

**Department of Trade and Industry
Consumer and Competition Policy Directorate**

The Sale and Supply of Goods to Consumers Regulations 2002

A Brief Introduction – Full Version

A minimum set of common consumer rights on faulty goods in each EU country is provided for by Directive 1999/44/EC on the Sale of Consumer Goods (“the Directive”). One aim of the Directive is to encourage people to shop across borders, knowing they have protection if anything is wrong with the products they buy. Existing UK law has been retained but slightly amended, mainly to give effect to specific remedies which, although they have been in use for many years, have not previously been part of the law. These amendments are contained in the Sale and Supply of Goods to Consumers Regulations (“the Regulations”), in force from 31 March 2003. This Guide is to explain the operation of the law in the UK.

The Regulations apply to a range of transactions between businesses and consumers, including the sale and supply of goods, hire and hire-purchase. “Consumers” are defined as people who are buying for purposes not related to their trade, business or profession. The Regulations do not apply to services in general (but see [“installation”](#) and [“goods to be manufactured”](#) below) nor do they apply to second hand goods sold at auctions that the consumer has the opportunity of attending in person.

When goods are faulty, a consumer can generally only obtain a legal remedy against the retailer. Consumers are generally not able to claim directly against the manufacturer. Consumers may have additional rights under any [guarantees](#) (see below) supplied with the goods or against a credit card company or finance house if the goods are purchased by means of credit and have a price of over £100.

A Simple Summary (see flow chart below)

Consumers 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.

Consumers 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, consumers 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 consumer 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. These are long-established rights and they remain available to the consumer after the Regulations come into force on 31 March 2003.

Under the Regulations, consumers 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 4, 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 consumer needs to demonstrate the goods were faulty at the time of sale. This is so if the consumer chooses to request an immediate refund or compensation (damages). It is also the case for any product returned more than six months after the date of the sale.

There is one exception. This is when a consumer returns 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.

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.

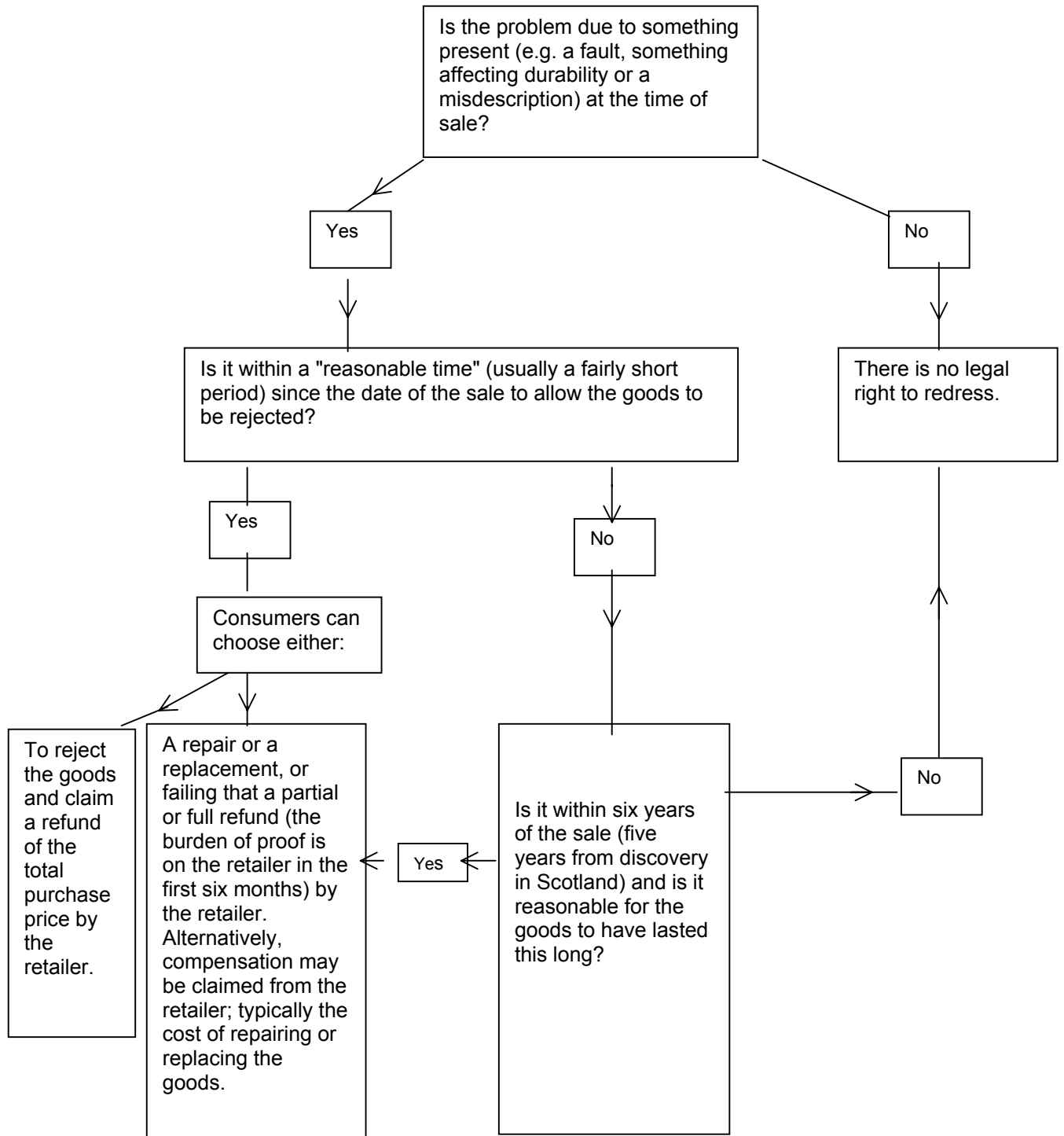
Alternative dispute resolution

Although consumers do sometimes take court action, in day-to-day practice this is a rare event. In the vast majority of cases, the consumer 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. Details may be sought from the retailer, the Community Legal Service or a Citizens Advice Bureau.

The examples given below to highlight points should not be considered legally authoritative and legal advice should always be sought.

Consumers 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 OFT's Shoppers Guide publication (<http://www.of.gov.uk/News/Publications/Leaflet+Ordering.htm>); the Community Legal Service (<http://www.legalservices.gov.uk/>); the Which? Online/Which? Legal Service (<http://www.which.net/>) and solicitors (who may charge). The DTI is not able to intervene in individual disputes.

Sale of Consumer Goods Regulations (in force from 31 March 2003)



Conforming to Contract (The Implied Terms)

When consumers 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 the typical consumer uses.

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 consumer was told that a record player could play 33, 45 and 78 rpm discs but it did this erratically because it was not manufactured properly, or because of poor design, then it would not conform to contract.

If a consumer was told that a dish was ovenproof but it was not and it shattered when used under the normal conditions for making a casserole it would be misdescribed and so would not conform to contract.

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).

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.

The Sale and Supply of Goods to Consumers Regulations 2002

These Regulations, in force from 31 March 2003, have introduced some additional requirements for any consumer sales.

Public statements

The Regulations say that 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.

Fair wear and tear

Goods cannot always be expected to work fault-free. They can break down through normal use. Consumers 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 advice that such pumps only worked for an average of four years. If, however, the pump had only lasted half the 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 raw materials that made it not durable enough to pass the satisfactory quality test of our Sale of Goods legislation.

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. Everything has a finite life, and this needs to be borne in mind when considering durability. Factors that could be considered 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 10-acre garden); or
- where an expensive product had been made with substituted inferior parts, as a crisis cost-cutting exercise, then it could well fail the durability test.

Remedies (see flow chart above)

The consumer now has a number of remedies. These comprise the two previous, long established, legal remedies and the four additional ones in the Regulations. All six are now outlined:

Rejection of Goods

Consumers 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 consumers have to be given a reasonable time to examine the goods to see if they were satisfactory. In practice courts decide this case by case. A court is able to take into account all the relevant factors in coming to a fair view such as whether the consumer had been hospitalised immediately after the sale, so that he could not check the goods.

Where a consumer 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 consumers would return goods they had themselves taken away to assist them convince the retailer their claim was legitimate and so speed things up.

Claim for Compensation

The other long standing remedy provides that consumers can claim compensation known as “damages”, if they are not entitled to reject the goods or 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](#) below). 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. Of course, a claim on any guarantee given with the goods is often the easiest way forward.

For a broken four-year-old clock with an inherent fault, a consumer's 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

For many years retailers have voluntarily offered a repair or replacement of faulty goods. These remedies are given a legal status under the Regulations. In other words the consumer can cite the Regulations, in force from 31 March 2003, in specifically requesting a repair or a replacement for purchases that do not conform to contract.

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 Regulations provide 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

“Consumers” are “people who are buying for purposes not related to their trade, business or profession” and the four remedies in the Regulations (repair, replacement, partial and full refund) are not open to non-consumers.

If a stairlift was purchased for use in a business environment, such as a café or nursing home, it would not be possible for a repair or replacement claim to be made - citing the Regulations - by masquerading as a consumer when approaching the retailer. Such claims could immediately be rejected. They should be properly pursued as normal business-to-business sale of goods contract disputes and legal advice sought.

Suspending the Right to Reject

It is important to note that, within the reasonable period after the sale (see above), the consumer does 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 consumer 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 consumer, 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 well detailed credit card statement). Although sales receipts are not a legal requirement, consumers are advised to request them where they might later be needed and to keep them safe.

Credit Notes

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

The essential point is that credit notes are voluntary items. Retailers do not have to offer them and consumers 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 consumer 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 Two-Year Guarantee Myth (see also [Free Guarantees](#) below)

The Regulations do not provide a two-year guarantee. This was a myth that seemed to grow out of a mention in the Directive that Member States had to give their consumers a two-year limitation period.

The limitation periods in the UK are the periods within which this type of legal proceedings must be commenced: namely six years in England, Wales and Northern Ireland; and five years from discovery in Scotland. These are, therefore, already longer than the Directive's two years and are quite different from a guarantee period.

This does mean that throughout the EU there is a requirement that all retailers will honour the four stages of remedy that have been outlined above (repair, replacement, partial refund or full refund) for at least two years. However, as this does not cover fair wear and tear, and since the consumer has to prove the lack of conformity for most of the period, this cannot be called a "guarantee".

The Burden of Proof and the First Six Months

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

"Reversed burden of proof"

However, the Regulations, in force from 31 March 2003, say that when a consumer seeks the remedies of repair, replacement, partial refund or full refund, in the first six months after the sale, it is for the retailer to prove that the goods conformed with the contract in disputed cases. This has been called the "reversed burden of proof". After six months, however, it is for 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

Consumers 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.

Consumers 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 consumer suffers loss as a direct consequence of a faulty product, the consumer may be able to claim damages. In extreme cases, consumers 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 consumer 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 consumer would be expected to have acted reasonably with regard to how they were accrued e.g. the retailer should be approached for substitutes, rather than merely hiring an alternative from elsewhere.

Free Guarantees/Warranties (see also [Guarantees Myth](#) above)

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, under the Regulations, in force from 31 March 2003, 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 OFT 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 consumer has under the law. The terms and conditions would spell out exactly how these were to work.

Second-hand Goods

The consumer has exactly the same rights with second-hand goods as he does with new. However, with older goods, it is increasingly difficult for the consumer 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

It has long been the case that 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 exclusions satisfying a reasonableness test. This is covered by the Unfair Contract Terms Act 1977.

This possibility continues for buyers other than consumers (business buyers, companies) but new goods bought at auction by consumers will now always be covered by the implied terms in the Sale of Goods Act. In addition the four remedies of repair, replacement, partial refund and full refund provided by the Regulations will be available for such goods. Second-hand goods will be covered by the four remedies when sold at auctions that consumers cannot attend in person. This will include internet auctions where consumers make purchases from trade sellers. It would also extend to auctions that barred consumers from attending but accepted their telephone bids.

However, the four remedies provided for by the Directive will not apply for second-hand goods sold at auctions where consumers "have the opportunity of attending in person".

The remedies of repair, replacement, 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 long established Sale of Goods Act rights to initially reject the goods or to request compensation.

If the auction house stopped consumers attending in person then the redress rights provided by the Regulations of repair, replacement, partial refund and full refund would be available to them. However, it is difficult for consumers to secure goods from auctions they cannot attend although this might be possible via a telephone bid or an internet auction.

Installation and Installation Instructions

The Regulations, in force from 31 March 2003, state that where the retailer agrees installation for a consumer by himself or his agent, as part of the sale contract, the consumer can call on the redress rights provided by the Regulations (repair, replacement, partial refund and full refund) where a lack of conformity arises. Any losses suffered as a result of the lack of conformity can be claimed as consequential losses. A consumer can alternatively seek a full refund of the money paid or adequate compensation and 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 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 all the remedies (repair, replacement etc.) 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 has always been 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 quality and fitness. This right continues.

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 of the Regulations and the Sale of Goods Act.

Goods to be Manufactured or Produced

The Supply of Goods and Services Act 1982 has been amended as a result of Article 1(4) of the Directive that 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 full redress rights (repair, replacement, partial refund and full refund) provided by the Regulations.

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

Services

The Regulations do not extend to services in general but only to installation, in certain limited circumstances (see [Installation](#)), and in contracts for the supply of consumer goods to be manufactured or produced (immediately above).

The Supply of Goods and Services Act 1982 requires a service to 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 (eg 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.

Attempts to Curtail Consumers' Rights

Consumers cannot have their legal rights removed in sale of goods contracts. It is also illegal to mislead consumers about their legal rights and to try to exclude them. To do so could result in a criminal prosecution. Notices such as "We do not give refunds" are similarly illegal, and enforcement is undertaken by local Trading Standards Departments.

Exclusion Clauses in Service Contracts

Unfair Contract Terms Act 1977

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).

A trader dealing with a consumer, or dealing 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. 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).

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.

Redress up the Supply Chain

The Directive says that 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.

End