



2 Resolving conflict: Consumer and retailer

Learning objectives

In this chapter you will learn about:

- 1 Sale of Goods and Supply of Services Act 1980
- 2 Consumer Protection Act 2007/National Consumer Agency
- 3 Resolving disputes between consumers and retailers

Consumer affairs

A consumer is a person who buys goods or services for his/her own use, not for resale. When a consumer buys goods or services, the transaction involves rights, responsibilities and remedies, which are set out in law.

Sale of Goods and Supply of Services Act 1980

This law sets out the:

- **Rights of consumers** when they buy goods or services from a retailer
- **Responsibilities of retailers** when they sell goods.

When goods are purchased they must be:

- Of merchantable quality
- Fit for purpose
- As described
- As per sample.

When services are purchased:

- The work must be done with proper **care and diligence**.
- The person doing the work must have the **necessary skills or qualifications**.
- Any materials supplied must be of **merchantable quality**.

Other provisions of the Act

- If a good or service is seriously faulty, the consumer is entitled to a **full refund, replacement or repair**.
- The **retailer is responsible** for seeing that consumers get their **statutory rights**.
- **Signs or statements** that try to deny these responsibilities are illegal and cannot take away consumers' statutory rights.
- **Guarantees** may offer additional rights to a consumer, but cannot reduce the consumers' statutory rights in any way.

- **Unsolicited goods/inertia selling:** Where goods are sent to people who have not ordered them, the consumer does not have to pay for them and the consumer can keep the goods after six months if they are not collected.
- A person who buys goods under a **hire purchase agreement** has the same rights as a cash buyer.

Consumer Protection Act 2007

The Consumer Protection Act 2007 set up the **National Consumer Agency (NCA)** with the role of protecting and promoting the interests and welfare of consumers.

Functions of the NCA

- Promotes and **protects** the interests and welfare of **consumers**
- **Informs** consumers of their rights
- **Enforces** consumer laws
- Encourages businesses to **comply** with consumer laws
- **Advises government** on development of consumer policies
- Investigates and **refers cases** to the Director of Public Prosecutions

How the NCA protects consumers

- Prohibits **false or misleading statements**, claims or descriptions of goods by retailers
- Asserts that all advertisements or statements must be **accurate and fair**
- Prohibits aggressive practices such as **harassment, coercion** or exerting **undue influence** on consumers

- Prohibits other practices relating to **unsolicited goods**, repeated cold calling, pyramid schemes, etc.
- Provides regulations to control how **prices** are displayed
- Can approve **Codes of Practice** drawn up by traders

The NCA can enforce the Consumer Protection Act by

- Getting a **written undertaking** from a business that they will stop a prohibited practice
- Issuing a **compliance notice** to a trader requiring them to stop a prohibited practice; the notice can be legally enforced
- Seeking a **prohibition order** on a trader from the courts to stop a prohibited practice
- Imposing an **on-the-spot fine** (fixed payment note) for offences relating to price display
- Publishing a **Consumer Protection List** of traders' names who have not complied with consumer laws (**name and shame**)
- Getting a court order requiring a trader to pay **compensation** to a consumer relating to an offence

Resolving disputes between consumers and retailers

Non-legislative resolutions

- Complain to the retailer
- Seek help from a third party, e.g. the National Consumer Agency, trade associations, the Consumer

Association of Ireland, the Ombudsman for the Public Service, the Ombudsman for the Credit Institutions or the Ombudsman for the Insurance Industry

Legislative resolutions

- Small Claims Court
- Employ a solicitor and take the retailer to court

Ombudsman for the Public Service

- This office investigates complaints from consumers about government departments, local authorities, the HSE and An Post.
- Complaints are investigated only when the consumer has pursued the case fully without satisfaction.
- Complaints must be brought within one year.
- Complaints are investigated by the Ombudsman and a recommendation is made; recommendations are not legally binding.
- The Ombudsman is independent of the government and provides a free service.

Small Claims Court

- The Small Claims Court allows consumers to pursue a complaint quickly, easily and at low cost (€25 in 2014).
- The court deals with claims for faulty goods, bad workmanship and damage to private property.
- A claim can be for maximum damages of €2,000 (2014).

- A simple claim form is submitted to the registrar of the court by post or online.
- The registrar asks each side to present their case and encourages the parties to make a settlement.
- A decision made by the registrar is not legally binding.
- An appeal can be made to the District Court for hearing before a judge.
- Approximately 75% of claims are settled by the Small Claims method without going to court.

Caveat emptor: let the buyer beware

Although consumers have legal protection if their purchases are faulty, it is clearly better to avoid these problems altogether. To do this, you should take proper care when buying.

- Research the range of products available.
- Compare the prices and quality of the alternatives.
- Read the brochures carefully, including the small print.
- Ask relevant questions to find out about the product.



Let the buyer beware

Exam questions

- 1 (i) Discuss the rights of consumers under the terms of the Sale of Goods and Supply of Services Act 1980.
(ii) Illustrate two forms of redress available to consumers for breach of the Act.

(2011, Section 3, Question 1B, 30 marks)

Sample answer

(i)

Goods

Goods should be of merchantable quality – they should be of reasonable standard/quality, taking into account what they are supposed to do, their durability and their price.

Goods must be *fit for the purpose intended*.

This means that the goods must be able to do what they are meant to do and what they were designed for (i.e. **fit for the particular purpose for which the buyer intends to use them**). For example, a waterproof jacket and leggings should keep the rain out. A combined fridge/freezer must be capable of freezing food.

Goods sold must be as described by the salesperson, catalogue/package or sample.

For example, if a consumer orders blue floral wallpaper from a catalogue, then it can't be gold plain wallpaper when delivered.

Services

Services must be provided with due care and attention – a car left at a garage for a full service but the garage failed to change the oil.

A service provider must have the *necessary competence and skill set*. In addition, any materials used in the delivery of the service must be of merchantable quality.

Other Provisions

Unsolicited Goods/Inertia Selling

It is illegal for a supplier to demand payment for unsolicited goods. These are goods that are sent to someone without having received an order. If a company sends you something you didn't order and does not provide for return post, it cannot invoice you for the product (e.g. book club). This demand is an illegal act and the consumer has specific rights, e.g. the right to keep the goods without payment after 30 days if the consumer has sent written notice to the sender and informed them where the goods can be collected.

Consumers' rights under the Act cannot be taken away or limited by signs such as 'Credit Notes Only', 'No Cash Refunds', 'No exchange', etc. These signs do not affect your statutory consumer rights. A credit note is not a refund, since it restricts you to shopping in that shop.

Sample answer

Guarantees are seen as something extra (additional protection) that is given to the consumer and they cannot limit the consumer's rights under consumer law. The guarantee must clearly show what goods are covered, the time frame involved and the procedure for making claims.

(ii)

The form of redress is dependent on **how serious the fault is**, the time it occurred and **how soon after the purchase the complaint was made**. If the complaint is valid, the consumer is entitled to one of the three Rs – refund, replacement or repair.

If a consumer purchases a **faulty good and complains promptly** then s/he is entitled to a full cash refund or replacement. For example, if a consumer purchases a microwave oven and the minute timer doesn't work (i.e. not of merchantable quality), then s/he is entitled to a full refund of money paid. A replacement may also be provided, e.g. a new model of the same or similar quality given in its place.

When the consumer has used the product, when there is a **delay between the purchase date and the actual complaint**, or when **the fault is of a minor nature**, then the consumer may only be entitled to partial refund or repair.

The consumer's rights lessen, the longer s/he puts off making the complaint.

Marking scheme

(i)

- Any four rights: 4 x 5 marks (5 = 2 + 3)
 - 2 marks for naming the right
 - 3 marks for explanation/development/example

(ii)

- Any two forms of redress: 2 x 5 marks (5 = 2 + 3)
 - 2 marks for naming the redress
 - 3 marks for explanation/development/example

Questions

Higher Level long questions

- Evaluate the role and functions of the National Consumer Agency (NCA) in protecting consumers. (2012, 20 marks)

- Evaluate the role of each of the following in protecting consumers:

- The Small Claims Court
 - The Office of the Ombudsman for Public Services. (2010, 20 marks)
- Describe the provisions of the Sale of Goods and Supply of Services Act 1980 and evaluate its effectiveness. ([YEAR], 30 marks)

Key-points!

- Sale of Goods and Supply of Services Act 1980
- Consumer Protection Act 2007
- Ombudsman for the Public Service
- Small Claims Court
- Caveat emptor

Key-definitions!

caveat emptor: Literally means 'let the buyer beware'. Consumers should do research before buying to ensure that they will be satisfied with the product.

consumer: A consumer is someone who buys and uses a good or service.

merchantable quality: Products sold by retailers must be of good enough quality to be sold to consumers under the Sale of Goods and Supply of Services Act 1980.

ombudsman: An independent third party who will investigate a complaint against an organisation and make a recommendation to settle the complaint, e.g. the Ombudsman for the Public Service.

redress: When a consumer buys faulty goods, they are entitled to a redress from the retailer to remedy their complaint. This may be a refund, a replacement or a repair.

retailers: Businesses that sell products and services to consumers, usually shops.

Small Claims Court: An inexpensive and speedy court procedure that can be used by consumers who have a complaint against a retailer.

