fails to disclose that they are a limited company and there is then a breach of contract, the consumer may be able to claim against the directors of the business as individuals. If a trader fails to disclose that they are acting as an agent for someone else, then the consumer may be able to make any claim directly against that trader.

Common questions

Q. A consumer doesn't produce a receipt; does the trader have to do anything even if the goods are faulty?

A. There is no legal requirement for the consumer to provide or produce a receipt. If the trader does not remember the consumer buying the item they can ask the consumer to provide proof of purchase. This can be a credit card voucher or cheque stub or anything that indicates when and where the item was bought.

Q. The manufacturer offers a guarantee; can the trader refer the consumer straight to that manufacturer?

A. The consumer's statutory rights are with the trader who sold the goods to him and the guarantee offered by the manufacturer is in addition to such rights. A consumer can choose whether to pursue the trader or the

manufacturer. However, the trader in turn may have rights against their supplier.

Q. If a trader sells sale goods or seconds, surely the consumer doesn't have the same rights against the trader as he would if new or perfect goods had been purchased?

A. The same rights apply whether the goods are in the sale or sold as seconds. However, when assessing the level of quality that is satisfactory, considerations such as price, age and easily identifiable defects would be taken into account.

Q. Someone asks a trader for a quotation; how is this different to an estimate?

A. A quotation is normally a fixed price whilst an estimate is generally a rough guess of what the work would cost.

Q. Can a trader put a notice in their shop stating that refunds are not given in any circumstances?

A. It is illegal to try to exclude a consumer's statutory rights, so a 'no refunds' notice is not permitted. A trader may wish to go beyond what the law requires and offer an exchange or refund policy for consumers who change their mind. A trader can display a notice giving details of such a policy, but it is recommended that the trader seeks advice on the wording of the notice from their local trading standards service. See '[Returns policies](#)'.

Q. A consumer rings a trader to say that the TV he bought from that trader during the previous week is defective but he isn't prepared to return it to the shop. Can the trader insist that he returns it?

A. If the consumer can prove that it is faulty and he hasn't accepted it, it is sufficient for him just to give notice of rejection and allow the trader any reasonable opportunity to collect the TV. The consumer may be prepared to return the goods to the trader if the trader offers to cover the travel and parking expenses but he does not have to do so.

Q. A trader gives a consumer a credit note but he cannot find anything he wants? Does the trader have to then offer a refund and for how long should the credit note run? Can a trader offer a credit note instead of a refund?

A. A trader needs to bear in mind the consumer's rights, so if he is returning goods that are faulty, misdescribed, etc then he may have a right to insist on a refund rather than a credit note in the first place. A trader can offer a consumer a credit note if he has no automatic right to a remedy - for example, if he has simply changed his mind after purchase. However, if a consumer has agreed to a credit note, even if it cannot be used, the trader doesn't have to offer a refund. The trader can determine an expiry date if they inform the consumer of this time period at the time of issue.

Q. A consumer insists on a replacement but the item is no longer manufactured and there are none in stock.

A. A trader can offer the consumer a repair, a reduction in the price or allow the consumer to rescind the contract. A repair will only be acceptable if this does not cause the consumer significant inconvenience.

Q. A trader cannot ascertain whether an item is faulty or whether it has failed due to misuse. What should they do?

A. If a consumer wishes to reject the goods, the onus is on him to prove that the item is faulty and that it has not been misused. If a consumer claims a repair or replacement (see **Additional remedies for consumers** above) within six months of delivery, the onus is on the trader to prove that the consumer is at fault. After six months, the onus falls back on to the consumer. In any case, if the trader cannot agree on the cause of the fault, the trader may wish to obtain a second opinion - for example, from the manufacturer or an independent expert. Where an independent expert is to be used the consumer and trader should ideally both agree to this in writing.

Q. A consumer states a specific date for delivery of goods and the trader fails to deliver them on time; does the consumer have the right to cancel the contract?

A. Yes; if the consumer has made 'time of the essence' and the trader has failed to comply, the consumer can treat this as breach of contract and cancel the contract.

Supplying services

If your business also supplies services (or supplies goods as part of a service) please see ['The supply of services / goods with services - before 1 October 2015'](#).

Key legislation

[Supply of Goods \(Implied Terms\) Act 1973](#)

[Torts \(Interference with Goods\) Act 1977](#)

[Unfair Contract Terms Act 1977](#)

[Sale of Goods Act 1979](#)

[Supply of Goods and Services Act 1982](#)

[Consumer Protection Act 1987](#)

[Contracts \(Rights of Third Parties\) Act 1999](#)

[Unfair Terms in Consumer Contracts Regulations 1999](#)

[Consumer Protection from Unfair Trading Regulations 2008](#)

[Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#)

[Consumer Protection \(Amendment\) Regulations 2014](#)

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Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to UK legislation can be found on each link's 'More Resources' tab; amendments to EU legislation are usually incorporated into the text.



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