

# Trading Standards



## **SHOPPING ADVICE DO YOU KNOW YOUR RIGHTS?**

### **Buying Goods? Consumer Rights**

The Sale of Goods Act 1979 gives you certain rights when you buy goods.

### **Buying Services? A Guide to the Supply of Goods and Services Act 1982**

This act applies to most situations where you ask a trader to do work for you.

### **Letters**

From our experience, consumers who write a formal complaint letter that clearly outlines their problem often achieve a satisfactory outcome at an early stage.

### **Thinking of Suing in the Small Claims Court?**

This is a brief overview of the small claims track of the County Court, for claims up to £5000. There is also guidance on what you must think about before making your claim.

### **Who is Really Responsible for Faulty Goods or Services?**

When you buy any goods or services, you have a number of ways by which you can pay eg cash, credit card or through a finance agreement.

# BUYING GOODS - CONSUMER RIGHTS

The **Sale of Goods Act 1979 (amended by the Sale and Supply of Goods Act 1994 and the Sale and Supply of Goods to Consumers Regulations 2002)** gives you certain rights when you buy goods. On 31 March 2003 changes were made to the existing law giving consumers new rights. These new rights only affect purchases made from this date.

The Sale of Goods Act defines your rights. It says that all goods sold to a consumer by a business should be

- **of a satisfactory quality** – this means that goods must meet the standard that a reasonable person would regard as satisfactory by taking into account the description of the goods and the price paid
- **fit for any reasonable purpose** – that you have made known to the seller. i.e. if you ask for a glue that sticks wood – then it must do so
- **as described** – on the packaging, in the advertising, or on signs in store.



When you buy goods from a seller you enter into a **contract**. A **contract** does not have to be in writing. The rights given to you by the **Sale of Goods Act (as amended)** will form the basis of such a contract.

Your rights will depend on how long you have had the goods and how serious the problem is.

If you have had the goods for a short time you will be entitled to reject the goods and ask for a refund. You may alternatively ask for a repair or replacement or a partial refund (a money sum to compensate for the reduced value of the item because of the fault). If you choose a repair, it may cost the trader more to repair the item. It would then be quite reasonable for the trader to offer a replacement instead.



If you have had the goods for some time your rights will change. In effect, the more you use an item and/or the longer you keep it, the more it becomes yours. The legislation does not give a specific time for this, but says that your rights will change after you have had a reasonable opportunity to examine the goods to make sure that the goods comply with the Contract. You will lose your right to reject the goods but will be able to claim damages, this is usually assessed as the cost of putting the item right or a money sum to compensate for the fault. You could also ask for a repair or replacement, although the longer that you have the goods the less likely it is that a replacement would be considered a reasonable solution.

If a fault became apparent after a short time and you agree to let the seller repair the goods you will not lose your right to ask for a refund if the repair is unsuccessful. It is a good idea to write to the seller and tell them that you are allowing the repair but you are going to **reserve your right** to reject the goods if the fault appears again.

If you have had the goods for some time and have had them repaired a number of times without success, you can argue that the goods are **not repairable** and make a claim for damages which will be the cost of replacing the item minus an amount for the use that you have had of it.

You also have the same rights against the seller if:

- **installation by the trader is not satisfactory**
- **installation instructions have shortcomings and you cannot put the goods into use**
- **the goods do not match the description made about them by the trader, manufacturer, importer or producer.**



## HOW TO MAKE A COMPLAINT

- Contact the seller as soon as possible after finding the problem. Telephone them or take the goods back to the store (if possible).
- Negotiate.
- If this fails put your complaint in writing to the seller.
- If you do not receive a suitable response from the seller you may have to consider enforcing your rights using the Small Claims Track of the County Court.
- Keep a record of times and dates of conversations. Get the name of the person you speak to. Keep copies of all letters.

Consumers should act reasonably when seeking redress and not add unnecessary costs. You should report faults as soon as possible. If you do not, it becomes more difficult to prove that the goods were faulty at the time of sale, as goods may deteriorate further.

You do not have to prove that the goods were faulty at the time of sale in the first 6 months after purchase. It is assumed that they were. If the seller disagrees, it will be for them to prove that the goods were satisfactory. After 6 months it will be down to the consumer to prove that the goods were faulty at the time of sale.

Be sure that you look after the goods that you buy. Follow user instructions and take reasonable care of them. **You do not have any rights under the Sale of Goods Act (as amended) for fair wear and tear, misuse or accidental damage or if you no longer want the item.**

## FREQUENTLY ASKED QUESTIONS

### DO I HAVE TO KEEP MY RECEIPT?

No, although some proof of purchase is essential. Many traders will insist on this before they will consider a claim. This does not have to be a receipt. A cheque stub, credit card receipt or bank statement may be enough. It is a good idea to keep the receipt for the lifetime of the goods in case a problem occurs.

### WHAT IF I PAY ON CREDIT?

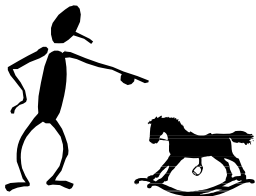
If the goods cost more than £100 and you paid by **credit card** or the trader arranged finance for you, the finance/credit card company has obligations to you too. These rights are given to you under the Consumer Credit Act 1974 under a principle called **equal liability**. This means that the finance/credit card company and the trader have the same obligations and responsibilities to you for the goods being satisfactory. You can therefore complain to both the trader and the finance/credit card company and if necessary take them and the trader to court to enforce your rights.



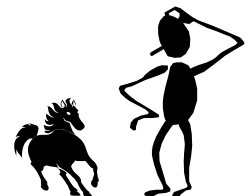
### I AM PAYING FOR THE GOODS IN INSTALMENTS. CAN I STOP PAYMENTS?

Stopping payments can affect your credit rating. Be very careful about stopping payments, as it can be difficult to sort out your credit rating even if your dispute is genuine. Stopping payments could also lead to the goods being repossessed by the finance company if you have a hire purchase or conditional sale agreement. Approach the finance/credit card company and ask them to suspend the account until the dispute is settled. Get them to put this agreement in writing.

### WHAT IF THE GOODS ARE NOT THE SAME AS IN THE BROCHURE OR THE SHOWROOM?



You will still have a claim under the **Sale of Goods Act (as amended)** because they are not as they were described to you. The trader may also be committing a criminal offence. Please send the details to **Kent Trading Standards** for information.



### I BELIEVE THAT THE GOODS I HAVE BOUGHT ARE UNSAFE - WHAT CAN I DO?

All goods must be safe and you may have a claim against the trader. Please contact **Kent Trading Standards** about the problem as we monitor safety issues.

## **THE GOODS WERE BOUGHT BY MAIL ORDER - DO I HAVE THE SAME RIGHTS?**

Yes you do **and** you may have a short time to cancel the contract. This is given to you by the **Distance Selling Regulations 2000**.



## **I BOUGHT THE GOODS FROM A PRIVATE INDIVIDUAL - IS THE LAW THE SAME?**

No. Goods will only have to be '**as described**'. **Remember BUYER BEWARE.** Some traders pretend to be selling as private individuals in order to dodge their responsibilities to customers. If you think this is happening please pass the information to **Kent Trading Standards**.

## **WHAT IF THE GOODS ARE SECOND HAND?**

Both new and second hand goods are covered. However, the older the goods are, the more wear and tear you must expect. They may not be perfect but they must still work.

## **CAN THE RETAILER SEND THE GOODS TO THE MANUFACTURER FOR INSPECTION?**

This may be a reasonable response, as the retailer may want to get the goods checked. This could be a cheaper option than getting the goods independently inspected. Remember the goods remain yours and you can ask for them back if you are not happy with their response.

## **WHAT USE IS THE MANUFACTURERS GUARANTEE?**

Always look at your guarantee. Sometimes it will offer more that you would be able to claim from the seller, particularly if you have had the goods for some time or a trader has gone out of business since you made your purchase. These guarantees are now enforceable in court. This change only applies if you bought the goods after 31 March 2003.

# BUYING SERVICES - A GUIDE TO THE SUPPLY OF GOODS AND SERVICES ACT 1982

This act applies to most situations where you ask a trader to do work for you. The amount of money involved may be relatively small, such as a repair to a video recorder or very large, such as the building of an extension, but all such contracts are covered by the Supply of Goods and Services Act 1982.

## YOUR RIGHTS

When you ask a trader to do work for you, the job should be done;

- with reasonable care and skill
- in a reasonable time (if no specific time has been agreed)
- for a reasonable price (if no price was agreed in advance)

AND any goods used or parts fitted as part of the contract must be;

- of satisfactory quality
- fit for their purpose
- as described.



If the supplier of the service fails any one of these conditions set out in the Act, he or she may be in breach of contract.

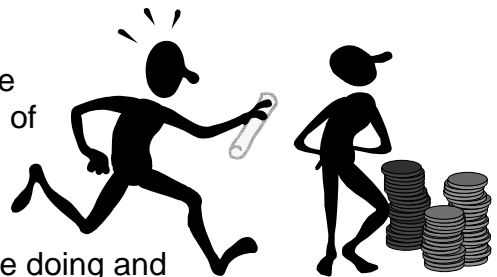
## WHAT TO DO IF THINGS GO WRONG

When you find that work carried out is not satisfactory, or costs more than was agreed or takes too long, you may be able to claim compensation. Unlike buying goods, it is not so easy to reject the whole job and ask for all your money back (although you should consider this if you can show that the workmanship was so poor that you got no benefit from it at all).



**Work not done on time.** When work is not completed on time or in a reasonable time you can write to the trader to make time '**of the essence of the contract**'. This means that you set a specific date for the work to be done, after which you will consider the trader to be in breach of contract and will be free to get other estimates and have the work completed by another trader.

- **Work not satisfactory.** It is usually considered reasonable to give the trader a chance to put things right – the amount of compensation you can claim for poor workmanship could be affected if you unreasonably refuse to allow the trader an opportunity to make amends. Tell the trader straight away if you are unhappy with the work done and confirm it in writing with a list of the specific problems to be sorted out.
- **Unauthorised work.** If you have agreed for particular work to be done and the trader goes ahead with additional work without authorisation, in theory you do not have to pay for the extra work. However, more practical solutions may be to;
  - accept the need for the extra work and pay if it seems reasonable
  - ask the trader to undo the work
  - negotiate a price for the work, taking into account that it was not authorised. You may have to pay under protest to get your goods back and then take legal action to claim compensation.



- **Withholding payment.** If you are not happy with the work, you may want to think about withholding some of the payment. You will have to decide whether to pay some of the bill and keep back enough to pay to put the work right or to delay the whole payment. It is important to tell the trader what you are doing and why. It is always advisable to tell the trader in writing that you are withholding payment. Be reasonable and be prepared to negotiate. It is very important to remember that if you fail to pay for work done, the trader may argue that you are in breach of contract and take court action against you. For them to succeed in their claim they would have to show on a balance of probabilities that the money is owed – ie, that the work has been done.
- **The price is very high** – If you were informed of the price at the outset and you agreed to this there is really nothing you can do. If no price was agreed then you need only pay a ‘reasonable’ price. A ‘reasonable’ price for a job can be determined by getting quotes for the same job from a number of other traders that do the same type of work in the same location and are businesses of a similar size. If you do this and find that you have been overcharged you can sue the trader for the difference in the County Court.

## HOW TO MAKE A COMPLAINT

- Contact the trader as soon as possible after finding the problem.
- Gather evidence of the breach of contract. Take photographs or use a camcorder. If you have to pay for an expert report to use in court you should try to get agreement from the trader on which one to use. Write a letter to the trader to suggest this so you can show you have tried, but if he refuses or you cannot agree you may need to get a report anyway. If you do not try to get such an agreement the judge may not let you claim for the cost of the report.
- Negotiate.
- If this fails put your complaint in writing to the seller.

- Find out how much it will cost to put the matter right. This may mean that you have to get quotes from other traders. It is possible that the cost of putting the faults right is more than the original cost of the job. For example, if you employ a trader to lay a tiled floor and he or she makes a very poor job of it, the cost of putting it right may include the cost of removing the tiles fitted, the cost of new tiles and the cost of laying those new tiles. The original trader may be liable for all these costs.

These extra costs are called consequential losses that have arisen because of the original breach of contract, that is the failure to carry out the work with a reasonable amount of care and skill.

**When finding out how much it will cost to put a matter right it is important to remember that you are under a duty to keep those costs as low as possible. This means that if some of the work done by the trader was of an acceptable standard or if the materials can be reused, you must take account of this when making your claim.**

- If you do not receive a suitable response from the seller you may have to consider enforcing your rights using the Small Claims Track of the County Court.

Keep a record of times and dates of conversations. Get the name of the person you speak to. Keep copies of all letters.

## **BEFORE AGREEING TO WORK BEING DONE**

- Get several quotes – shop around.
- Ask to speak to previous clients and ask to see previous work.
- Try not to pay money up front. If a large sum of money is involved try to agree staged payments so you pay for work as it is completed.
- Try to use a credit card to pay at least a deposit for the work if the price of the contract is between £100 and £30,000. Your credit card provider will then be liable for the contract in exactly the same way as the trader.
- Try to find out if the trader is a member of any trade associations. Some trade associations run schemes that take steps to resolve disputes with their members thus avoiding the need to take court action.
- Try to get a contract in writing. Verbal agreements can be very hard to prove if you end up having to go to court.



**It is very important to remember that a legally binding contract can be agreed verbally. You do not need to have signed anything to have a legally binding agreement.**

## FREQUENTLY ASKED QUESTIONS

### **I HAVE SIGNED A CONTRACT AND NOW I HAVE FOUND OUT I CAN GET THE WORK DONE CHEAPER, CAN I CANCEL?**

No, you will have entered into a legally binding agreement with the trader. You will not be able to cancel unless the contract or trader says that you can.

### **A REPAIRMAN HAS CHARGED ME A £50 CALL OUT FEE, JUST TO TELL ME THAT THE APPLIANCE IS UNECONOMIC TO REPAIR - CAN HE DO THIS?**

Yes, if this was agreed at the outset. If no price was agreed then the call out fee must be reasonable.

### **I WANT THE TRADER TO COME BACK AND RECTIFY FAULTS. BUT I CANNOT FIND THEM?**

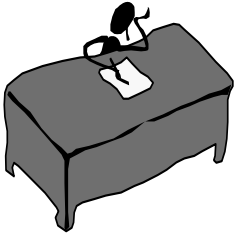
If a limited company goes out of business there is nothing you can do to make a claim against them. If you were dealing with a sole trader or partnership you will have to find them. This may be very difficult. If you have made a payment using a credit card you may be able to make a claim against your credit card company.

### **I HAVE TAKEN MY CAR FOR A REPAIR BUT THEY HAVE NOT DONE IT PROPERLY - I HAVE REFUSED TO PAY, BUT NOW THEY WILL NOT GIVE ME MY CAR BACK?**



You may have to pay under protest to get your car back. The garage may argue that they have a 'lien' over the goods until an agreement is reached about payment. Make sure that you make it clear to the trader at the time that you are paying under protest – in writing is best – and take up your claim against them once you have your goods back.

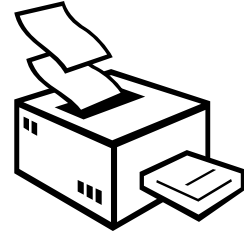
# LETTERS



From our experience, consumers who write a formal complaint letter that clearly outlines their problem often achieve a satisfactory outcome at an early stage. One letter can be more effective and less costly than several phone calls. You can still contact the trader by telephone, but do remember to confirm important points in writing.

## IMPORTANT

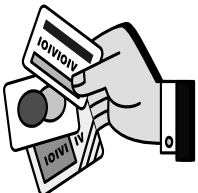
Always send your letter by Recorded Delivery and keep a copy. These copies may be useful if you have to take your claim to the county court.



## SUGGESTED LETTER FORMAT

- **Paragraph 1**  
Give details of the goods or services, such as any reference numbers, dates and prices.
- **Paragraph 2**  
Give details of your problem. List the faults.
- **Paragraph 3**  
Give the trader a diary of action taken, such as visits and telephone calls.
- **Paragraph 4**  
Tell the trader what you want done about the problem and by what date. Remember, any time scale has to be realistic and reasonable.
- **Paragraph 5**  
Tell the trader what steps you will take if this is not done, such as possible county court action.

If the goods or services cost over £100 and were bought using a credit card or on finance arranged by the trader, send the credit company a copy of the above letter asking them for assistance. Give details such as agreement or account numbers.



Example Letters of Complaint:-

Customer Services Manager  
No-con Garages  
Old Street  
Canterbury  
CT11 11D

Ivor Mishap  
123 Abacus Street  
Margate

(Remember to date your letter)

Dear Sir/Madam

Re: Renault 5 A11 ROT

At approximately 8.30 am on the 15th September this year, I brought my vehicle, a Renault 5, Registration Number A11 ROT, to your garage and asked you to service it.

When I collected the vehicle from you at approximately 4.30 pm the same day, I was told that you had carried out a "full service" and had adjusted the timing, replaced the air filter, spark plugs, distributor cap and cam belt and carried out a complete oil change. The bill for this work was £128.00 which I paid by cheque accordingly.

On the 17th September, 2 days after the service, the vehicle developed faults:- it wouldn't start when I turned on the ignition and once I eventually got it going, every time I slowed down the engine cut out.

Under the Supply of Goods and Services Act, you should carry out the service with reasonable care and skill and for a reasonable price, using parts that are both of satisfactory quality and fit for their purpose.

I therefore request that you rectify the faults within the next 7 days, free of charge. Failing this would you be prepared to share the costs of an independent report to confirm what the problems are with the vehicle.

I therefore request that you either rectify the faults within the next 7 days, free of charge, or pay the costs of an independent mechanic to put the faults right.

I should be grateful for you comments, within the next 7 days, before I consider any further legal action.

Yours faithfully

Ivor Mishap

Customer Services Manager  
Rip-Off Stores Limited  
Head Office  
High Street  
London

Jane Bloggs  
123 Abacus Street  
Maidstone

(Remember to date your letter)

Dear Sir/Madam

Re: Faulty Radio/Alarm Clock

On 12<sup>th</sup> September this year I bought a digital radio/alarm clock, model CP230, at a cost of £27.99 for which I paid cash, from your Ashford branch at 88 Maths Street, Ashford.

After one week, the digital display started to work intermittently and the alarm stopped working altogether.

I returned to your Ashford branch with the clock on 21<sup>st</sup> September and spoke to the Assistant Manager (Mrs Bird), but she was not prepared to assist, other than to offer me a credit note, which I did not accept. I therefore telephoned the branch on 22<sup>nd</sup> September and spoke with Mr Sage, the Manager, who confirmed all he was prepared to offer was a credit note.

In view of the short length of time I have had the clock, before it developed a fault, I wish to reject it as not being of satisfactory quality under the Sale of Goods Act 1979 (as amended) and claim a full refund of my money, within the next seven days.

If you fail to resolve this matter to my satisfaction I will consider seeking legal advice on pursuing redress through the local County Courts.

I look forward to your comments at your earliest convenience.

Yours faithfully

Jane Bloggs (Miss)

#### **REMEMBER:**

- TO ALWAYS KEEP A COPY OF YOUR LETTER
- TO SEND YOUR LETTER BY RECORDED DELIVERY
- TO ASK THE POST OFFICE FOR AN AR CARD SO YOU KNOW THE LETTER HAS BEEN SIGNED FOR AND DELIVERED.

# THINKING OF SUING IN THE SMALL CLAIMS COURT

This is a brief overview of the small claims track of the County Court, for claims up to £5000. There is also guidance on what you must think about before making your claim.

If after reading this you decide to make your claim, please contact your local County Court and ask them for comprehensive guidance leaflets and the appropriate forms.

## HOW IT WORKS

The procedure can be quite simple, but you may be put off by the terminology such as claimant (person suing) or defendant (person being sued) or perhaps by the forms you need to complete. This leaflet tries to offer some general advice to make your claim easier.

## COURT SHOULD ALWAYS BE SEEN AS THE LAST RESORT

You must have tried every possible option available to you to resolve the problem first.

Try to keep copies of letters and notes of telephone conversations so that you can show the steps you have taken to resolve the dispute. When writing letters it is a good idea to send them 'Recorded Delivery', you can then prove that the person you are writing to, has actually received them.



## DO I NEED TO USE A SOLICITOR?

No. You may represent yourself when making a claim in the County Court.

In the small claims track you would not be able to claim for the cost of a solicitor to represent you - even if you won your case. Equally, if you were to lose you would not be expected to pay the defendant's solicitor's fee.

If your claim is for more than £5000 you may feel that it is necessary to consult a solicitor before starting a claim because you may be expected to pay all the defendant's costs if you were to lose. This may be in addition to your own costs and court fees. It is very important to be aware of the financial risks of making your claim before you begin.

## WHAT FORMS DO I NEED?

When making a claim for money or for the return of goods you will need to complete a claim form. You will have to get the appropriate set of instructions from the court, depending on whether you are claiming goods or money.

## WHAT HAPPENS NEXT?

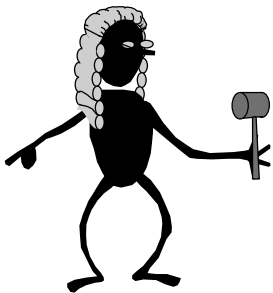
Once completed, the particulars of claim can be taken to the court, or if posted, sent recorded delivery to the Chief Clerk enclosing a self-addressed envelope. (Remember, if the forms are posted and are incorrect they may need to be amended. This will delay the process, so going in person may be best).

The fee also has to be paid, this can either be cash, cheque or postal order.

The summons is then sent to the defendant by post (usually within 7 days) and the person being sued has the right to reply within 14 days.

If the case is defended, the Court will send instructions to both parties detailing how they wish the case to proceed, and an allocation questionnaire. It is important that you follow these directions. If you do not, your case may be delayed or thrown out. This questionnaire is designed to give the judges the information they need to ensure that the claim is heard in the correct track of the County Court. It may also instruct you to do something such as get an expert's report, or exchange copies of all your documents with the other party. If your claim is more than £1000, a fee is payable at this stage.

If you hear nothing, you may be entitled to have judgement entered in default, but the procedure gets a little complicated and you should seek further advice on this.



A district judge may decide that you can make a judgement on the basis of the documents submitted thus avoiding the need for a hearing.

The district judge may decide to have a hearing, this would normally be held in the court buildings. It is possible that the district judge may decide to visit the source of the claim to enable him or her to make a decision, they may want to look at the faulty carpet or damaged furniture themselves to decide the case.

A district judge can reject a claim if he or she considers it to be unreasonable.

## WHAT IF I RECEIVE A DATE FOR A HEARING?

Hearings are generally fairly informal - it is likely just to be you, the district judge and the defendant or their representative.

You should state your case from the beginning and **STICK TO THE POINT - DO NOT ELABORATE**. The judge will make his/her own notes, so pause between sentences to ensure everything is noted and nothing is missed. If you do not understand a question, say so. Remember you will probably be asked questions by the defendant - so stay calm.

You should be fully prepared beforehand, knowing the nature of the problem, the amount being claimed and have evidence to prove your claim, along with a list of expenses incurred (with proof such as receipts) in bringing the case to court. However, costs will not be awarded unless asked for and may sometimes be awarded against you if the judge believes you to have been unreasonable in bringing the action.

## WHAT IF THE OTHER PARTY HAS A SOLICITOR?

Remember, for claims less than £5000 the small claims track has been established to keep costs down, be accessible to everyone and to be used as a friendly, informative court. Therefore, a solicitor (if present), will not be allowed to subject the other side to legal jargon if they are not represented. The judge will try to balance both sides as evenly as possible.

## WHAT HAPPENS AFTER THE HEARING?

At the end of the case, the district judge will decide on judgement, known as an award, which is binding on both parties.

The successful party has to ask for judgement to be entered before the claim is to be paid. However, the other party may not 'pay up' so you may have to try and enforce this judgement, which can be very difficult, time consuming and costly. You should therefore seek advice on this procedure before commencing.

## NOW I KNOW HOW IT WORKS, WHAT ELSE DO I NEED TO KNOW?

Points to consider before starting.

You will need to ask yourself:

- **Have I got legal grounds to sue?** To make a claim you must be able to identify a breach of civil or criminal law. If you cannot do this your claim will not be allowed to continue
- **Am I in time?** There are time limits on making claims
- **Is my claim reasonable?** It's no good trying to claim £5000 if the zip of a £50 jacket broke after 6 months
- **Will the defendant pay up if I win?** This is very important - if you feel that the person you are suing will be determined not to pay or has no money, the judge cannot make them pay. You may have to take further court action to enforce the judgement. Think very carefully before throwing good money after bad.
- **Can you prove your claim?** Do you have any evidence such as photographs, receipts, witnesses etc. In some instances it will just come down to one person's word against another, and the district judge will have to decide where the liabilities lie, based on who has the best evidence.



Remember, in civil proceedings you do not have to prove your claim 'beyond reasonable doubt' as you would in a criminal prosecution. The burden would be on you, the claimant, to prove your case on a 'balance of probabilities' ie at least 51% in your favour.

- **How much to claim?** This should be proportional to the source of the claim, eg. if a car is not properly repaired and breaks down as a result, your claim is likely to be for the cost of putting it right. You may also be able to claim for out of pocket expenses, which have arisen as a direct result of this breach, such as extra phone calls, letters, extra travel and if

appropriate the cost of transporting the vehicle to a repairer.

In some circumstances you may be able to claim extra money for the 'distress' caused by the action of the defendant. You may also be able to claim extra money if you have not been able to use the goods as expected.

Remember - the small claims track will only deal with claims up to £5000. If your claim is just over this amount you may wish to consider limiting your claim to £5000 to avoid the possibility of having legal costs awarded against you if you were to lose.

Interest can be claimed from the date of the fault/problem, to the date of issue of summons. This needs to be specifically claimed on the summons form. The judge will not award it afterwards. This can be complicated, so you should seek further advice on this.

- **Who do I sue?** If you make a claim against the wrong person, your case will be thrown out and you may have to start again.

## THERE ARE DIFFERENT TYPES OF BUSINESS

- If you are suing a Limited company eg. 'Got your money PLC' or 'Got your money LTD' you can use the company name on your receipt/invoice and send the summons to their trading address or their registered office address.

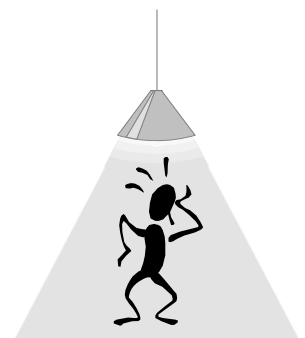
If the person you are suing is a sole trader, it is best to sue the owner of the business as he or she is personally liable for the business debts. The summons is sent to the trader at either their home or business address. Send it to 'Mr XXXX Trading as Badduns'.

If the business is a partnership it is best to sue all the partners who are liable - as the partners, like sole traders are responsible for their business debts. Address the letters as you would a sole trader. You cannot first sue one partner and then if they cannot pay sue another.

## EXPERT WITNESSES

In the small claims track the judge will try to keep the costs down. Expert witnesses add greatly to the costs of court action.

The role of the expert witness in court proceedings should be to provide information for the judge and this will be their principal duty. Their obligation is to the court NOT to the person paying their bill.

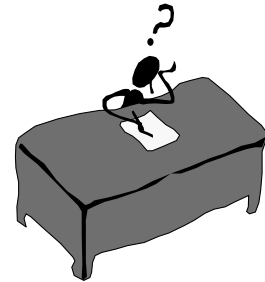


In the early stages of preparing a claim, try not to use an expert. If you feel one is necessary or could help in resolving your dispute, contact the defendant and ask if you could both use the same expert. Try to agree to be bound by their decision and if possible share the cost.

In many instances the district judge will feel competent to decide the case without an expert. If they feel it is necessary they will appoint ONE. This is to avoid the situation where both sides have experts working for them, arguing the case and increasing the length and cost of the case.

## HOW DO I COMPLETE THE FORM?

- Keep the details brief
- First of all Set the Scene - Who, what, where, when, cost
- Then - Problem - What went wrong?
- Action - What was done to resolve the dispute?
- Law - State the legal grounds for your claim
- Money - State clearly how much you want to claim and how you arrived at that amount
- Try to type the details if you can. If this is not possible use black pen
- Keep details SHORT, CONCISE and ACCURATE



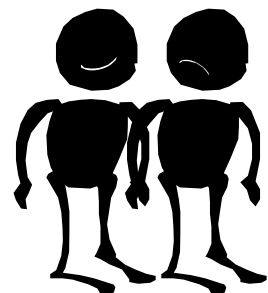
If any point needs a detailed explanation it is a good idea to put this onto a separate piece of paper and attach it to the form. If you have had a lot of contact with the defendant, it is a good idea to set this out in a list and attach it to the form. In both instances it is essential that these documents are referred to in the summons, otherwise they will not be considered.

You will need an original form and all attached documents to be sent to each of the parties being sued, a copy for the court and a copy for yourself.

Remember - your local County Court will have copies of forms and full explanation notes on how to complete them. Their address can be found in the local telephone directory or on [www.courtservice.gov.uk](http://www.courtservice.gov.uk).

## WHAT SHALL I BRING TO THE HEARING?

- **Be prepared** - bring all your original documents - in date order. Make sure that any witness you want to call, comes to court with you. It is important that they attend IN PERSON.
- **Be prepared** - write down what you want to say - if you think it might help, take a friend or adviser with you. Or use them to present your case to the judge, if you think they can do it better than you.



# WHO IS REALLY RESPONSIBLE FOR FAULTY GOODS OR SERVICES?



When you buy any goods or services, you have a number of ways by which you can pay eg cash, credit card or through a finance agreement.

However, who is responsible to you in law if something goes wrong may vary, depending upon the type of finance agreement involved. Before reading these notes, get hold of your agreement and follow through the flowchart on the back page. This will help you to identify the type of facility that you have entered into.

## CASH OR CHEQUE?

Here, the contract for the goods is solely between you and the trader. Any claim you make will be against the person or business you dealt with. (NB: not the manufacturer).

## BANK LOAN OR OTHER LOAN FACILITY?

This is the same as buying with cash or cheque. Although the bank or other lender has supplied you with the money, for which you make monthly repayments, they have no connection with the supplier you use. (NB: it is slightly different for timeshare and further advice on this specific matter should be sought).

## HIRE PURCHASE AGREEMENT OR CONDITIONAL SALE AGREEMENT?

This is likely to be the most complicated to understand. Although you may walk, for instance, into a car showroom to order your second-hand car and to collect it, the person you are actually dealing with is the finance company (who has provided you with the credit facility).

This is because under a hire purchase or conditional sale agreement, the vehicle/goods belong to them until you have made the final payment under the terms of the agreement.

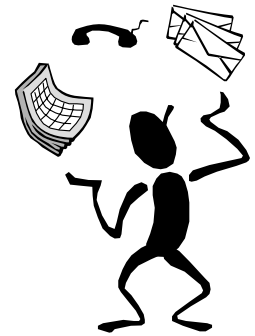
In effect, they own the car/goods and are allowing you to use them. So, should things go wrong, any claims you make would be purely against the finance company.

In practical terms, they may refer you back to the retailer where you collected the goods from to carry out repairs, however they are legally responsible and you must make contact with them to remind them of this fact.

If you do have difficulties - under no circumstances should you just stop paying, as the company may be allowed to come and take the goods back. It is always best to seek advice on what steps to take next.

## CONNECTED LENDER LOANS

This is one of the most common forms of credit agreement you may enter into. Usually for items such as large pieces of furniture, electrical goods or home improvements. The credit will have been arranged for you by the retailer/supplier.



With these type of agreements, providing the contract price of the goods and/or services is over £100, both the retailer and the finance company are jointly liable for any difficulties that you may have.

This means that for any breach of contract, you can claim compensation from either the retailer, or the finance company or both. Although we would advise you to approach the retailer first.

This can definitely be of benefit if the retailer has ceased trading, as you may still seek redress from the finance company.

## CREDIT CARD?

These are not to be confused with debit cards such as 'Switch', or other cards where you have to clear your account in full at the end of the month.

A credit card is where you have a 'credit limit' - an amount by which you are authorised to spend up to - then make minimum monthly repayments back to the credit card company.

Like a connected lender loan, if the contract price is over £100 then you can claim against either the retailer, credit card company, or both.

This is obviously of benefit if you use your credit card to purchase goods abroad whilst on holiday, which turn out to be faulty when arriving home in the UK. It will be simpler to pursue the credit card company for redress rather than try to deal with a foreign business.

Please note that responsibility will not be placed on the credit card company if you have obtained cash using your card, from a cash machine, and then purchased goods with the money.

## HIRE OR RENTAL AGREEMENTS

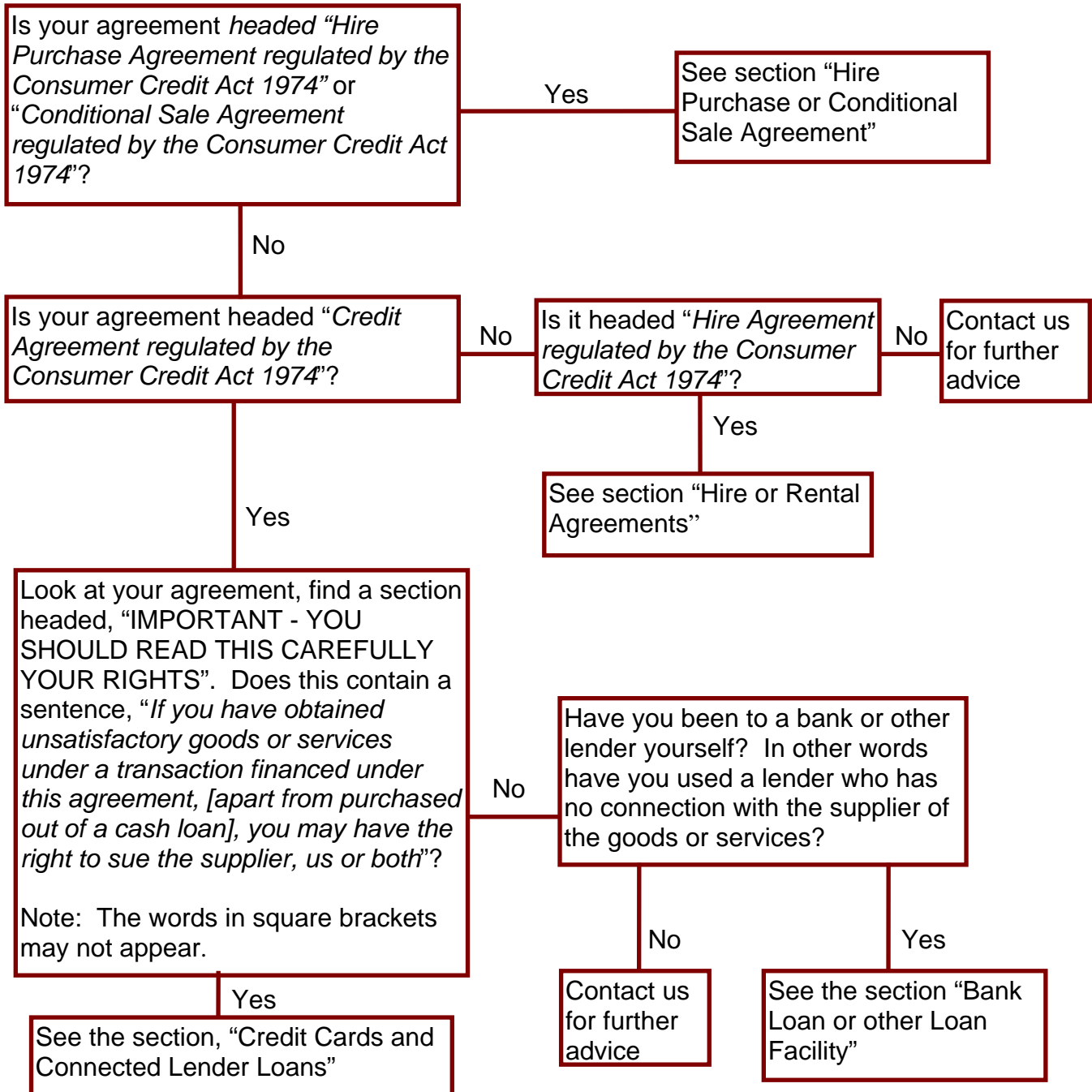
With these agreements, typically for televisions or other domestic appliances, you are renting the goods from whoever you are making the payments to. Therefore because you are paying for use of the goods on an ongoing basis, you should return to them if anything goes wrong.

## ANY OTHER TYPE OF FACILITY

It is not possible to cover every type of facility that is available on the market place. So if your agreement does not fall within one of the headings mentioned above, please contact us for further advice. We may need to ask you to send a copy of the agreement to us before we can advise you fully.

## IDENTIFICATION OF AGREEMENTS

This flowchart is intended to help you identify the type of credit or hire agreement that you have signed and whether or not the finance company has any responsibility for problems with any goods or services that you have been supplied.



Trading Standards Website: [www.tradingstandards.gov.uk/kent](http://www.tradingstandards.gov.uk/kent)

If you are in any doubts or would just like more information on the details contained in this leaflet or on your rights, then please contact Consumer Direct for advice on:-

**08454 040506**

Open Monday to Friday between 8.00 am and 6.30 pm  
and Saturday between 9.00 am and 1.00 pm

