

A Guide for Businesses on:
The Supply of Goods and Services
(Jersey) Law 2009

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Introduction

As a trader you need to know how the Law relating to the supply of goods and services affects you and your customers. This guide explains the operation of the Law in Jersey.

The Law on sale of goods has evolved over many years. It is now principally set out in the Supply of Goods and Services (Jersey) Law 2009.

All buyers are entitled to remedies under the legislation but consumers are entitled to a greater range of remedies.

"Consumers" are defined as people who are buying for purposes not related to their trade, business or profession. Please bear this in mind throughout the guide.

Consumer's fundamental rights in relation to the sale of goods and supply of services cannot be curtailed in any way by a term in the contract. Restrictions might be possible for less fundamental rights in business-to-business contracts. Any restrictions are however subject to provisions contained within Regulations made under this Law.

When goods are faulty, buyers can obtain a legal remedy against the retailer.

Consumers may also have additional rights under any manufacturers guarantee supplied with the goods (see page 11) or against a credit card company (if the goods cost more than £100) or a finance company.

If you sell goods or supply services at a distance, for example by mail order or over the internet, you should note that there is additional legislation that applies to these contracts which are not covered in this guide. See the guide for business on the Distance Selling (Jersey) Law 2007. Details can be found at www.gov.je

Please note that this guide explains the civil law as it relates to the supply of goods and services, but does not include any criminal law.

Of necessity, some matters are over simplified so neither the general guidance nor the examples that appear throughout to illustrate particular points should be taken as legally authoritative.

Summary of Rights and Remedies

Buyers 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.

But buyers 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, buyers 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 before delivery.

Remedies

If a product that was faulty at the time of sale is returned to the retailer, the buyer 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”).

Additional rights for consumers

Alternatively, consumers (see definition page 1) can choose to request instead:

- **a repair or a replacement**

The retailer can decline either of these if he can show that they are disproportionately costly in comparison with alternatives.

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 price reduction**, depending on what is reasonable in the circumstances.

It may be the case that a full price reduction (equivalent to 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 price reduction can be assessed.

As illustrated in the flow chart on page 3, 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 buyer needs to demonstrate the goods were faulty at the time of sale. This is so if he chooses to reject the goods and request an immediate refund or compensation (damages).

There is one exception. When a consumer has chosen to request any of the “additional rights for consumers” and returns the goods in the first six months from the date of the sale, and requests a repair or replacement or, there after, a full or proportional price reduction. 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 them (the retailer) to prove that the goods were satisfactory at the time of sale.

For goods returned after six months the normal rules apply so that it would be for the consumer to demonstrate they were faulty when sold.

Other situations covered

The remedies of repair, replacement or price reduction are also available to consumers:

- where installation by the trader 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.

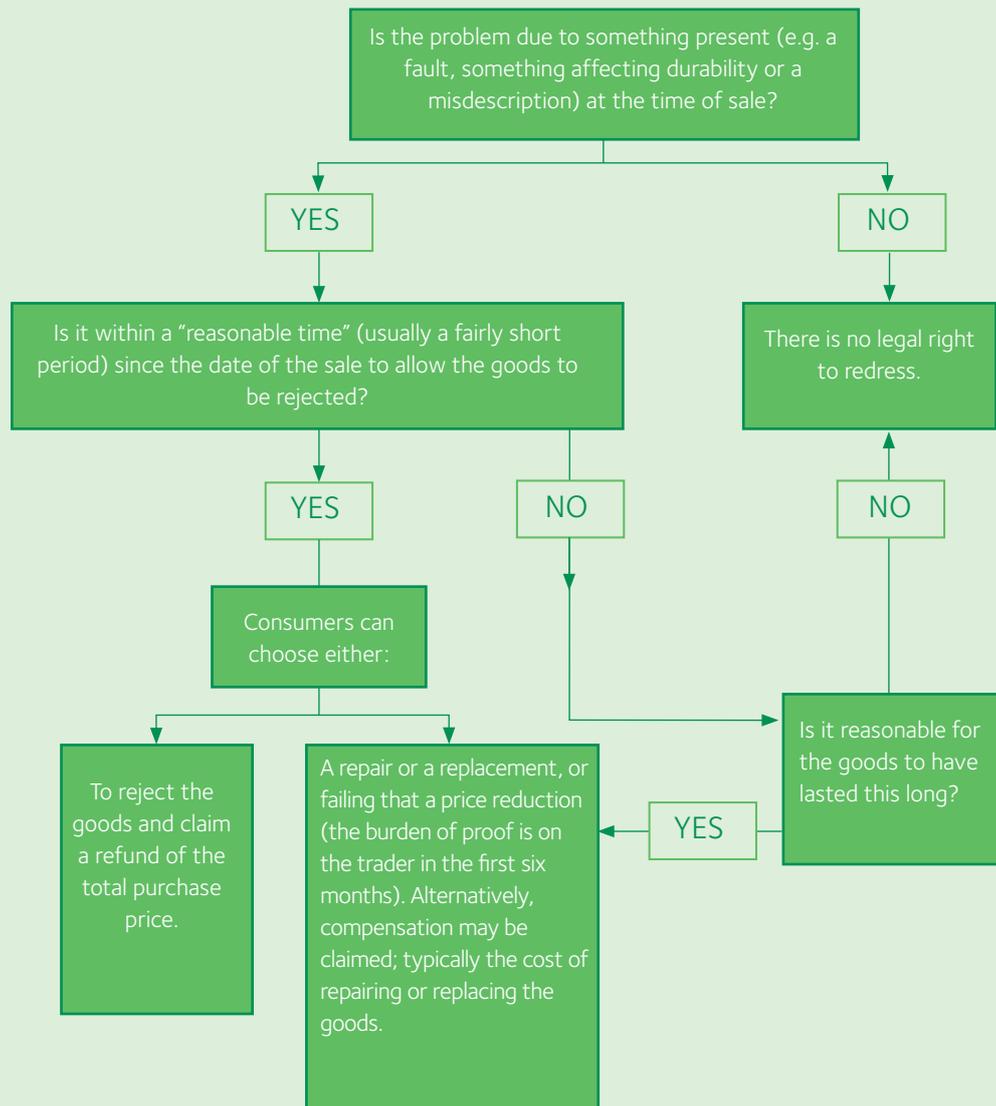
These are greatly simplified explanations.

Resolving Disputes

Although buyers do sometimes take court action, in day-to-day practice this is a rare event. In the vast majority of cases, the buyer and seller are able to reach a satisfactory solution without any need to consider going to court. Where this is not possible, buyers or sellers can seek free confidential advice from the Trading Standards Service on 448160.

Supply of Goods

simple summary of consumers' rights and remedies



Conforming to Contract (The Implied Terms)

When buyers 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 is usually used in this situation.

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 Supply of Goods and Services (Jersey) Law 2009

Conforming to contract

The Law 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 dish is described as oven proof but shatters when used under the normal conditions for making a casserole, it would have been misdescribed and so would not conform to contract. If someone buys a self-assembly wardrobe and a panel is missing then the goods are incomplete and would not conform to the contract.

Description

In practice nearly every transaction involves a description of some kind. Even where the customer selects goods without assistance, as in a self-service store, that is usually still a sale by description – for example, on the label. When someone is supplied with goods and they rely on the description given to them, the goods must be as described. For example, a car described as a 2003 registered 1200cc must have been registered in that year and be of that engine capacity.

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).

In deciding whether goods are satisfactory, the various aspects of quality which may be taken into account include fitness for all the purposes for which goods of the kind in question are commonly supplied, their appearance and finish, freedom from minor defects, safety and durability. But in some circumstances other characteristics may also be relevant.

Because appearance and finish and freedom from minor defects are relevant factors, in appropriate cases the buyer is entitled to expect that the goods will be free from even small imperfections. The durability requirement suggests that the goods should last for a reasonable time but it does not mean that they remain of satisfactory quality for this time (see “Fair wear and tear” and “Durability” on page 5).

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.

Conforming to Contract (The Implied Terms)

Fair wear and tear

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

Durability

Durability can be a difficult concept, but, as indicated in the “Fair wear and tear” example, it is something that can be considered when evaluating whether goods conform to contract. For example, if a product which should have a long life develops a major fault and cannot be repaired after a comparatively short period then it may well fail the durability test. Everything has a finite life and this needs to be borne in mind when considering durability.

Factors that could be taken into consideration in assessing durability 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 very large garden); or
- whether the product was subject to greater use than normal (domestic washing machine used to regularly wash several families clothes).

Additional Requirements for Consumer Sales

Public statements

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.

Redress up the Supply Chain

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.

Hiring Goods

The customer is entitled to expect the goods to be as described, of satisfactory quality and fit for their purpose in the same way as if he had bought the goods.

Traders cannot deprive consumers of their rights by reference to a contract term but they may be able to do so for non-consumers, although any restriction or exclusion has to be fair and reasonable (see page 13).

Hire-Purchase and Conditional Sale Agreements

In the case of hire-purchase agreements, the buyer's rights will be against the finance company. Buyers can, in appropriate circumstances, reject goods or claim compensation (see below).

In the case of conditional sale agreements, the buyer's rights are against the seller of the goods. Buyers can, in appropriate circumstances, reject the goods or claim compensation. Additionally, consumers can request a repair or replacement (see page 7).

Remedies

The buyer has a number of remedies if goods do not conform to contract. All buyers can pursue the first two remedies, *Rejection of Goods* or *Claim for Compensation* – the remainder are only available to consumers (that is "people who are buying for purposes not related to their trade, business or profession"). The rights of consumers are simply illustrated in the flow chart on page 3.

Rejection of Goods

Buyers can reject the goods and require their money back provided they complain within "a reasonable time" (usually a short period).

The Law does not define what amounts to a "reasonable time" but buyers have to be given a reasonable time to examine the goods to see if they were satisfactory. Ultimately, the matter can only be decided by a court after taking into account all the circumstances. An important factor might be that the buyer was not in a position to check the goods for a long time after the sale than usual, because, for example, he was admitted to hospital immediately after he purchased them.

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

Where the buyer is not a consumer and the problem is a slight one (e.g. there is only a minor defect) then the goods cannot be rejected although compensation can be claimed.

Claim for Compensation

Buyers can instead claim compensation known as "damages", if they are not entitled to reject the goods, or if they 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" on page 10). 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.

For a broken four-year-old clock with an inherent fault, a 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).

Remedies

Repair and Replacement

Consumers (see definition page 1) can, if purchases do not conform to contract and they do not wish (or are not entitled) to reject the goods or claim compensation, specifically request a repair or a replacement.

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 goods. 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 hiring a 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.

Price Reduction

If repair or replacement are not practicable options, the Law provides 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 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

Non-consumers are not entitled under the Law to a repair or replacement if they have purchased goods that do not conform to contract but they are still entitled to redress. However, if buyers prefer not to reject the goods or ask for compensation there is nothing to prevent retailers offering a repair or replacement as a way of resolving a dispute.

If a computer was purchased for business use and has a fault it might be more convenient for the business to try and come to an arrangement with the retailer for a simple repair or a replacement rather than formally rejecting the computer or seeking compensation.

Suspending the Right to Reject

It is important to note that, within the reasonable period after the sale (see "Remedies" on page 2 and "Rejection of Goods" on page 6), buyers (both consumers and business buyers) do 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 Article 64 (6) of the Law.

If the buyer 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 requesting a refund. 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 buyer, 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 detailed credit card statement).

Although sales receipts are not a legal requirement, buyers are advised to request them where they might later be needed and to keep them safe.

Credit Notes

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

The essential point is that credit notes are voluntary items. Retailers do not have to offer them and buyers 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 and any time limits that are to be applied.

Time Limit – Ten Years to Bring a Claim

Disputes can be brought to court up to ten years after discovery of the breach. This is called the “period of prescription” or in England it is known as the “limitations period”. After that time, generally court cases can’t be brought. This does not mean that goods have to last ten years, clearly many electrical items or clothing would not last ten years. This is not a durability requirement.

There are some exceptions to this time limit but as a general rule it is ten years.

A buyer could bring a case against a retailer, alleging non-conformity of contract, for up to ten years after this discovery. 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 life span.

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 Burden of Proof and the First Six Months

If goods do not conform to the contract at the time of sale (or very shortly afterwards), a consumer is entitled to:

A full refund or a reasonable amount of compensation.

When rejecting the goods and requesting a full refund or compensation, the consumer needs to demonstrate the goods were faulty at the time of sale (or very shortly afterwards).

Material Breaches

Non conformity needs to be a material breach (not a minor breach). In business to business contracts, the buyer would have to establish that such a breach was material. In business to consumer contracts, it is considered a material breach if it relates to quality, fitness for the purpose, description or sample.

After a period of time, the consumer is only entitled to:

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. The repair or replacement must be completed without any significant inconvenience to the consumer.

If neither a repair nor a replacement is realistically possible, consumers can request:

A price reduction (partial or full refund), depending on what is reasonable in the circumstances. It may be the case that the consumer will have enjoyed some benefit from the goods before the problem appeared and this would be taken into account in the price reduction (so a partial refund is offered).

Retailers must be given a reasonable period of time to honour a request.

In the case of repair, replacement, or price reduction, the Law now provides a reverse burden of proof (placing the responsibility on the trader) when consumers return goods in the first six months from the date of the sale.

This reverse burden of proof does not apply to a consumer rejecting the goods and requesting a full refund or compensation at the time of sale or very shortly afterwards.

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 goods 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

Buyers 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.

Buyers 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 buyer suffers loss as a direct consequence of a faulty product, the buyer may be able to claim damages. In extreme cases, buyers 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 buyer 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 buyer would be expected to have acted reasonably with regard to how they were accrued e.g. approaching the retailer for a solution immediately rather than first incurring expenditure hiring alternative equipment from elsewhere.

Free Guarantees/Warranties

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, those given free of charge with the product should;

- be legally binding on the person offering the guarantee;
- be written in English and in plain intelligible words;
- 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.

Whilst this is not a requirement it is considered to be best practice.

If a manufacturer reneged on a free guarantee then the consumer could theoretically enforce it in 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 should 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.

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 full money back for undamaged goods, for up to a set number of weeks, for whatever reason.

These are useful additional benefits to those the buyer has under the Law. The terms and conditions would spell out exactly how these were to work.

Second-hand Goods

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

Under Article 2(2) of the Law, sales by auction or by competitive tender are treated as if the buyer is acting in a business capacity.

There are therefore two types of sales at auction.

1. Where the seller is acting in the course of a business

Goods sold at auction will need to correspond with their description, be of satisfactory quality and be fit for purpose. Sellers can introduce terms in the contract that restrict or exclude their liability for breach of these obligations, but only if the term is fair and reasonable. If it is not, it shall have no effect and the term will be void.

They can not exclude a warranty as to the title of the goods.

2. Where the seller is acting otherwise than in the course of a business (so this would be private sales)

Goods sold at auction will need to correspond with their description. Private sellers can introduce terms in the contract that restrict or exclude their liability for this description, but only if it is fair and reasonable. If it is not, it shall have no effect and the term will be void.

They can not exclude a warranty as to the title of the goods.

The seller also warrants that they have disclosed to the buyer all defects in the goods that render the goods not of satisfactory quality, being defects of which the seller is aware. They can not introduce a term in the contract that excludes or limits this warranty. If they do, the term will be void.

Remedies

In both types of sales, if there is a material breach of contract, the buyer has the right to reject goods and obtain a refund and / or claim damages.

Buyers will not be able to enjoy the benefit of the right to require a repair, replacement or price reduction as this only applies in consumer cases.

Installation and Installation Instructions

Where the retailer agrees installation for a consumer by himself or his agent, as part of the sales contract, the consumer can, where a lack of conformity arises, call on the redress rights of repair, replacement or failing that partial or full refund. Any losses suffered as a result of the lack of conformity can be claimed as consequential losses. A consumer, or a buyer who is not a consumer, can alternatively seek a full refund of the money paid or adequate compensation including 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 a possible alternative for a consumer 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 redress 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 is open to purchasers of goods sold within adequate self-installation/self-assembly instructions to pursue a claim that they had been sold in breach of Article 23 of the Supply of Goods and Services (Jersey) Law, which deals with conformity with the contract as to quality and fitness requirements.

Where the installation or assembly instructions were written with short comings 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 under the Supply of Goods and Services (Jersey) Law 2009.

Goods to be Manufactured or Produced

The Supply of Goods and Services (Jersey) Law 2009 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 redress rights of repair, replacement or, if they are not possible, partial or full refund. A non consumer buyer could claim compensation.

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

Services

In addition to the requirements about installation (page 12) and contracts for the supply of consumer goods to be manufactured or produced, there are specific requirements in the Law about the provision of services.

A business providing a service to a consumer must do so with reasonable care and skill, within a reasonable time and cost no more than a reasonable charge (if that time and charge had not been agreed).

If a dispute can not be resolved amicably, then a Court may have to decide what is reasonable based on the facts of each individual case.

Exclusion Clauses

Sale of Goods or the Supply of Services to Consumers

When a trader sells goods, or a finance company supplies goods under a hire purchase agreement, the trader cannot purport to exclude or restrict liability for breach of the following obligations arising from:

Article 21 – Warranty as to title

Article 32 – Warranty as to title
(for goods supplied under a hire-purchase agreement).

If they do, the term will have no effect (the legal term is void).

In addition to this, if one party is dealing as a consumer, the trader can't exclude or restrict liability for breach of the following obligations arising from:

Article 22 – Warranty as to description (Article 33 for goods supplied under a hire purchase agreement)

Article 23 – Warranty as to quality or fitness (Article 34 for goods supplied under a hire purchase agreement)

Article 25 – Warranty as to sale by sample (Article 35 for goods supplied under a hire purchase agreement)

If they do, the term will have no effect.

Typically, exclusion clauses appear on quotations that customers are asked to sign and return or are displayed on notices in shops.

Therefore, notices such as “*We do not give refunds*” would be considered a void term under the Regulations (made under Article 91 of this Law), if the trader applied this to any of the situations outlined in the warranties detailed above.

Advice on notices and policies can be obtained from Trading Standards.

Traders **can** exclude or restrict other liabilities or obligations under the Law, provided the term is **fair and reasonable**.

Sale of Goods or the Supply of Services to Business Customers (and all auction sales)

Excluding or limiting liability for breach of the obligations under Articles 21 and 32 (when the customer is dealing in the course of their business), is treated in the same way as outlined opposite.

The significant difference lies in the way in which the trader can exclude Articles 22, 23 and 25 (33, 34 and 35 for goods supplied under a hire-purchase agreement).

Exclusions under these or indeed any other Articles or obligations in the contract (excluding Articles 21 and 32) are permitted, however the term must be fair and reasonable.

Exclusion Clauses

Fair and Reasonable

In deciding whether a clause is fair and reasonable, a court could consider:

- whether the customer knew or ought reasonably to have known of the existence and the significance of the exclusion clause,
- the bargaining strength of the customer in comparison to that of the trader,
- whether the goods or services (or suitable alternatives) could be obtained elsewhere without the exclusion clause,

- whether the customer received any special inducement to accept the exclusion clause (such as a special discount),
- whether the goods were made to the customer's specification (a special order).

Where a trader seeks to limit his liability, under an exclusion clause, to a specified sum of money, the courts may 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.

Trading Standards offer consumers and traders clear, practical, confidential and impartial advice and information.



Call us on **448160** from 9am to 5pm Monday to Friday (excluding bank holidays and public holidays). If we can't take your call immediately, you can leave a message and we will call you back.



You can **call into our offices** without an appointment. You will find us in the Central Market next door to the Post Office.

Our hours for personal callers are:

Monday to Friday 9am to 1pm and 2pm to 4:30pm. *Please note* the office is closed to personal callers in the Market at 1pm on Thursdays.

If you require an appointment outside of these hours or have any special needs, please give us a call and we will do everything we can to accommodate you.



You can **e-mail details of your enquiry** to: tradingstandards@gov.je or visit www.gov.je



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