CUFS17

SALE OF GOODS LAW (CONSUMER PROTECTION)

1. Unfair Terms in Consumer Contracts Regulations

The Unfair Terms in Consumer Contracts Regulations 1999 apply to consumer contracts. They will therefore apply to certain unfair terms in a contract concluded between a seller or supplier who is acting in the course of a business and a consumer.

If you sell goods to consumers and rely upon your own standard terms and conditions these regulations are, arguably, the most important piece of legislation since the 1979 Sale of Goods Act. All standard terms of sale should be reviewed in the light of these regulations.

As before, the regulations define 'consumer' as a natural person acting for purposes outside their normal course of business. So, a limited company will not be able to argue that a contract term is unfair under these regulations but a sole trader or partnership may do provided they are acting outside their normal course of business.

The regulations seek to establish an adequate and effective means for the prevention of the use of unfair terms. To achieve that aim, persons or organisations having a legitimate interest in protecting consumers' rights have been appointed as qualifying bodies having the power to take legal action in relation to such terms. These include the Office of Fair Trading (OFT), the Information Commissioner and other utility regulators. Additionally, the Consumers' Association now enjoys the lesser right, in certain circumstances, to consider complaints about contract terms and receive undertakings given as to the continued use of those terms.

Terms not individually agreed

Sales or services provided on standard terms and conditions are likely to be caught by this provision where the consumer has had no say in the negotiation of those terms. These have so far affected high profile businesses such as tour operators and providers of mobile telephones and airtime but will catch any business relying on standard terms and conditions where the terms have not been individually negotiated with the consumer.

What terms are unfair?

The test of an unfair term is based around the concept of **"good faith"**. There will be a breach of good faith where a term causes **"significant imbalance"** between the parties' rights and obligations. The regulations provide an indicative list of terms that may be considered unfair. The list is not exhaustive and intended merely as a guide. They include:

- Terms seeking to exclude or limit the legal liability of a seller/supplier in the event of the death or personal injury to the consumer as a result of an act or omission on the part of the seller/supplier.
- Terms excluding or limiting of the legal rights of a consumer against the seller/supplier in the event of total or partial failure, or inadequate performance, by the seller/supplier of any of the contractual obligations.
- Terms giving one party control over the contract or the performance of the contract. Examples would be clauses that irrevocably bind the consumer to terms where they had

no real opportunity to know of the terms before entering the agreement or terms enabling the seller or supplier to alter the terms of the contract or the characteristics of the goods or services unilaterally without giving good reason.

- Terms that govern the duration of the contract. Examples would include clauses that enable the seller or supplier to terminate an ongoing contract without giving reasonable notice unless there are serious grounds for doing so or clauses that enable the seller or supplier to automatically extend a contract of fixed duration where the consumer has not indicated otherwise. The OFT website (see Links below) provides very useful information about the types of clauses which may be viewed as unfair under the Regulations. We strongly advise that you review this website before drafting terms and conditions for consumers.
- Terms that prevents the parties having equal rights. Examples would be clauses that make an agreement binding on the consumer whereas the provision of the services by the seller or service provider is entirely at their own will.
- Terms that attempt to prevent or exclude liability for breach of the implied terms (of the Sale of Goods Act 1979).
- Terms that allow the seller or supplier to retain money paid by the consumer (keeping the deposit) where the consumer is in breach by not completing the contract, *unless* there is a similar clause compensating the consumer for an equivalent amount where the seller/supplier fails to complete the contract.

Core terms

Terms of the contract that set the price or identify the product or service are known as "core terms". The regulations do not apply to the core terms of the contract. So, whilst a consumer might use the regulations to complain about a term that purports to allow a trader to terminate the contract for no good reason, they will **not** be able to use these regulations to complain about, say, the price of goods or services.

Effect of the Regulations

Any of the qualifying bodies may investigate terms in standard contracts that may be unfair, usually following a complaint from a consumer. If the term is found to be unfair it will not be enforceable against the consumer although the consumer may still be able to enforce the contract to obtain their part of the bargain. All the qualifying bodies may receive undertakings to change or discontinue using terms that are unfair. The statutory qualifying bodies may also bring an action in the civil courts forcing such a change or discontinuance. Ultimately, only a court can decide whether a particular term is in breach of the regulations.

2. Distance and Doorstep selling

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 SI 2013/3134 came into force from 13th June 2014. They offer further protection for consumers and are in addition to the statutory rights explained elsewhere. They abolish previous laws/rules relating to both distance and doorstep selling, and harmonise both of these areas under one set of regulations, amongst other things, by giving just one "cooling-off" period of 14 calendar days. Furthermore, these regulations also now apply, in part, to "on-premises" (i.e. in-shop) contracts, where non "day-to-day" goods are sold, and whilst the consumer does not have a right to cancel such contracts, they do now have a right to receive prior information.

Consumer protection

The regulations give protection to buyers who are consumers, not those acting in the course of a business. A consumer is defined as 'any natural person who is acting for purposes which are outside his business'. A limited company, therefore, would not be able to rely upon these regulations but a sole trader or member of a partnership could, provided the purchase had nothing to do with their business. The trader must be acting in the course of a business. A private sale by an individual of personal belongings will not be covered by the regulations.

What is distance selling?

The regulations provide an indicative list of what is meant by distance selling. They cover goods and services sold by means of the internet, digital television, mail order (including catalogues), and phone and fax communications.

What is doorstep selling?

The regulations give consumers additional protection when entering into a contract at their home, place of work; the home of another individual; or an excursion organised by the trader away from the trader's business premises.

Exemptions

There is a blanket exemption, and the regulations will not apply AT ALL to contracts for:

- Gambling
- Financial services such as insurance and banking services.
- The sale of land or buildings or the construction of buildings.
- Residential letting.
- Package travel.
- Timeshare.
- Supply of consumables by regular roundsmen such as milkmen.

The Right to Prior Information

With both "distance" and "doorstep" contracts, the trader must provide the consumer with prior information before entering into a contract. This must be in a clear and comprehensible format. If the trader has a website, this information should be on it, and should be clearly legible by the consumer. However, with "doorstep" contracts, the prior information must be given on paper, unless the consumer agrees otherwise, therefore putting it on a website won't be sufficient. The prior information must include all items listed in **Schedule 2** of the regulations, as follows:

- The trader's name and address. Also, where payment is required in advance, the trader's postal address.
- A description of the goods and/or services.
- The price inclusive of any tax.
- Delivery costs if applicable.
- Arrangements for payment.
- Arrangements for, and date of, delivery.

- Details of the right to cancel the order, including (a) a cancellation form for use by the consumer who wishes to cancel within the cooling-off period, provided as a detachable slip (a specimen form can be found in Schedule 3 of the Regulations) (b) a statement that the consumer does not have to use the cancellation form but can also cancel by letter, email or fax.
- If appropriate, that the consumer is responsible for the cost of returning the goods.
- The duration of the contract, where applicable.
- How long any offer or price will remain valid.

Once the contract has been entered into, the consumer must be sent confirmation in writing or by some other durable form (fax/e-mail, etc). The confirmation must reiterate the prior information above including notice of the right to cancel and who is to bear the cost of doing so (if applicable), what guarantees or after sales services there are, and how an open ended service contract may be terminated. With regard to a "doorstep" contract only, a copy of the signed contract should be given, if one exists, or confirmation of the contract, on paper, unless the consumer agrees otherwise.

The Right to Cancel

Where the regulations apply to the sale of goods, the consumer now has a "cooling off period" of 14 calendar days from day after receipt of the goods within which to cancel the contract and return the goods. Where the regulations apply to the provision of a service, the consumer has 14 calendar days from day after the contract is entered into. There does not have to be any reason for the cancellation.

The trader can stipulate in their terms and conditions and the prior information that the consumer is responsible for the cost of returning any goods, and that this is at the consumer's own risk. If this is not stipulated then the trader must bear these costs.

With regard to goods, once the consumer has notified the trader that they are cancelling the contract, and the trader has either received the goods back or, if earlier, received evidence that the goods have been sent back, the trader must refund any sum paid by the consumer within 14 calendar days. With a contract for services, the refund must be made within 14 calendar days of the trader being informed of the consumer's decision to cancel.

The trader may make a deduction from a refund for any loss in the value of the goods supplied, if the loss is the result of unnecessary handling by the consumer (beyond what is necessary to establish the nature, characteristics and functioning of the goods). This means if the consumer has done something to diminish the value of the goods beyond what was necessary to reasonably inspect the goods, for example, the consumer has worn or used the goods, then the trader may be entitled to make a deduction if this has decreased their value.

If the trader has not provided the consumer with the required information about their right to cancel, but does so within 12 months, the cooling off period will be extended for 14 calendar days after the information is received. Otherwise the cancellation period ends at the end of 12 months after the day on which it should have ended had the information been provided within the correct time-scale.

Exemptions to the Right to Cancel

The right to cancel does not apply to contracts for:

- Goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader (other than the supply of water, gas, electricity or district heating).
- The supply of goods that are made to the consumer's specifications or are clearly personalised (Bespoke goods). Simply selecting an option that might be available such as the blue car and not the red one will not be considered a bespoke order and the consumer will still be allowed to cancel under the regulations. However, a request that the car be sprayed shocking pink with the consumer's name embossed in gold lettering down the side will be considered a bespoke order and the consumer will not be able to exercise the right to cancel under the regulations.
- The supply of goods which are liable to deteriorate or expire rapidly.
- In certain circumstances, the supply of alcoholic beverages.
- Where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance.
- The supply of newspapers, periodicals of magazines (with the exception of subscription contracts).
- Sealed audio or video recordings, or computer software, where the seal has been broken by the consumer.
- The supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities, if the contract provides for a specific date or period of performance.
- Small contracts with a value of less than £42 (doorstep contracts only).

How does the Consumer cancel the contract?

If the consumer wants to cancel the contract they must do so within the requisite period, ideally they should use the cancellation form, which the trader is legally obliged to have made available (see above). However, they do not have to, and can communicate this by any clear statement (e.g. a letter sent by post, fax, or email). The prior information and confirmation will have provided the consumer with the trader's contact details in order to do this.

What protection will a business receive against non-payment if they have already started providing <u>services</u> before the end of the cooling off period?

This will be most common with "doorstep" contracts. If the consumer wants the trader to start within the relevant cooling off period, the trader should generally only begin providing the service if the consumer has agreed to this in writing. In such circumstances, ideally the trader should provide a further form, specifically for these scenarios, for the consumer to complete.

This form should set out that:

- The consumer wishes the trader to commence the works before the cooling-off period has expired.
- The consumer is aware that if they then cancel within the cooling-off period, but after the seller has commenced works, they will be required to pay in accordance with the 'reasonable' requirements of the cancelled contract for those services provided up to the point of cancellation.

- If the services are completed before the cooling off period has expired, the right to cancel will then be lost.

The above information should also have been provided in the prior information before the contract was concluded. Technically if this is a "distance "contract rather than a "doorstep" contract the consumer does not have to make their request in writing, but it is certainly best practice to get this in writing in all circumstances.

Miscellaneous other changes

- Certain prior information (set out in **Schedule 1** of the regulations) now also needs to be provided for "on-premises" contracts (for example in-shop transactions) but **only** if the sale is of non "day-to-day" goods. As such, this will not apply to the purchase of a loaf of bread, but would apply to something that one buys infrequently, like a sofa or a car. Please note this does not include the right to cancel and is generally information about the trader and the goods. If the trader does not comply with these requirements then the contract could be invalid and unenforceable.
- Traders will no longer be able to have customer service telephone help-lines which charge more than a basic-rate for incoming calls. As such the consumer will not be expected to make an expensive telephone call to complain about or cancel.
- The trader must deliver any goods (a) without undue delay and (b) in any event, not more than 30 days after the day on which the contract is entered into, unless otherwise agreed.
- Any "button" on a trader's website, whereby the consumer is clicking to place an order, now needs to be very clear and stress that pressing it creates an obligation to pay.

What are the penalties for traders who do not adhere to the Regulations?

A trader who fails to provide a written "Notice of the Right to Cancel" or any other information required by the Regulations will not be able to enforce his contract against the consumer. A trader may also be fined up to a maximum penalty of a level 5 fine (£5,000).

In addition, the consumer's right to cancel may be extended for up to 12 months, and the trader will lose their right to make a deduction if say the consumer has used the goods excessively.

Finally, depending on which part(s) of the regulations are breached, the entire contract can be held to be invalid and effectively unenforceable.

3. The Sale and Supply of Goods to Consumers Regulations 2002

Introduction

The above regulations took effect from 31 March 2003. The established rights of a consumer to reject faulty goods and claim a full refund (within a reasonable period of time) or damages for the cost of a repair, under the 1979 Act (see fact sheet on Sale of Goods Law)) are not affected and continue for 6 years as before. These regulations provide additional rights where the buyer is a consumer.

Who the regulations affect

The regulations apply to the sale and supply of goods, hire and hire purchase contracts between retailers and consumers. They do not apply to services as such, but will where the sale and supply of goods include installation.

A ***"consumer"*** is defined as any natural person who is acting for purposes which are outside his trade, business or profession.

Main Points

Since 31 March 2003 where goods "do not conform to the contract", (are faulty, in other words), as an alternative to the rights explained in the fact sheet on Sale of Goods Law:

- A consumer may request either a repair or replacement from the retailer. This is often done by agreement anyway but is now a legal entitlement.
- If the retailer agrees to a repair or replacement, this must be done within a reasonable time and without significant inconvenience to the consumer. The retailer would have to bear any related costs.
- The retailer could refuse either of these requests if he could show one was disproportionately more costly in comparison than the other.
- Any replacement will have to be on a like for like basis rather than new for old. A consumer seeking a replacement for a faulty washing machine after, say, 4 months or even 14 months would be entitled to something comparable (but in working order, obviously) – not a brand new machine.

A repair or replacement may not be possible for whatever reason or declined by the retailer as too costly. Alternatively, the retailer may have agreed to a repair or replacement but the consumer feels that is taking too long.

In those situations the consumer may then request either a **partial** or **full refund** to reflect the loss they have suffered. A full refund, particularly after a lengthy time from the time of sale, would be rare. The consumer would have had, at least, some use of the goods so a reduction of the purchase price (a refund) would be calculated accordingly.

Satisfactory Goods

It is important to remember that these regulations and, (subject to certain exceptions) most other "consumer rights" will only apply where goods are not of a satisfactory quality, or, do not conform to the contract. That is to say, the goods are faulty. Consumers do not (generally) have the right to reject goods or claim any of the rights discussed here and elsewhere, simply because they have changed their mind or no longer want them.

Neither would a consumer have a claim where the fault complained of was nothing more than normal wear and tear, to be expected of particular goods in particular circumstances. Whilst it is true that consumers have 6 years within which to bring a claim under UK legislation, that does not mean that simply because a fault develops within 6 years the consumer would be able to bring a claim. Goods do not have to last for 6 years. Obviously, some goods are not intended to last that long. In other cases, component parts may simply need replacing. If that occurs through normal wear and tear or an intervening act, such as misuse by the consumer, there will be no basis for any claim against the retailer.

Powers of the Courts

Under the regulations, a court may make an order for specific performance, following an application by the consumer who requests a repair or replacement. It would then be up to the retailer to convince a court why any one of the options was not practicable.

So, which remedy?

A consumer can switch between the remedies sought but never pursue more than one remedy at a time. So, a consumer's first claim would be for a repair or replacement. If that was declined or they were getting nowhere, the consumer could then notify the retailer that they were abandoning the repair/replacement option and wanted a partial or full refund. A consumer cannot seek a partial/full refund without first considering the rights of repair or replacement.

Proof

Usually, a consumer has to prove that the goods were faulty at the time of sale in order to establish a claim. That remains the case where a consumer is seeking to claim an immediate right to reject with a refund and/or claim damages under the 1979 Act.

However, where a consumer is seeking to enforce any of the 4 new rights of *repair, replacement, partial or full refund* – and the fault appears **within the first 6 months** from the date of sale then it is ***assumed*** the goods were faulty when sold and it is up to the retailer to prove otherwise. After the initial 6 month period has lapsed the burden of proof reverts to the consumer.

So, in any claim under the 1979 Act for a right of immediate rejection and refund **or** a claim for any of the new rights for faults that appear ***later*** than 6 months from the date of purchase, it will be for the consumer to prove the fault. A claim for any of the new rights where the fault appears **within** 6 months of the date of purchase will mean a *presumption* that the goods were faulty when purchased and it is up to the retailer to prove otherwise.

Public statements

Public statements (advertising campaigns, labelling etc), made by the manufacturer, importer or producer, about specific characteristics of the goods will now form part of the contract between the consumer and the retailer, giving the consumer a claim against the retailer where those statements are not factually correct.

The retailer may avoid liability under this section if he can show he had good reason not to be aware of the statement, or it had been corrected by public announcement or the consumer could not have been influenced by the statement.

So, a localised or regional advertising campaign in a foreign country and language would probably not bind the retailer whereas a national advertising campaign might.

Free guarantees and warranties

Any guarantees given by (usually) manufacturers will be legally binding against the manufacturer notwithstanding they are "given free" and a consumer will be able to enforce it through the courts. The guarantee will take effect from the time that it is delivered.

Where such guarantees are given for goods being sold in the UK they must be written in plain, intelligible English, must be available for viewing prior to purchase and state that they do not affect the consumers' statutory rights. Local trading standards departments and/or the Office of Fair Trading have powers to investigate any complaints that guarantees do not meet the above criteria.

Auctions

The implied terms of the Sale of Goods Act 1979 plus the 4 new rights under the regulation will now ***always*** apply where **new** goods are bought at auctions by consumers.

Previously, auction sales could be excluded from the implied terms if the exclusion notice satisfied the test of reasonableness. Where *consumers* buy *second hand* or *used goods* at auctions which they attend personally the 4 new rights will **not** apply, plus, signs that satisfy the test of reasonableness can still exclude the implied terms. Where used goods are bought at auctions where the consumer *does not attend personally*, bids by telephone or Internet auctions, the 4 new rights will apply.

Scenario # 1

Consumer buys new washing machine. After 4 months a fault appears. Consumer has, arguably, had the machine for more than a reasonable period of time and so under the 1979 Act would have lost the right to reject, even assuming the consumer could have proven there was a fault at the point of sale. However, the fault has arisen within the first 6 months so, under the new regulations the consumer does not need to prove there is a fault, as it is assumed to have been present at point of sale – it is up to the retailer to prove otherwise. The consumer will be able to request the retailer carries out a repair, or opt for a replacement within a reasonable time and without significant inconvenience. The consumer could ask a court for an order of specific performance to enforce either of these options and the retailer would have to convince a judge that either or both were disproportionately costly to the other before considering whether a partial or full refund should be awarded. The consumer has had at least 4 months use of machine so a full refund would be unlikely.

Scenario # 2

Consumer buys new car. Within the first few days it develops a fault but because the consumer loves the car he waives a right to reject and claim a full refund (1979 Act) and asks for a repair as provided for by the regulations. 6 months later and the fault has still not been repaired so consumer asks dealer to replace the car, again under the regulations. The dealer agrees but prevaricates, offering any number of excuses. After 18 months with no replacement and the original car still not repaired satisfactorily, the consumer notifies the dealer that he wants a partial or full refund. After18 months the onus of proving there was a fault at point of sale should have reverted to the consumer (after 6 months) but, given the history of this car that is not a problem. In this situation, it is entirely possible that a District Judge could find that as the consumer had been deprived of any worthwhile use of the car for the 18 months since purchase a full refund would be the appropriate remedy, thus giving the consumer a remedy that would have been lost a long time earlier under the 1979 Act.

4. Common queries

Can I exclude my liability as seller?

That depends on the status of both the seller and buyer. Section 14 of the 1979 Act states where the seller sells goods in the course of a business there is an implied term that the goods are of a satisfactory quality. When the sale is to a consumer by somebody in the course of a business, the implied term of satisfactory quality can **never** be excluded. Exclusion clauses purporting to restrict a seller's liability in such circumstances will be of no effect. However, it is possible to exclude liability in respect of the satisfactory quality of goods where both the buyer and seller are acting in the course of a business. Any such exclusion clause, though, would have to satisfy the test of reasonableness as required by the Unfair Contract Terms Act 1977.

Individuals selling goods privately are not under any obligation to ensure that goods meet the statutory requirement in respect of satisfactory quality. However, the provisions dealing with ownership and the right to sell, and goods corresponding with their description, apply to all sales, including those made by private sellers and can not be excluded.

Who is a consumer?

Where the buyer deals as a consumer it will not be possible for the seller to exclude any of the implied terms as stated above. So, who is a consumer? One definition of a consumer is taken from the Unfair Contract Terms Act 1977. A person deals as a consumer if:

1. he neither makes the contract in the course of a business nor claims to be doing so;
2. the other party does make the contract in the course of a business; and,

the subject matter of the contract are goods of the type ordinarily supplied for private use or consumption.

What deals are consumer deals?

Not every item bought by the company, sole trader or partnership will necessarily fall outside the definition of a consumer sale. Companies, sole traders and partnerships can, therefore, make purchases other than in the course of their business. Unfortunately, there is no universal definition of what is meant by "dealing in the course of a business". The test is likely to include whether the item purchased is an integral part of the business or merely incidental. An indication will be whether the business makes that type of purchase on a regular basis. So, the kettle for use in the kitchen at work or even a car that the director uses may still be described as consumer purchases and any attempt to exclude the implied terms will be invalid.

When is the seller acting in the course of a business?

Until recently, whether a seller of goods was acting in the course of their business could be determined by the above definition. Unless the goods were an integral part of the business and that type of goods were sold fairly regularly, the seller would not be acting in the course of their business. However, a recent Court of Appeal decision has thrown doubt on that definition. The effect of the decision is that onward sale of the company car is now likely to be considered a sale in the course of a business. This would appear to be the case even

though the sale of the car itself is neither integral to the business and the company cars are only sold on every couple of years or so.

The significance of the decision means that even if your business is the local corner shop, when you come to sell the estate car that you rely on for picking up stock, it will still be a sale in the course of a business. It follows from the above that unless the Sale of Goods Act implied terms are excluded, the seller will be liable if the car is not of a satisfactory quality. Remember the implied terms about satisfactory quality can only ever be excluded if the sale is to another person in business. If the sale is to a consumer they can never be excluded.

The decision is somewhat confusing in that a sole trader may purchase, say, a car and be considered a consumer. However, when he comes to sell the car it will be a sale in the course of a business leaving him liable to a claim for damages in the event that the car is not of a satisfactory quality.

What about business to business deals?

Whereas the implied terms about satisfactory quality can never be excluded when the buyer is a consumer, they may be excluded from purely business transactions but only where it would be fair and reasonable in all the circumstances, as required by the Unfair Contract Terms Act 1977. Criteria to be taken into account by the court include the bargaining power of the parties, whether the terms were brought to the attention of the buyer prior to entering into the contract and the purpose of the contract.

That means that a supplier may be able to contract out of the implied terms as to satisfactory quality when selling to other businesses. However, where that sale is to a retailer and the end user of those goods will be a consumer, the consumer will be able to insist on his statutory rights. Therefore, it may be possible to argue that it would not be fair and reasonable for the supplier to attempt to exclude liability in the event that the goods are not of a satisfactory quality.

What happens if the implied terms are broken?

If you sell goods in the course of a business to a consumer, the implied terms cannot be excluded and the law imposes a strict liability on the seller for breach of those terms. Depending on the circumstances, the buyer may be able to either reject the faulty goods and claim a full refund providing they do so within a reasonable period of time, claim damages for the cost of repair or claim damages based on the difference in value. Since 31 March 2003 the buyer who is a consumer has additional rights and may request either a repair or replacement of the goods or, where appropriate, either a partial or full refund.

I'm only the retailer – I'm not responsible for faulty goods

Wrong. The law clearly places an obligation on the seller selling goods in the course of a business to sell goods of a satisfactory quality. This is known as strict liability and cannot be avoided, say, by referring the customer to the manufacturer under the terms of the guarantee. A guarantee or warranty will always be in addition to consumers' statutory rights and those statutory rights can never be avoided. So, if a consumer has a complaint that goods are not of a satisfactory quality, their complaint is against the retailer. It is then up to the retailer to pursue the suppliers or manufacturers for damages on an indemnity basis subject to any terms and conditions of any supply contract. Furthermore, since 31 March

2003 the retailer may be liable for any "public statements" about the goods that are incorrect even though those statements are made by the manufacturer, importer or producer.

The goods are perfectly fine – can the buyer reject?

Generally, the answer would be, "no". However, that is subject to exceptions such as sales that are covered by the "Distance Selling" regulations and certain consumer credit transactions (see fact sheet on Consumer Credit Law). Although some stores will replace goods as a matter of policy, the law states that consumers can only reject goods which are faulty, or not of a satisfactory quality. If the customer selects goods and later decides they are the wrong colour or not the size they wanted, although the goods themselves are of a satisfactory quality, they will have no legal right to reject the goods or recover damages. If goods are damaged and the particular damage was specifically brought to the attention of the buyer prior to purchase, then again, the buyer will have no right to reject.

The customer signed for the goods – can he reject?

Probably. The Sale and Supply of Goods Act 1994 made significant improvements in the rights of rejection enjoyed by consumers. The critical issue is whether the consumer has ***accepted*** the goods. Where goods are delivered to a customer who has not previously examined them, for example by mail order, he will not be deemed to have accepted them until he has had a reasonable opportunity to inspect them. This will be the case even where a consumer has been asked to sign a delivery or acceptance note. The Act clearly states that a consumer will not lose the right to reject merely by signing a delivery note.

I don't believe the consumer has a genuine complaint

Often, there will be a dispute as to whether the goods actually are faulty. As usual, the burden of proving a claim rests with the person making the allegation, in this case, the consumer alleging that the goods are faulty. However, regulations which came in force on 31 March 2003 state that where the sale is to a consumer and a fault appears within the first 6 months of purchase, there is an **assumption** they were faulty when sold and it is up to the retailer to prove otherwise. Where there are technical issues involved, as may be the case with a car or computer, a report from an independent expert would be a good start to either support or rebut any claim that goods were faulty. Better still, work together with the consumer and agree to appoint a joint expert who will be able to provide a report you will both agree to be bound by and accept the outcome. Such a course of action will also have the advantage of possibly avoiding unnecessary court action.

What about signs to deter complaints?

Not a good idea. Signs that seek to restrict a consumer's statutory rights are illegal and will soon attract the attention of the local trading standards officer. "No refunds under any circumstances" should never be displayed because there are certain circumstances when the consumer will be entitled to a refund if the goods are faulty and rejected within a reasonable period of time. Remember also that sale of goods law applies equally to used or second hand goods. So, if the defects were not specifically brought to the consumer's attention, or were not discoverable upon reasonable inspection, the consumer may still be legally entitled to reject faulty goods and claim a full refund. "No refunds without valid till receipt" will again be caught because the till receipt has no legal standing. By all means ask for proof of purchase but that can be provided by other means such as a cheque stub, statement or credit card statement.

The price is not right

It is commonly believed that goods on display, in a shop window for example, is an offer for sale and the customer is entitled to pay the price shown on the price tag, even though a labelling mistake has been made and the price is wrong. That is not the case. Goods displayed, either on the shelf or in a shop window, with a particular price are what is legally known as an *invitation to treat*. It's an invitation to the prospective customer to make an offer to buy the goods. A legally binding contract is only formed when an offer is made (by the buyer), that offer is accepted (by the seller) and there is payment of, or a promise to pay, consideration (the price). So, where the customer makes an offer to purchase goods at the price shown but the mistake is noticed before acceptance of that offer e.g. before the sales assistant takes the money and puts it in the till, no agreement (contract) has been reached. The seller is not obliged to sell the goods at the price shown and the buyer cannot insist on paying the lesser price. If, however, the mistake went unnoticed and the offer had been accepted (by putting the money in the till) a contract has been concluded and the customer probably got a bargain (unless the mistake was obvious).

Do I have to return a deposit?

Once a contract is formed, it is legally binding on both parties. A deposit may be left while goods are ordered from a seller or until the buyer is able to collect them. Whether the deposit must be returned depends on the circumstances. The key issue is that a deposit, if the amount is reasonable, can be retained by the seller if the customer does not purchase the goods (especially if the deposit is expressed to be non-refundable). However, if the amount taken as a deposit is larger than a reasonable amount (generally a deposit should be in the region of 10%), the law could potentially consider it to either be a part-payment, a penalty, or an unfair term under the Unfair Terms in Consumer Contracts Regulations 1999 (where the customer is a consumer) rather than a deposit. If this is the case, the customer may be entitled to have some or all of the deposit returned to him, especially if the seller cannot justify how it actually compensates him for his losses, and why he is not able to mitigate his losses. All innocent parties to a breach of contract are under a duty to mitigate their loss so a seller would have to make reasonable efforts to try to resell the goods in question.

Therefore, if for example a customer pays a £20 deposit on a table which costs £200 and then decides that he does not want it, the seller can retain the deposit (even if he can sell it to another customer straight away). However, if a customer pays £100 deposit for a table which costs £200 and then decides that he does not want it, he may be able to argue that he should be entitled to have some or all of the money returned to him. This is particularly the case if the seller can re-sell the table and cannot justify how the £100 is a reasonable sum of money to compensate him for any financial losses.

As a seller, it is vital that you specify that the payment you are taking from the consumer is in fact a deposit and you should clearly set out that this will not be returned to a buyer if he is in breach of contract.

If the seller is unable to supply the goods as ordered the seller will be in breach of contract even though the breach may not be their fault. In such circumstances, the consumer may be forced to go elsewhere in order to purchase comparable goods. If those goods are more expensive, the seller may be liable to pay not only the returned deposit but also the difference between the price originally agreed and any extra cost that the consumer has incurred as a result of the breach of contract.

Can I offer a credit note instead of a refund if the goods are faulty?

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

5. Links

All local authorities will have Trading Standards departments to assist consumers and retailers with any consumer problems. Details will be in your local telephone directory or search online at Trading Standards Central www.tradingstandards.gov.uk

Free advice and leaflets for consumers are also available from most Citizens Advice Bureaux. Details are again available from your local telephone directory or contact their main website for online advice and to fine your nearest bureau www.nacab.org.uk

The Competition and Markets Authority is the main regulatory body and also has free consumer advice for both consumers and retailers on their website. Contact details are:

Office address and general enquiries

Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: general.enquiries@cma.gsi.gov.uk

General enquiries: 020 3738 6000