

Teacher's notes

At this Key Stage some students may be shopping more independently, i.e. shopping trips out with friends or family members, therefore it is important to gain some understanding of shopping safety and what rights consumers have.

Buying something that is faulty can be a real problem,

- Proving that the fault wasn't caused by yourself
- Proving that you bought it from that shop
- Being able to return it in a certain amount of time that helps your case i.e. as soon as possible
- Dealing with the situation with as little stress as possible

Therefore to know your consumer rights will help to deal with these situations in the most effective way,

- Check goods before you buy them
- Ask what the shops refund policy is
- Always ask for a receipt
- Buy from reputable traders
- Return faulty goods as soon as possible, a shop may argue that it is wear and tear, or your fault if you leave it too long

The information below is taken from a leaflet available from Trading Standards. Please see <http://www.tradingstandards.gov.uk/>

On this website you will find very specific information around consumer rights if you would like to do a more in-depth research exercise with students.

Buying Goods - your rights

When you buy goods from a trader, such as a shop, market stall, garage, etc, you enter into a contract, which is controlled by many laws including, the Sale of Goods Act 1979 (as amended by the Sale & Supply of Goods Act 1994 and the Sale and Supply of Goods to Consumers Regulations 2002). The law gives you certain implied, or automatic, statutory rights, under this contract.

The Sale of Goods Act 1979 (as amended) says that goods should be as follows:

- **Of satisfactory quality.**

This means the goods must meet the standards that any reasonable person would expect, taking into account the description, the price and all

other relevant information. In some circumstances, the retailer may be liable for any statement made by the manufacturer about the goods.

Satisfactory quality includes the appearance and finish of the goods, their safety and durability and whether they are free from defects (including minor faults)

- **Fit for the purpose**

that goods of this type are generally sold. They must also be fit for any specific or particular purpose made known to the seller at the time of the agreement.

- **As described**

- goods should correspond with any description applied to them.

When are you not entitled to anything?

- If you were told of any faults before you bought the goods.
- If the fault was obvious and it would have been reasonable to have noticed it on examination before buying.
- If you caused any damage yourself.
- If you made a mistake, e.g. you don't like the colour, it is the wrong size etc.
- If you have changed your mind about the goods, or seen them cheaper elsewhere.

The situation may be different and you may have additional rights where contracts involve:

- credit (see 'your rights when buying on credit');
- distance selling i.e. not involving face to face contact, for example internet sales, catalogue, telephone sales etc. (see 'shopping at home'); or
- an unsolicited phone call or visit to your home.

What are you entitled to ask for?

If the goods are faulty at the time of sale, you are legally entitled to request one of the following remedies:

1) A full refund.

This remedy is available when the goods have not been 'accepted'. Under the Sale of Goods Act, acceptance can take place in three ways:

- By telling the retailer that you have accepted them.
- By acting in a way with the goods which is inconsistent with the seller's ownership. E.g. if you have altered the goods in any way or customised them then you would be deemed to have accepted them.
- By keeping them for longer than a reasonable time without telling the seller that you have rejected them. There is no time specified in the Act and it may vary according to the type of goods. Ultimately, it may be for the judge to decide whether an unreasonable time has passed and whether goods have been accepted. For this reason you must contact the supplier, preferably in writing, as soon as the fault appears. To delay may mean you lose a right to a refund

If acceptance has taken place, then only the following remedies are available:

2) Compensation (damages)

The amount of compensation may be based on the cost of repair, or if that is not possible, compensation may be based on the purchase price with an allowance for usage.

3) Repair or replacement

The trader can refuse to agree to either of these remedies if it is disproportionate in comparison to the other remedies. For example, if you ask a trader to replace a washing machine then he would be entitled to turn down your request and offer a repair instead.

However, the repair or replacement must be carried out within a reasonable time and without causing significant inconvenience to the consumer. If this does not happen or the repair or replacement is not possible, then the consumer can rescind the contract (claim a refund) or request a reduction in purchase price.

Please note: The remedies of repair/replacement and the subsequent rescission or reduction in purchase price are not applicable to Hire Purchase contracts and other laws apply. Please contact your local Trading Standards Service for further advice

4) Rescission or reduction in price

These financial remedies can only be achieved by a failure of the repair / replacement option once acceptance has taken place. If the trader agrees to rescission, the amount paid may be reduced to take account of usage.

Once you have chosen a remedy and the trader has agreed, you must give the trader a reasonable time to effect the chosen remedy before switching to another

one. Ultimately, if a remedy cannot be agreed upon, then the courts have the power to choose any of the remedies.

Proving the fault

- If you have not accepted the goods and are rejecting and claiming a full refund or damages, it is **YOU**, the consumer, who needs to prove that there has been a breach of contract in that the goods are not of satisfactory quality, fit for purpose or as described at the time of purchase.
- If you are claiming the remedies of repair or replacement within the first six months after purchase, it is for **THE TRADER** to prove that the goods conformed to the contract at the time of sale.
- If you are claiming repair or replacement more than six months after purchase, the burden of proof is back to **YOU**, the consumer.
- If it becomes necessary to obtain an expert opinion to support your claim, there are procedures to follow before you employ anyone in this capacity. County Court rules say that where an expert is necessary, it should be a single, jointly approved expert, and the expert's duty is to the court. You need to agree your choice of expert with the other party, and allow them to put their comments to the expert. Failure to follow this procedure may mean that a judge may not allow your expert to be heard should the matter eventually reach County Court. For further clarification, please seek advice from your local Trading Standards Service.

Who can you claim against for faulty goods?

Your claim could be against:

- the retailer under the Sale of Goods Act;
- the manufacturer (under the terms of a guarantee if you have one);
- a credit company if financed by credit (see 'Your Rights when Buying on credit' leaflet); or
- the credit card company (see 'Your Rights when Buying on credit' leaflet).

Guarantees

If the manufacturer of the goods provides a free guarantee with the goods, this creates a contractual obligation by the guarantor. If the manufacturer fails to honour the guarantee, you could sue the manufacturer for the promises he makes. A guarantee is extra to your rights under the Sale of Goods Act. In some circumstances, you may have a claim under the guarantee, but find that a claim under the Sale of Goods Act would be difficult to prove, or vice versa. You may also in some circumstances have a claim against both, and therefore have a choice of who to claim against. If you are unsure seek advice from your local Trading Standards Service.

A trader or manufacturer is under no obligation to provide a guarantee, and if they do, they can specify any time span, for example six months, twelve months or three years. They can also specify what is to be covered by the guarantee, and exclude certain parts, or wear and tear. They cannot, however, take away any rights you would have under the Sale of Goods Act

Returns policies

Some retailers make promises out of goodwill that they will issue refunds for unused goods within a time period, for whatever reason. This creates additional useful rights for consumers.

Offences

If the seller is in business (rather than a private seller), he may have committed a criminal offence if he:

- sells goods which are **unsafe**;
- has given a **false description** to the goods i.e. a car sold with incorrect mileage (clocked car);
- gives a **false description** to the services he is providing e.g. falsely claiming to be a member of a trade association;
- advertises a **misleading price**;
- displays a sign which states '**No Refunds**'.

If you feel that any of the above could apply, you should report the matter to your local Trading Standards Service before you return to the trader.

If you have been injured as a result of any goods, you should seek immediate advice from a solicitor.

Some problem areas when buying goods

Private sales

When you buy goods from a private individual, you don't have the same rights as when buying from a trader. The legal principle of caveat emptor, or 'buyer beware', operates. You have no rights to expect that goods be of satisfactory quality or fit for their purpose, but there is a requirement that they should be 'as described'. You should check goods thoroughly before you buy them.

Second-hand goods

The Sale of Goods Act applies to second-hand goods. When considering whether goods are of satisfactory quality one must take into account the lower

expectations of second hand goods. For example, it wouldn't be reasonable to expect a ten-year-old, high mileage car to be completely free from fault, or to perform in the same way as a brand new vehicle, or to last as long. Second hand goods will have part-worn parts which will not be as durable as a new model.

Sale goods

Again, you have full rights under the Sale of Goods Act. However, if the goods were reduced in price because of a fault that was either brought to your attention at the time, or if you examined the goods and the defect would have been obvious to you, you would not be able to have your money back later for that particular fault.

Auctions

When anyone buys at auction they are seen to be dealing as a trader. In a trade to trade contract it is possible for the parties to limit their liabilities to each other, and for this reason it has been possible for the auction house to put up notices which exclude the purchase from rights given by the Sale of Goods Act. This is subject to a reasonableness test and is covered by the Unfair Contract Terms Act 1977.

However

- New goods purchased at auction by a consumer will be covered by the Sale of Goods Act with the corresponding remedies.
- Second hand goods will also be covered when sold at auction **but only where** the consumer cannot attend in person

Some car auctions give the purchaser a limited time to try out the vehicle and reject if not suitable. This may only be a matter of a few hours, so it is worth looking closely at the terms of business.