

Specific Terms Implied by Statute in Relation to Consumer Contracts

Key Terms	<p>Consumer Described in the Consumer Rights Act 2015 as an 'individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.' Note that a company cannot be a 'consumer' as it is not an individual. It is up to the trader to prove whether or not the Claimant is a consumer.</p> <p>Trader Described in the Consumer Rights Act 2015 as 'a person acting for purposes relating that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.' Note that a trader can be sole trader or a company or business partnership or any other form of business organisation.</p>		
The Consumer Right Act 2015	Brings together all rights and remedies in relation to consumers into one place	<p>Applies to the contracts of</p> <ul style="list-style-type: none"> • Sale • Hire • Hire Purchase • Other contracts for the transfer of good 	
		<p>Rights</p> <p>Section 9 - The right of satisfactory quality This means the goods meet what the reasonable person (not the trader/consumer) would see as satisfactory quality, taking account of</p> <ul style="list-style-type: none"> • Any description of the goods • The price and other consideration for the goods (if relevant) • All the other relevant circumstances <p>The quality of goods includes their state and condition and take into account</p> <ul style="list-style-type: none"> • Fitness for purpose of the goods usually supplied and durability • Appearance and finish of the goods • Freedom from minor defects of the goods • The safety of the goods <p>However, this will not apply</p> <ul style="list-style-type: none"> • If the defects are drawn to the consumer's attention before purchase • The consumer examines the goods and the examination would have revealed the defect • Where goods have been sold after inspection of a sample and the defect would have been apparent on a reasonable examination of the sample 	Rogers v Parish (Scarborough) Ltd (1987)
		<p>Section 10 - The right for fitness for a particular purpose Applies when the consumer makes the trader aware they want to use the goods for a particular purpose. In this circumstance there is an implied term that the goods are fit for purpose. E.g. If I am buying a car and ask for a family car with a large boot and the sales man sells me a Nissan Micra this would not be fit for purpose. Where the goods are being used for their normal use there is no need to state the use – i.e. there is no need to tell the cashier you will wear a rain coat in the rain. However, if the C has a particular sensitivity that is not known to the C, then the test is whether the goods are fit for the reasonable person – i.e the seller does not have to guard against a rare allergy they are not aware of</p>	Baldry v Marshall (1925) Grant v Australian Knitting Mills Ltd (1936) Griffiths v Peter Conway Ltd (1939)
		<p>Section 11 - The right relating to the description The goods must match the description. The description can be implied – i.e. when the goods are on display. Statutory information should be included under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. If the goods are sold by inspection of a model then the goods supplied must match the model. The can even refer to the way goods are packaged</p>	Re Moore and Co. Ltd and Landauer and Co.'s Arbitration (1921) Beale v Taylor (1967)
		<p>Section 20 - The short term right to reject goods Must be exercised within 30 days of delivery (shorter where goods are perishable) This must be made clear to the trader and the consumer is able to get a full refund. The trader must bear any reasonable costs of returning the goods A refund (once the trader accepts the right) must be given within days and must be paid in the same way as the original payment unless otherwise agreed.</p>	
		<p>Section 23 - The right to repair or replacement If the goods were unique and could not be replaced the C could have a right to repair. Whether repair or replacement would put a disproportionate cost on the seller is taken into consideration. Repairs must take place within a reasonable time and the trader must bear any additional costs. The consumer cannot require the trader to repair or replace goods if the cost to the trader would be disproportionate in relation to other remedies. This takes into account the nature of the goods and the purpose. The fault complained about must have been present at the time of delivery.</p>	
		<p>Section 24 - Right to price reduction or final right to reject If s.23 does not bring satisfaction the consumer has this right. The trader can only have one attempt at repair or replacement for the C to use this right. Any refund is subject to a deduction for use. During the first 6 months any deduction for use is currently only allowed for motor vehicles.</p>	
		<p>Who has to show non-conformity? If a fault appears within the first 6 months it is said to be there at the time of delivery (unless the trader can prove otherwise. (does not impact short time right to reject) If the fault develops after the first 6 months the burden lies with the consumer to prove the fault was there at the time of delivery.</p>	
		<p>Section 49 - Reasonable Care and Skill Implied term that the trader must exercise reasonable care and skill. The standard expected is similar to that in negligence and dealt with on a case by case basis</p>	Thake v Maurice (1986) Wilson v Best Travel (1993)
		<p>Rights</p> <p>Section 52 - Performance within a reasonable time Where the contract does not expressly fix a time the services must be performed in a reasonable time. What is reasonable depends on the circumstances.</p> <p>Rights of the trader S.49 and S.52 states that the trader has a right to reasonable payment if none is stated.</p>	
<p>Section 55 - The right to require repeat performance This means if a job is not done properly the consumer can request that it is done again, the trader must provide it in a reasonable time and without significant inconvenience to the consumer. The trader must bear any necessary costs (e.g. material and labour)</p>			
<p>Remedies</p> <p>Section 56 - The right to a price reduction An appropriate price reduction for the trader's failure to perform the contract. This may result in the trader giving a refund up to the full contract price. This remedy is only available in two situations</p> <ul style="list-style-type: none"> • Where completion by repeat performance is impossible; or • If the consumer has asked for repeat performance but the trader is in breach of the requirement to do it within a reasonable time and without significant interference to the consumer 			

