

A Guide to your Consumer Rights

LINDER MYERS
SOLICITORS



This quick guide covers:

1. Goods/Services purchased before 1st October 2015 and the remedies available to you.
2. Goods/Services purchased on or after 1st October 2015 and the remedies available to you.
3. Digital content.
4. What to do if you think you have a dispute with a company.
5. What to do if your claim is for more than £10,000.
6. Our top ten tips for resolving a consumer dispute.





Whether you have purchased goods or services in store, over the telephone or via the internet, as a consumer you have rights that protect you from the product or service not being satisfactory.

For transactions which took place prior to the 1st October 2015, you have protection under a law called the 'Sale of Goods Act 1979' (SGA 1979), which was updated in 2002 by virtue of the 'Sale and Supply of Goods to Consumers Regulations'. Where you have been supplied with services, then the 'Supply of Goods and Services Act 1982' (SGSA 1982) applies to those transactions.

Under these rules, goods you buy as a consumer must be fit for their purpose, be as described and be of a satisfactory quality. For services, they must be supplied with reasonable skill and care, be completed within a reasonable time period and at a reasonable price.

This protection extends to purchases you make online and also provides you with a chance to change your mind if you wish. This period, however, tends to be quite strict, so it's always advisable to check the terms and conditions of the company you are buying from.

On the 1st October 2015 new legislation known as 'The Consumer Rights Act 2015' (CRA 2015) came into force and replaces key provisions of the 'Sale of Goods Act 1979' and the 'Supply of Goods and Services Act 1982'. CRA 2015 applies only to business to consumer contracts entered into on or after 1st October 2015. The date you purchased your goods/services is therefore important as it affects the law applicable to the transaction and what remedies you may have.

1. Goods/Services purchased before 1st October 2015

Buying goods

Traders must have the right to transfer/sell the goods, and the goods themselves must:

Be of satisfactory quality - The standard of any goods you buy needs to be what a reasonable person would expect, in terms of price of the goods and their description. The goods must also be free from minor defects and be durable, as well as safe.

Be fit for a particular purpose - Goods you purchase should be fit for their specified purpose, and for the purpose as advertised by the supplier.

Be as described - Any goods must match the description advertised or communicated, whether verbally, on the packaging or by anyone you speak to.

Buying services

Traders who are providing services to consumers must:

Carry out any services with reasonable skill and care - Any services you are provided with should be supplied with the skill and care that a reasonable person would expect. You are entitled to this as a consumer.

Services should be completed within a reasonable time period - Even if you have not agreed a date on which the work will be completed, the assumption is that the work will be carried out within a reasonable time. You are not entitled to withhold payment unless you have given a reasonable amount of time for a deadline for the work to be completed.

Services are to be charged at a reasonable price - Even if you have not agreed a price for the work, there is an assumption that the price you will be charged will be a reasonable one. Reasonable would depend upon the exact nature of the work done.





What remedies are available to you?

Buying goods

Under the SGA 1979 you have the following remedies when goods do not conform to the contract for sale including:

- **You have a right to request a repair or replacement** - You can require the seller to repair or replace goods within a reasonable time and without significant inconvenience to you. A seller can repair if the cost would be disproportionately higher than the cost of replacement (or vice versa). If the repair is not to your satisfaction then you can still reject the goods.
- **You have a right to a partial or full refund** - You can request a refund if the goods do not conform to the contract.
- **You have a right to terminate the contract where delivery of the goods has not taken place within 30 days, or by or within the agreed time or period and any of the following apply** - If the trader has refused to deliver the goods, time for delivery of the goods was essential or before the contract was made, you notified the business that delivery was required no later than 30 days or by or within the agreed time or period was essential.

These rights are in addition to any common law remedy you may have such as:

- Right to reject the goods within a reasonable period of time. The right to reject will be lost if it can be said that you accepted the goods.
- A claim for damages which will usually equate to the cost of repair or replacement of the goods.

Whether such remedies are available to you will be fact and case specific.

Buying services

Under the SGSA 1982 you have no statutory remedy for breach of the implied terms listed above. Instead, your remedy lies in breach of contract. You therefore have the following remedies available to you, subject to the facts of your dispute:

- A right to claim damages
- Seek a refund where the business has not performed his side of the bargain
- Seek specific performance of the contract
- Rely on a breach against a claim by the business for the price
- Terminate the contract

2. Goods/Services purchased on or after 1st October 2015

Buying goods

Traders must have the right to transfer/sell the goods, and the goods themselves must:

Be of satisfactory quality - The standard of any goods you buy needs to be what a reasonable person would expect, in terms of price of the goods and their description. The goods must also be free from minor defects and be durable, as well as safe.

Be fit for a particular purpose - Goods you purchase should be fit for their specified purpose, and for the purpose as advertised by the supplier.

Be as described - Any goods must match the description advertised or communicated, whether this be verbally, on the packaging or by anyone you speak to.

Match the sample or model that is seen and examined by you, except to the extent that any differences are brought to your attention before the contract is made - Any goods should match the sample or display model unless differences are highlighted before the purchase is completed.

Be installed correctly - Any goods which require installation (and installation forms part of the sale) must be installed correctly.

Any digital content must conform to the contract to supply that content - Any digital content such as music downloads, films, software, and computer games must conform to the information provided by the business concerning the content's main characteristics, functionality and compatibility.

In addition, traders are required to provide consumers with specific pre-contractual information in certain circumstances. This includes, for example, details regarding payment and delivery arrangements.

Buying services

Traders who are providing services to consumers must:

Carry out any services with reasonable skill and care - Any services you are provided with should be supplied with the skill and care that a reasonable person would expect. You are entitled to this as a consumer.

Changes to pre-contract information - Any change to any of the previously agreed terms, whether made before entering into the contract or later, is not effective unless expressly agreed by you.

Services should be completed within a reasonable time period - Even if you have not agreed a date on which the work will be completed, the assumption is that the work will be carried out within a reasonable time. You are not entitled to withhold payment unless you have given a reasonable amount of time for a deadline for the work to be completed.

Services are to be charged at a reasonable price - Even if you have not agreed a price for the work, there is an assumption that you will pay the trader for its services and the price you will be charged will be a reasonable one. Reasonable would depend upon the exact nature of the work done.

Services to comply with information voluntarily provided by the trader - Anything that is said or written to you, by or on behalf of the trader, about the trader or the service is said to be a term of the contract of supply. This is provided that it is taken into account by you when deciding to enter into the contract or it is taken into account by you when making any decision about the service after entering into the contract.

What remedies are available to you?

Buying goods

Under CRA 2015 if the goods do not conform to the contract for any of the reasons listed above then as a consumer, you have the following rights:

You have a short term right to reject the goods

- The short term right to reject provides consumers with the right to reject goods that are faulty or not as described within 30 days unless the expected shelf life of the goods is shorter for example food items. The short term right to reject extends by at least 7 days if the trader has to repair or replace the goods during that time.

You have a right to request a repair or replacement of the goods - You can request that the goods supplied are repaired or replaced even after the 30 day short term right to reject has expired. A trader has one opportunity to repair or replace. Where there has been one unsuccessful repair or replacement, you are entitled to a reduction in price or the final right to reject.

It is important to note that where you seek to use your short term right to reject the goods, it is up to you to prove that the goods do not conform to the contract.

These rights are in addition to common law remedies including:

- Right to reject the goods within a reasonable period of time. The right to reject will be lost if it can be said that you accepted the goods.
- A claim for damages which will usually equate to the cost of repair or replacement of the goods.

Whether such remedies are available to you will be fact and case specific.

Buying services

Under CRA 2015 if the services supplied to you do not conform to the contract for any of the reasons referred to above, then you have the following rights:

You have a right to require repeat performance or if that is impossible or not done in a reasonable time, the right to a price reduction

- The right to require repeat performance is a right to require the trader to perform the service again, to the extent necessary to complete its performance in fulfilment of the contract. If repeat performance is requested, then a trader must provide it within a reasonable time and without significant inconvenience to you. The trader must also bear any necessary costs incurred in doing that work. If repeat performance is impossible and/or performance is not carried out within a reasonable time period, then you are only entitled to a price reduction.

This right is in addition to common law remedies including:

- A right to claim damages
- Seek a refund where the business has not performed his side of the bargain
- Seek specific performance of the contract
- Rely on a breach against a claim by the business for the price
- Terminate the contract

Whether such remedies are available to you will be fact and case specific.



3. Digital Content

Whilst existing consumer law on goods and services did apply to digital products and services, CRA 2015 introduces for the first time specific rights and remedies for the sale and supply of digital content as distinct from other goods and services. Digital content includes products and services such as music downloads, films, software, and computer games.

The digital content contracts covered are contracts for the supply of digital content to you for a price, content which is provided free with goods or services or other digital content for which you are required to pay and for content paid for by way of a 'facility' such as a gift voucher.

CRA 2015 implies into every contract to supply digital content a term that the content is of satisfactory quality, fit for purpose, and as described.

Satisfactory quality - The quality of the digital content includes its state and condition, content must be fit for all the purposes for which digital content of that kind is usually supplied, free from minor defects, safety and durability.

Fitness for purpose - If you make it known to a business before the contract is made, any particular purpose for which you intend to use the content, then the contract is to be treated as including a term that the content is reasonably fit for that purpose, whether or not that is a purpose for which digital content of that kind is usually supplied.

As described - The digital content must match the description of it given by the seller to you.



If any of these implied terms are breached then you have the following remedies available to you:

Unlike with goods, there is no right to reject digital content because there is no way to return it. You do however have a right to a refund. Furthermore, you have a right to a repair or replacement or if a repair or replacement are not possible or do not resolve the fault, you have a right to a price reduction. Any repair is required to be completed within a reasonable time period and without significant inconvenience to you. It is important to note that unlike with goods, sellers of digital content are not limited to one opportunity to repair or replace before you can request a refund.

CRA 2015 also provides you with an additional remedy for in the event that the digital content supplied causes damage to your device or to other digital content, for example because the content contained a virus. The damage must however, be of a kind that would not have occurred if the seller had exercised reasonable care and skill. Where such damage has been caused, the consumer is entitled to require the trader to repair the damage within a reasonable time and without significant inconvenience to you, or to compensate you for the damage by way of an appropriate payment.



4. What do you do if you think you have a dispute with a Company?

First of all, these days, most reputable companies value their reputations so much that, as and when you bring any problems to their attention, they will aim to resolve them quickly and satisfactorily. Getting in touch with customer services or a senior member of staff will often resolve your issue.

It is important that you keep notes of all conversations you have had regarding the matter. Most importantly:

1. Any conversations you had prior to you purchasing the goods or services that could be seen as a verbal contract and/or a term of the contract.
2. The name of the person or people you spoke to
3. Any receipts or delivery notes and copies of the terms and conditions.
4. The dates and times of communications relating to any dissatisfaction you have had.
5. Any outcomes to that point.

Additionally, it is always worthwhile asking for the supplier's complaints procedure. However, in most cases getting in touch with customer services or a senior member of staff will often resolve your issue.

If the situation has not resolved itself, then it is well worth contacting any trade bodies or organisations the supplier may be connected to in order to resolve your problem. A quick search on Google should provide you with the details of the relevant trade body or overseeing organisation. Any trade body will be more than happy to help you resolve your issue in a timely fashion.

If, at this point, your actions have not resolved the issue, then you have a number of other courses of action available to you. If the goods or services are under the value of £10,000, then it may well not be a very cost-effective solution to engage a solicitor. This is simply due to the fact that you cannot claim back your legal costs from the supplier if you are successful.

You may however, feel that you would benefit from some initial advice on the merits of your claim and/or wish to engage the services of a solicitor to assist you to defend proceedings if they have been brought against you. At Linder Myers our team is happy to assist clients in Small Claims disputes and often provide guidance to Companies and Individuals who find themselves involved in Court proceedings. Whilst the Small Claims Court is designed to be user-friendly, Court proceedings can be complicated and stressful to deal with on your own, by instructing solicitors to assist you, you can alleviate some of that stress in the knowledge that you are in expert hands.

You may, however, want to check to see if you have any legal expenses cover on your household or personal insurance. Many have advice services that can help you. Your legal expense insurance may also cover you for any small claims court action. **This needs to be checked thoroughly before you take any further action.**

Additionally, you should speak to your local Citizens Advice Bureau who will be able to guide you the process and provide advice on the potential costs of a small claims court action.

5. What if your claim is for more than £10,000?

If your claim is for a value in excess of £10,000 it opens up the opportunity to engage the services of a solicitor, as you have the chance of claiming back a percentage of your legal expenses from the supplier you are claiming against. It is still advisable to follow all the steps outlined previously but, should they not have the desired effect, it may well be worth consulting a solicitor.

Your solicitor will be able to advise you on the various options you have available to resolve the dispute. These include court action or seeking an alternative form of resolving the dispute, such as conciliation or arbitration. Each option has its individual merits and suits some disputes better than others.



Starting Court action

If you have been negotiating with a trader to resolve a consumer complaint but have not been successful, you may want to consider going to Court. Before taking legal action, you should make sure that you have tried all other options for resolving your dispute. You will need to answer the following questions:

- Can the trader in question afford to pay?
- Can you afford to go to Court?
- Do you need a solicitor?
- Is there a time limit?
- Do you have the trader's details?

Alternative dispute resolution (ADR)

If you have a dispute over the supply of goods or services that you have been unable to settle through negotiation, you may wish to consider using an Alternative Dispute Resolution scheme rather than taking Court action.

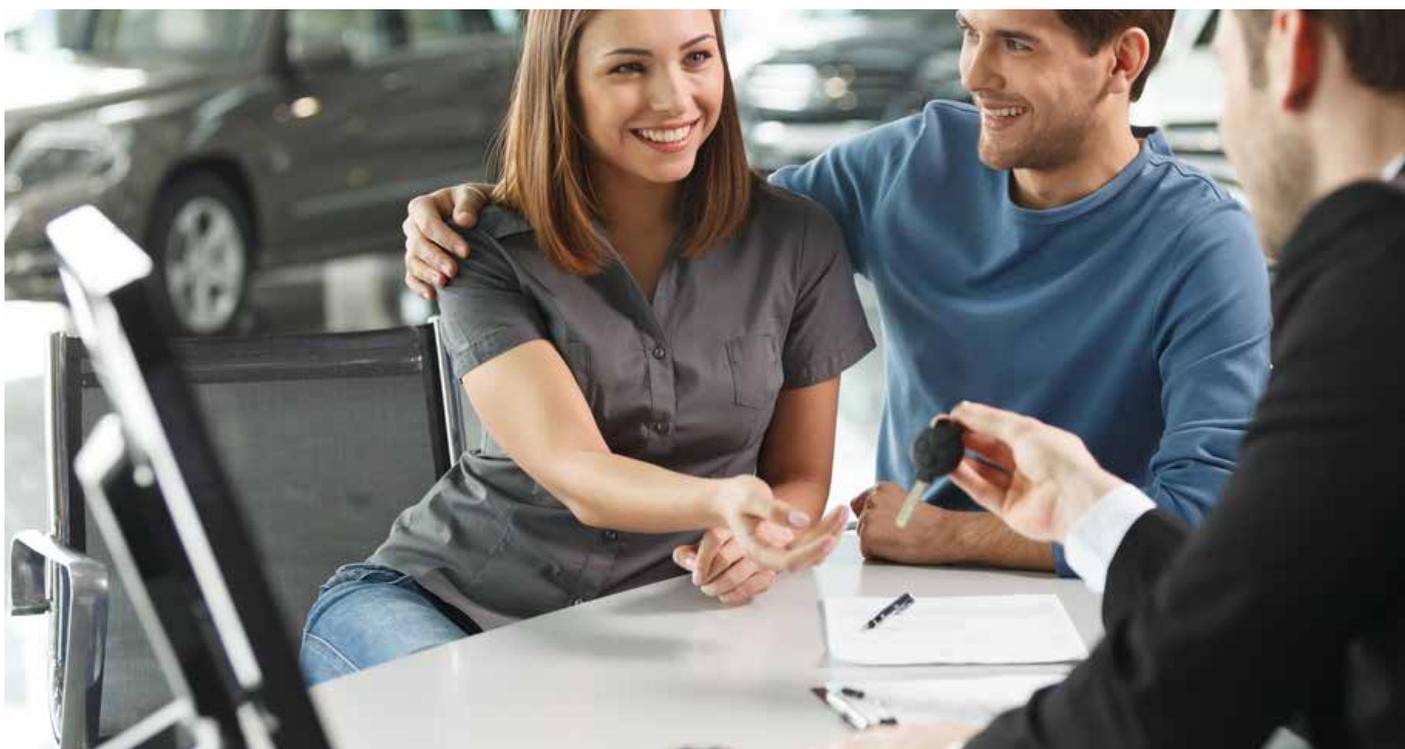
This uses a third party, such as an arbitrator or an ombudsman, to help you and the supplier reach a solution. You will usually have to complete the supplier's internal complaints procedure beforehand and you may have to pay a fee for using the scheme. This is usually refunded if you are successful.

Some schemes are legally binding, which means you cannot take Court action if you aren't satisfied with the decision, except to enforce an award.

Some considerations you need to think about prior to commencing any Court action are:

1. The potential costs. There will be Court fees and potentially witness or expert costs which, if you lose, you would be liable for.
2. Whether the supplier can pay. The supplier may not have the funds to pay you and, in some cases, even if you win, the supplier may be able to pay off very small amounts back to you over time.

For claims over £10,000 it is always a good idea to have an initial conversation with a solicitor and, whilst there may be a fee for this, it could potentially save you money in the long run.



6. Our top ten tips to ensure you get the right outcome if you are at all dissatisfied with the goods or services you have purchased.

1. Look carefully at the supplier's terms and conditions.
2. Keep all receipts and delivery notes.
3. Keep records of everyone you have spoken to about your issue.
4. Ask for the supplier's complaints procedure.
5. Write a formal letter before action.
6. If unresolved, contact the trade body or regulator of the supplier.
7. Consult your local Citizens Advice Bureau.
8. Consider any possible costs carefully.
9. Think about leaving a poor review online.
10. Consult a solicitor.

It goes without saying that disputes can be stressful for everyone involved. At Linder Myers, we have a great deal of experience in resolving disputes for individuals avoiding Court where possible. Even if your claim has a value of under £10,000, it may still be commercially practical and sensible to discuss this situation with a lawyer, notwithstanding the initial costs that may be involved.

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