

# SHOPPING BUYING GOODS

Today, we can buy goods 24/7. In this factsheet we look at the law which applies to those transactions and any legal redress you have when things go wrong.

When buying any goods or services, it is helpful to know that the Consumer Rights Act 2015 (CRA) sets out what a consumer should 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 to use the rights contained in this legislation, which are often referred to as your statutory rights, you must be a private individual buying the item for yourself and the seller must be a business seller. Buying from a friend, a man at the pub or at a car boot sale will not be protected by law. Buying from an online auction site, such as eBay, may be covered if the seller is a registered business seller.

When buying any goods you can expect them to be fit for purpose, of satisfactory quality and to match their description. Here we deal with each of these in detail.

## Goods must be fit for purpose

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

- The goods must do what you would normally expect them to do. A fridge must keep things cold and an iron must heat up to the right temperature so you can iron clothes.
- The goods must do what the seller says they should do. If you are concerned that the item you are considering will be able to do what you expect and the seller says it will, you should be able to rely upon that. For example, if you ask whether an oven has a certain feature and it does not, it will not be fit for purpose.
- The goods must also be fit for the purpose you want to use them for, even if that is not the usual use of the item. For example, when you buy an item because the seller recommends it will do a certain job, even though it may not routinely be used for that purpose.

The advice of the seller is a representation that the goods you are intending to purchase are fit for the stated purpose. You can rely upon that representation if it is reasonable to do so. For example, some sellers have specialist advisers for some types of product, 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 the seller. Your rights in this situation are detailed below.

Beware when purchasing used items that these rules, whilst they still apply, will produce different expectations. This is particularly relevant when buying a second-hand car from a dealer. 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 purchased should match the description given to you by the seller. The description can be written, in a picture or a verbal representation made by the seller. The goods must match what you have been told about them.

## Exceptions to your consumer rights

There are some situations where your rights under the Consumer Rights Act 2015 will not apply. This includes:

- When the item is damaged by your actions. 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 your consumer rights.
- Normal wear and tear where an item has been used and its condition has deteriorated in line with expectations provided.
- 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.

- Items bought from a private seller, although the goods must match their description.

## What can I do if I am unhappy with the goods purchased?

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

- 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, your rights will be against the seller who sold you the goods and not against the manufacturer. We frequently speak to callers who have been told by the seller that they must contact the manufacturer because the item is under guarantee. This is not the case as your statutory rights are with the seller - any guarantees or warranties are additional to that.

## Rejection of goods

Under the Consumer Rights Act there is 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. So, if you have furniture delivered which is faulty, scratched or ripped, it should be easy 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 to reject the car.

## Repair or replacement of goods

If you discover 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 your actions. So, if the fault is caused by something you have 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 you will have to prove the goods are not satisfactory. In this situation you will be looking at the durability of the item and the cause of the fault. Again, any damage which is as a result of your actions will mean the seller is not liable.

It is the buyer to request the item 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 are in addition to your statutory rights. Some sellers may try to persuade you to contact the manufacturer should items prove to be faulty. This is generally incorrect - all issues with goods being of satisfactory quality should be referred to the seller first.

## 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. When considering this it is important to understand exactly what may be covered by a warranty. We speak to many people

who find that the reason for which they may need a warranty is not included.

## Buying online or by phone

Buying online increases in popularity each year. In 2020 87 percent of UK households made online purchases during the previous year.

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

Check the seller's terms and conditions and returns policy regarding the returns process. This will include information such as who should pay for postage (usually you).

There are some orders where you won't 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 your responsibility to return the goods to the seller following cancellation and you'll have to bear the direct cost of doing so, unless the seller has offered to collect them 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 within 14 calendar days of the cancellation. If you don't return the goods, the seller may not be required to refund any payment.

## Doorstep selling

The regulations set out what happens if you enter into a contract when a salesperson comes to your home, workplace or during an excursion arranged by the company, often a timeshare company. Generally, you will have the same rights that you would have if you had bought online. So, in this type of situation, the seller should supply you with details of your right to cancel and a standard cancellation form for you to use. Failure to provide the necessary information could extend your right to cancel for up to a year.

If buying goods or services this way there are relevant cancellation rights. For goods, the time starts from the moment you place your order and ends 14 days from the receipt of the goods. For services, the time limit is 14 days after you enter into the contract. If the service starts immediately, you can still cancel within the 14-day cooling-off period but you may not get a full refund and may be charged for the use you have 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.

Important: These rules do not only apply to cold callers but also to those who may be invited into your home by you e.g. plumbers, builders and other trades people.

## Exemptions to the rules for distance selling

It's important to note the cases where CCR's do 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 there is a 14-day cancellation period and a seller must not supply the content during that time unless you expressly agree to this happening. In reality, this is usually the case and accepting the terms and conditions would usually contain this agreement.

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

The regulations also applies to digital content bought after 1 October 2015. For the first time there are specific rights for digital goods. 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 to reject the item.

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

Your remedies for any breach of the Consumer Rights Act 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, you 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).

## Paying for goods

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

### Debit card

Where goods are paid for using a debit card and there is a problem with the item it is sometimes possible 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 the seller's bank account to meet the cost. It cannot be used if you are seeking damages to repair an item.

The chargeback remedy can be used if the goods are damaged in transit to you, are not as described or if the seller is no longer in business and your goods have been lost.

There is generally a time limit of 120 days to make the claim and sometimes a cut-off time limit of 540 days. These times may vary from bank to bank. In the event that the bank refuses to do what you ask you can request a letter of deadlock to allow you to take your complaint to the Financial Ombudsman Service (FOS).

Any complaints about a claim should be made to the FOS within six months of your claim to the bank. You can contact the service [here](#).

### Credit card

Section 75 of the Consumer Credit Act provides additional security when buying goods over £100. It is not necessary to pay for the goods entirely with the credit card, provided part of it is. For example, you may pay the deposit for the goods with your credit card and the balance with your debit card. For goods under £100 paid for by credit card you can use the chargeback service (see above).

If the goods are faulty, not delivered or not of satisfactory quality then you may make a claim to your credit card company in the same way that you would to the seller of the goods. You are able make a claim to the seller and the credit card company at the same time.

If your credit card provider will not deal with the issue and refuses to accept there is a claim, the matter should be referred to the FOS.

### Hire purchase

Where goods are purchased on hire purchase (HP) these are regulated by the Consumer Credit Act. This type of credit is used for large items, such as cars, but is also frequently used for electronic items such as computers and TVs. It is not a HP agreement if you take out a separate loan to buy the items.

You will need to check the terms of the HP agreement. It is often the case that the goods do not belong to you until payment is complete and the HP is finished. Until that time the goods remain the property of the finance company, therefore concerns about the goods should be directed to the finance company.

### **PayPal**

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

If you use your credit card to pay for something through PayPal and the funds go direct to the seller, then as long as the company you are buying from has a 'Commercial Entity Agreement' with PayPal you may still be able to claim under Section 75 for any misrepresentation or breach of contract.

If there is no agreement, you may not be able to claim as there is no direct link with the seller and the credit card company. The seller's 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, so it's worth checking if you would be covered by that in the event of a problem with your purchase.

### **What happens next?**

Our advisors do speak to callers who are unable to resolve the issues relating to their purchase. If that is the case please call our helpline for further assistance.

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