

**BUYING
SELLING
AND BORROWING**

**A GUIDE TO CONSUMER
RIGHTS IN
NORTHERN IRELAND**

THIRD EDITION



FOREWORD

As consumers we all buy goods and services on a regular basis. We are involved in selling when we move house or change our car and it is now common practice to borrow money or make use of credit facilities to obtain some of the larger and more expensive things that we need. Buying, selling and borrowing are therefore activities which affect us all and it is vitally important that we understand the laws which govern these transactions and know exactly what our rights and responsibilities are. **Buying, Selling and Borrowing** provides that information in a straightforward and easily understood way. It covers virtually all of the situations that we, as consumers, are ever likely to have to face and gives helpful advice as to what we can do and what course of action we can take. This guide has proved popular with many people including, advice workers, students, traders and members of the Northern Ireland public from it was first published in 1987. I have no doubt that this, the third edition, which has been revised and brought up to date with the most recent changes to UK and EC legislation, will be equally useful.

Once again the Council is indebted to Mrs Nuala O'Loan of the School of Public Policy, Economics and Law at the University Of Ulster, Jordanstown, who prepared the original text and subsequent revisions.

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INTRODUCTION

As consumers we live in a very rapidly developing world. New products are constantly being made available to us, there are new ways of selling these products to us and new ways of paying for them when we buy them. Living as we do in the European Union, we have access to a range of goods and services which quite simply were not available to us in 1987 when the first edition of Buying Selling and Borrowing was published to provide the Northern Ireland consumer with a guide to consumer rights under Northern Ireland law.

These changes, bringing with them so many benefits to consumers, bring also the risk of something going wrong in connection with a consumer transaction, and the national governments and the European Union have recognised the need to provide additional protection to consumers. Many of the changes made to consumer protection law are the result of this acknowledgement and of the need to protect consumers as they buy, sell and borrow across the European Union.

However, the freedom to buy, sell and provide goods and services across the European Union will only really be exercised by a confident well-informed consumer who has the benefit of real protection in law. There will be more changes in the near future, as the European Union moves to provide access to justice for the consumer across Europe. In the meantime it is hoped that this Guide will prove useful to those who buy, sell and borrow in Northern Ireland today.

I would like to express my thanks to my fellow Council Members, to the staff of the Council and to my husband and sons for their help in the preparation of this Guide.

NUALA O'LOAN
July 1996

MAKING A CONTRACT

THE AGREEMENT

Every day the average consumer makes contracts - getting on a bus, buying a lottery ticket and buying a drink in a pub all involve making a contract. When a consumer makes a contract that person enters into a relationship which has legal consequences, giving the consumer rights, but also imposing obligations on him.

What then is a contract?

A contract is an agreement between two or more people to do or not do something in return for a price. The people who make the agreement are called the "parties to the contract" and they must intend that if one party breaks the contract, eg. by not paying the price, the other party will be able to enforce the contract by suing in the courts (see pages 39-44).

The contract must not be made for an illegal purpose.

• **Example:**

Alan agrees to import Ecstasy tablets into Northern Ireland for Bill, and Bill agrees to pay £10,000 for them. Alan cannot sue Bill if he does not pay for the tablets and Bill cannot sue Alan if he does not import the tablets. This contract is illegal.

WHO CAN MAKE A CONTRACT?

The general rule is that anyone over the age of 18 can make a contract. Some people however are only able to make contracts for every day purchases. This rule applies to the mentally ill, who are unable to understand what it means to enter into a contract, and to those who are so under the influence of alcohol or drugs that they, too, are unable to understand what they are doing.

• **Example:**

Mabel who suffers from Alzheimers Disease buys four gold and silver necklaces at £1,500 from a jeweller, telling him she needs them to have tea with Queen Victoria next week. She pays by cheque and the cheque bounces - the jeweller could not sue her for the £1,500.

People under the age of 18 (minors) have only limited ability to make a contract. They can buy and sell things which they need for their everyday

life eg food, books, clothes and can make contracts of apprenticeship and employment. In most cases they will not be able to buy luxuries such as holidays, cars etc. If they do enter into agreements for such

luxuries, they cannot be sued for the money due under the contract, but a court can order restitution of the goods, or any identifiable proceeds of sale of such goods, to the retailer. If persons under the age of 18 do want to buy these things an adult will have to enter into these contracts on their behalf. Minors cannot enter into binding loan contracts. However if an adult guarantees a loan to a person under the age of 18, that guarantee **will** be enforceable. If the loan is not repaid the guarantor will be liable to pay the whole sum due under the guarantee.

THE PRICE

If a consumer wants to be able to ask a court to enforce a contract, then the consumer will have to be able to show the Court that the agreement into which he entered contained an element of exchange: something given in exchange for something else. This is generally called the price, it does not have to reflect the true value of the goods; it simply has to have some value.

• **Example:**

Colin agrees to sell his television to David for £150. The price here is £150. However even if Colin agreed to sell the television for 5 pence that would still be a binding contract which David could enforce through the courts.

The price paid in a contract does not have to be money, it can take the form of goods or anything that has a recognisable value.

• **Example:**

Clive agrees to give Derek his 1994 Rover 214 in exchange for Derek's 1970 Mini. This is a binding contract which the courts would enforce.

• **Example:**

A middle aged couple, Mr and Mrs Black agreed to sell their own house and go and live with an elderly couple, Mr and Mrs Green. Mr Green promised to leave his house to the Blacks in his will but, two years later after much unpleasantness, Mr Green told the Blacks to leave. They were then left homeless and they sued for

breach of contract. By selling their own house and moving in with the Greens, the Blacks had given something of sufficient value in exchange for the promise to leave the house to them, and were entitled to compensation.

PRICE MARKING

If no price is agreed by the buyer and seller, then the

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buyer must pay a reasonable price for the goods or services. Generally there are no maximum prices for goods except for medical prescriptions and dental treatment under the NHS.

In most situations goods for sale in shops are marked with a particular price. The cost of any ancillary goods and services must be stated separately. A contract is made when the customer asks to buy the goods and the shopkeeper agrees to sell the goods to the customer at the price which the customer offers to pay.

• Example:

*A leather jacket may be displayed for sale at £55. When this happens the jacket should only be sold for £55. If the shopkeeper charges more he may have committed a criminal offence. However, if the shopkeeper, having displayed the leather jacket at £55, realises that he has made a mistake and that the leather jacket should have been priced at £155, he does **not** have to sell the jacket to the customer at £55 and can alter the price. The customer still has the choice of either buying at the higher price, or not buying at all. The shopkeeper must alter the price card before selling and there is a possibility that he has committed an offence under the Consumer Protection (Northern Ireland) Order 1987 by stating the wrong price. This may result in him being prosecuted by the Trading Standards Officer. That prosecution will not affect the customer who is still bound to pay the higher price, whether or not the price card has been changed, if he wants the goods.*

If a trader states a price which does not apply to all methods of payment, then he must indicate either the price payable, for example when a cheque is used rather than cash, or he must state in writing the difference between the indicated price and the price of payment by another method.

VAT

Prices charged by retailers to consumers, and stated in their advertisements should always include VAT. Where food and drink is sold in restaurants, cafes, pubs, self-service stalls or takeaways, the price displayed must **always** include VAT.

MISLEADING PRICES

A trader can offer most goods for sale at any price, and can always reduce the price of goods which he has on offer. A trader must not, however, give any misleading indication as to the price at which goods, services (including credit, banking or insurance,

buying or selling foreign currency, charges for private parking of motor vehicles and charges for keeping or putting a caravan, not used as a main residence, on land), accommodation or facilities are available. A trader must not understate the price. He must make it clear to customers if a price is quoted, and that price applies only to cash customers. If a different price applies to credit customers this must be stated. If the price does not apply to part-exchange deals, the trader must say so. If special rules apply to the price, the trader must say so. If there is any additional charge, such as a service charge, this must be stated. If the trader breaks any of these rules he commits an offence. He also commits an offence if he falsely indicates that a price is expected to be reduced, increased or maintained or if he makes a false price comparison, by for example, comparing goods falsely with other goods.

PAYING THE PRICE

A consumer is contractually obliged to pay the price under a contract he enters into. If the consumer is dissatisfied with the goods or services he receives he can offer a lesser amount than the price "in full and final settlement" of the bill. If this is accepted by the seller then he cannot usually subsequently sue the consumer for the full amount.

• Example:

James received an estate agent's bill for £1,200 in respect of the sale of his house. He was dissatisfied with the services rendered by the estate agent and sent a cheque for £250 "in full

and final settlement" of the bill. The cheque was cashed by the estate agent's cashier a fortnight later, but the estate agent then tried to claim the balance of £950. He was not entitled to do so as he had accepted James' cheque on the basis that it was a final settlement.

If an offer of a lesser amount for a bill is not accepted, then the consumer will either have to pay the full amount or wait for the seller to sue him and then counter-claim for compensation for his dissatisfaction. Alternatively, the consumer could sue the seller for not carrying out his obligations under the contract (see Enforcing the Contract, pages 39-44).

MISLEADING ADVERTISEMENTS

If a trader makes any false statement about goods, or offers goods for sale to which a false trade description has been applied then he commits an offence.

• Example:

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Thomas decided to buy a car which he saw displayed in a garage forecourt at £5,000. The mileage shown on the mileometer was 36,000 miles. After buying the car Thomas contacted the original owner who told him that when he sold the car to the garage it had done 136,000 miles. In this case Thomas can sue the garage for misrepresentation (see below) and misdescription (see pages 10-11). The garage can be prosecuted under the Trade Descriptions Act.

If consumers or traders see any advertisement which is misleading, and likely to injure a trade competitor or persuade someone to enter into a contract, they can complain to the Director General of Fair Trading who can take action against the advertiser. If the advertisements appear on commercial radio or television, then complaints should be made to the following as appropriate.

(1) Radio Authority
Holbrook House
14 Great Queen Street
Holborn
London WC2B 5DG
Tel. 0171 430 2724

(2) Independent Television Commission
33 Foley Street
London
W1P 7LB
Tel. 0171 255 3000

MISREPRESENTATION

When people are negotiating a contract then the general rule is "caveat emptor" - let the buyer beware! The seller does not have to make any statements about what he is selling and, if he does not do so, the general rule is that the buyer takes the goods subject to any inadequacies or deficiencies in them. (There are special rules for the sale of goods in the course of a business under The Sale of Goods Act 1979 as amended, -see pages 9-14).

• Example:

Andy has a motorbike for sale for £2,000. Ben comes to look at it and asks Andy if the clutch is good. Andy says "Take a look at it" and Ben does so. If Ben subsequently buys the bike and the clutch goes, Andy is not liable because he has not stated that the clutch is good. However, if Andy were to reply that the clutch was good when it was not, then he would have made a misrepresentation and Ben would have rights against him.

A misrepresentation is a misleading statement of fact made by one party to a contract or his agent (eg the seller) which induces the other party (eg the buyer) to enter the contract.

If a buyer suffers a misrepresentation, he will be able to sue the seller in the courts and claim **compensation** (see pages 39-44). He may also be able to claim **rescission**, ie the right to return the goods, and get his money back.

• Example:

Jim offered his house for sale for £65,000. John agreed to buy the house for this price, Jim having assured him that there were no disputes of any kind affecting the property. John paid a deposit of £6,500 and then discovered that there was a boundary dispute which had been in existence for several years. John told Jim that he did not want to carry on with the sale and wanted his money back. Jim refused. John sued Jim for misrepresentation and claimed rescission, which

was granted to him. His £6,500 had to be returned to him.

FORMALITIES FOR CONTRACTS

When making a contract the consumer must ensure that he knows from whom he is buying, what the price is and what the terms are. Certainty, ie. a clear understanding of what the contract is about, is essential if either party is to be able to enforce it in a court in the event of the other party breaking it. In most cases contracts can be made verbally or in writing or even by implication from conduct. In some cases however the law requires certain formalities to be complied with. These are:

- (A)** Certain Consumer Credit Agreements.
- (B)** Contracts for the Sale of Land.
- (C)** Guarantees.

(A) Consumer credit agreements where the amount of credit does not exceed £15,000

Most hire purchase transactions fall into this category as do most loan agreements entered into by the average consumer. These agreements must be made in writing and must comply with the requirements of the Consumer Credit (Agreements) Regulations 1983 as amended. Basically the agreement must:

- (1) be in writing,
- (2) be easily legible,
- (3) contain writing which is a different colour from the colour of the paper,
- (4) contain the names and addresses of the lender

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and the borrower,

(5) contain details of all the financial and related particulars, such as:

- description of goods,
- deposit,
- amount of credit,
- cash price of goods,
- APR (see page 46),
- total charges for credit,
- information about the right to pay off the debt early.

The person making the agreement must be given a copy of it when he signs it. All the details must be filled in and if the lender has not already signed it the borrower must be sent a completed copy of

the agreement, signed by the lender within seven days. If these requirements are not complied with, the consequences are that:

(1) if the consumer (ie the borrower or hirer) did not sign the agreement, then the lender cannot enforce the agreement against the consumer - he cannot sue the borrower,

(2) if the agreement did not contain all the necessary information, then the lender will have to go to the court and ask for an order to enforce it.

These rules apply even if the total price of the goods exceeds £15,000. The important ceiling of £15,000 applies to the amount of the money borrowed.

• **Example:**

Kate buys a car for £18,000, paying a deposit of £6,000. She borrows £12,000 on a hire purchase agreement. This will be a regulated agreement and will be subject to all the rules described above.

(B) Contracts for the sale of land

Under s.2 of the Statute of Frauds (Ireland) 1695, every contract for the sale of land must be evidenced in writing. This means that there must be some note or memorandum, or some documents (eg a letter and a cheque), which can be read together if the contract is to be enforceable. The note must contain:

- (1) the names of the buyer and seller,
- (2) a description of the property,
- (3) the price,
- (4) any other terms, eg. that the price is payable in instalments,
- (5) the signature either of the party to be sued or his agent.

Consumers buying property need to take care that they do not enter into a contract before they have found out enough about the property to be sure that it

is really what they want. Conveyancing procedures in Northern Ireland are complex and consumers are not generally recommended to "do it yourself". Do it Yourself Conveyancing manuals sold in England and Wales are not appropriate for use in Northern Ireland, and it is wise to consult a solicitor. He will draw up a formal contract containing all the terms of the sale and will arrange for the consumer to sign it at the appropriate time,

when he is satisfied that he has provided against the possibility that, for example, a major road building project is planned which will affect the property, or that there is an outstanding mortgage on the property. He will arrange all the necessary enquiries into the nature of the property which the consumer wishes to buy, and will draw up the deed which is necessary to transfer the property from the seller to the buyer. (A deed is a document on paper or parchment which is signed, sealed and delivered by the person(s) making the contract).

Gazumping

This occurs where a seller agrees to sell a house to a buyer, and before the written contract is signed, agrees to sell the property to a third party.

• **Example:**

A seller, Mark, agrees to sell his house to Anthony for £55,000, and Anthony instructs a solicitor to handle the conveyancing for him. He is then informed by Mark that he has a better offer of £60,000, and he is no longer interested in Anthony's offer. If there is no signed written evidence of a contract signed by Mark, then Anthony has no rights. Any costs which he may have incurred (eg the solicitor may have done work which costs £150) are his own responsibility, and he has no redress against Mark.

(C) Guarantees

Where a consumer is borrowing money and has nothing to offer as security to the lender, the lender may ask him to provide a guarantor, someone who will be liable to pay off the debt if the consumer fails to pay. A guarantee, like a contract for the sale of land, must be evidenced in writing and signed by the guarantor otherwise it will not be enforceable against him. Consumers should be cautious about signing guarantees; it would be wise to consult a solicitor about the terms of the guarantee. Most bank guarantees, for example, make the guarantor liable for an unlimited amount of debt for an indefinite period. Banks do not like guarantees which cover only, for example, a car loan.

• **Example:**

Brian wanted to borrow £6,000 to finance the purchase of a car and asked his friend Adrian to

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sign the guarantee required by the National Bank.

Adrian signed and two years later discovered that, not only had Brian not repaid the £6,000 plus interest, but he owed the bank £13,285 altogether. The National Bank sued Adrian for £13,285 which Adrian was liable to pay because he had signed a guarantee covering all monies owing to the Bank on any of Brian's accounts.

Guarantees can usually be terminated by giving notice in writing, but a guarantor should be careful about this because, if he tells the lender he is no longer willing to act as guarantor, the lender may well call in the loan. The consumer may be unable to pay and then the guarantor will be liable for the whole amount anyway.

Consumers should therefore be wary of being asked to act as guarantor, even of their student children's bank accounts. The guarantee will run until terminated and this could prove very costly. If, for example, the child has graduated, started a business, run up debts and becomes unable to pay, the parent will be liable for all the debts.

● RELEVANT LEGISLATION

Statute of Frauds (Ireland) 1695
Trade Descriptions Act 1968
Misrepresentation Act (NI) 1967
Consumer Credit Act 1974
Consumer Credit (Agreements) Regulations 1983 as amended
Unfair Contract Terms Act 1977
Consumer Transactions (Restriction on Statements) Order 1976 as amended
Sale of Goods Act 1979 as amended
Misleading Advertising Directive 1984/450/EEC
Minors Contracts Order (NI) 1987
Consumer Protection Act 1987
Consumer Protection Order (NI) 1987
Control of Misleading Advertisements Regulations 1988
Broadcasting Act 1990
Price Marking (Method of Payments) Regulations (NI) 1991
Price Marking Order (NI) 1992
Unfair Terms in Consumer Contracts Directive 1993/13/EEC
Unfair Terms in Consumer Contracts Regulations 1994
Sale and Supply of Goods Act 1994
Trade Marks Act 1994
Price Indications (Resale of Tickets) Regulations (NI) 1995.

DOORSTEP SELLING

BUYING AT HOME

Consumers may make contracts to acquire goods in a number of different places and in a number of different ways (see pages 1-5). Perhaps the most common places in which contracts are made are in shops and in the home. A seller may call at the consumer's home selling insurance or encyclopedias for example. There are two main ways in which the transaction may be made:

- (1) Cash contracts.
- (2) Credit Contracts.

(1) Cash contracts made at a consumer's home, at someone else's home or at a consumer's place of work

If a consumer is visited by a salesman **whom he has not asked to call**, and buys goods costing more than £35 for which he pays or agrees to pay cash, he has the right to change his mind within seven days of agreeing to buy the goods, or within seven days of his offer being accepted by the business selling the goods to him. A consumer will also have the right to cancel if a salesman whom he has invited to his home for one purpose sells him something different.

• **Example:**

Jean invited an encyclopedia salesman to her home and agreed to buy a £900 children's encyclopedia for cash. When the business was finished Jean made the salesman a cup of tea and he mentioned that his company also sold computers for educational purposes for children. Jean agreed to buy a package consisting of a computer, printer, monitor and several educational games for £899.99 cash. She subsequently discovered the same package on sale in a shop in Belfast for £825. Jean is entitled to cancel the contract to buy the computer package, but is bound by the contract to buy the encyclopedia because she invited the salesman to the house in the first place.

These rules do not apply if the seller offers credit of up to £35 on a cash sale. Consumers should therefore be very wary of sellers offering to sell goods with a period of interest free credit of up to £35. If a consumer accepts such an offer then he has no right to cancel the agreement.

• **Example:**

Jenny agreed to buy a built-in wardrobe unit from a salesman who called at her house. The price was £735 of which £700 was payable on completion and the remaining £35 was payable within six months of completion. This agreement was not cancellable because the salesman was offering £35 credit on the

deal.

Right of cancellation

If a trader is calling uninvited at peoples' homes and selling goods to them, then he must give each customer a notice of his right to cancel within seven days, during his visit. If no such notice is given the agreement will not be enforced by a court.

If a customer does cancel in these circumstances:

- (1)** he is entitled to get any money paid back,
- (2)** he must look after the goods for 21 days,
- (3)** he must return them if they are asked for,
- (4)** he can refuse to hand the goods over until he gets his money back,
- (5)** he is entitled to get back from the trader any goods he gave in part-exchange within 10 days.

A consumer will only be bound by a contract and therefore have to pay for the goods if they are perishable, eg. tomatoes or they are consumable and have been consumed - eg. a Christmas Hamper, or they have been supplied to meet an emergency, or they are goods which have been incorporated in the land - eg. roof tiles which have been used in repairing a roof.

Generally speaking a consumer will have slightly longer to cancel if he enters into a credit agreement than into a cash agreement, but this is nevertheless an important new protection for the consumer who can no longer be pressurised into a binding cash contract by a high-powered salesman who calls at the door.

Exceptions

These rules do not apply to insurance contracts, contracts relating to the buying of property or securities, or to contracts for the purchase of a timeshare.

(2) Credit contracts made at consumer's home

If Jean were to agree to buy the £900 encyclopedias from the salesman on credit terms, she would have the right to cancel the agreement within 5 days of receiving the completed copy of the Agreement (see page 26). She can reflect in peace and comfort on whether she really wants to buy such an item without the pressure brought to bear upon her by the salesman.

UNSOLICITED GOODS

DOORSTEP SELLING

Sometimes a seller will put even more pressure onto a buyer by simply delivering goods to the buyer in the hope that the buyer will pay for them. A company might, for example, send ten volumes of an encyclopedia, asking the consumer to return them within 28 days if he does not want them. In such a situation the consumer has received unsolicited goods.

What the consumer can do

If a consumer receives goods which he did not order, but which he is invited to buy, then he does not have to return the goods. He has two courses open to him;

(1) he may wait for six months and, if during that period the seller has not collected the goods or unreasonably been refused permission to take them, the consumer may keep them, OR

(2) the consumer may not wish to keep the goods in his house for six months; in this situation he can write to the seller stating that the goods were unsolicited and giving an address where they can be collected. The seller then has 30 days during which to recover the goods. If he does not collect them within the 30 days the consumer can keep them.

If a seller of unsolicited goods sends invoices or similar documents, they must be on white paper, with black or dark grey writing, and each page of the document(s) must contain these statements:

(1) THIS IS NOT A DEMAND FOR PAYMENT - THERE IS NO OBLIGATION TO PAY.

(2) THIS IS NOT A BILL.

Any consumer receiving such a document should therefore ignore it. He is under no obligation either

to keep the goods or to return them. If the goods are accidentally lost or damaged he is not responsible. All he should do is wait until the 30 days or six months period (whichever is appropriate) is up and then the goods become his property.

TIMESHARE AGREEMENTS

If a consumer enters into a contract, whether for cash or credit for the purchase of a timeshare (a right to occupy a specified property for a specified period of time during the year), then provided the agreement is signed in the United Kingdom, there is a 14 day cooling-off period during which the consumer can cancel the agreement.

● RELEVANT LEGISLATION

Unsolicited Goods and Services (NI) Order 1976
Unsolicited Goods and Services (Invoices etc.)

Regulations (NI) 1979
Consumer Credit Act 1974
Doorstep Selling Directive 1985/577/EEC
Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 as amended
Timeshare Act 1992
Timeshares Directive 1994/47/EEC

BUYING AND SELLING GOODS

BUYING ON STANDARD TERM CONTRACTS

There are a number of general rules which apply when consumers are buying goods, and they are doing so on the basis of a seller's standard terms of contract. These are the terms which are **not** negotiated with the buyer. The buyer and seller will agree on what is to be sold and how much it will cost. Sometimes, however the seller will sell subject to a number of other terms, generally referred to by consumers as the "small print". These terms may be subject to two different sets of rules, under:

- (1) The Unfair Contract Terms Act 1977.
- (2) The Unfair Terms in Consumer Contracts Regulations 1994.

(1) The Unfair Contract Terms Act 1977

This Act applies when a consumer enters into a contract and the seller, by his contract terms, tries to exclude liability for specified matters. This means that the seller is claiming that he will not be liable. The following exclusions are unlawful:

- (1) Any attempt by contract to exclude liability for death or personal injury resulting from negligence.
- (2) Any attempt by a manufacturer to exclude or restrict his liability for loss or damage arising from defects in goods which result from negligence in manufacture or distribution.
- (3) Any attempt by a manufacturer or supplier to exclude liability for breach of the terms implied into a consumer contract by the Sale of Goods Act 1979 as amended (see pages 9-14), or the Supply of Goods (Implied Terms) Act 1973 as amended (which applies to hire-purchase - see page 23), or the Supply of Goods and Services Act 1982 (which applies to service contracts such as contracts for the supply and installation of a gas fire - see pages 32-34). These terms guarantee that the seller has the right to sell or hire, that the goods or services correspond to any ⁿ description or sample, that the goods are of satisfactory quality and fit for any normal or agreed purpose.

Other exclusions

If a seller tries to exclude his liability in other circumstances he will only be able to do so if it is reasonable.

(2) The Unfair Terms in Consumer Contracts Regulations 1994

These rules apply to all clauses in all contracts entered into by consumers on standard terms which are imposed by the seller and are not negotiable

whether they are exclusion clauses or not. They do not apply to the basic agreement between buyer and seller about what is being sold and how much it will cost. All terms must be written in plain and intelligible language. All other terms apart from those relating to subject matter and cost must be fair. They will not be fair if they create a significant imbalance in the parties' rights and obligations to the detriment of the consumer. Only a court can decide if a term is unfair. These Regulations list a number of typical terms which **may** be unfair. These include:

- (1) A term which says the seller will not be liable for breach of contract.
- (2) A right for the seller to end a contract for goods without giving notice to the buyer.
- (3) A right for the seller to change the goods without agreement.
- (4) A right for the seller to increase the price.
- (5) A right for the seller to have the final say if there is a dispute between buyer and seller.

If a consumer enters into a contract which contains a term which the court decides is unfair, the seller cannot enforce the contract against the buyer. The seller does not commit any criminal offence.

OTHER IMPORTANT CONTRACT TERMS IN CONTRACTS FOR THE SALE OF GOODS

Special rules apply to contracts where one party is buying and the other party is selling "goods". Goods are any item other than land, houses, money or cheques. The term "goods" includes cars, food, furniture, ships, crops to be grown in the future, goods to be manufactured. The goods must be sold for a *money* price if these rules are to apply, so they do not apply to:

- (1) contracts where consumers exchange goods,
- (2) agreements by which the consumer borrows money,
- (3) mortgages,
- (4) contracts for the supply of goods or services, eg. a contract where Tom, a painter, agrees to paint Dick's house for £500. These are dealt with separately, (see pages 32-34).

WHO OWNS THE GOODS?

In law there is an assumption that a person selling goods is either the owner or has the owner's authority to sell, and that therefore the seller has the *right* to sell, and that the buyer, having paid for the goods, will become the owner and will be allowed to use them without any interference by any other person. In

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most cases this is what happens; occasionally however it transpires that the goods were either stolen from the true owner or were the subject of a hire purchase agreement (see page 23). Where this happens there may be a problem.

STOLEN GOODS

If a consumer buys stolen goods the general rule is that the goods remain the property of the person from whom they were stolen.

• Example:

Victor agrees to buy a 1993 Vauxhall Cavalier from Jim for £10,000. He pays Jim, who takes the cheque, cashes it and disappears. Three days later Victor is stopped at a checkpoint by the RUC who inform him that he is driving a stolen car and that they are impounding it.

In this case Victor has no rights over the car. Jim had no title - no right to sell the car - and he could not give Victor any rights over the car. The car will be returned to its rightful owner and Victor will be left £10,000 poorer. His only course of action would be to sue Jim for breach of contract, ie. for breach of the implied term that Jim had the right to sell the car. Victor will have to find Jim and then sue him (see pages 39-44). This may not be easy as Jim may well have disappeared.

There are a number of exceptions to this general rule that, if a consumer buys stolen goods or goods which do not belong to the seller for other reasons (eg. that he has acquired them on hire purchase), he cannot keep the goods. These include:

- (1) motor vehicles held on hire purchase,
- (2) sales by a person with a defective title.

MOTOR VEHICLES HELD ON HIRE PURCHASE

Special rules apply where a consumer buys a car or other motor vehicle, not knowing that it is the subject of a hire purchase agreement (see page 21). If the consumer buys the goods as a private purchaser and not as a car dealer or as a person who provides finance for the purchase of motor vehicles, then he will become the true owner of the vehicle.

• Example:

Patrick agreed to buy a 1992 Ford Granada for £11,000 and paid the money to Damian. Three weeks later he learned that the car was the subject of a hire purchase agreement and the finance company were claiming that the car was theirs. Since Patrick bought as a private purchaser, not knowing that there was a

hire purchase agreement in respect of the car, he became the owner of the car and the finance company had no claim over it.

These rules apply **only** where motor vehicles which are the subject of a hire purchase agreement are sold. They will not apply if the buyer knows that the car is subject to a hire purchase agreement. They do not apply to other goods such as washing machines, stereos and furniture.

SALES BY A PERSON WITH A DEFECTIVE TITLE

A defective title can be created as follows:

• Example (a):

Kevin sells his car to Brendan who says that he is William and pays for the car by cheque signing the cheque in William's name. Kevin then takes the cheque to the bank and pays it into his account, whereupon the cheque bounces because it was stolen by Brendan. Kevin is then left with no car and no money. His course of action is to sue Brendan for his money if he can find him, and inform the police of the matter.

This is misrepresentation (see page 3) by Brendan of who he was. When Brendan claimed to be William he was misleading Kevin about his true identity. The effect of such misrepresentation is that Brendan will get only a *defective* title to the

car. This means that, if Brendan sells the car before Kevin *avoids* the title, then any purchaser from Brendan will own the car. To *avoid the title* Kevin must take some action such as informing the RUC and the AA and asking them to look for the car. If he does so *before* Brendan resells, then the car will still be Kevin's property. If not, it will belong to the person to whom Brendan sold it.

• Example (b):

Kevin sold his car to Brendan, a fraudulent buyer whose cheque bounced. Kevin then informed the police and the AA. After this Brendan sold the car to Sam. Kevin traced the car and sued Sam to get it back. The court said that, since Sam had bought the car after Kevin avoided the title (by informing the police and the AA and asking them to trace the car), the car still belonged to Kevin.

• Example (c):

Kevin sold his car to a fraudulent buyer, Brendan, in return for a cheque which was dishonoured. Brendan sold to Michael and the police traced the car to Michael. Kevin sued Michael for the return of his car. The court said that the car belonged to Michael because Kevin had not avoided the title before Brendan sold to Michael. Since Michael bought the

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car not knowing that Brendan had acquired it by fraudulent means, Michael became the true owner of the car.

This rule applies only if Michael is ignorant of the earlier fraud. If Michael knows or has reasonable grounds to suspect that he is being offered stolen property, and buys despite such knowledge or suspicion, the property will not become his.

If a fraudulent buyer sells before his title is avoided to an innocent third party who then resells to a fourth person, that fourth person will become the legal owner.

DELIVERY OF THE GOODS

In most cases the consumer takes delivery of the goods in the seller's shop or other business premises; once he gets the goods he must pay for them. Sometimes, however, a consumer orders goods which are then delivered to his home; in such circumstances delivery must be made either on a date agreed between the parties or within a

reasonable time and must be made at a reasonable hour. If a seller delivers goods to the consumer's home and hands them to a person appearing to have the authority to receive them, he has done all that is required of him and the buyer must pay for the goods.

• Example:

A seller, Mervyn, delivered goods at Wallace's home. A burglar, Basil, opened the front door, took the goods from Mervyn and then disappeared with them. Wallace had to pay for the goods because Mervyn had done all that was required of him.

DELIVERY BY THE SELLER AND ACCEPTANCE BY THE BUYER

When goods are delivered, which have not previously been examined, the consumer has a reasonable time to examine them. He can then decide whether the goods are what he ordered, or if he ordered after examining a sample, whether the goods correspond to the sample. If the goods are not as ordered, he is entitled to reject them. In other circumstances he must accept them. Acceptance can occur if the consumer tells the seller he accepts the goods, if he uses them, or if keeps them, but does not tell the owner that he has rejected them.

DESCRIPTION AND SAMPLES

There are two simple rules that apply where goods

are sold with a description attached to them, and/or by reference to a sample. If the goods are sold with a description then the goods must be as described or the consumer is entitled to his money back.

• Example:

A consumer, Edward, buys a shirt from a shopkeeper, Ken. The shirt is described as "100% pure cotton". Edward is allergic to polyester and discovers that the shirt is in fact 60% cotton and 40% polyester. He is entitled to a full refund and to compensation for any injury suffered.

If goods are sold by reference to a sample then the bulk of the goods must correspond with the sample. If any description is attached to the sample, the bulk must also correspond to the

description.

• Example:

Andrew went to a tile shop where he selected a light grey tile with a dark grey stripe with which to tile his bathroom. He inspected one of the tiles carefully and decided that it fitted his requirements. The tiles were described as being 200mm x 100mm. When Andrew started to tile his bathroom he discovered that some of the tiles were of a darker shade of grey than the sample and that two of the boxes contained tiles measuring 6" square. Andrew is entitled to a full refund.

THE QUALITY OF GOODS

The section on Making a Contract mentioned that the old rule 'caveat emptor' - let the buyer beware - applies when consumers make contracts. However, while this rule still applies, for example, where a consumer buys a house, it no longer applies in consumer sales. If a consumer buys goods of a type ordinarily bought for private use or consumption and he buys them from a shop-keeper, catalogue, second-hand car dealer or anyone else carrying on a business, then the goods must comply with two legal requirements:

- (1) They must be of satisfactory quality.
- (2) They must be fit for any specified purpose.

(1) Satisfactory quality

This means that the goods must "**meet the standard that 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 law states that when a consumer is considering

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the quality of goods he can take into account their state and condition including, in appropriate cases:

- (1) fitness for all the purposes for which goods of the kind in question are commonly supplied,
- (2) appearance and finish,
- (3) freedom from minor defects,
- (4) safety,
- (5) durability,
- (6) any other relevant issues.

A consumer buying goods must therefore consider carefully what he is buying, why he is buying it, what he wants it for, how much he is paying, and for whom he is buying. All these factors are relevant.

Some things are obviously not of satisfactory quality, for example a saucepan with a handle which keeps falling off or a lawnmower which will not cut the grass or sheets which are not big enough to put on to a bed. When this happens the consumer should immediately return the goods to the seller and ask for a full cash refund. This is what he is *entitled* to; he does not have to take a replacement, a credit note or alternative goods, although he may do this if he so wishes.

However, sometimes consumers buy goods which are apparently satisfactory, but which subsequently appear to be unsatisfactory, for example, the three-piece suite costing £1,495 on which the draylon covering starts to wear after two months, or the carpet costing £25 per square metre on which the pile becomes flattened after six months, or the automatic washing machine which needs a new door-seal after one week. In cases such as these, the consumer should inform the seller of what has happened and demand a full cash refund. Again, he can take a credit note or alternative goods if he so wishes.

HOW LONG DO GOODS HAVE TO BE OF SATISFACTORY QUALITY?

Difficulties arise where, for example, goods are delivered which work for a year or more and then become unworkable because of an inherent defect, for example, the washing machine which works for 18 months and then requires a new drum. There is no requirement that the goods remain of satisfactory quality for a specific period and the question of durability is one which causes a lot of problems. Goods must remain in a reasonable state for a reasonable period of time, provided they are not misused; this will depend upon the nature of the goods and the price paid for them.

USING GOODS PROPERLY

A consumer may buy goods which have to have something done to them even though they are of satisfactory quality. For example, if a consumer buys two pork chops from a butcher, the law presumes that he will cook them properly before eating them.

If he does not do so and eats the chops and becomes ill, the consumer will not have any rights against the seller because the consumer has not done what is required of him. If a consumer buys a fridge, for example, which has a two star freezer compartment, then he should be careful to store goods in the freezer section in accordance with the instructions given, so that the goods do not deteriorate through being stored for too long.

SPARE PARTS

Goods may be of satisfactory quality when bought but subsequently break down and need a spare part without which the goods are unusable. The supplier of goods is under no obligation to store spare parts, although some suppliers act under voluntary Codes of Practice which require them to do so for a specified period.

BUYING IN SALES, ETC

If a consumer buys goods in a sale in which the price has been reduced and he discovers a defect, then the goods may not be of satisfactory quality and, if so, he will be entitled to a full refund. If the shop displays a "No Refunds" notice then it is breaking the law. The notice is meaningless. The consumer is still entitled to a refund. The shopkeeper can be prosecuted by the Trading Standards Officer.

SPECIAL PURCHASES

When shops are holding sales they frequently buy in goods specifically for the sale and describe them as "special purchase". The use of this phrase does not alter the consumer's rights and the goods must still be of satisfactory quality and reasonably fit for their purpose.

SHOP SOILED GOODS

These are goods which have been damaged or soiled during display. If a consumer buys goods which are

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described as shop soiled, he should examine them carefully and would have no rights in respect of stains etc. He would be entitled to a full refund if he bought such goods which turned out not to be fit for their purpose.

• **Example:**

Edith bought a lilac shop soiled jumper size 42" reduced to £8.99. When she tried it on she discovered it was very small and only measured 36". The jumper was not of satisfactory quality and she was entitled to a full refund.

SECONDS

Where goods are described as "seconds" this is a clear indication that the goods are defective and the consumer should examine them carefully before buying.

WHERE GOODS DO NOT HAVE TO BE OF SATISFACTORY QUALITY

The requirement that goods must be of satisfactory quality does not apply if the defect is pointed out to the consumer when he agrees to buy the goods.

• **Example:**

Cahal agrees to buy a wall unit which normally costs £699 and the retailer agrees to sell it to him for £599 because there is a long deep scratch across the top of it. Cahal cannot subsequently claim that the goods are not of satisfactory quality solely on the grounds of the scratch.

EXAMINING THE GOODS

If the consumer examines the goods before buying them and he should have noticed a defect during his examination, then he will not be able to claim in respect of that defect.

• **Example:**

Owen was buying a second-hand car from a dealer for £3,500. He examined the car but failed to notice that the bumper was badly cracked. He could not claim that the car was not of satisfactory quality because of that defect.

FITNESS FOR A SPECIFIED PURPOSE

If a consumer tells a supplier that he requires the goods for a specific purpose and he relies on the seller to sell him goods which are suitable for his requirements, then the goods sold to him must be fit for his specified purpose.

• **Example:**

John wanted to buy a bit to use in his electric drill to drill a hole in a stone wall. He told the seller what he needed, stating exactly what he wanted to do with the bit. The supplier sold him a bit which broke when he attempted to use it although he was using it correctly. John was entitled to a full refund and compensation for any loss suffered.

If the consumer does not rely on the retailer's advice, then he cannot complain that the goods he bought are not suitable for his specified purpose.

• **Example:**

James asked a retailer to recommend a brand of paint with which to paint the outside of his house. The retailer recommended Brand X, but James, in fact, bought Brand M. He painted the house with Brand M; two months later, after the first frosts, he noticed the paint was peeling. Unless Brand M was described as being suitable for outside use, he would have no rights against either retailer or manufacturer, because he did not rely on the retailer's advice and the manufacturer made no claims as to the paint's suitability for James' purpose.

CAN THE SHOPKEEPER EXCLUDE HIS LIABILITY?

Where a seller sells goods:

- (1) in the ordinary course of his business, and,
- (2) the goods are of a type normally sold for private consumption, and,
- (3) the buyer buys for his own private purposes (ie not for a business),

then the buyer buys the goods as a "consumer" and the seller **cannot exclude his liability for breaches** of the implied terms:

- (1) that he owns the goods or has the right to sell them,
- (2) that they will correspond with any relevant sample or description applied to them,
- (3) that they are of satisfactory quality; and,
- (4) that, if a use has been specified and the consumer has relied on the buyer's advice, the goods

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are fit for that purpose.

Any attempt by the seller to exclude the liability described above will not work. The consumer will still have all his statutory rights.

These rules apply to all goods including second-hand cars provided they are bought from dealers. The rules are, however, complex and it may not be easy to decide whether, for example, a 1992 Ford Orion costing £6,000 is of satisfactory quality or not.

SECOND-HAND CARS AND OTHER GOODS BOUGHT FROM PRIVATE SELLERS

Rules (3) and (4) above do not apply if a consumer buys a second-hand car or any other item from a private seller. If a consumer buys from a private seller then the old rule 'caveat emptor' - let the buyer beware - applies, and he must take the goods as he finds them unless he asks specific questions about the goods. If he does ask such questions and is given false answers and he buys relying on those answers, then he can sue the seller for misrepresentation (see page 3). If the consumer asks no questions and the seller volunteers no information, then generally the consumer cannot sue the seller if he later discovers the goods to be defective.

AUCTIONS

When a consumer buys at an auction he does not have the protection of the rules discussed on pages 9-14. In this situation he should examine the goods carefully and read the auction terms carefully before bidding for goods.

● RELEVANT LEGISLATION

Sale of Goods Act 1979 as amended
Supply of Goods and Services Act 1982
Consumer Credit Act 1974
Unfair Contract Terms Act 1977
Misrepresentation Act (NI) 1967
Hire Purchase Act (NI) 1966
Unfair Terms in Consumer Contracts Directive
1993/13/EEC
Sale and Supply of Goods Act 1994
Unfair Terms in Consumer Contracts Regulations
1994

DANGEROUS AND DEFECTIVE GOODS

THE LAW

The law requires that sellers sell goods which are of satisfactory quality, and that no unsafe products should be made available to consumers. All goods must be safe except antiques and products supplied for repair or reconditioning before use. If goods are sold for repair or reconditioning before use, the consumer must be informed of that fact. If unsafe goods are sold a criminal offence is committed.

If a consumer buys and/or is injured by defective goods or has another complaint about a shop, a number of courses may be open to him.

COMPLAINING TO THE SELLER

If a consumer is dissatisfied with goods which he has bought, he can complain to the seller. He cannot complain if:

- (1) he has changed his mind and decided that he does not want the goods after all,
- (2) he saw the goods displayed at a cheaper price in another shop. Some shops are now operating a system whereby they guarantee that, if a consumer buys goods and then discovers them at a cheaper price elsewhere in the area within a specified period (eg. 6 days), then the shop will give the consumer the difference between its price and the cheaper price. If a notice displaying such an offer is displayed in a store, then the consumer will be entitled to the extra money back, but in most circumstances the consumer must just shop around and find the best price before buying,
- (3) the consumer did not buy the goods himself or if they were not bought for him by his wife, her husband or parent,
- (4) the goods have been damaged since they were bought,
- (5) it is more than six years since the goods were bought,
- (6) the consumer examined the goods himself and should have seen the defect.

WHAT TO DO

If the consumer has a valid complaint, he should:

- (1) return to the shop, taking the receipt with him, if possible. Always keep receipts and write on the back

of them the date, shop and details of the goods purchased. This will usually be accepted as proof that the goods were purchased from the seller. However, if the receipt is lost, the consumer still has rights, they are simply more difficult to obtain,

- (2) explain the situation as quietly and politely as possible. If the goods are more or less new, and are not satisfactory, he is then entitled to a full cash refund.

The seller may then:

- (1) say that he accepts no responsibility for the defect and he does not give refunds. The seller is not allowed to say that he accepts no responsibility. If he has sold the goods then he is responsible. If he does deny responsibility, the consumer will have to take further action (see below),

- (2) offer a cash refund,

- (3) refuse a cash refund but offer to repair the item. The consumer does not have to accept the offer of a repair but can insist on his refund. If he does accept the offer of a repair, he loses his later right to reject the goods and get a refund if the goods still prove unsatisfactory,

- (4) offer to replace the unsatisfactory goods. This may be acceptable to the consumer but he does not have to accept a replacement and can insist on a refund,

- (5) offer a credit note. This will only have limited use as it can only be used in the shop in question, and may be valid for a limited period only. The consumer is entitled to reject the offer and insist on a full cash refund.

If a complaint to the shopkeeper does not produce a solution, then the consumer should consider one or more of the following options:

- (1) contact an advice-giving agency for help and advice,

- (2) he may be able to sue the seller,

- (3) he may be able to sue the manufacturer, own-brand or importer,

- (4) if food is contaminated he should contact the Environmental Health Officer *before* he tells the shop,

- (5) if toys, electrical goods, etc are dangerous he should contact the Environmental Health Officer,

- (6) if he has a complaint about trading practices he should contact the Trading Standards Officer,

- (7) he may complain to the Office of Fair Trading.

DANGEROUS AND DEFECTIVE GOODS

GETTING ADVICE

When a consumer is faced with a problem, his first need is for informed advice and he can turn to any Citizens Advice Bureau, Local Advice Centre, Law Centre or other advice-giving body which will either advise him itself or help him to find a solicitor.

SUING THE SELLER

Generally the only person who can sue the seller of goods is the buyer; he can sue for damages (monetary compensation) if the goods are defective, do not correspond to sample or description, are not of satisfactory quality or are not fit for the purpose for which he stated he required them.

If somebody else, eg. a friend, is injured as a result of goods not conforming to the requirements of consumer safety legislation such as the Cosmetic Products Safety Regulations 1984 (cosmetic products must not be likely to damage your health in normal use and must not contain lead or other heavy metals), he will be able to sue the seller. In most cases, however, if a consumer does not buy the goods himself, he cannot sue the seller for injury he suffers when using them, unless he can prove that his injury is due to a defect in the product itself -(see Product Liability pages 17-18).

If a consumer decides to sue the seller for damages then he will have to decide where to sue. If he is claiming less than £1,000 he will be able to sue in the Small Claims Court (see pages 39-40). If he is claiming more than £1,000, but less than £15,000, he will be able to sue in the County Court (see pages 41-43). In exceptional cases

where the damages claimed exceed £15,000, he can sue in the High Court (see pages 43-44).

MANUFACTURERS' GUARANTEES

Manufacturers commonly give "guarantees" with their products.

Where this happens the consumer has all the rights described above in addition to the "rights" contained in the guarantee. By signing a guarantee a consumer does not lose any of his legal rights, but may gain additional rights.

SUING THE MANUFACTURER

(1) In negligence

If a consumer buys goods and suffers injury to himself or his property or if somebody is injured as a

result of using goods, he may be able to sue the manufacturer in negligence. He will be successful in his action only if he can prove that the manufacturer did not act reasonably in producing the goods. The consumer must be able to prove that the manufacturing process was not that which would have been followed by a reasonable producer and that therefore the manufacturer is liable for the injury suffered by the person who used his product.

• Example:

A woman went into a cafe with a friend who bought her a bottle of ginger beer. She drank half the ginger beer and, as she poured the remaining half into her glass, she saw the decomposing remains of a snail. As a result of drinking the ginger beer she became ill and sued the manufacturer for compensation. She was entitled to compensation because a manufacturer is under a duty to see that food products which leave his factory do so in a fit state for human consumption.

To defeat a consumer's case a manufacturer merely has to prove that he could not reasonably have taken any action which would have prevented the injury suffered by the consumer and that he acted reasonably and in accordance with the information available to him at the time.

(2) Statutory product liability

A consumer who has bought and is injured by a **defective** product can always sue the seller of the goods in contract. But if someone other than the buyer is injured, he will not normally be able to sue the seller in contract. He may be able to sue the manufacturer in negligence (see above - Suing the Manufacturer). He may also be able to sue under Product Liability law.

Under the Consumer Protection Order (NI) 1987 anyone who has been injured by, or whose property has been destroyed or damaged by a defective product and the loss exceeds £275, can sue. If the loss is less than £275 then the consumer cannot sue under Product Liability law. A consumer using a product is entitled to expect certain safety levels. These will depend on when the product is made. A product must be reasonably safe at the time it was made. Safety levels will probably improve in the future but a manufacturer in 1996 will only be expected to manufacture goods which are not defective in the light of the knowledge and technology available in 1996. He will not be required to meet the safety expectations of 1996 if he has manufactured the product in 1990, even if it is sold in 1996.

DANGEROUS AND DEFECTIVE GOODS

This protection applies to almost everything that is produced except land and primary agricultural produce such as potatoes or unprocessed game. It applies to most goods and to gas and electricity.

Consumers must, however, always follow the manufacturer's instructions; they must only use the product for the purpose for which it is marketed, and observe any warnings which may be attached to the product. If, having used a product for the purpose for which it was sold, and having followed the instructions on the packaging, a consumer is injured, then he can sue under the Product Liability law. All he has to prove is that he used the product, that it was defective, and that it caused him injury. He does not have to prove negligence.

• **Example:**

Jane bought two packets of beef burgers in a supermarket and took them home. Thomas and James, her two 16-year old twin sons, decided to make beef burgers late that night for their supper, and cooked the beef burgers according to the instructions on the packet. The following day both boys became very ill with food poisoning. They

could sue under the Product Liability law.

• **Example:**

Agnes bought an electric iron from a well-known electrical shop. Her daughter Tabitha used it for the first time a week later and after ironing for half an hour, it exploded burning Tabitha badly. Tabitha could sue under Product Liability law for the injury she suffered and Agnes could recover from the seller the cost of the iron under the Sale of Goods Act. Agnes could not recover the cost of the iron under the Product Liability law because it is not worth more than £275.

(3) Suing for Damage caused by a Defective Product

Whom do you sue?

The injured consumer can sue one of the following three people -the producer, the own-brander or the importer into the European Union. The producer is the person who made the goods; the own-brander is a person who has bought goods from a producer, removed the producer's label and put his own label on it. The importer into the European Union (EU) is the person who brought goods manufactured outside the EU into any country of the European Union.

• **Example:**

F G Foods Limited, a supermarket chain, buy goods from producers and put their own labels on - "F G Peas" or "F G Sugar". If the peas or sugar are

defective and cause damage, the consumer can sue F G Foods Limited. This only applies if the label does not inform the consumer of the name of the producer of the goods.

• **Example:**

Peter bought a car jack from a shop. When his cousin John was using it to jack up his car it broke injuring John and damaging the car. The jack was manufactured in Taiwan and imported into Portugal by Better Tools Ltd who subsequently supplied it to the seller. In this case, because the producer was in Taiwan, John should probably sue Better Tools Ltd for his injury and the damage to his car (if it will cost more than £275 to repair) and Peter should sue the seller for selling a jack which was not of satisfactory quality.

If the consumer does not know who produced or imported the goods he should ask the seller or wholesaler. If the seller does not tell him who produced or imported the goods, then the injured consumer can sue the seller. In most cases however the seller will give the consumer the necessary information.

Where do you sue?

The consumer injured in Northern Ireland can sue in Northern Ireland or in the country where the producer, own-brander or importer has its registered office. It will probably be cheaper and easier to sue in Northern Ireland and get the judgement enforced against the defendant in his own country. A consumer seeking to sue in these circumstances should consult a solicitor.

Unsafe Goods

The Consumer Protection Order (NI) 1987 also says that if a consumer is injured by goods which do not comply with relevant safety regulations he can sue the trader who supplied goods. Many goods such as babies' dummies, children's nightdresses, and upholstered furniture have to meet certain safety standards. If such goods are sold and do not meet the appropriate standard, then the consumer can sue the retailer.

• **Example:**

Judith bought a bed for her three year old son who was badly injured when the bed caught fire and the mattress gave off poisonous fumes. The contents of the mattress did not comply with the Regulations and so the child could sue the seller under the Consumer Protection Order (NI) 1987.

THE ENVIRONMENTAL HEALTH OFFICER

DANGEROUS AND DEFECTIVE GOODS

If a consumer buys food which has been made harmful to health, or which is unfit for human consumption, or is so contaminated that he could not reasonably be expected to eat it, then that food does not comply with food safety requirements and the seller may have committed a criminal offence. In these circumstances the consumer can complain to the Environmental Health Officer, who may investigate and prosecute the seller.

Environmental Health Officers are responsible for the enforcement of consumer safety standards and can take action on dangerous or defective goods, eg. selling children's beds containing polyurethane.

If a consumer is dissatisfied with food handling procedures he can also contact the Environmental Health Officer. There is no necessity for anyone to have been injured by the contaminated food in order to make a complaint.

• **Example:**

Mrs Smyth shopped regularly at Lock's butchery in Ballydun and was concerned when she saw assistants handling fresh meat and cooked meat without taking any precautions to protect the cooked meat from contamination by the fresh meat. She rang the Environmental Health Officer who visited the shop and discussed the matter with the owner who arranged for cooked meats to be displayed on a separate counter, weighed on a separate scale and handled with tongs to prevent bacteria travelling from uncooked meat to cooked meat.

To get in touch with the Environmental Health Officer, contact your local council. The telephone number, along with an after-hours number, is listed in the Phone Book under the relevant council name (see also Yellow Pages under 'Council Information').

THE TRADING STANDARDS OFFICER

There are a number of laws designed to protect consumers from unfair trading practices. Traders may be prosecuted if they commit a wide range of offences, some of which are:

- (1) selling goods which are of a lesser weight than the weight marked on the container,
- (2) offering to supply goods at a price which is less than the price at which they are in fact being offered,
- (3) displaying a notice saying "No money refunded" or "No refunds on sale goods", "Credit Notes Only!",
- (4) offering goods with a guarantee which appears to

exclude or restrict the consumer's rights without saying "This Guarantee does not affect your statutory rights",

- (5) applying a false trade description to goods, for example, to describe an Aran jumper as being "hand-made" when it has been knitted on a machine.

If a consumer is affected by one of these practices or thinks that the shop with which he is dealing is not acting fairly, he should contact a Trading Standards Officer who will investigate the complaint and may bring a prosecution if necessary. Trading Standards Officers are to be found at the following addresses:

Trading Standards Headquarters,
176 Newtownbreda Road
Belfast BT8 4QS
Tel. 01232 253900

Regional Offices:

Crown Buildings
Alexander Road
Armagh
BT61 7JL
Tel. 01861 529846

Artillery Road
Crown Buildings
Coleraine
BT52 1QL
Tel. 01265 42181

Crown Buildings
Asylum Road
Londonderry
BT48 7EA
Tel. 01504 319548

Crown Buildings
Bridge Street
Newry
BT35 8AJ
Tel. 01693 253144

Queen Elizabeth Road
Enniskillen
BT74 7JH
Tel. 01365 343222

Academy House
121A Broughshane Street
Ballymena
BT43 6BA
Tel. 01266 41577

COMPLAINING TO THE OFFICE OF FAIR TRADING

The Office of Fair Trading, under the control of the

DANGEROUS AND DEFECTIVE GOODS

Director General of Fair Trading, has a number of functions:

- (1) it can suggest legislation to ban undesirable trade practices,
- (2) it aims to control traders who trade using unfair practices,
- (3) it encourages trade associations to formulate voluntary codes of practice for their particular trade,
- (4) it publishes consumer information and advice sheets,
- (5) it enforces legislation.

If a consumer wishes to complain about a trader's practices such as advertising goods at VAT exclusive prices or packaging goods so that they appear to contain more than they actually do, he can contact,

The Office of Fair Trading,
Field House,
15-25 Bream's Building,
London
EC4A 1PR,
Tel. 0171 242 2858

or alternatively he can ask a Trading Standards Officer or Citizens Advice Bureau to do so for him. This does not give the consumer any right to compensation or any other rights against the trader, but he does have the satisfaction of knowing that his complaint will be investigated and that he may help to identify and to outlaw an undesirable trade practice.

THE GENERAL CONSUMER COUNCIL FOR NORTHERN IRELAND

The General Consumer Council for Northern Ireland was founded to promote and safeguard the interests of consumers in Northern Ireland. It speaks out on behalf of consumers to government, to trade and industry and to those who provide services, whether public or private. By providing information and carrying out research, it tries to raise standards of service for everyone.

Generally speaking, it does not deal with individual complaints except those involving transport, solid fuel and gas. In such cases consumers should refer the complaint to the transport company or fuel provider first. If the consumer cannot get satisfaction he should then ask the Council for help at,

General Consumer Council for Northern Ireland
Elizabeth House
116 Holywood Road
Belfast

BT4 1NY
Tel 01232 672488

Complaints about electricity should be referred to,

OFFER(NI)
Brookmount Buildings
42 Fountain Street
Belfast
BT1 5EE
Tel 01232 311575

● RELEVANT LEGISLATION

Sale of Goods Act 1979
Unfair Contract Terms Act 1977
Consumer Protection Act (NI) 1965
Limitation Acts (NI) 1958-82
Trade Descriptions Act 1968
Fair Trading Act 1973
Cosmetic Products Safety Regulations 1984 as amended
Law Reform (Husband and Wife) Act (NI) 1964
Food and Drugs (NI) Act 1958
Product Liability Directive 1985/374/EEC
Consumer Protection Act 1987
Consumer Protection (NI) Order 1987
Furniture and Furnishings (Fire) (Safety) Regulations 1988 as amended
Food (NI) Order 1989
Food Safety Order (NI) 1991
Child Resistant Packaging (Safety) (Amendment) Regulations 1986 as amended 1993
Unfair Terms in Consumer Contracts Directive 1993/13/EEC
Unfair Terms in Consumer Contracts Regulations 1994
Sale and Supply of Goods Act 1994

HIRE PURCHASE OF GOODS

There are many ways in which a person can become the owner of goods and one of the most widely used today is hire purchase. In all hire purchase agreements there are three people involved: the consumer (called the debtor), the trader and a finance company. Occasionally the trader will offer his own hire purchase facilities in which case he becomes both the creditor and the supplier. Once the debtor has chosen the goods he wants, he fills in a hire purchase form and pays the deposit to the trader. The trader then sells the goods (under a sale of goods contract) to the finance company which becomes the legal owner of them and it hires the goods out to the debtor for whatever time the hire purchase agreement is to last. At the end of the hire purchase period the debtor is given an option to purchase the goods if he wishes from the finance company and the cost is usually very low.

• Example:

John goes to a garage and chooses a car which he states he wants to buy on hire purchase. The garage owner asks him to fill in a form (which is an offer by John to buy the car from the finance company) which the garage owner sends to the finance company together with another form from the garage owner offering to sell the car (which John has chosen) to the finance company. The finance company either accepts or rejects both offers. If it accepts them the finance company hires the car out to John for a specified period and gives him the choice at the end of the hiring period to buy the car for a nominal sum.

Ownership of goods passes to the debtor only when he exercises the option to buy them and, until that time, the ownership of the goods remains with the finance company.

In some cases the finance company may consider a potential customer to be a bad credit risk and may refuse to grant him hire purchase facilities. In law it is totally entitled to do so as the hire purchase form which is filled in is regarded as an offer by the debtor to buy the goods on hire purchase; the finance company is quite free to accept or reject the offer. Indeed, if the offer is rejected, the customer is not entitled to demand a reason for the rejection (but see Credit Reference Agencies pages 26-27).

The law has decided that, because hire purchase agreements are so common at the present time and finance companies are so powerful, a debtor

entering into such an agreement should receive a large amount of protection.

THE PROTECTION

False Description

Before entering into a hire purchase agreement, the debtor will usually examine the goods that he is proposing to buy. Generally speaking the trader may make some sort of oral statement about the quality or description of the goods or he may advertise them in a printed advertisement. If it turns out that the goods have been falsely described by the trader, and the debtor only discovers this after he has entered into the hire purchase agreement with the finance company, he is entitled to a full refund of the deposit and any instalments which he has paid to the finance company. If it refuses to give him back all the money that he has paid, he is entitled to sue the finance company or the trader for it.

This protection is particularly important in cases where a trader has wrongly described the goods that the debtor is buying under hire purchase and has become bankrupt by the time it is discovered that the goods were wrongly described. In such a case there is absolutely no point in the debtor taking any action against the trader. Indeed, even if he has not become bankrupt, the debtor is still entitled to ignore the trader and take action against the finance company if he so wishes. Furthermore, the right to take action against the finance company in respect of any wrong description of the goods by the trader is so important that the company cannot exclude or restrict in any way its responsibility for the trader's statements. Any clause in the hire purchase agreement which states that the company is not responsible for any statements made by the trader is totally ineffective.

The main disadvantage about taking action against the finance company is that it is possible that it will resist most claims. It is also very likely that any legal action which the debtor wishes to take against it will have to be taken in an English court.

• Example:

Alfred goes to a garage and tells the owner that he wants to buy a second-hand car. The garage owner points to one and says: "It's a good little car, it does forty-five miles to the gallon, I would

stake my life on it". On the basis of this statement Alfred agrees to buy the car on hire purchase but discovers after three months that it only does thirty miles to the gallon. He decides that he does not want to keep it and asks the finance company to refund his money to him. If it refuses to do so, he can sue either the finance company or the garage owner.

These provisions apply only to hire purchase agreements which contain the following characteristics:

(1) the person entering into the agreement must be either a consumer or a one-man business or a partnership,

and,

(2) the amount of the credit must not exceed

HIRE PURCHASE OF GOODS

£15,000.

Contents of Hire Purchase Agreements

As has already been mentioned (see page 4), the form and contents of hire purchase agreements are contained in Regulations; failure to comply with them makes the agreement defective. The purpose of the Regulations is to ensure that the consumer is made aware of:

- (1) his rights and duties under the agreement,
- (2) the amount and rate of the total charge for credit,
- (3) the remedies available to him.

The formalities

The agreement must be signed and a copy given to the debtor when he signs it and a further copy given to him within seven days of the finance company signing. During that period the debtor is free to put an end to the agreement if he so wishes; if he decides to do so, no action can be taken against him. In certain circumstances the debtor is further entitled to put an end to the agreement even after it has been signed by the finance company, and he must be informed of this right in all agreements where it is appropriate. The circumstances are:

- (1) it is a hire purchase agreement made by a consumer for credit not exceeding £15,000;
- (2) the trader must have made some statement about the goods before the agreement is made, and,
- (3) the debtor must sign the agreement at some place other than the business premises of the finance company or the trader.

If, in the last example concerning Alfred, there was a clause in the hire purchase agreement which stated "The company cannot accept any responsibility for or vouch for the accuracy of any statements made by Flash Motors Ltd" (the garage), Alfred would still be entitled to a full refund of his money. When Alfred sues the finance company it cannot rely on the excluding clause.

Cooling Off Period

When these conditions are satisfied, the debtor has the right to cancel the agreement at any time between the date that he signs it and up to five days after he receives the signed copy from the finance company. This period is known as the cooling off period. Its purpose is to enable a debtor who has entered into a hire purchase agreement as a result of high pressure salesmanship by someone calling at

his house to be absolutely sure that he wishes to go through with the agreement that he has made. The cancellation right obviously does not apply where a debtor goes along to the premises of a trader in order to buy an article on hire purchase terms.

Extortionate Terms

Considerable protection is given where a debtor has entered into a hire purchase agreement containing extortionate terms. He has the right to apply to the County Court to have the terms of the agreement altered if he considers any of them to be extortionate or unfair. A number of factors which must be taken into consideration in deciding whether an agreement is extortionate include:

- (1) whether the rate of interest being charged is excessive,
- (2) the age, state of health and business capacity of the debtor,
- (3) all the other terms of the agreement.

Implied Terms -the consumer's statutory rights under a hire purchase agreement

In addition to the terms which are contained in the hire purchase form signed by the debtor and the finance company, there are other terms which are implied into the agreement. These terms do not have to be written into the agreement as they automatically apply when a hire purchase agreement is made and they give considerable protection to the debtor. They are deliberately very similar to the terms which are implied into contracts for the sale of goods (see pages 8-14). The reason for this is that a contract for the sale of goods and a hire purchase agreement achieve exactly the same result in that ownership of the goods is transferred from one person to another. The implied terms relate to:

- (1) title to the goods,
- (2) description and sample,
- (3) satisfactory quality,
- (4) fitness for purpose.

Title

The only implied term which is different to those implied into sale of goods contracts is that dealing with the ownership of the goods; it is that the finance company will have the right to sell the goods to the debtor when he exercises his option to purchase them at the end of the hire period. As has already been mentioned (see page 21) a hire purchase agreement is basically a contract of hire followed by the debtor being given the option to purchase the

HIRE PURCHASE OF GOODS

goods; as long as the finance company owns the goods when the option to purchase is exercised, the law is satisfied.

It does not matter if the finance company does not own the goods during the hiring period as all that the debtor is entitled to at that time is possession of the goods. If however the finance company does not have the right to sell the goods at the appropriate time, this amounts to a very serious breach of contract as a result of which the debtor is entitled to a full refund of all the instalments and the deposit he has paid. Of course he must also return the goods to the finance company. The usual situation where this arises is where goods which have been stolen come into the possession of a trader, are sold by him to a finance company which lets them out on hire purchase to a debtor.

In such a case the finance company would have the right to take action against the trader. Other implied terms which relate to ownership of the goods provide that:

(1) if any person has any claim to the goods that this fact will be made known to the debtor before he enters into the hire purchase agreement, and

(2) that he is entitled to the possession of the goods during the period of hire.

If either of these two terms is broken the debtor is entitled to claim compensation from the finance company.

As the term dealing with the right to sell the goods is regarded as the most important term in all hire purchase agreements, it is not possible for a finance company to exclude or restrict it in any way; if it attempts to do so by putting an excluding term into the agreement, that term is totally ineffective and cannot be relied upon by the finance company.

The other implied terms which apply to hire purchase agreements relate to description, quality, fitness for purpose, and sample and are almost exactly the same as those applying to sale of goods contracts and the same conditions apply. In the same way the trader cannot exclude or restrict these terms in any way if the person entering into the agreement is a consumer. If the person entering into the agreement is a business party, then the implied term can be excluded or restricted provided that it is reasonable to do so in the circumstances. There are three conditions which must be satisfied for a person to be classified as a consumer in relation to a hire purchase agreement:

(1) the finance company must enter into the agreement in the course of business,

(2) the debtor must enter into the agreement in his private capacity, and

(3) the goods which the debtor is buying must be ordinary consumer goods.

The Unfair Terms in Consumer Contracts Regulations 1994

apply to hire-purchase agreements, so that if the consumer buys the product from the finance company on the finance company's standard terms and conditions, these will be subject to the rules described on page 8.

Ending the Agreement by paying all monies due

A debtor has the right to terminate the agreement before the end of the Hire Purchase period. If he does so and pays all the money due under the agreement, he is entitled to a rebate on the interest charges. This rebate does not cover the whole interest for the period from the date of settlement to the date on which the hire purchase agreement should have ended. Methods of calculating the rebate are complex, but the consumer should be aware that, in most cases, he will save comparatively little by early settlement.

Breaking the Agreement- Repossession of the goods

If the debtor finds that he has got into financial difficulties and can no longer pay, he is committing a breach of contract and the creditor can sue him. However there is a certain procedure which the creditor must comply with before he attempts to repossess the goods; it gives the debtor the opportunity to pay the outstanding instalment and continue with the agreement. Before repossessing the goods the creditor must serve a default notice on the debtor which states:

(1) the amount of money required from the debtor to bring his instalments up to date,

(2) the length of time within which he must pay - this cannot be less than seven days,

(3) the consequences of failure to pay within the specified time, and

(4) that if the payment is made within the specified time the agreement will continue in existence.

If the debtor fails to pay within the specified time, the creditor should get a court order entitling him to repossess the goods and go along to the debtor in the hope that he will hand them over. If he refuses to do so the creditor can then request the Enforcement of Judgements Office to seize the goods on his behalf. Should the creditor fail to get a court order and just arrive at the debtor's home demanding the goods, the debtor does not have to hand them over and is within his rights to refuse to let the creditor in.

HIRE PURCHASE OF GOODS

Protected Goods

There is a further restriction on the creditor's right of repossession in cases where the debtor commits a breach of the agreement after paying at least **one third** of all the instalments due. In such cases the goods are known as protected goods and can be repossessed only by the creditor taking action through the courts. Failure to do so by the creditor means that the agreement is ineffective and the debtor is entitled to a full refund of all instalments paid and is not liable for any future payments.

Ending the Agreement

The debtor also has the right to put an end to the agreement at any time up until the last instalment becomes due by giving notice to the creditor or his agent. In such a case the debtor is under an obligation:

(1) to pay all the instalments which are due up to the time at which he gives the required notice,

(2) to pay (if necessary) a further amount to bring his total payments up to one half of the price of the goods. (The reason for this is to provide the creditor with compensation for being left with depreciated goods which he may have great difficulty in selling to another person. However if the court decides that the loss which has been suffered by the creditor is not substantial it can order that a lesser sum be paid by the debtor),

(3) where appropriate to pay compensation for failure to take reasonable care of the goods while in the debtor's possession, and

(4) to return the goods.

It has now become common practice for finance companies to include in their hire purchase terms a minimum payments clause which states the amount which the debtor must pay if he ends the agreement. If such a clause is included then effect is given to it rather than the procedure outlined above. However the amount specified in the clause must be as close as possible to a genuine pre-estimate of the loss that the creditor will suffer because, if the sum specified is too high, it will not be enforced by the court; indeed it could be challenged on the basis of being extortionate.

Licensing

Finally, in order for a finance company to make hire purchase agreements with debtors up to £15,000 in

value, it must be granted a credit licence. If it makes an agreement without such a licence, the debtor cannot be forced to repay any of the instalments (see page 4).

● RELEVANT LEGISLATION

Consumer Credit Act 1974
Supply of Goods (Implied Terms) Act 1973
Unfair Contract Terms Act 1977
Consumer Credit Directive 1987/102/EEC and 1990/88/EEC
Unfair Terms in Consumer Contracts Directive 1993/13/EEC
Unfair Terms in Consumer Contracts Regulations 1994

BUYING GOODS ON CREDIT

There are many ways of buying goods on credit in existence today ranging from the simple credit sale where goods are sold on tick, budget accounts operated by certain stores and credit card trading. The type of credit that a consumer should apply for depends largely on the purpose for which the credit is required. If he wishes to buy a car he could apply to a finance company for **hire purchase** facilities, or he could arrange a **bank loan**, or if he wishes to buy clothes he could pay for them by **credit card** or by making use of a store's **budget account**.

He should be aware of the different rates of interest charged by various creditors and should shop around for the lowest rate of interest. For example the present bank base lending rate is approximately 9% whilst a finance company's rate could be much higher. Despite the fact that the forms of credit differ substantially from one another, the legal rules which apply to them are quite similar.

ASKING FOR CREDIT

The usual situation where credit is granted is where the consumer himself asks for credit; if he does so as the result of a firm advertising credit facilities, the advertisement must satisfy a number of conditions:

- (1) the advertisement must not be false nor must it give a misleading impression,
- (2) if an interest rate is stated, it must be the annual rate of interest being charged for the credit. (This is usually referred to as the APR.) A consumer also has the right to ask a credit firm for a written quotation containing full information about the credit facilities available.

DOORSTEP SELLING OF CREDIT

(1) Unsolicited selling of credit

If a salesman arrives at a consumer's home without any prior notice and attempts to persuade him to enter into a pure credit agreement (such as an ordinary cash loan), he is committing a crime. It should be remembered that supplying goods on hire purchase or credit sale terms are not pure credit agreements and therefore doorstep salesmen persuading consumers to enter into these agreements are not committing a criminal offence

provided the caller has a licence to sell credit off trade premises. Nor is it an offence if the visit to the consumer's home is made as the result of an earlier written request by the consumer or if the visit by the salesman is to the consumer's business premises.

(2) Right of cancellation - cooling off period

Should a consumer decide to enter into a pure credit agreement after a visit by a doorstep salesman and then at a later date change his mind, he has the right to cancel the loan agreement within the 5 day cooling off period. As has already been seen the same applies to hire purchase agreements (see page 22). It is always wiser for a consumer to sign any type of credit agreement he enters into at his home as this satisfies one of the necessary conditions for the right of cancellation.

CREDIT REFERENCE AGENCIES

When a consumer applies for credit it is very likely that the prospective creditor will contact a credit reference agency in order to obtain information about the credit worthiness of the applicant. That is why credit proposal forms require so much information about the consumer's job, his address, whether he owns his house or lives in rented accommodation and so forth.

The role of a credit reference agency is to collect and keep a register of information about the financial standing of people; it collects this information from a number of sources including debt collection agencies and debt departments of large businesses. While a consumer does not have a right to be granted credit nor a right to know the reason why credit has been refused, it is likely that if he is refused credit it is because of the credit reference agency's report.

FINDING OUT WHY CREDIT HAS BEEN REFUSED

If the consumer has tried to get credit of up to £15,000 and failed then he is entitled to ask the lender for the name and address of any credit reference agency that the lender has asked for information about the consumer. This request must be made within **28 days**. The lender must then send this information to the consumer within **7 days**. However if the lender has not used a credit reference agency he does not have to reply to the

consumer's request. In fact it is not necessary for the consumer to wait until his request for credit has been turned down as he is entitled to request this information at any time. He is then entitled, on payment of a small fee (£1), to a copy of the file held on him by the agency.

When requesting a copy of the file the consumer should provide the credit reference agency with the following information:

- (1) the consumer's full name, address and postcode,
- (2) any addresses at which the consumer has lived for the past six years,
- (3) the address of any business owned or run by the consumer.

BUYING GOODS ON CREDIT

The credit reference agency must reply to any request within **7 days**, although it may be necessary for it to seek further information from the consumer.

INFORMATION KEPT BY CREDIT REFERENCE AGENCIES

Credit reference agencies keep the following information:

- (1) the consumer's address as shown on the electoral register,
- (2) detail of any county court judgements against a consumer for failing to pay a debt within the last six years,
- (3) detail of any bankruptcies,
- (4) information on whether a consumer's credit accounts are paid up to date.

INCORRECT INFORMATION KEPT BY CREDIT REFERENCE AGENCIES

If the consumer considers that any of the information in his file is wrong he can insist that the information is removed from the file or is rectified. This right is most important as it is almost impossible for a consumer to get credit if there is any indication of his being a bad credit risk. The consumer should write to the credit reference agency, identifying the error, and the

credit reference agency should tell the consumer that it has made the necessary correction or taken no action within **28 days**. If the credit reference agency will not amend the file then the consumer can take the matter to the **Director General of Fair Trading** for resolution.

TYPES OF CREDIT ARRANGEMENT

Credit Sale

A credit sale is a straightforward sale of goods contract under which the buyer becomes the owner of the goods as soon as he is given them by the seller but he pays for them by instalments. As it is a sale of goods contract, the main protection that the buyer has comes from the implied terms and is exactly the same as an ordinary sale of goods contract (see pages 8-14). Thus the seller must have the right to sell them, the goods must correspond with their description and any sample, they must be of satisfactory quality and reasonably fit for the purpose for which the buyer has bought them. Where the buyer is a consumer (see page 13) these terms cannot be excluded by the seller.

Conditional Sale

A conditional sale is basically the same as a credit sale except that in this case the buyer does not become the owner of the goods until he has paid the last instalment. He is entitled to the same protection under the implied terms (mentioned above) and once again they cannot be excluded by the seller. In addition, where the price of the goods is less than £15,000 (which of course applies to the vast majority of conditional sales entered into by consumers) the buyer is entitled to the same protection as the debtor in a hire purchase agreement (see pages 21-25). Thus there is a specific form in which the same must be drawn up:

- (1) it must contain certain clauses (see page 4),
- (2) in certain instances the buyer can cancel the sale within the cooling off period (see page 6),
- (3) if the buyer fails to pay an instalment when it falls due, no action can be taken against him until the seller serves a default notice on him,
- (4) if one third of the price of the goods has been paid, the seller must take action through the courts

in order to repossess the goods,

- (5) the buyer is entitled to put an end to the sale at any time up until the last instalment becomes due but in this case must pay at least one half of the price of the goods (see page 24).

If the buyer sells the goods before he pays the last instalment, the person buying the goods from him will not become the owner unless the goods involved are some sort of motor vehicle and the second buyer is not a dealer (see pages 9-10).

Credit Cards

Using a credit card is a method of buying goods or services on credit. The way in which it works is that, when the consumer has picked out the goods which he wants, he gives the credit card to the trader who records the transaction on a credit card machine and gets the consumer to sign it. The credit card company pays the trader after deducting a certain amount of discount and the consumer pays the amount plus interest back to the credit card company. In the vast majority of credit card transactions there are three parties involved - the company which has issued the credit card (known as the creditor), the person to whom the card has been issued (known as the debtor), and the trader.

Not every credit card works in exactly the same way, as some credit card companies insist that, rather than the debtor repaying the amount used in instalments, he must pay back the full amount that he has used during a particular period of time. Examples of these are Diners Club cards and American Express (Green) cards; in these cases credit has not been given to the

BUYING GOODS ON CREDIT

debtor. What follows therefore does not apply to these two cards.

The most important protection for a debtor who uses a card such as Access, Visa, Barclaycard and so forth is that, if the trader who sells him the goods or services worth between £100 and £30,000, and falsely describes them before the contract is made, the debtor can sue the credit card company. The company is fully responsible for all statements made by any traders which accept their cards. Where goods are bought by credit card the debtor is making a sale of goods contract with the trader; once again the implied terms form part of his contract (see pages 8-14). If the trader supplies goods which do not comply with the implied terms or breaks any term in the

contract, the debtor is again entitled to sue the credit card company.

• **Example:**

If a consumer buys a three piece Chesterfield suite of furniture using a credit card and it collapses after only one week's use, he is entitled to sue the credit card company for the return of his money.

However, this only applies to an article which costs between £100 and £30,000. So if a debtor was to use a credit card to buy something from a trader which cost less than £100 and it turned out to be defective, his only course of action would be against the trader. This could be particularly important if a trader were to supply defective goods to a debtor which caused damage to property or even worse severe personal injury. In such a case it would obviously be wiser to sue the credit card company, if possible, rather than a trader who might not have very much money.

Lost and Stolen Credit Cards

If a debtor loses a credit card or if it is stolen, it is vitally important that he informs the credit card company immediately, preferably in writing. The debtor is not liable if his card is used after he has informed the company. Between the date of the loss or theft and the giving of notice to the company, the maximum amount, depending upon which credit card company is involved, for which the debtor can be held liable is about £50. If, however, the debtor gives his card to another person to use, the debtor is fully liable for the amount involved.

Check Trading

A trading check is a check issued by a trading company and bought by a customer which enables him to buy goods at any shop which accepts the check up to the value of the check. When a check is bought the customer pays a small deposit to the company and the remainder plus interest is repaid in

instalments either weekly or monthly. An example of a trading check currently in use in Northern Ireland is Provident.

The way in which it works is the customer selects the goods he wants and the price is marked on the back of the check. If the full value of the check has not been used, the customer is free to use it at any shop operating the system. The check trading company pays the shop for the goods after

deducting discount and the customer repays by instalments. When the customer buys goods using a trading check, he is entering into a sale of goods contract and again the implied terms form part of his contract (see pages 8-14,23) and, as is the case with credit cards, the check trading company can be sued if the trader breaks any term in the contract or falsely describes the goods.

Budget Account

A budget account is a system whereby a buyer agrees to pay a fixed amount to a trader each month and in return is given credit of a certain amount which he may spend in that shop.

• **Example:**

If a customer agrees to pay £15 per month, he could be given credit of 10 or 12 times that amount (which would mean maximum credit of £150 or £180). He is normally allowed to top up his debt so that, as the amount he owes reduces, he can buy other items on credit and bring his debt back up to the original amount.

In this type of arrangement, as there is no third person involved, the only person against whom action can be taken by the buyer if something goes wrong is the trader. Once again any goods which are bought are covered by the implied terms in sale of goods contracts (see pages 8-14).

Bank Loan

This is an agreement under which a customer borrows a sum of money from his bank at a fixed rate of interest, and agrees to pay it back in instalments at regular intervals. It is not very common for consumers to arrange bank loans in order to buy goods unless the goods are rather expensive.

Bank Overdraft

This is an arrangement under which a customer can write cheques even though he does not have enough money in his current account to meet them. Interest is payable on the amount that the customer has overdrawn and the rate varies from time to time. Usually there is no requirement that it must be paid off at regular intervals and the customer makes his own arrangement with the bank.

BUYING GOODS ON CREDIT

Loan Company

Another method of getting credit for buying goods is to arrange a loan from a loan company. The business of a loan company is to lend money to customers who repay it together with interest over a fixed period of time. Interest rates on such loans tend to be quite high and a customer should examine in detail all the terms of the loan agreement which he is entering into. Some points which should be remembered when taking out a loan are:

- (1) do not borrow any more than is necessary as the more you borrow the more interest you will have to pay,
- (2) always look at the rate of interest being charged; as a general rule this must always be included in the loan document which the customer is asked to sign and usually appears under the heading of APR,
- (3) advertisements for loans which may be secured on a borrower's home must contain the following statement - "Your home is at risk if you do not keep up repayments on a mortgage or other loan secured on it".

If a consumer enters into a loan agreement and eventually thinks that the rate of interest is too high, he is entitled to go to the County Court which has the power, not just to reduce the interest rate, but to change all the terms of the agreement. In a famous case in Scotland in 1980 it was proved that a certain trader (who is no longer in business) was charging interest at a rate of 1,310,363%!!

The protection which is available to consumers who enter into loan agreements with companies is quite similar to that given to debtors entering into hire purchase agreements and buyers entering into conditional sale agreements but, because no goods are involved in loans, there are some differences. Provided that the loan which the consumer receives does not exceed £15,000, then:

- (1) there is a specific form in which the loan agreement must be drawn up,
- (2) the consumer can cancel the loan agreement within the cooling off period if there was any oral discussion with a representative of the finance company before he signed and he signs the agreement at home,
- (3) if the consumer fails to pay an instalment when it falls due, no action can be taken against him by the company until it serves a default notice on him,
- (4) the consumer is entitled to repay the amount borrowed earlier than the time stipulated in the agreement and if he does so the interest payments are reduced,

(5) if the loan company has not been granted a licence to lend money, the loan agreement is not enforceable against the consumer. This means that he does not have to repay the loan or the interest to the company. The company also commits an offence and the consumer can contact the Trading Standards Officer who may prosecute the company. In certain circumstances, however, a loan company may be granted a retrospective licence which will make all loan agreements made by the company valid. In this case the consumer cannot refuse to repay the loan.

Credit Unions

Another possibility is for the consumer who is a member of a credit union to seek a loan from that society. Credit unions are societies registered with the Registrar of Friendly Societies whose members are encouraged to save with the credit union and who may then borrow from the credit union. Membership of credit unions may be limited by reference to locality, occupation, etc. The maximum share holding of any member is £5,000 and there are limits on the amount of a loan which a credit union can make.

Other methods of getting credit include pawnbroking and moneylending, but generally speaking it will normally be in the consumer's interest to seek credit first from one of the sources mentioned above.

CONTROLLING CREDIT

If a consumer decides to buy goods on credit he should ALWAYS know exactly what the goods are going to cost. Buying goods on credit almost always means that the goods will cost more than if they were bought for cash.

• Example:

John and Mary decide to buy a three piece suite. The cash price is £999.99, but credit terms are

available. If John and Mary buy on credit they can spread the cost over 100 weeks. If they do, the interest which will be charged is £300, making the total real cost of the suite £1299.99.

John and Mary's suite will cost them £1299.99 NOT £999.99.

Getting credit can be relatively easy - what is not always easy is keeping up the payments. A consumer's circumstances may change - in the example above many things could happen over the two years - John and Mary could have a baby, could lose their jobs, could have to look after an elderly relative who has become ill and can no longer cope alone, their rent or mortgage payments could increase. If any of these things happened to John and Mary they would find that they had less money available to meet their repayments.

BUYING GOODS ON CREDIT

DEBT

Avoiding debt problems - some simple guidelines:

- (1) Always ask what the real cost of an item is going to be - then think about whether you really want to buy it.
- (2) Before buying on credit, sit down and work out whether you can afford the repayments. When working out your budget, don't forget any of your regular outgoings - eg rent, rates, food, electricity, fuel, telephone, insurance, HP payments.
- (3) Try and find out whether the goods are available somewhere else at a lower price or at a lower rate of interest.
- (4) Can the money be borrowed somewhere else? From a credit union? Or a bank overdraft? It may be cheaper to borrow the money somewhere else at a lower rate of interest and then buy the goods for cash.
- (5) Try not to borrow to the limit of your credit facility. The credit card company or shop may be willing to lend you more than you can comfortably repay. You may find yourself in the debt trap of borrowing more money to meet existing credit repayments. This is a trap which it is very difficult to get out of.
- (6) Always try and leave a safety margin when working out the household budget - leave something to cover sudden extra expenses, eg. a new pair of shoes or a new coat for a child. Try not to commit yourself to the limit of the money you have available. Avoid buying on impulse.

Dealing with Debt

When a consumer realises that he cannot meet his repayments he must deal with the situation. Help is available at Advice Agencies or at the CAB. They may be prepared to contact the creditors and try and arrange an alteration of the repayment scheme - smaller payments may be spread over a longer period for example.

If the financial difficulties mean that there is a problem paying a mortgage then the Building Society, Bank or NIHE who granted the mortgage should be informed of the problem. If the consumer just stops paying and ignores all letters from the Mortgage Company, then eventually the Mortgage Company will take action to repossess the property. This means that the home will be sold. Generally

speaking the Mortgage Company does not want to sell the home. So long as the consumer keeps the Mortgage Company informed and tries to meet any revised payments, the Company will usually do all it can to help the consumer through a difficult financial period.

The important thing to remember is that debt problems do not go away; they have to be dealt with. There is help available.

● RELEVANT LEGISLATION

Supply of Goods (Implied Terms) Act 1973
Consumer Credit Act 1974
Sale of Goods Act 1979 as amended
Unfair Contract Terms Act 1977
Credit Unions (NI) Order 1985 and subsequent orders
Consumer Credit Directive 1987/102/EEC and 1990/88/EEC
Unfair Terms in Consumer Contracts Directive 1993/13/EEC
Sale and Supply of Goods Act 1994
Unfair Terms in Consumer Contracts Regulations 1994

CONTRACTS FOR THE SUPPLY OF GOODS AND SERVICES

THE SUPPLY OF GOODS

There are many ways in which a person may be supplied with goods other than sale or hire purchase. These include contracts of exchange, goods obtained by giving coupons or vouchers to a trader and goods supplied by way of bonus with other goods. However, the most common contract for the supply of goods in use today is a contract for the hire of goods and this is particularly common in relation to electrical equipment such as a television or a video recorder and cars.

The terms of such contracts depend upon what the parties say to each other and the documents which they exchange. The rules described on page 8 under the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1994 apply to these contracts also. A number of terms are implied into these contracts and they are very similar to the terms implied into sale of goods contracts (see pages 8-14). Thus they deal with title, description and sample, satisfactory quality, and fitness for purpose. The only area of difference is that in contracts of hire the consumer is only entitled to possession of the goods and consequently there is an implied term on the part of the trader that he has the right to give possession of the goods to the consumer for the duration of the contract.

Again, as with sale of goods, the trader cannot exclude or restrict in any way his responsibility for the implied terms when he is supplying goods to a consumer.

When a consumer arranges with a trader that some service will be performed for him, he is, of course, making a contract and the terms of the contract depend on what the people involved say to one another. In addition to these agreed terms there are also terms implied into the agreement and they relate to the important areas of:

- (1) standard of workmanship,
- (2) the time during which the service will be carried out,
- (3) the price.

THE SUPPLY OF SERVICES

It can sometimes be difficult to decide whether a contract is one for the supply of goods or supply of services but the most important characteristic of

service contracts is that the supplier has got to carry out some job on behalf of the consumer and in so doing has got to use a certain amount of skill. The following examples are clearly contracts for the supply of services:

- (1) dry cleaning,
- (2) using public transport,
- (3) arranging a holiday through a travel agent,
- (4) going to a cinema, theatre or attending a concert,
- (5) booking into an hotel,
- (6) being supplied with electricity,
- (7) hiring out equipment such as a stereo, a television or a car.

Implied Terms in contracts for the supply of goods and services

These contracts consist of two elements: firstly a contract to carry out certain work. The points stated above apply to this. The second element is that the ownership of the materials used by the supplier is transferred from him to the consumer and here certain implied terms apply. Again these terms are very similar to contracts for the sale of goods (see pages 8-14) and deal with:

- (1) ownership of the materials,
- (2) description and sample,
- (3) satisfactory quality,
- (4) fitness for purpose.

The supplier is not entitled to exclude or restrict in any way his responsibility for the implied terms where the person who is receiving the service is a consumer.

Contracts for Work and Materials

However, there are also certain service contracts where, in addition to the supplier doing some job for the consumer, materials are used which become the property of the consumer. These contracts are known

CONTRACTS FOR THE SUPPLY OF GOODS AND SERVICES

as contracts for work and materials and they include:

- (1) repairing electrical and mechanical equipment and items such as watches and jewellery,
- (2) installing central heating or cavity wall insulation,
- (3) building operations.

Irrespective of the type of service contract the consumer is entering into, there are some important points which should be remembered.

WRITTEN DOCUMENTS

A large number of firms carry out service contracts on the basis of a document which they give to the consumer or in certain instances they may ask him to sign the document. It is vitally important that a consumer reads the document given to him so that he is aware of all the terms on which the contract is being made. As far as signing a document is concerned, a person is bound by everything in a document which he signs and is deemed to know all its contents. Therefore a consumer should **never** sign a document without reading it fully.

Perhaps the best thing to do on being asked to sign a document is to ask what the effect of the document is: if a consumer is given wrong information (even innocently), the document is not effective. If the contract contains standard terms which were not negotiated individually with the consumer, then those terms will be subject to the Unfair Terms in Consumer Contracts Regulations 1994 (see page 8).

EXCLUDING TERMS

It is quite common for traders to include in service contracts a term or a number of terms claiming that if the work is not up to standard there is nothing that the consumer can do about it. While such terms are permitted by the law and are effective **provided that they are reasonable and not unfair**, there are some grounds on which they can

be rendered ineffective. Therefore if a consumer is given a document which he is not asked to sign and which contains an excluding term, he must be given reasonable notice of the term by the trader. The terms must not inappropriately exclude the rights of the consumer.

If the trader attempts to hide the term by, for example, having it typed in smaller print than the rest of the terms in the document, it will not be effective. The consumer must be given reasonable notice of

the term either before or at the time of entering into the service contract. If he receives notice after he has made the contract, the excluding term will not be effective. If a document does contain an excluding term it does not necessarily help the trader as it is important to examine the wording of the term to see who are the people that it attempts to protect. So if the term said, "The Management will not be responsible for ..." or, "The Proprietors cannot accept responsibility for ..." it would only protect the management or the proprietors as the case may be and would not, for example, protect anybody else such as an ordinary member of the trader's staff. This would mean that, if such a member of staff was at fault by failing to carry out the service with reasonable care and skill, the excluding term in the contract would not be of any help to him. A trader who wishes to rely on an excluding term has to show that the term is reasonable.

ESTIMATES AND QUOTATIONS

An **estimate** is merely an attempt by the trader to give an indication of the price that he thinks the job will cost; therefore if he gives an estimate he is not bound by it and may disregard it if he pleases. A **quotation**, on the other hand, is an actual statement of the price that the trader is going to charge for the job and he cannot charge any other price unless he has made it perfectly clear that he may do so. It is, therefore, a wise precaution for a consumer to get a number of quotations, if possible, and select the one which he thinks represents the best value for money. However, a large number of traders, rather than giving a quotation for the job, will give an estimate; it is possible that if the estimate is *totally wrong* the consumer may be entitled to challenge it and refuse to pay it.

PRICE

One of the main areas of consumer complaints in the past with regard to services has been that the price charged was much more than the consumer had been led to believe it would be. Now, however, the consumer may challenge the price being charged if he considers that it is unreasonable, but unfortunately he is not entitled to do so if the charge for the job has been specifically mentioned in the contract or if the contract mentions how the price is to be calculated.

TIME

Another area causing a large number of complaints in the past is the amount of time taken to carry out the

CONTRACTS FOR THE SUPPLY OF GOODS AND SERVICES

service contract. Once again, the position now is that the contract must be carried out within a reasonable period of time, but again this does not apply if the contract itself specifies the amount of time which the service will take or if it mentions how the time will be calculated.

STANDARD REQUIRED OF THE TRADER

The vast majority of consumer complaints in the past have been in relation to the standard of the service carried out by the trader. He is under a duty to perform it with reasonable care and skill and, as long as he uses the same amount of care and skill which an ordinary reasonable trader would use, he is not liable. This means that the service must be of a reasonable standard. The extent to which the trader can exclude or restrict his responsibility in this respect is uncertain. The trader cannot exclude or restrict his responsibility in any way if the service which he has carried out causes the death of a consumer or causes him to suffer any personal injuries.

• *Example:*

A motor mechanic carried out a service on a car but failed to notice that the brakes were defective; the owner of the car was seriously injured in an accident caused by the brakes failing to work a few days later. The mechanic could not exclude or restrict his responsibility in any way by including an excluding term in his contract of service with the consumer.

If, on the other hand, the failure by the mechanic to carry out the service with reasonable care and skill caused the consumer to suffer injury to his property or financial loss, the trader could exclude his responsibility provided that it was reasonable to do so in the circumstances. This would cover the situation where, as the result of the brakes being defective, the consumer had an accident with another car and severely damaged it.

PACKAGE TRAVEL

This is another common area for complaint, and the consumer is now protected if he buys services within the terms of the Package Travel, Package Holiday and Package Tours Regulations 1992 as amended. If the consumer buys at least two of the following:

- (1) transport,
- (2) accommodation,

- (3) other separate tourist services,

at an inclusive price and the service lasts **24 hours** or more or includes overnight accommodation he should be protected.

The seller of the services is strictly liable for ensuring that the consumer receives the services he has agreed to buy. If the consumer does not receive the package he has booked he can sue the seller. The seller must also arrange for the consumer to travel home from another country should the seller go out of business while the consumer is away on a package tour.

● **RELEVANT LEGISLATION**

Consumer Credit Act 1974
Unfair Contract Terms Act 1977
Supply of Goods and Services Act 1982
Consumer Credit Directive 1987/102/EEC and 1990/88/EEC
Package Travel, Package Holiday and Package Tours Regulations 1992
Package Travel Directive 1990/314/EEC
Unfair Terms in Consumer Contracts Directive 1993/13/EEC
Unfair Terms in Consumer Contracts Regulations 1994

DISSATISFACTION WITH PROFESSIONAL SERVICES

COMPLAINING ABOUT PROFESSIONAL SERVICES

When a consumer seeks advice from a professional person he does so trusting that the services which he will receive will be professionally rendered and that he will not be ignored, abused, insulted, over-charged or in any other way subjected to treatment or service which is less than satisfactory. However, incidents do arise which cause the consumer to feel he has grounds for complaint and he has basically three options to consider.

(1) If he feels that his advisor has been negligent and that he has suffered either financially or physically, he can sue the advisor. This will probably be a complex and lengthy procedure, but if he wishes to obtain compensation this is the route he must follow (see pages 39-44).

(2) He may follow an established complaints procedure.

(3) He may complain to the disciplinary body to which the professional advisor belongs, or by which he is controlled.

The procedure for complaining about certain professions is as follows.

SOLICITORS

If the cause for complaint is the generally unsatisfactory nature of the services rendered, the consumer can complain to the:

Law Society of Northern Ireland
Law Society House
98 Victoria Street
Belfast
BT1 3JZ
Tel. 01232 231614

The types of behaviour which the Law Society will investigate include:

- (1) delay in answering letters or enquiries;
- (2) delay in dealing with the case,
- (3) failure to deal with the client's money properly,
- (4) acting in the same case for two or more clients with conflicting interests,
- (5) overcharging,
- (6) dishonesty or deception,
- (7) failure to hand over papers where the consumer has asked for them and does not owe the solicitor

money.

Action by the Law Society of Northern Ireland

The Law Society will investigate the claim and, if satisfied that an allegation has been substantiated, will report the solicitor to the Solicitors Disciplinary Tribunal who can;

- (1) strike the solicitor off the Roll of Solicitors (so that he cannot practise any more),
- (2) suspend him from practice,
- (3) impose a fine,
- (4) reprimand the solicitor,
- (5) order the solicitor to make restitution.

The Law Society has no power to award compensation; it simply regulates the conduct of solicitors.

If still dissatisfied the consumer can refer the matter to:

The Lay Observer
1st Floor
Lancashire House
5 Linenhall Street
Belfast
BT2 8AA
Tel. 01232 542900

The Lay Observer is appointed to observe the adequacy of the complaints procedure of the Law Society in individual cases.

BARRISTERS

Barristers are responsible for the preparation and conduct of cases in court and give advice on complex legal issues. If a consumer has a complaint about a barrister, he should contact,

The Chief Executive
The General Council of the Bar of NI
The Bar Library
The Royal Courts of Justice
Chichester Street
Belfast
BT1 3JP
Tel. 01232 562349

who will cause the matter to be investigated.

DISSATISFACTION WITH PROFESSIONAL SERVICES

NATIONAL HEALTH SERVICE PRACTITIONERS

All Health and Social Services care in Northern Ireland is delivered by **Trusts**. They may be Acute Hospital Trusts, such as the Royal Hospitals Trust in Belfast, which deliver solely in patient and out patient services, Community Trusts such as Homefirst Community Trust, which deliver all the community nursing, speech therapy, occupational therapy, social services etcetera, or mixed trusts, such as the Causeway Trust which delivers both acute hospital services and community services.

These services are purchased for the people of Northern Ireland by the four **Health and Social Services Boards**, which commission care and monitor the Trusts to ensure that the care which has been commissioned is actually delivered. These Boards also have to decide what kind of care is necessary for the people of their area and ensure that the care which is delivered is of the best possible quality.

General Practitioners (GPs) are sometimes **Fundholding GPs** which means that they have some powers to buy services from the Trusts for their patients.

If a consumer has a complaint about any aspect of health and social services care, he can contact his local Health Council which will advise the consumer and can assist him in making the complaint. The addresses are:

Eastern Health and Social Services Council
19 Bedford Street
Belfast BT2 7EJ
Tel 01232 321230

Northern Health and Social Services Council
8 Broadway Avenue
Ballymena BT43 7AA
Tel 01266 655777

Southern Health and Social Services Council
Quaker Buildings
High Street
Lurgan BT66 8BB
Tel 01762 349900

Western Health and Social Services Council
Hilltop
Tyrone and Fermanagh Hospital
Omagh BT79 ONS
Tel 01662 252555

How to make a complaint

The National Health Service complaints procedure has two stages. In the first instance the consumer should complain to the complaints officer for the organisation against which there is a complaint, and

seek a **local resolution** of the problem. If this does not solve the problem then the consumer can ask for an **independent review**. The system works as follows:

1. General Practitioners

If a patient has a complaint against a doctor who is a GP, or any staff of a GP practice, then he or she should seek to resolve it by complaining first orally or in writing to the Practice to which the Doctor belongs. If this is not successful then the complainant will have to refer the issue to the **Convener for Complaints of the Health and Social Services Board** area in which the Doctor practices. The addresses of the four Health and Social Services Boards are as follows:

Eastern Health and Social Services Board
Champion House
12-22 Linenhall Street
Belfast
BT 2 8BS
Tel 01232 321313

Northern Health and Social Services Board
County Hall
Ballymena
BT42 1QB
Tel 01266 653333

Southern Health and Social Services Board
20 Seagoe Industrial Estate
Portadown
BT36 5QD
Tel 01762 336611

Western Health and Social Services Board
15 Gransha Park
15 Clooney Road
Campsie
Londonderry
BT47 1 TG
Tel 01504 860086

2. Trust Employees

A complainant against an employee of a Trust, be it a doctor, nurse, receptionist, physiotherapist or any other employee, can make the complaint orally or in writing. The simplest way for a minor complaint such as rudeness, is to speak politely to the senior officer of the Trust on the spot, explaining the problem as fully as possible. Many problems can be resolved in this way.

If this is not possible the complainant should write to the **Complaints Officer** at the Trust setting out the complaint as clearly as possible. **All complaints should be made within 6 months of the event complained of** although the Complaints Officer has

DISSATISFACTION WITH PROFESSIONAL SERVICES

a discretion to receive complaints made within 12 months where it would have been unreasonable to make the complaint earlier, and the complaint can still be investigated.

3. Health and Social Services Board Employees

Making a complaint

The complainant should either speak to someone, if this is possible and it is a minor complaint. In other circumstances the complainant should write to the Complaints Officer at the relevant Board, setting out the complaint as clearly as possible.

There is a 6 month time limit within which complaints should be made, although the Complaints Officer has the discretion to extend this period in the circumstances described above.

LOCAL RESOLUTION OF COMPLAINTS

GPs, Trusts and Boards are all under an obligation to acknowledge a complaint within **2 working days**. Complainants should receive a full response from GPs within **10 working days** and from Trusts and Boards within **20 working days**. The relevant Complaints Officer should attempt to resolve the matter, to the satisfaction of the complainant. When this stage has been exhausted the Chief Executive of the Trust or Board should write to the complainant indicating that the complainant has

the right to ask for an **Independent Review** if he remains dissatisfied.

Seeking an Independent Review

If the complainant is dissatisfied with the response from the GPs, Trust or Board then he can write to **The Convener for Complaints at the Health and Social Services Board** for his area and ask for an Independent Review. **He must do this within 28 days**. The Convener will then consider whether there is cause to establish a Review Panel to hear the complaint, or may send the complaint back to the Complaints Officer at the Trust to see if everything possible has been done to resolve the complaint. If the Convener decides to establish a Review Panel this is a lengthy procedure and it may take up to **120 working days** before the complainant receives the Panel's report.

Complaining to the Commissioner for Complaints

The Chief Executive of the Health and Social Services Board will then write to the complainant telling him the outcome of the Board's consideration of the Review Panel Report, and telling him that he has the right to complain to the Commissioner for Complaints.

The Commissioner for Complaints

Progressive House
Wellington Place
Belfast
BT1 6HN
Tel. 01232 233821
Freephone. 0800 282036

Dentists and Opticians

Dentists and opticians, like GPs, are required to have a complaints procedure, and a consumer wishing to complain about a dentist or optician should contact the Complaints Officer of the dental or optician's practice. The procedure is then similar to that described above for GPs, with the complainant having the right to ask his Health and Social Service Board's Convener for Complaints for an Independent Review.

ESTATE AGENTS AND SURVEYORS

Estate Agents are controlled nationally by the Director General of Fair Trading; in Northern Ireland Trading Standards Officers are responsible

for the enforcement of the Estate Agents Act.

Complaints about Estate Agents' misuse of clients' money or mishandling of business should be made directly to local Trading Standards Officers. Estate Agents and Surveyors may also be members of professional associations who will also deal with complaints. The Associations are:

The Royal Institution of Chartered Surveyors
Northern Ireland Branch
Alpha House
3 Rosemary Street,
Belfast
BT1 1QA
Tel. 01232 322877

The National Association of Estate Agents
Arbon House
21 Jury Street
Warwick
CV34 4EH
Tel. 01926 496800

The Incorporated Society of Valuers and Auctioneers
C/o Alan Newell Estate Agents
Shopping Centre,
Carryduff
BT8 8DN
Tel. 01232 812422

The Irish Auctioneers and Valuers Institute
38 Merrion Square East
Dublin 2,
Tel. 00 3531 661 1794

Consumers with a complaint should contact the

DISSATISFACTION WITH PROFESSIONAL SERVICES

Chairman of the relevant body who will investigate the matter and, if necessary, refer the case for a disciplinary hearing by the Disciplinary Committee. The Committee can:

- (1) reject the complaint if they find the allegation to be unsubstantiated,
- (2) reprimand or severely reprimand the offender,
- (3) require him to cease practising unprofessionally,
- (4) suspend or expel him from membership of the society.

The purpose of most disciplinary hearings, therefore, is to investigate what has happened and to try and prevent it from happening again. It is not to compensate the complainant, who must sue the advisor in the courts if he is seeking financial compensation.

● **RELEVANT LEGISLATION**

Solicitors (NI) Order 1976
Health and Personal Social Services (NI) Order 1972
Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (NI) 1973 [as amended]
Health and Personal Social Services (General Dental Services) Regulations (NI) 1975 as amended
Health and Personal Social Services (General Ophthalmic Services) Regulations (NI) 1975 [as amended]
Commissioner for Complaints Act (NI) 1969
Parliamentary Commissioner Act (NI) 1969
Estate Agents Act 1979

ENFORCING CONSUMER RIGHTS

Where a consumer is unable to resolve a problem by discussion and conciliation he will have to resort to the Courts to enforce his rights. He may claim:

- (1) in the Small Claims Procedure of the County Court (Small Claims Court) where he is claiming up to £1,000,
- (2) in the County Court where he is claiming up to £15,000,
- (3) in the High Court in all other matters.

BRINGING A CASE IN THE SMALL CLAIMS COURT

If a consumer has a problem with an item he has bought, a loan agreement he has entered into, or faulty goods and services, etc, he can claim compensation in the Small Claims Court provided that the amount he is claiming does not exceed £1,000. It is not possible to sue in the Small Claims Court if the claim is for compensation for, or relates to:

- (1) personal injuries,
- (2) damage suffered in a road accident,
- (3) damages for libel or slander,
- (4) a legacy or share of an estate or annuity,
- (5) a dispute about ownership of land,
- (6) a dispute about matrimonial property.

THE PROCEDURE

(1) Making a claim

To start proceedings the consumer must first get an "Application for Arbitration" Form 125 from a:

Small Claims Court Office,
Petty Sessions Office,
Citizens Advice Bureau,
Trading Standards Office,
Local Advice Centre.

The consumer must send 3 completed copies of this form to the Small Claims Court office with the appropriate fee:

Claims	Fee
£75 or less	£12
£75 - £300	£28
£300 - £500	£40
£500 - £1,000	£46

The form is very easy to fill in and if there is any problem the consumer can seek advice when collecting the form.

The Small Claims Court will then fill in on the Application Form the date, time and place at which the case will be heard and will send one copy to the Applicant (the consumer) and another copy to the Respondent (the other party).

(2) Disputing a claim and counterclaiming

If the Respondent wishes to deny that the Applicant has a case against him or wishes to counterclaim (claim money from the Applicant), then he must fill in a Notice of Dispute Form 126A giving his reasons and the amount, if any, which he is counterclaiming and send it to the court with the appropriate fee:

Counterclaim Fee

£75 or less	£6
£75 - £300	£14
£300 - £500	£20
£500 - £1,000	£23

If the counterclaim is for more than £1,000, then the matter cannot be dealt with by the Small Claims Court but will be referred to the County Court or High Court, depending on the amount and nature of the counterclaim.

(3) Admitting the Claim

If the Respondent admits that he owes the money claimed by the Applicant, he should fill in the Acceptance of Liability Form 126B and send it to the Small Claims Court office. He should pay the money directly to the Applicant. If he admits the claim but wants time to pay, he must attend the hearing and produce details of his income to the court.

(4) The Hearing

A Small Claims Court is presided over by a District Judge who decides the matter at the date, time and place on the "Application for Arbitration" form

returned to both parties by the Small Claims Court. The hearing is informal and may be held in private. The Applicant and Respondent can present their own cases to the court or, if they prefer, they can be represented by a barrister, solicitor or a non-legally qualified representative accepted by the court. If a consumer decides to use a lawyer he will be personally responsible for his costs whether he wins or loses. There is no legal aid available to those using the Small Claims Court, although a consumer may be eligible to receive legal advice and assistance from a solicitor under what is sometimes referred to as the Green Form Scheme (see further page 41).

ENFORCING CONSUMER RIGHTS

The District Judge will invite both parties to put their cases, explaining the facts as they understand them and will question them both. Either party can bring witnesses, but will have to pay for them themselves. The District Judge, having heard the facts, will make his decision on that basis. Consumers should, therefore, take great care before going to the hearing to prepare their cases properly. The District Judge has power to obtain a technical report on an issue raised.

Preparing the case might include writing the facts out to make sure that the consumer can remember exactly what happened, gathering together all relevant letters, invoices, receipts, etc. and taking any photographs which might support the consumer's case. This is the evidence which will support the consumer's case.

(5) The Results of the Case

When he has heard all the evidence the District Judge will make his decision (the Award). Both parties are notified of the Award by post. Generally speaking, this decision is final and there is no appeal from it unless:

(a) the Respondent did not go to the hearing and within 14 days he is able to prove to the District Judge that he had a good reason for his absence. If this happens the District Judge can set the award aside,

or,

(b) the District Judge has misconducted himself or the proceedings.

If the District Judge feels that the case involves a difficult point of law he can refer it to the High Court for a decision.

ENFORCING THE AWARD

If the Respondent does not pay the compensation ordered by the District Judge, the Applicant should ask the Small Claims Court for a "Certificate of Award" and take this to the Enforcement of Judgements Office with the fee of £15:

The Enforcement of Judgements Office
Floor 7
Bedford House
16-22 Bedford Street
Belfast
BT2 7DF
Tel 01232 245081

The Enforcement of Judgements Office then warns the Respondent that the Applicant is going to enforce the award by serving a Notice of Intent. If the Respondent still does not pay, the Applicant will have to make an "Application for Enforcement". The minimum fee for this is now £15 for all judgement

debts up to £50.99. A list of all enforcement fees can be obtained from the Enforcement of Judgements Office. For example the fee for enforcing a debt of £100 is £30, the fee for enforcing a debt of £500 is £121, the fee for enforcing a debt of £1,000 is £181.

• Example:

James sold his car to Paul for £450. Paul did not pay saying that the car was not worth £450. James made an Application for Arbitration and paid £40. The Judge decided that Paul had to pay James, but Paul still did not pay. James served Paul with a Notice of Intent to Enforce, paying the Enforcement of Judgements Office £15. Paul still did not pay so James made an Application for Enforcement paying a fee of £121 for this.

Total cost of using the system

<i>Application Fee</i>	<i>£40</i>
<i>Notice of Intent</i>	<i>£15</i>
<i>Application for Enforcement</i>	<i>£121</i>

Total £176

If James were successful he would recover the amount of his award plus £176, but even the Enforcement of Judgements Office will not necessarily be able to collect the money and James may be left £626 poorer.

Using the Small Claims Court may be the obvious answer to a consumer faced with a dispute involving less than £1,000. The procedures are very simple. The consumer can put his own case to the court and should not feel intimidated by the occasion. Hearings are generally fairly short and the whole matter may be concluded within 3 months. Consumers should remember, however, that it is one thing to win a case whether in the Small Claims Court, County Court or High Court, but quite another thing to actually collect the compensation ordered by the Judge from the other party.

BRINGING A CASE IN THE COUNTY COURT

The County Court in Northern Ireland deals with a wide range of matters. It can hear cases involving, amongst other things:

- (1) claims for compensation for personal injury, damage to property or breach of contract, provided the amount claimed is less than £15,000,
- (2) claims as to who owns land or disputes about land with an annual value not more than £500,
- (3) disputes about whether a will is valid, who is to administer the property of someone who dies without making a will,

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- (4) divorce and the distribution of family property,
- (5) adoption of children,
- (6) allegations of sex discrimination in the provision of goods and services,
- (7) applications to re-open a loan agreement on the grounds that it is extortionate (see page 22),
- (8) determining the proper rent for a protected tenancy.
- (9) from 1997 it will have power to hear cases arising under the Disability Discrimination Act 1995 regarding the provision of goods and services.

Most consumers will cope very successfully with making a claim in a Small Claims Court without a solicitor but, if action in the County Court is contemplated, it is recommended that the consumer should consult a solicitor.

USING A SOLICITOR

If a consumer has a legal problem he can seek help from an Advice Centre, a CAB or a solicitor or any other source of advice, eg a Trade Union. Many people are concerned about using a solicitor because of the cost. There are several schemes designed to help people with the cost of legal aid and advice.

Fixed Fee Interviews

When making an initial appointment to see a solicitor the consumer can ask if he can have a fixed-fee interview. This entitles the consumer to a 30 minute interview for **£5**. If the consumer does not wish to ask for a fixed-fee interview or if the solicitor will not see the consumer under the scheme, the consumer should ask how much the appointment will cost. He can ask several solicitors and compare the costs.

Legal Advice and Assistance

When the consumer sees the solicitor for the first time, the solicitor will advise the consumer what to do about the problem. He may advise the consumer that he has no case. Alternatively he may advise the consumer that further appointments will be necessary to deal with the problem. If further appointments are necessary the consumer may be entitled to help under the Legal Advice and Assistance Scheme, particularly if he is on benefits or has a low income. The solicitor will advise whether the consumer is entitled to help. If he is then he will be entitled to **£88** worth of advice and assistance - up to two hour's work. Under this scheme the solicitor can write letters, draft a will, help prepare a case for a tribunal, and in some very limited cases he can represent the consumer in the Magistrates Court or

the County Court or before a Mental Health Review Tribunal.

Legal Aid

If the legal problem is such that the consumer is going to have to go to court to resolve it, he may be entitled to legal aid. To qualify for legal aid the consumer must satisfy the Legal Aid Assessment Officer of the Department of Health and Social Services that he comes within the financial limits by having not more than **£6,750** disposable capital (or **£8,560** in a case involving a claim for compensation for personal injuries) and not more than **£7,403** disposable income (or **£8,158** in a

case involving personal injuries).

The rules for calculating disposable capital and income are very complicated and the solicitor will advise the consumer about whether he is likely to be granted legal aid. Basically disposable income is income that is left after allowances have been made for a spouse, children and other dependant relatives, rent or mortgage, rates, hire-purchase payments and other necessary outgoings. Disposable capital is any savings or valuables the consumer owns except the house he lives in and the furniture in that house. Allowances are also made for dependants.

Even if the consumer satisfies the financial tests, he still has to satisfy the Law Society's Legal Aid Department that it is reasonable for him to bring or defend the case and that it is reasonable in all the circumstances to grant him legal aid. In some circumstances he may also be required to make a contribution to the costs. This will happen if he has disposable capital of between **£3,000** and **£6,750** (or **£8,560** in a case involving a claim for compensation for personal injuries), or disposable income between **£2,498** and **£7,403** (or **£8,158** in a case involving personal injuries). If his disposable capital is less than **£3,000** and his disposable income is less than **£2,498**, he will not be asked to make any contribution to the costs.

If the consumer asks the solicitor to act for him, whether with or without legal aid, the solicitor will advise the consumer what to do, and will take all the necessary steps. If at any stage the consumer is in doubt about the costs he should ask the solicitor what it is going to cost. He can also ask for a written quotation of the probable costs. If the consumer wins the case the court will usually order the other party to pay the consumer's costs or a substantial part of them.

It is possible for a consumer to sue in the County Court without using a solicitor, but it is not easy. County Court procedure is not as complicated as High Court procedure, but it is complex; for example, there are time limits within which documents must be served or returned to the court; there are special

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procedures which must be followed in certain types of cases and other procedures which are available in particular situations.

The two parties to a County Court action are the Plaintiff (the person bringing the case) and the Defendant (the person being sued). The Plaintiff

should, in most cases, bring his case in the County Court for the area in which the Defendant lives or carries on business or in which the case arose or where the consumer lives. The consumer will still have to enforce the judgement in the country in which the Defendant lives or carries on business and this may still be a difficult process despite recent changes in the law.

THE PROCEEDINGS

Proceedings in the County Court are started by the Service of a Civil Bill by the Plaintiff on the Defendant. A Civil Bill is a document which sets out the names and addresses of the parties and briefly states the reason why the case is being brought. The Plaintiff must pay a fee to issue a Civil Bill, and a date, time and place will be given for a hearing. A copy of the Civil Bill must be "served" on the Defendant either by giving it to him or by sending it by Recorded Delivery, and the Plaintiff must then note the method and date of service on the back of the original document. The Civil Bill will then be entered for specified hearings depending on whether it is going to be defended or not. There may be a counterclaim made by the Defendant against the Plaintiff. There are special procedures where the Defendant is not contesting the case against him and the claim is for a specified sum already calculated, which enables the matter to be settled without an oral hearing by the Judge.

If the case is to go to an oral hearing, then either party may want to know more about the other party's case and can seek further information and documents from the other party which the court can order him to produce.

Finally, the matter will go to trial. Cases are heard by a Judge. The Plaintiff's legal representative will see that the Judge has the Civil Bill and will then tell the court about the legal and factual issues in dispute and those issues which the parties have agreed between them. He then calls his witnesses and produces all relevant documents to the court and, having proved his case, he states that the Plaintiff's case is closed.

The Defendant can then ask the Judge to say that the Plaintiff has not even proved that there is a case to answer and to dismiss the case. If not, or if the Judge refuses to dismiss the case, then the Defendant or his legal representative put the defence case and call the necessary evidence. The

case is then closed and the Judge makes a decision and enters judgement. He may dismiss the Plaintiff's case or he may grant a decree stating what remedy is given to the Plaintiff, whether he will get his legal costs paid by the Defendant (in most cases if he wins he will get his costs) and dealing with any other outstanding matters.

THE REMEDIES AVAILABLE

There are three basic remedies available to the Plaintiff who wins a case in the County Court:

- (1) Damages,
- (2) Specific Performance,
- (3) Injunction.

(1) Damages

Where a consumer has a problem with a contract, whether it be for the sale or supply of goods or services, or a contract to obtain credit in some form, he will normally be seeking monetary compensation from the Defendant. This compensation is called damages. If the Plaintiff can prove his case, the Judge must award him the damages which will put him in the position he would have been in had the event complained of not happened.

(2) Specific Performance

Specific performance is an order of the court compelling a Defendant to perform his duties under the contract, ie. it will make the Defendant do what he has promised to do. The Plaintiff does not have the *right* to a decree of specific performance; it is the Judge who decides whether it would be just to grant it after looking at all the circumstances of the case.

(3) Injunction

This is an order of the court which will forbid the Defendant to do the act complained of or to do some positive act to undo a wrong he has done. Like specific performance, the injunction is a remedy which is at the discretion of the Judge.

An injunction will only be issued if it will prevent further real harm to the Plaintiff and it is not impossible or ludicrously expensive to comply with.

APPEAL

There is a right of appeal from the County Court where a consumer loses his case (see page 44).

BRINGING A CASE IN THE HIGH COURT

If a consumer cannot obtain satisfaction in the Small

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Claims Court (claims up to £1,000) or the County Court (claims up to £15,000), then he must bring his action in the High Court. The High Court in Northern Ireland is divided into three divisions.

- (1) Queen's Bench Division, which deals with contract cases where the claim exceeds £15,000 as well as other matters such as actions for compensation for road accidents, accidents at work, etc.
- (2) Chancery Division, which deals with disputes about property matters, partnerships, companies, etc.
- (3) Family Division, which deals with cases of divorce, nullity, separation, adoption, etc.

Proceedings in the High Court are immensely complicated and any consumer wishing to sue in the High Court will require legal advice. Consumers with low incomes may be entitled to legal aid to assist them in the cost of fighting their cases.

THE PROCEDURE

Most cases involving consumers are likely to be heard in the Queen's Bench Division. To start an action the Plaintiff issues a "writ of summons" which warns the Defendant that he is being sued and tells him what the case is about. Any consumer who receives a writ has fourteen days to take the necessary action; he must "enter an appearance", i.e. fill in a form which lets the Plaintiff know that he is going to fight the case. If a consumer ignores a writ then the Plaintiff can get judgement against him after fourteen days (i.e. the court will say that the Defendant is liable to pay the Plaintiff the amount claimed in the writ). The Defendant having entered an appearance, the Plaintiff then has six weeks within which to send a detailed claim to the Defendant. Within three weeks of receiving that document the Defendant must send the Plaintiff his defence, which will probably deny most of the Plaintiff's claims and

may include a counterclaim by the Defendant against the Plaintiff. The Plaintiff can then reply to the defence and, if necessary, defend the counterclaim. After this, both sides to the action will consider the case and may seek further documents or details if they consider them necessary.

Finally the case will come to trial. The Plaintiff's barrister will present the Plaintiff's case, the Defendant's barrister will present his defence. The judge sitting alone will make the final decision after these cases have been presented.

Proceedings in the Chancery and Family Division are slightly different because of the different nature of the matters with which those Divisions deal.

APPEALING FROM A DECISION

If a consumer brings a case in a Small Claims Court, he has no general right of appeal: that decision is normally final (see page 40). If he loses his case in the County Court he may appeal to the High Court or if he is appealing only on a point of law he can appeal direct to the Court of Appeal. Where the consumer has lost a case in the High Court he can appeal to the Court of Appeal and finally, with permission, to the House of Lords. The House of Lords is the final court of appeal - the end of the line, unless there is an issue of unresolved European law in the case when it may be referred to the European Court of Justice in Luxembourg.

The above comprises a very brief introduction to litigation in the Small Claims Court, the County Court and the High Court. Legal procedures tend to be slow, expensive, very complex and somewhat cumbersome, and apart from the small claims procedure a consumer should always seek legal advice when contemplating litigation. Otherwise he may be in danger of losing his case by default because he is not sufficiently familiar with the system

● RELEVANT LEGISLATION

Sex Discrimination (NI) Order 1976
County Courts (NI) Order 1980 as amended
County Court Rules (NI) 1981
Disability Discrimination Act 1995
Judicature (NI) Act 1978
Judgements Enforcement (NI) Order 1981
Judgements Enforcement Rules 1981
Rules of the Supreme Court (NI) 1980
Civil Jurisdiction and Judgements Act 1982
County Courts (Financial Limits) Order (NI) 1993
Legal Aid and Assistance (Financial Conditions) Regulations (NI) 1995

CHRONOLOGICAL TABLE OF LEGISLATIVE PROVISIONS REFERRED TO

1695	Statute of Frauds (Ireland)	1986	Consumer Safety (Amendment) Act
1958	Food and Drugs (NI) Act	1987	Consumer Protection Act
1958-82	Limitation Acts (NI)	1987	Consumer Protection (NI) Order
1964	Law Reform (Husband and Wife) Act (NI)	1987	Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations as amended
1965	Consumer Protection Act (NI)	1987	Consumer Credit Directive 87/102/EEC and 90/88/EEC
1966	Hire Purchase Act (NI)	1987	Minors Contracts (NI) Order
1967	Misrepresentation Act (NI)	1988	Control of Misleading Advertisements Regulations
1968	Trade Descriptions Act	1988	Furniture and Furnishings (Fire) (Safety) Regulations
1969	Commissioner for Complaints Act (NI)	1989	Food Safety Order (NI)
1969	Parliamentary Commissioner Act (NI)	1989	Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order
1972	Health and Personal Social Services (NI) Order	1989	Food (NI) Order
1973	Fair Trading Act	1989	Package Travel Directive 90/314/EEC
1973	Supply of Goods (Implied Terms) Act	1990	Broadcasting Act
1973	Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (NI) as amended	1990	Property Misdescriptions Act
1974	Consumer Credit Act and Regulations and Orders made thereunder	1991	Health and Personal Social Services (NI) Order 1991
1975	Health and Personal Social Services (General Dental Services) Regulations (NI) as amended	1991	Price Marking (Method of payments) Regulations (NI)
1975	Health and Personal Social Services (General Ophthalmic Services) Regulations (NI) as amended	1992	Price Marking Order (NI)
1976	Unsolicited Goods & Services (NI) Order	1992	Timeshare Act
1976	Consumer Transactions (Restriction on Statements) Order as amended	1992	Package Travel, Package Holidays and Package Tours Regulations
1976	Solicitors (NI) Order	1992	General Product Safety Directive 92/59/EEC
1976	Sex Discrimination (NI) Order as amended	1993	Unfair Terms in Consumer Contracts Directive 93/13/EEC
1977	Unfair Contract Terms Act	1993	County Courts (Financial Limits) Order (NI)
1978	Judicature (NI) Act	1994	Sale and Supply of Goods Act
1979	Sale of Goods Act as amended	1994	Timeshare Directive 94/47/EEC
1979	Estate Agents Act	1994	Unfair Terms in Consumer Contracts Regulations
1979	Unsolicited Goods and Services (Invoices etc) Regulations (NI)	1994	Trade Marks Act
1980	County Courts (NI) Order as amended	1995	Price Indications (Resale of Tickets) Regulations (NI)
1980	Rules of the Supreme Court (NI)	1995	Legal Aid and Assistance (Financial Conditions) Regulations (NI)
1981	County Court Rules (NI) and other County Court Rules	1995	Disability Discrimination Act
1981	Judgements Enforcement (NI) Order		
1981	Judgements Enforcement Rules		
1982	Supply of Goods and Services Act		
1982	Civil Jurisdiction and Judgements Act		
1983	Consumer Credit (Agreements) Regulations		
1984	Cosmetic Products (Safety) Regulations		
1984	Misleading Advertising Directive 84/450/EEC		
1985	Doorstep Selling Directive 85/577/EEC		
1985	Product Liability Directive 85/374/EEC		
1985	Credit Unions (NI) Order as amended		

SOME FURTHER READING ABOUT CONSUMER RIGHTS

Sealy & Hooley - Text and Materials in Commercial Law, **Butterworths** 1994.
Dickson - The Legal System of Northern Ireland, SLS 1993.
Debt; a series of leaflets published by the General Consumer Council for Northern Ireland.
Smith & Keenan - Advanced Business Law, **Pitman** 1994.
Encyclopedia of Consumer Law, **Sweet and Maxwell** 1996.
Hodges, Tyler and Abbott - Product Safety, **Sweet and Maxwell** 1995.
Hodges - Product Liability: European Laws and Practice, **Sweet and Maxwell** 1993.
Harvey and Parry - The Law of Consumer Protection and Fair Trading, **Butterworths** 1996.
1992 The Consumer View - General Consumer Council for Northern Ireland.
European Consumer Guide to the Single Market, European Commission, 1996.

GLOSSARY OF LEGAL TERMS

APR

Annual Percentage Rate of interest for credit transactions. There are different methods of calculating the APR and complex rules about when and how it must be quoted. For further information see Consumer Credit Act 1974 - Credit Charges, published free by the Office of Fair Trading.

Applicant for Arbitration

A person making an application to the Small Claims Court for a dispute to be determined by that court.

Arbitration

The settlement of a dispute by an arbitrator whose decision is final and binding on the people who are in dispute.

Bankrupt

A debtor who has been unable to pay his debts, and who has been declared bankrupt by the court. His property is distributed amongst his creditors by a person appointed by the court (a trustee in bankruptcy).

Breach of Contract

A failure to comply with the terms of a contract; it gives the innocent person the right to sue the party in

breach, and in some cases to treat the contract as discharged (no longer binding on either party).

Creditor

A person to whom a debt is owed.

Contract

An agreement between two or more persons to do or abstain from doing some act in return for a price. A contract may be entirely oral, partly oral and partly written or wholly in writing. It may consist of a number of different documents.

Conveyancing

The legal process of transferring the ownership of property from one person to another.

Damages

Monetary compensation awarded by a court.

Deed

A document in writing which has been signed, sealed and delivered by the person making it.

Defendant

A person against whom proceedings are brought in a court.

Directive

An order from the European Community compelling a member state (eg. the UK) to formulate a particular law. The member state has to comply with the Directive, but can decide on the particular method of implementation.

Draft Directive

A draft Directive is a directive which is published for discussion purposes, to enable member states to make representations on the form of the Directive.

Enforcing a Contract

Bringing an action to ask a court to make someone

fulfil their responsibilities under a contract.

European Union

The organisation consists of 15 member states: Austria, Belgium, Denmark, France, Germany, Greece, Iceland, Republic of Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, United Kingdom. **The rules protecting consumers in the European Union now apply also in Norway and Liechtenstein under the European Economic Area Act.**

Guarantee (1)

A promise to be liable for the debt of another person if he fails to pay the creditor. A guarantee must be in writing.

Guarantee (2)

A statement by a manufacturer of rights which a consumer has when he buys goods made by the manufacturer. These rights must be, and must be stated to be, additional to the consumer's rights under law.

Guarantor

A person who promises to be liable for the debts of another person.

Liability

Responsibility under the law for something which has happened.

Litigation

The process of bringing an action in the courts.

Misrepresentation

A false statement of fact made by one party to a contract which induces the other party to enter into the contract.

Mortgage

A transfer of an interest in land to a creditor who has lent money to the owner of the land.

Negligence

Failing to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do. Professional negligence is failure by a professional person to act according to those standards which might reasonable

be expected of a competent member of that profession.

Plaintiff

A person bringing a case in the County Courts or High Court.

Product Liability

Liability of a manufacturer, own-brander or importer for injury or damage caused by a defective product.

Respondent

A person against whom a case is brought, particularly in the Small Claims Court.

Unsolicited Goods

Goods which are delivered to a person who has not ordered them.

Unfair Term in a Contract

A term in a consumer contract which creates a significant imbalance in the parties' rights and obligations to the detriment of the consumer.