



Selling goods

Today, buyers can purchase goods 24/7 and sellers can sell over a multitude of platforms. In this factsheet we look at the law which applies when selling to a consumer and any legal redress you may need to offer when things go wrong.

When selling any goods or services, it is helpful to know that the Consumer Rights Act 2015 (CRA) sets out what a buyer can expect from a seller and their rights if things are not as expected.

Also applicable are the Consumer Credit Act 1974 (CCA), for all purchases made with the help of credit, and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2014 (CCR) (referred to as the distance selling regs) for online purchases or those where the contract is made away from a seller's premises i.e., at home or at work.

In order for a buyer to be protected by the rights contained in this legislation, which are often referred to as statutory rights, they must be a private individual buying the item for themselves and you as the seller must be a business seller. If you sell to a friend, a man at the pub or at a car boot sale the buyer is unlikely to be protected by law. Sales via an online auction site, such as eBay, may be covered if you are a registered business seller.

Goods must be fit for purpose

Any goods sold by you must be fit for the purpose for which they have been purchased. Therefore:

- The goods must do what a buyer would normally expect them to do. A fridge must keep things cold, and an iron must heat up to the right temperature so they can iron clothes.
- The goods must do what you, the seller says they will do. If you inform a buyer that the item, they are considering purchasing will do what they expect

it to do, the buyer will be able to rely on that. For example, if a buyer asks whether an oven has a certain feature and you confirm it does when in fact it does not, it will not be fit for purpose.

- The goods must also be fit for the purpose the buyer wants to use them for, even if that is not the usual use of the item. For example, where a buyer purchases an item because you have recommended it will do a certain job, even though it may not routinely be used for that purpose.

Your advice as a seller is a representation that the goods the buyer intends to purchase are fit for the stated purpose. The buyer is entitled to rely upon that representation if it is reasonable to do so. For example, some sellers have specialist advisers for some types of products, such as electronics, and to rely upon that advice would arguably be reasonable.

Goods must be of satisfactory quality

In addition to being fit for purpose, goods must also be of satisfactory quality for that purpose. It must be in a condition and of a standard that a reasonable person would consider acceptable.

There are a number of areas in which goods can be regarded as being satisfactory. They must be safe, of an acceptable appearance and finish when they arrive, and durable.

The issue of satisfactory quality is probably the most common cause of goods being returned to sellers. The buyers' rights in this situation are detailed below.

Beware when selling used items that these rules, whilst they still apply, will produce different results. This is particularly relevant when selling second-hand cars. In that case, the price, age and mileage of the car are all important factors which will affect the issue of satisfactory quality.

Goods must match their description

Any goods sold should match the description given to the buyer by the seller. The description can be written, in a picture or a verbal representation made by the seller. The goods must match what the buyer has been told about them.

Exceptions to your consumer rights

There are some situations the consumer rights under the Sale of Goods Act 1979 and the Consumer Rights Act 2015 will not apply. This includes:

- When the item is damaged by the buyer. Probably one of the most common is water damage to an electronic device such as a mobile phone. Accidental damage is not included or covered by a buyer's statutory rights.
- Normal wear and tear where an item has been used and its condition has deteriorated in line with expectations.
- Second-hand items cannot be returned for a fault pointed out at the time of purchase. Anything which subsequently develops as a fault may mean the goods can be returned.

What can you do if the buyer is unhappy with the goods purchased?

If the goods sold are not satisfactory for any of the reasons set out above, it is possible that one of the following remedies may be available to the buyer:

- reject the goods and obtain a full refund
- have the goods repaired
- have the goods replaced
- have the goods repaired, and if that does not work, obtain a refund.

In any case, the buyer will be able to enforce their rights against you as the seller who sold the goods and not against the manufacturer. This applies even where the item is under guarantee. This is the case as a buyer's statutory rights are with the seller - any guarantees or warranties are additional to that.

Rejection of goods

Under the CRA the buyer benefits from a statutory right to reject faulty goods within 30 days of the contract (purchase). If the goods are subject to a repair during this time, then the period is paused and resumes once the repair is complete.

The right to reject the goods is generally used for goods which perhaps cannot be repaired and for which rejection is the only reasonable course of action. For example, if furniture has been sold and is delivered to the buyer faulty, scratched or ripped, it is likely to be proportionate for the buyer to reject the goods. If it is a larger item, such as a car, it is not necessarily proportionate to reject the vehicle if there is a small scratch on the paintwork. If, however, it fails to start that could be a reason for them to reject the car.

Repair or replacement of goods

If the buyer discovers a fault with the goods within the first six months after the purchase, there is a presumption the fault existed at the time of the purchase. In this case it is for the seller to prove the fault has been caused by the buyer's actions. If the fault is caused by something the buyer has done, such as dropping the item or failing to keep it safe, the seller will not be responsible for this.

After the first six months, the situation is reversed, and the buyer will have to prove the goods are not satisfactory. In this situation the focus will be on the durability of the item and the cause of the fault. Again, any damage because of the buyers' actions will mean the seller is not liable.



Selling goods



It is for the buyer to request the item be repaired or replaced, provided the chosen option is not disproportionately expensive compared to the alternative. There is an additional statutory right, if the repair fails, to ask for a price reduction or to reject the goods at that point. Any price reduction could be up to 100 per cent of the value of the goods but an allowance will be made to reflect the use of the goods at that point.

Guarantees

Guarantees are provided by manufacturers of products and typically last for a year. These provide rights to the buyer in addition to their statutory rights and therefore it would not be appropriate to try to persuade the buyer to contact the manufacturer should items prove to be faulty.

Warranties

Warranties are provided by sellers or other third parties and are sometimes part of an insurance product or underwritten by an insurance company. It is often the case that a seller may offer an extended warranty for an additional sum at the point of purchase. Where a buyer seeks to make a claim on a warranty, it is important you understand exactly what additional rights the buyer has, provided by the warranty in addition to their statutory rights.

Buying online or by phone

Under the distance selling regulations, buyers have additional rights. Under these regulations they have the right to cancel an order anytime from the moment they place the order until 14 days from the day they receive the goods. This right is available just because they change their mind and does not depend on the goods being faulty in any way. A buyer can cancel an online order in writing, by fax or by email, although it's sensible for them to stick with the process the seller has set up if it's reasonable.

Your terms and conditions and returns policy should detail the returns process including information such as who should pay for postage (usually the buyer).

There are some orders where the buyer will not have the right to cancel such as:

- items made to order or personalised
- goods likely to deteriorate rapidly such as food
- goods where the seal is broken, such as CDs and DVDs
- where the seal is broken on goods sealed for health and hygiene reasons

It will usually be the responsibility of the buyer to return the goods to the seller following cancellation and they will have to bear the direct cost of doing so, unless the seller offers to collect the goods, or they can't be posted. If the terms and conditions or returns policy doesn't state who pays for returns, the regulations state the seller must cover the cost of postage.

The goods must be returned by the buyer within 14 calendar days of the cancellation. If the buyer doesn't return the goods, the seller may not be required to refund any payment.

Doorstep selling

The regulations set out what happens when a salesperson visits the home or workplace of the buyer and forms a contract with them or if a contract is formed during an excursion arranged by the company, often a timeshare company.

Generally, the buyer will have the same rights that they would have if they had bought online. So, in this type of situation, the seller should supply the buyer with details of their right to cancel and a standard cancellation form for the buyer to use. Failure to provide the necessary information could extend the buyers rights to cancel for up to a year.

If selling goods or services this way, you should be aware of the relevant cancellation rights. For goods, the time starts from the moment the buyer places their order and ends 14 days from the receipt of the goods. For services, the time limit is 14 days after the buyer enters into the contract. If the service starts immediately, the buyer can still cancel within the 14-day cooling-off period but you may not have to offer

a full refund and may charge for the use the buyer has made of the service. If the service has been completed within that time, then there is no right to cancel. This will often be the case with an emergency service such as a plumber.

Exemptions to the rules for distance selling

It's important to note the cases where CCR's no not apply. Examples of this include:

- goods or services worth less than £42
- perishable goods, such as food and drink
- land, insurance, credit and investment agreements
- passenger transport services.

Digital downloads and content

Downloading computer software, music and other digital content is an action frequently completed in our digital age. Consumer regulation originally drafted in the 1970s has struggled to keep up but, for the first time, digital downloading now has a special mention in law.

By the very nature of the action, digital downloads take place at a distance and not face-to-face. The CCR's state that the buyer has a 14-day cancellation period, and a seller must not supply the content during that time unless they expressly agree to this happening. In reality, this is usually the case, and your terms and conditions would usually contain this agreement.

It is also a requirement that the buyer acknowledges that once the download starts the right to cancel is lost. Again, this is likely to be included in your standard terms and conditions.

The regulations also apply to digital content. These goods are defined as 'data which are produced and supplied in digital form' and include:

- computer games
- television programmes
- films
- e-books
- computer software
- mobile phone apps
- systems software.

The content will have to meet the same standards of satisfactory quality, be fit for purpose and as described in the same way as physical goods.



In considering whether the content is satisfactory or not, three factors are required to be taken into account:

- any description of the content
- the price paid
- other relevant circumstances, such as advertising or labelling.

Much digital content has minor defects, such as bugs, which are often fixed as they are discovered. A reasonable person may expect this to be the case, which would make it difficult for a buyer to reject the item.

These statutory rights will not apply if the download is free, although you may still be liable to the buyer if the digital download causes damage.

The buyer's remedies for any breach of the CRA for digital content will include the right for a repair or replacement, provided that is not impossible or disproportionate to any other remedy, or 100 per cent of the purchase price.

In addition to the above, the buyer may consider other remedies, such as:

- a claim for damages
- seeking to force the seller to fulfil the contract
- refusing to pay for the product and/or considering a section 75 application if you have paid by credit card (see below).

Selling goods

Paying for goods

There are many different ways to you may be paid for goods including cash, debit and credit card, or via an online service such as PayPal. Some of these can have important additional advantages and rights for the buyer under the law.

Debit card

Where a buyer purchases goods using a debit card and there is a problem with the item it is sometimes possible for the buyer to get a refund via the bank which issued the card. This is known as a chargeback application and is not something which is a statutory right but is part of the rules banks subscribe to.

This is not the same as the section 75 application (below) and is only possible if there are funds in your bank account to meet the cost. It cannot be used if the buyer is seeking damages to repair an item. The chargeback remedy can be used if the goods are damaged in transit to the buyer, are not as described or if you are no longer in business and the buyers' goods have been lost.

There is generally a time limit of 120 days for a buyer to make the claim and sometimes a cut-off time limit of 540 days. These times may vary from bank to bank.

Credit card

Section 75 of the Consumer Credit Act provides additional security to a buyer where they are buying goods over £100. It is not necessary for the buyer to pay for the goods entirely with the credit card, provided part of the purchase is paid for with the credit card. For example, if a buyer pays the deposit for the goods with their credit card and the balance with their debit card.

If the buyer believes the goods are faulty, not delivered or not of satisfactory quality then they are able to make a claim to their credit card company in the same way that they would raise a claim to you as the seller of the goods. A buyer is able to make a claim to the seller and the credit card company at the same time.

PayPal

This is an increasingly common payment method for online purchases and there are different rights where payment is made by this method.

If a buyer uses their credit card to pay for something through PayPal and the funds go direct to you as the seller, the buyer may still be able to claim under S75 for any misrepresentation or breach of contract provided you have a 'Commercial Entity Agreement' with PayPal. If there is no agreement, the buyer may not be able to claim as there is no direct link between you and the credit card company. Your contract is with PayPal and that third-party arrangement is not covered under the Consumer Credit Act.

PayPal offers its own buyer protection scheme, called PayPal Buyer Protection, which could assist the buyer in the event of a problem with their purchase.

What happens next?

Our advisors do speak to sellers who are unable to resolve the issues which purchases of their goods. If that is the case, please call our helpline for further assistance.

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