

## Customers' rights

- Do you or your organisation supply goods or services to customers?

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- Does your team's work affect the quality of goods or services supplied to customers?

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- All customers have rights when they buy goods and services.

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Do you serve customers directly? Do you produce goods or services which customers buy? There are very few jobs where nothing is being supplied to other people, although sometimes these are not charged for. For example, people who work in local councils or for charities may supply services which are paid for through taxes or donations.

Wherever goods or services are being bought, then customers have certain legal rights. This session looks at customers' rights, and what they mean to you and your team. In this session you will see that some law only applies to **goods** (which are things you can see or touch, like a car or a computer). Other laws apply only to **services** (which are things done for people, like repairing a washing machine or booking a holiday). Some apply to both. As a buyer or seller, you need to know about both.

## Agreeing a Contract of Sale

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When you buy goods or services, you enter into a **contract** with the seller. A contract is an agreement to buy and sell. A contract doesn't need to be written down, unless it involves land or buildings. Simply agreeing by word of mouth to buy or sell something makes a verbal contract.

If the terms of the contract are met by the supplier, then the contract for the supply of goods or services is legally binding on the buyer. That means, if the seller supplies the goods asked for by the customer, then the customer must pay for them, as agreed.

Contracts are formed when the buyer offers to give some **consideration** for them and the seller agrees to accept it. Consideration means to pay for goods or services or to swap something for them. Giving something away doesn't create a contract for sale. This is because there is no consideration. But if a customer has to buy a tube of toothpaste to get a 'free' toothbrush, then there is a consideration - the customer had to buy the toothpaste and a contract was formed between the buyer and seller.

Advertising something is available at a particular price is called an **offer to treat**. That means that the seller would like to sell the goods or services. It doesn't mean that the supplier has to sell the product to anybody who offers to buy it. Read this case study.

### Case Study

Chris breeds Dalmatian dogs. She is very particular about who she sells them to. When she has some puppies to sell she puts an advert in a specialist magazine.

Phil phones her up and says that he saw the advert and would like to buy one. He asks how much they are. She says that she wants 'about £350'. Phil asks if he can come and look at them. Chris says 'Yes, if he wants to, but she is very particular about who she sells to'. Phil says he doesn't have time to talk on the 'phone and arranges to visit Chris. When he arrives the next day, Phil chooses one of the puppies and offers Chris £350.

Chris asks him where he lives. He tells her, it is in a flat in the middle of London. She refuses to sell him the puppy. He says she has to sell it as she offered to sell them in her advert and he has travelled a long way to buy.

## Exercise

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Is Phil right? Must Chris sell the puppy to him? Why or why not?

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Chris might have checked these details earlier, and been clearer in her advert, but she doesn't have to sell. There's no contract. She simply invited people to make offers for the puppies (what the law calls an **invitation to treat**). In fact, she could ask a customer to pay more if she wanted. If there are lots of people interested, she can encourage them to bid up the price until only enough buyers are left for the number of puppies available, like an auction.

## What Customers Can Lawfully Expect

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Most contracts to buy or sell goods are covered by **The Sale of Goods Act 1979** (and amendments to it in 1994 and 1995) and the **Supply of Goods and Services Act 1982**. The main exception is selling property (eg buying or selling a house), which usually requires legally qualified assistance.

The Sale of Goods Acts say that sellers must own the goods that they are selling, which seems like common sense. The Acts also distinguish between **expressed terms** and **implied terms** or conditions. Expressed terms are particular agreements entered into as part of the contract. For example, an order may say 'Supply the goods by Friday at the latest'. That is an expressed term of the contract. Goods delivered on Saturday need not be accepted or paid for by the customer.

But all contracts have some implied terms. That means that when people agree to buy and sell something, they both imply certain conditions. Three implied terms are laid down in the Acts. Firstly, buyers have a right to expect that goods are of **satisfactory quality**. This applies to both new and second-hand goods bought from a trader, but not goods bought from a private individual. Satisfactory quality means that goods should be durable (that means that they will last a reasonable length of time in normal use), safe and have acceptable appearance.

Of course, this is in relation to the price and the circumstances in which they were bought. What a customer can expect from a charity shop isn't the same as from an exclusive dress designer.

Secondly customers have the right to expect that the goods are **accurately described**. That means that when a seller says that a coat is rain-proof, it does keep out the rain. Thirdly, goods must be of merchantable quality, or **fit for the purpose**. This means that goods must be suitable for the use they are being put to. If a customer asks for a cartridge for a particular laser printer then the cartridge supplied must work in that printer.

A trader can't exclude any of these contract rights for consumers. The **Unfair Contract Terms Act 1977** (and the **Unfair Terms in Consumer Contracts Regulations 1994**) say that the three basic rights (satisfactory quality, accurate description and fitness for the purpose) can't be left out or restricted if you are an ordinary consumer. However, if you are buying goods for use in a business, your Sale of Goods rights can be excluded, but only when the seller can prove that this is reasonable. This is because businesses are thought to be able to protect their own interests better than ordinary consumers.

Read this case study.

### Case Study

Isla works for a commercial horticulture company. Her team grow pots of herbs for supermarkets. Some herbs don't meet the very stringent requirements of the supermarkets. Some of the rejects are just uneven or lop-sided in appearance. Others are suffering from disease or starting to die back.

The owner of the company decides to run a stall in local markets to sell off the rejected stock at cut price. He tells Isla and her team to sort through the sub-standard herbs and find any which are still in sellable condition. He says that appearance doesn't matter as long as the herbs are still growing well. He asks them to stick some labels on them saying 'First class plants at second class prices'.

Isla objects. She says that selling the herbs will breach the Sale of Goods Acts, especially with those labels. The owner says that as it's a market, it doesn't matter what they say. People expect market goods to be imperfect.

## Exercise

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Is Isla right? Do you think that the herbs can be sold in the market? And should the labels be used? Why or why not?

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Consumers rights cannot be excluded or ignored by a supplier, no matter where goods are sold or at what price. All the customers for the herbs will have legal protection under the Sale of Goods Acts. Being in a market doesn't alter consumers rights at all. So Isla is half wrong and half right. The herbs can be sold, as they are still of satisfactory quality, given the fact that they are being sorted and sold at a cut price. And as they are still growing they are fit for their purpose, of being kept on a kitchen window sill to supply fresh herbs.

However, the description 'first class' is probably not accurate. If the herbs were first class, the company wouldn't have to sell them at half price.

## When Things Go Wrong

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What can a customer do when goods aren't of satisfactory quality, have been inaccurately described or aren't fit for the purpose? In other words, they fail to meet the implied terms of a contract? Or what if a supplier fails to meet an expressed term in the contract, perhaps by supplying the wrong product or not delivering on time?

In general, customers can return such goods and demand their money back. Customers do not have to accept replacement goods, free repairs or credit notes if the goods don't meet the terms of the contract, implied or expressed. However, a contract which has some expressed terms or conditions in it may also set some penalties or remedies if these terms aren't met. For example, if goods are promised to be supplied within 24 hours, the customer may get a reduced price if they arrive late.

Suppliers can refuse to give a refund if the goods have had some reasonable use. Then they can offer only to repair or replace them or to give a credit note. The time limit will vary with the goods and the amount of use. A £10 pair of trainers can't be expected to last as long as a £100 pair of hiking boots, even though the boots may get harder wear. All rights to compensation are lost in any case after a maximum of six years (five years in Scotland).

When goods are bought from a retailer or a distributor, the contract is always with them, not the manufacturer. However, the manufacturer may offer a **guarantee**. This adds to the customer's rights, it doesn't replace them. Generally speaking, guarantees add to the time within which faults in the goods can be put right. Extended warranties sold by retailers do the same. Neither replaces the customers' rights under the Sale of Goods Acts.

## Customers' Rights When Buying Services

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There are also some implied terms in contracts for services. **The Supply of Goods and Services Act 1982** adds three. These are that **reasonable care and skill** must be taken when supplying a service, that the service must be completed in a **reasonable time** and that it must be completed at a **reasonable charge**, if a price wasn't agreed in advance.

Reasonable care means that the supplier takes care to avoid any obvious risks. If the supplier is a specialist, then they are more likely to be aware of the possible problems which someone else wouldn't know about. Of course, any organisation wanting to be successful needs to do a good job, to protect its reputation. But things can go wrong, and customers have the right to demand that you put them right or complete the job. If not, they can get someone else to do it and sue your organisation - take legal action against it - to recover the extra cost.

Reasonable time means that suppliers can't disappear halfway through their work and not return for weeks. They would be failing in an implied term of the contract, even if no completion date was agreed. And the price can't be exorbitant. If there are any special reasons for abnormally high prices, like having to finish a job by working long hours, then the customer must be warned.

## Exercise

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- ❖ Have you ever had to return goods or complain about a service? Did the supplier refuse you your legal rights, or did they do more than was required? How did you feel?
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- ❖ What do you think your customers would feel about the service you and your team supply? Do you meet (or exceed) your customers' legal rights?
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## People Have a Right to be Respected

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The law does more than govern contracts. It also offers people certain rights as individuals, to be treated with respect. In the year 2000 the UK incorporated the European Convention on Human Rights into domestic law. This doesn't affect the way suppliers treat customers directly, but it does reflect a change in attitudes. Most law about contracts used to assume that buyers and sellers are equal. In fact, most ordinary consumers have a lot less power than suppliers, especially large suppliers.

The law now tries to give people extra protection because of this imbalance. This means that you cannot discriminate against customers on the grounds of their:

- ❖ Race - the **Race Relations Act 1976** makes it unlawful to discriminate against someone on the grounds of race, colour, nationality (including citizenship) or ethnic or national origin in the provision of goods, facilities or services;
- ❖ Sex - the **Sex Discrimination Act 1975** (amended 1986) makes it unlawful to discriminate on the grounds of sex in advertising or when providing housing, goods, services or facilities;

- ❖ Disability - the **Disability Discrimination Act 1995** makes it unlawful to treat disabled people less favourably than other people for a reason related to their disability. Suppliers must make reasonable adjustments for disabled people, such as providing extra help or making changes to the way services are provided; from 2004 they have had to make 'reasonable adjustments' to their buildings to overcome physical barriers to access, such as installing ramps rather than steps.

You are also required to treat information about customers with proper care. The eight *Principles of Data Protection* were set out in the **Data Protection Act 1998**. They are that data must be:

- ❖ fairly and lawfully processed;
- ❖ processed for limited purposes;
- ❖ adequate, relevant and not excessive;
- ❖ accurate;
- ❖ not kept longer than necessary;
- ❖ processed in accordance with the data subject's rights;
- ❖ secure;
- ❖ not transferred to countries without adequate protection.

In other words, if customers give you their personal details for any reason (their address for a delivery, their age, height and weight for an insurance policy) you shouldn't use it for other purposes or be so careless with it that other people who have no right to it can get hold of it.

In reality, most organisations don't need to worry about the law, because it only makes unlawful what would be very poor customer service anyway. A good supplier will not discriminate unfairly, nor will it be careless with information about its customers. Many organisations have policies or codes of practice which meet their legal obligations and often go beyond them. Sometimes these are drawn up by industry groups. For example, the Advertising Standards Authority (ASA) has a code of practice on advertising which prohibits advertising which is not *legal, decent, honest and truthful*. It is enforced by advertisers and publishers, who will withdraw any advertisement which is held to breach the code. This, and many more like it, ensure that organisations conduct business or provide services to their customers in ways which are not just lawful but which respect them as well.

## Team Leaders' Responsibilities

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You and your team must always take care to describe goods accurately. You should listen to customers and what they want the goods for. You are judging whether or not the goods are fit for the purpose. As employees, you and your team speak on behalf of your organisation. What you say forms a contract between your employer and the customer.

If you supply a service, you should take care to do the job as well as you are able, and make sure that you don't allow it to take too long to complete or run up bills customers aren't prepared for.

You don't need to know the law in detail. For one thing, there is just too much—the ASA lists 191 pieces of legislation which affect businesses and their customers! Much of it is very specialised, and is irrelevant to most people. But know what is important for you, your team, your organisation and your customers.

If you have any doubts about a customer's rights and your responsibilities, ask. Ask your manager or another person in authority if you're not sure. It doesn't matter how a customer behaves, treat your customers with respect. The law gives customers certain rights but those rights are just good customer service. If you treat customers fairly and do your job well, you and your team are likely to meet your legal obligations and have satisfied customers.

## Comprehension Check

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Complete the following exercises. Refer back to the session if necessary.

**A. List the three implied terms in a contract for the sale of goods.**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**B. List the three implied terms in a contract for the supply of services.**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**C. Mark the following statements True (T) or False (F)**

- 1. An organisation must sell to any customer who offers to pay the price the goods are advertised at.
- 2. A contract to sell goods is made once the seller accepts the customers' offer to pay an agreed price.
- 3. Only written contracts to sell goods and services are enforceable by law.
- 4. A supplier can insist on customers accepting credit notes if they return faulty goods.
- 5. A supplier can require customers to give up some of their rights under the laws about the sale of goods and supply of services, but only with trade customers.
- 6. If goods have a manufacturer's guarantee, a retailer is no longer responsible for their quality.
- 7. Suppliers can choose to serve whichever customers they please, without having to justify refusing service to people they don't like.
- 8. Codes of practice adopted by organisations can give customers more rights than they have by law.

## Making Connections

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Answer the questions following each case.

### Case A

Sean is a keen walker. He sees some 'Alpine Boots' advertised at half price as part of a special purchase. He goes into the shop to buy them. The shop assistant, Maia, only started that day. Sean tells her he is planning to walk along the Pennine Way, the long distance footpath. He asks if they are up to the job.

Maia: "I should think so. After all, they are called Alpine Boots."

Sean: "But they're very cheap."

Maia: "Well, we've got a whole load of them, so we're doing a special deal."

Sean's boots fall to pieces on the Pennine Way. He demands that he has all his money back. The shop offers a credit note or to change the boots.

- ❖ Should Sean accept their offer? Why or why not?

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### Case B

Jamie has a small company designing and operating websites for local businesses. He employs three designers. They have been getting very busy lately, and are finding it difficult to cope with the work load.

Whitings is a local delicatessen which wants to start an Internet-based mail order business. They have asked Jamie to design the website but after two months he has still not completed it. The owner of Whitings tells Jamie she is going to ask another company to do the work. Jamie says that she must allow them to finish it. They have a contract, as she asked them to do it for the price Jamie quoted. There was no completion date agreed, only that it should be 'as soon as possible'.

- ❖ Is Jamie right? Was there a contract? Do you think he can oblige Whitings to let him finish the job?

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## Think and Apply

How well do you use the skills in this session? Think about the way that your organisation deals with its customers.

- ❖ Does it give customers their minimum legal rights, or does it try to offer better or worse service?
- ❖ Do you and your team have the knowledge of the goods you sell to give customers the level of advice they are entitled to?
- ❖ Do you and your team use reasonable care and skill when supplying services?

1. Read the list of skills. Tick the boxes to show your strengths and weaknesses.				
<i>Skills</i>	<i>strengths &lt;- - - -&gt; weaknesses</i>			
	I'm good at this	I'm quite good at this	I'm not so good at this	I'm quite poor at this
■ recognising whether goods or services are of 'reasonable quality'	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
■ describing goods accurately	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
■ making sure goods meet customers' needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
■ making sure services are delivered on time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
■ ensuring complaints about goods or services are dealt with legally and in accordance with the organisation's policies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you want to improve any of these skills?				
3. How do you plan to improve the skills you listed in question 2? (You might want to discuss this with your line manager or your tutor/mentor/coach.)				