

OXFORD



# introduction to **BUSINESS LAW**

THIRD EDITION

Lucy Jones



**SUPPLEMENT INCLUDING COVERAGE  
OF THE CONSUMER RIGHTS ACT 2015**



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# Preface to New Chapter 10: The Sale of Goods and Supply of Services

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This chapter has been written to update the content of *Introduction to Business Law*, Chapter 10. Understanding the law on the sale and supply of goods and services is essential for businesses and empowering for consumers. The Consumer Rights Act 2015, which came into force in October 2015, replaces a number of laws with regard to business-to-consumer transactions. However, certain rights of sellers, and the law relating to contracts made between businesses or between individuals, continue to be governed by previous legislation such as the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982. The objective of this new chapter is to provide students with an integrated coverage of the subject area. The chapter includes a series of figures and examples to enable students to clearly see which laws apply to different types of contracts and to develop their understanding of this complex area of the law.

Lucy Jones  
March 2016

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# The Sale of Goods and Supply of Services

10

## Introduction

Transactions entered into by businesses and individuals often involve the sale and supply of goods and services. The general principles of contract law such as offer and acceptance, consideration, and intention to create legal relations apply to contracts for the sale of goods. However, in addition to these general principles, other laws specifically focused on the sale of goods have developed since the 19th century. Much of the law evolved to protect consumers in their contracts with businesses and to ensure that buyers were treated fairly. In October 2015, a new Act, the Consumer Rights Act, was introduced to simplify and strengthen consumer rights. The Act applies to consumer contracts, made from 1 October 2015, where a trader is supplying goods, digital content (such as music downloads and e-books), or services to consumers. Under the provisions of the Act certain terms, for example relating to the nature and quality of the goods supplied, are to be treated as part of the contract and those terms cannot be excluded by the trader.

The Consumer Rights Act 2015 does not apply to contracts made between two or more businesses, or between private buyers and sellers or where a person who is not a trader sells or supplies goods to a business (or if made before 1 October 2015). In these cases terms, similar to those implied by the Consumer Rights Act, are implied into contracts by the Sale of Goods Act 1979 (as amended). However most of the **implied terms** can be excluded by the parties if it is reasonable to do so.

The Sale of Goods Act 1979 only applies to the sale of goods in return for money and does not apply to services or where goods are installed, or hired or obtained via hire purchase contract. The Supply of Goods and Services Act 1982 implies terms into non-consumer contracts for the supply of services, the supply of goods, and hire contracts; and the Supply of Goods (Implied Terms) Act 1973 implies terms into non consumer hire purchase contracts. The terms implied are similar to those found in the Sale of Goods Act 1979.

Further information and practical advice for businesses concerning the sale of goods can be found on the government website <https://www.gov.uk/> (click on businesses and self-employed).

## Learning Objectives

After studying this chapter you should be able to:

- Explain which types of contracts are governed by the Consumer Rights Act 2015.
- Explain what is meant by a contract for the sale of goods/sales contract.
- Identify terms that are treated as part of the contract where a trader is supplying goods, digital content, or services to a consumer.
- Outline remedies available to consumers under the Consumer Rights Act 2015.
- Identify terms that are implied into contracts for the sale of goods by the Sale of Goods Act 1979.
- Distinguish between the right to ownership of goods and the right to possession of goods, and explain when rights may be transferred from a seller to a buyer.
- Identify the rules relating to delivery of goods.
- Outline the duties of a seller and the remedies available to the seller for breach of a sale of goods contract.
- Identify terms that are implied into non-consumer contracts for the supply of goods and services, contracts for the hire of goods, and hire purchase contracts.

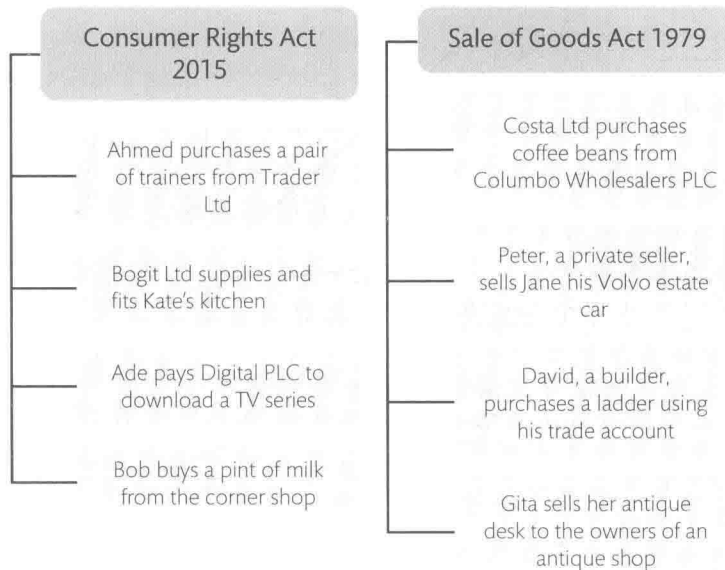
## Consumer Contracts and Non-consumer Contracts

The Consumer Rights Act 2015 (CRA) applies to consumer contracts for the supply of goods, digital content, or services made on or after 1 October 2015. A consumer contract is one that is made between a trader and a consumer. The Act seeks to protect a consumer by implying various terms into contracts and giving a consumer special remedies where the contract is breached by the trader.

A **trader** is defined as 'a person acting for purposes relating to that person's trade, business, craft, or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf' (CRA, s 2). A 'person' includes legal persons such as companies and charities and can mean more than one individual—for example, a partnership of two or more people.

A **consumer** is defined as 'an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft, or profession' (CRA, s 2). As a consumer is defined as 'an individual' it cannot be a company. Where a consumer indicates that he is acting in the course of a business (for example, by buying goods for personal use on a trade account) then he will not be treated as a 'consumer'.

Figure 10.1 Examples of contracts governed by the Consumer Rights Act 2015/Sale of Goods Act 1979



The Sale of Goods Act 1979 (SOGA, as amended by later Acts) governs contracts for the sale of goods but many of its provisions, for example relating to implied terms, delivery of goods, and the buyer's remedies for breach of contract, no longer apply where the contract for the sale of goods is by a trader to a consumer. The SOGA governs all contracts for the sale of goods where both parties are businesses, both are private individuals, or an individual, who is not a trader, sells goods to a business (see Figure 10.1).

**Key Concept** The Consumer Rights Act 2015 (CRA) only applies to consumer contracts for the supply of goods, digital content or services made on or after 1 October 2015. A consumer contract is one that is made between a trader and a consumer. Other contracts for the sale of goods are governed by the Sale of Goods Act 1979.



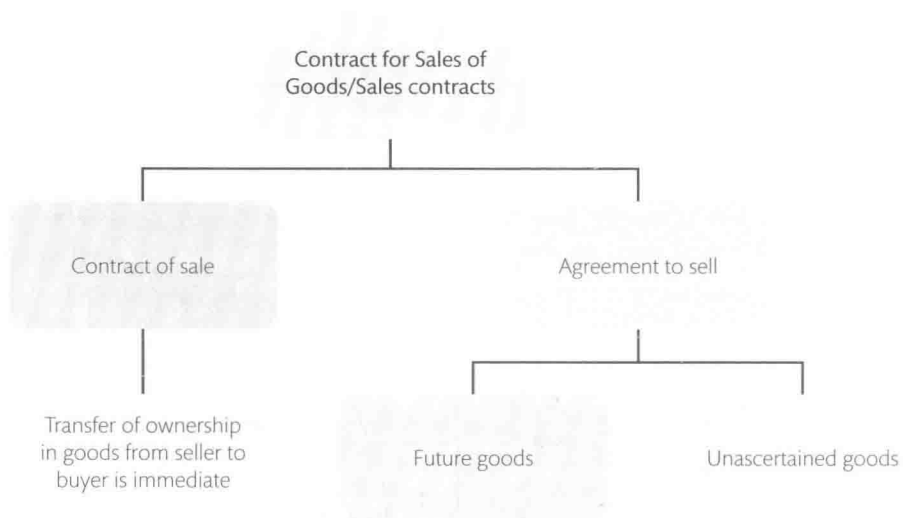
## Contract for the Sale of Goods/Sales Contracts

### Definitions

A contract for the sale of goods (referred to as a sales contract in the CRA) is a contract by which the seller transfers, or agrees to transfer, the ownership in goods to the buyer and the



Figure 10.2 Contracts for the sale of goods



buyer pays or agrees to pay the price. Under the CRA the buyer must be a trader and the seller must be a consumer.

A contract for the sale of goods may be in any form, oral, written, or through conduct.

The CRA and the SOGA apply to contracts where ownership (sometimes referred to as 'title' or 'property') of goods is transferred immediately the contract is made, for example buying a bottle of beer in a shop. The goods (bottle of beer) already exist and are in the possession of the seller and, therefore, ownership can be transferred immediately to the buyer.

The Acts also apply to agreements to transfer ownership of goods. An agreement to sell is a binding contract which only becomes a contract of sale once the specified goods exist. For example, Smith decides to buy a fleet of ten vans for his business. He looks at the vans in a showroom and then orders ten new white Citroën vans from the salesman. The exact vans Smith is buying are not in the possession of the salesman but are together with 100 vans in the Citroën warehouse, and therefore it is an agreement to sell (see Figure 10.2).

There are two examples of an agreement to sell:

- Future goods which have not yet been manufactured or acquired by the seller.
- Goods that are *unascertained* (not specified), for example an order for 100 Christmas trees will be unascertained if they are in a warehouse containing 1,000 trees. The goods will become specific when the seller selects the 100 trees specifically for this order. Goods advertised in catalogues are often unascertained until earmarked for a particular buyer.



**Key Concept** A sale of goods contract (called a sales contract under the CRA) includes contracts where ownership of goods is to be transferred immediately from the seller to the buyer and contracts where the seller agrees to transfer ownership at some later date.

### Meaning of 'goods'

The SOGA, s 61(1), defines 'goods' as all personal chattels (this means property that is tangible, such as cars, telephones, furniture), crops, and other things attached to land which are agreed to be severed from the land before sale or under a contract of sale. The CRA, s 2 defines goods as any tangible moveable item, i.e. anything that can be moved. It also includes water, gas, and electricity if they are put up for supply in a limited volume or set quantity. The CRA and the SOGA do not cover land, money, or 'things in action'. A thing in action is an intangible asset such as a guarantee, trademark, or copyright.

If, unknown to the seller, the goods have already perished when the contract is made, then the contract is void.

### Meaning of 'price'

For a transaction to fall within the SOGA, the consideration given by the buyer for the goods must consist of money. The money can be paid by any means such as cash, credit, or debit card, and a contract will still be valid even if the exact price is not specified. The SOGA, s 8 provides that, where a price is not specified, then the buyer must pay a reasonable price. What is considered a 'reasonable price' depends on the factual circumstances of each case. A contract will not be covered by the SOGA where a 'free gift' is passed to a business customer and no money is due, or where goods are exchanged for other goods and no money changes hands.

The CRA applies to sales contracts where the supply of goods is in exchange for money and to contracts where goods are exchanged for consideration other than money (provided it has a monetary value, for example loyalty points). It will not apply where no consideration is given or agreed to be given by the consumer. Where there is a contract to supply services and there is no price agreed then the consumer must pay a reasonable price for the service and no more (CRA, s 51).

### Implied terms are conditions

The CRA and the SOGA imply various terms into contracts (see Table 10.1). These terms are conditions of the contract. A condition of a contract is a fundamental term of the contract which, if broken, allows the innocent party to treat the contract as at an end within a reasonable time and to claim damages for any losses they have incurred.

Table 10.1 Terms implied into sale of goods contracts by the SOGA and CRA

<b>Sale of Goods Act 1979</b>	<b>Consumer Rights Act 2015</b>	<b>Consumer Rights Act 2015</b>
<b>Non-consumer contracts (e.g. business to business or non-trader to consumer) for the sale of goods have the following implied terms (apart from s 12 these may be excluded if reasonable to do so).</b>	<b>Consumer contracts (between a trader and consumer) to supply goods are to be treated as including the following terms (which cannot be excluded).</b>	<b>Consumer contracts (between a trader and consumer) to supply digital content are to be treated as including the following terms (which cannot be excluded).</b>
section 12 The seller has the right to sell the goods.	section 17 Trader has the right to supply the goods.	section 41 Trader to have the right to supply the digital content.
section 13 Goods sold by description shall correspond with the description.	section 11 In contracts to supply goods by description the goods will match the description.  section 12 Pre-contractual information required under the Consumer Contracts Regulations to be part of the contract.	section 36 The digital content will match any description given to it.
section 14(2) Where the seller sells goods in the course of a business, the goods are of satisfactory quality.	section 9 The quality of the goods supplied is satisfactory.	section 34 The quality of the digital content is satisfactory.
section 14(3) Where the seller sells goods in the course of a business, the goods sold are reasonably fit for purpose.	section 10 The goods supplied are reasonably fit for purpose.	section 35 The digital content supplied is reasonably fit for particular purpose.
section 15: Where goods are sold by reference to a sample, the goods will correspond with the sample.	section 13 Where goods are supplied by reference to a sample the goods will match the sample.  section 14 Where goods are supplied by reference to a model, the goods will match the model seen or examined.	

## Consumer Contracts for the Supply of Goods, Digital Content or Services

A consumer contract under the CRA is a contract under which a trader supplies goods (tangible moveable items), digital content or services to a consumer. Digital content means data which is produced and supplied in digital form, for example, apps, music, films, games, and ebooks. Services includes a wide range of services from small works such as dry cleaning a jacket to major works such as building a house extension. Services can be provided alone or they may be provided with goods, for example providing and fitting of a new shower. The Act applies whether the contract is written or oral or implied from the parties' conduct (or more than one of these combined). Usually the consumer must pay or agree to pay the price of the goods, digital content or services.

A contract to supply goods includes selling, hiring or transferring the ownership of goods. It also includes goods supplied under a hire purchase agreement. In a contract for **hire**, ownership of the goods does not pass but the consumer has the right to possession and use of the goods for a limited time, for example a contract for the hire of a car. A hire purchase contract is one where the hirer agrees to hire goods for a fixed period of time and is given the option to purchase the goods for a nominal sum at the end of that period of time. New cars are often purchased by consumers under a hire purchase agreement.

The CRA and the SOGA imply similar terms into contracts relating to the nature and quality of goods. The wording is slightly different in that the SOGA states that the terms are implied into all contracts for the sale of goods (other than trader to consumer contracts) whereas the CRA states that a contract to supply goods, digital content or services to a consumer by a trader is to be treated as including various terms which are part of the contract and cannot be excluded or limited in any way by the trader.

### Terms Included in a Contract to Supply Goods Made between a Trader and a Consumer

The trader has the lawful right to sell or transfer the goods (s 17)

This means that the trader must have the right to sell or transfer the goods at the time when ownership of the goods is to pass to the consumer.

The goods are of satisfactory quality (s 9)

This means that the goods must be of a standard that a reasonable person would regard as satisfactory. Quality of goods covers a number of matters including fitness for all the

purposes for which goods of that kind are usually supplied, appearance and finish, freedom from minor defects, safety, and durability. In assessing quality, all relevant circumstances must be considered, including any description of the goods, the price, advertising and labelling. But it does not cover anything which makes the quality of the goods unsatisfactory where, before the contract is made, the defect has been specially drawn to the consumer's attention or where the consumer has examined the goods and the examination should have revealed the defect. For example, if a small stain on a dress is pointed out to a consumer by the sales assistant before purchase, the dress will not be of unsatisfactory quality because it has a small stain but could be of unsatisfactory quality because it has a faulty zip.

When deciding if goods are satisfactory, the court can take into account public statements by the trader, producer or their representatives about the specific characteristics of the product, particularly advertising or labelling. However, a public statement will not be relevant if the trader can show that he did not know about the statement, or was not reasonably aware of it, or if, before the contract was made, the statement had been publicly withdrawn or corrected. In addition, the statement will not be relevant if the trader can prove that the consumer's decision to buy the goods could not have been influenced by the public statement.

### The goods will be reasonably fit for their specified purpose (s 10)

If before the contract is made the consumer expressly or by implication makes known to the trader that he is contracting for the goods for any particular purpose, there is an implied term that the goods are reasonably fit for that purpose, even if it is not a purpose for which such goods are commonly supplied. For example, before purchasing a bicycle a consumer informs a sales assistant he wants a bike that he could use for off-road riding as well as on the road. A bike recommended by the sales assistant must be fit for general cycling as well as off-road cycling. The trader can avoid liability if he can prove that the consumer did not rely on the trader's skill or judgement or that, although the consumer did rely on the trader's skill and judgement, it was unreasonable for the consumer to do so.

### The goods will match their description (s 11)

This covers contracts where the goods are described but not seen and contracts where goods have been examined or selected by the consumer and the consumer relied on a description given of the goods. For example, a label on a dress stating '100 per cent silk' or a description in a catalogue stating that a camera has a 18-55 telephoto zoom lens. Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (Consumer Contracts Regulations 2013) where a trader sells goods to a consumer at a distance, for example online, by mail order or by telephone, certain information about goods must be provided to consumers before the consumer enters into the contract. This information includes a description of the main characteristics of the goods which will become a term of the contract.

### Pre-contractual information is part of the contract (s 12)

Information required to be given under the Consumer Contracts Regulations 2013 (other than information about the main characteristics of the goods which is covered by s 11) become part of the contract. This includes information relating to the seller, cost of delivery, and details of who pays for the cost of returning items.

### The goods will match the sample (s 13)

This covers contracts where goods are supplied after a sample of the goods are seen or examined by the consumer. Unless differences are brought to the consumer's notice before the contract is made the goods must match the sample. For example, there would be a breach of s 13 if a carpet sample showing a blue carpet with black flecks was examined but when the carpet arrived it is blue with pink flecks. The goods must also be free from any defect, which would not be apparent from a reasonable examination of the sample, which makes their quality unsatisfactory. If the supply of goods is by sample and description there is a breach of s 11 if the bulk of the goods match the sample but the goods do not match their description. For example, if a carpet is described as 100 per cent wool but the sample examined was only 50 per cent wool and the carpet matches the sample and is only 50 per cent wool there will be a breach of s 11.

### The goods will match the model (s 14)

This covers contracts where goods are supplied after a model of the goods is seen or examined by the consumer. Unless differences are brought to the consumer's notice before the contract is made the goods must match the model. A model is usually an example of a whole item on display such as a new car in a car showroom.

(For further detail on the meaning of the terms description, quality, fitness for purpose, and sale by sample, see Figure 10.3.)

## Remedies Available to a Consumer under the CRA

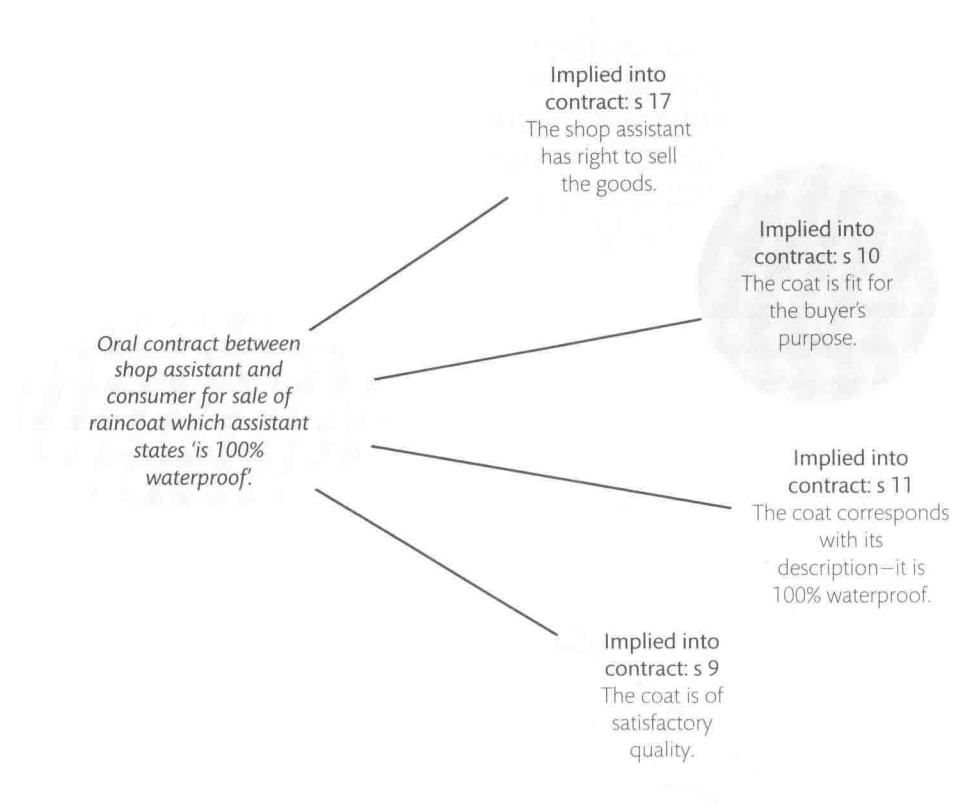
If there is a breach of s 17, and the trader does not have the right to sell or transfer the goods, the consumer has the right to reject the goods.

Where there is a breach of the terms described in ss 9, 10, 11, 13, or 14 the consumer has:

### The short term right to reject (ss 20 and 22)

The short-term right to reject goods lasts for 30 days unless the goods are likely to perish in a shorter period of time (in which case it is the shorter time). The 30-day period is paused if

Figure 10.3 Implied terms in a consumer contract for the sale of a raincoat



the consumer asks for repair or replacement during this period. The consumer then has the remainder of the 30-day period, or seven days (whichever is longer) to check whether the repair or replacement conforms to the contract and if not to reject the goods. When a consumer rejects goods he can claim a full refund which must be given without undue delay, and in any event within 14 days of the trader agreeing that the consumer is entitled to a refund. If the consumer paid money under the contract, the trader must refund the money using the same method of payment unless the consumer agrees otherwise. The trader is responsible for the reasonable cost of returning the goods unless the consumer is returning them in person to the place where he took possession of them.

### The right to repair or replacement (s 23)

If the consumer has lost or chooses not to exercise his right to reject goods, he will usually be entitled to claim a repair or replacement. The trader must repair or replace the goods within a reasonable time and without significant inconvenience to the consumer and bear

any necessary costs incurred in doing so. If the repair or replacement still does not conform to the contract the consumer does not have to give the trader other opportunities to repair or replace but he can do so if he wishes. The consumer cannot require the trader to repair or replace the goods if that remedy is impossible or is disproportionate compared to the other remedies.

### The right to a price reduction or the final right to rejection (ss 20 and 24)

If repair or replacement is not available or is unsuccessful after at least one attempt, or is not provided within a reasonable time and without significant inconvenience to the consumer, then the consumer can claim a price reduction or reject the goods. The right to a price reduction is the right to require the trader to reduce by an appropriate amount the price the consumer is required to pay under the contract, and receive a refund from the trader for anything already paid. The amount of the reduction depends on the circumstances but can be any amount up to the whole price. If the consumer exercises his final right to reject the goods, then he is entitled to a refund. This refund may be reduced to take account of any use the consumer has had from the goods. However, no deduction can be made where goods are rejected within six months of supply, except where the goods are motor vehicles. No deduction can be made if the consumer has the goods because the trader has delayed in collecting them.

Where a defect is discovered within six months of delivery, it is assumed that the fault was there at the time of delivery unless the trader can prove otherwise or it is inconsistent with the circumstances (for example, obvious signs of misuse). If more than six months have passed, the consumer has to prove the defect was there at the time of delivery.

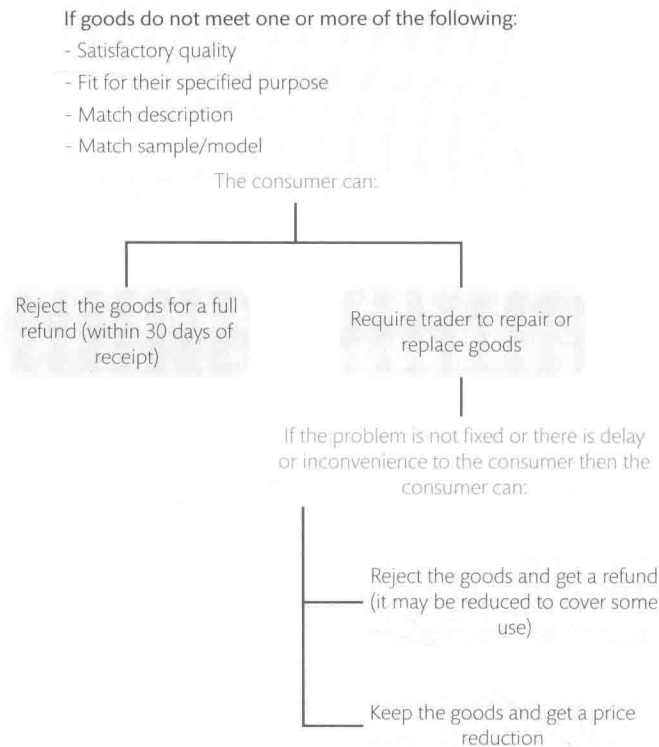
The remedies above are remedies provided by the CRA. However, a consumer will still have access to remedies in common law for breach of contract (see later under The Buyer's Remedies), such as damages, but the consumer cannot claim compensation twice for the same issue. For an outline of the remedies available to the buyer, see Figure 10.4.

## Delivery of Goods

The legal meaning of '**delivery**' is the 'voluntary transfer of possession from one person to another. It does not only refer to situations where goods are sent to a consumer, but also where goods are handed over, for example when a shopper purchases a dress in a shop and the dress is put in a bag and handed to her by the sales assistant. In a consumer contract the trader and consumer can agree a specified time or period of time, for example the delivery of a washing machine between 9am and 1pm on 1 June. If no agreement is made about delivery the trader must deliver the goods to the consumer without undue delay and in any event within 30 days of the contract. Where the parties have agreed a specified



Figure 10.4 Outline of remedies under the Consumer Rights Act 2015



time or period of time, for example the delivery of a washing machine between 9am and 1pm on 1 June, then the trader has an obligation to deliver the goods at the agreed time. If the trader fails to deliver the goods at the agreed time or within 30 days (if no time agreed) then, unless the delivery time was essential to the contract, the consumer can agree a further delivery period. If the trader fails to deliver the goods the consumer will be entitled to reject the contract. Delivery of goods will be essential to a contract if the consumer expressly told the trader or it was apparent from the circumstances, for example the delivery date of a marquee for a 21st birthday party, where the date of the party is known to the trader (CRA, s 28). If goods are delivered in the wrong quantity (too many or too few) the consumer can reject all the goods, accept all the goods delivered, or, if too many are delivered, just accept the quantity contracted for. If goods are accepted, they must be paid for at the contract price (CRA, s 25). Unless otherwise agreed, a buyer does not have to accept delivery by instalments. Where the contract does provide for goods to be delivered and paid for by instalments, and delivery of some of the instalments is defective, depending on the circumstances the consumer may be entitled to reject the whole contract or the goods in the instalment (CRA, s 26).