

Consumer remedies for faulty goods

A consultation response by the Office of Fair Trading

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1 FOREWORD

- 1.1 As the UK's competition and consumer authority the Office of Fair Trading (OFT) is pleased to have the opportunity to respond to the Law Commission's consultation on consumer remedies for faulty goods. We agree that consideration of the effectiveness of existing remedies and proposals for change is appropriate at this time alongside consideration of the EU's proposal for a Consumer Rights Directive as part of the review of the consumer acquis. We welcome the opportunity to consider changes to the existing system of remedies which we agree is difficult for consumers, traders and consumer advisers to understand and confidently act upon.
- 1.2 We have also responded to BERR's consultation on the proposal for a Consumer Rights Directive (CRD) in which we expressed a number of concerns relating to the provisions on sale of goods and remedies particularly in light of the maximum harmonisation approach of the directive. Our concerns under the directive are wider than the loss of the 'right to reject', although we are strongly opposed to its potential loss. We consider that the CRD effectively proposes to disproportionately empower the trader at the expense of the consumer. When considering the issue of rights and responsibilities for remedies it should always be borne in mind that it is the **trader** who is in breach of the contract. Consumers are entitled to expect fault-free purchases, and easily exercisable remedies where this is not the case.
- 1.3 The proposals on consumer remedies set out in this consultation seem to be based on sound evidence and analysis of the historic and current problems. We support the overall objective of the review and, in the main, the detail of what is proposed. In particular, we believe that a fixed period for consumers to return faulty goods is very welcome in order to provide clarity and certainty. This would also be a much simpler and clearer message to give to consumers.
- 1.4 We note the research that informed the analysis which showed that in general consumers have a poor understanding of their rights and this confirms our own experience. From complaints received via Consumer

Direct it also appears that in many cases it is the **trader** who suggests and imposes the remedy which is most suitable for him. We think that this is an indicator that consumers are insufficiently confident enough of their rights to be able to assert the remedy which they would prefer.

- 1.5 The suggestion to revise the wording currently in use to clarify the relationship between retailers' voluntary policies and consumers legal rights is a welcome step and we suggest that the proposed wording is tested on consumers.
- 1.6 We are supportive of the need to inform consumers of their rights, and consider that traders should also be targeted in campaigns together with information materials. If both parties are confident of the legal position this may reduce the potential for misunderstanding and dispute when consumers try to assert their rights.

2 THE RIGHT TO REJECT IN SALES CONTRACTS

10.1 We provisionally propose that:

(1) the right to reject should be retained as a short term remedy of first instance for consumers (8.31)

2.1 We agree. Our thinking, which forms the basis of our response to all of the questions in Part 10, is essentially based on two fundamental principles:

1. It is important that the right to reject is retained. In our view consumer confidence would be significantly impaired by its removal. While we appreciate the findings that both consumers and traders have difficulty understanding the extent of their remedies it is generally the one remedy that consumers are fairly confident about, at least in the immediate period following purchases. If this remedy were removed, consumers may be less adventurous in their purchasing and tend to favour known brands and suppliers making cross-border trade less likely. Although we can envisage ways in which the effect could be lessened by the promotion of voluntary schemes this would not entirely eradicate the detriment, particularly for small businesses and cross-border traders.
2. We believe that if consumer remedies are to be reformed either in the UK or throughout the EU, the reforms should simplify the remedies available. In some cases this might appear disadvantageous to consumers in the finer detail but we believe overall simplicity giving consumers a clear path of remedies is the best solution. We believe that making consumers aware of their rights and supporting them to develop the skills and confidence to exercise their rights could address any potential disadvantage which could arise from making remedies as simple as possible.

2.2 In addition, we are conscious that the current EU proposal for a Consumer Rights Directive (CRD) would eliminate the right to reject. The EU is likely to listen more readily to requests to incorporate such a right

within the CRD if it is simplistic and can be demonstrated to be a remedy which would be of general benefit.

(2) the right to reject should not be extended to cover latent defects which appear only after a prolonged period of use (8.41)

2.3 We agree. In the interests of simplicity, and of minimising the risk of additional costs being passed on to consumers, we question whether this is necessary. If such a right were to be created we feel it should only relate to goods which have a longer life span. In any event, we think that the remedies of repair, replacement and rescission for non-conformity of goods coupled with a potential general claim for damages for breach of contract should be sufficient to give consumers the remedies they are most likely to require or are most appropriate in these circumstances. For example, taking the scenario of the defective support beam, rejection is unlikely to be the most appropriate remedy. Repair or replacement would be effective remedies. If it were possible to rescind in cases where there is an understandable loss of confidence in the supplier, in our view this would amount to a good set of remedies. Our comments are subject to the observation that Article 27 of the CRD which relates to damages is clarified and does not restrict the current UK legal provisions in relation to heads and level of damages available where there is a breach of contract.

(3) the legislation should set out a normal 30 day period during which consumers should exercise the right to reject which would run from the date of purchase, delivery or completion of contract, whichever is the later (8.75)

2.4 We agree that the idea of a finite time in which the right to reject is available would be a sensible reform, provided that the period is long enough. Although we appreciate that even specification is likely to reduce the period of time in which the right may currently be exercised in some circumstances, the advantages of simplicity outweigh the potential disadvantages in our opinion. Further, we believe that many possible disadvantages could be avoided by a good consumer/trader awareness programme. If both consumers and traders knew there was a specific period in which this right could be exercised we think it may

give consumers added confidence in their dealings with traders and vice versa.

- 2.5 We do think that careful thought would need to be given to when the period commences. We would not support any time limit starting on a deemed delivery date when it is apparent that the consumer does not have possession of the goods.
- 2.6 Also, where goods may be delivered but not installed for some time, due to, for example, the installation being part of a wider contract, the period should not start until completion of installation or any related works contract. For example, a washing machine may be supplied and delivered to be part of a new kitchen. Where the supplier also supplies the kitchen and is aware that the washing machine may not be used for some time, then the time should not start until the washing machine is installed and available for use. We appreciate that this could be dealt with in one of two ways, either by reference to the defined start point of the period or as suggested under 10.3(2)(a). We think that in the interests of simplicity and avoiding a new area of uncertainty as to what is reasonably foreseeable at the time of sale, defining the start point to take account of such scenarios would be preferable, although potentially more difficult and more likely to leave out some situations.

The normal period of 30 days

10.2 Do consultees agree that 30 days is an appropriate period? We would be interested in receiving arguments for either a shorter or longer period.

- 2.7 Many traders and consumers already appear to believe that they have 30 days in which to return goods (probably as a result of voluntary systems offered by some traders) so we think that this period is probably appropriate and gives the consumer sufficient time to test the goods and enables the trader to have some certainty.
- 2.8 We have assumed that the period relates to 30 calendar rather than working days but think that this should be clarified.

10.3 We ask consultees whether it should be open to

(1) the retailer to argue for a shorter period where

(a) the goods are perishable (that is they are by their nature expected to perish within 30 days)?

2.9 We agree that a shorter period should apply in such circumstances.

(b) the consumer should have discovered the fault before carrying out an act inconsistent with returning goods?

2.10 We do not agree with this proposal as we believe it complicates the issue and will introduce uncertainty and the possibility for legal dispute. We appreciate that currently a buyer will be deemed to accept goods and lose the right to reject if he carries out any act inconsistent with the ownership of the seller¹ and would agree that a similar provision could be retained, although the question of acceptance has been fraught with difficulties. However, this proposal may result in consumers feeling unable to use the product freely enabling them to discover faults. This type of exception to the right will make consumers uncertain as to what they are able to do with a product and when they can return goods. It might result in goods being returned more frequently as consumers are fearful of continuing to use a product if they are unsure whether there is a fault or not.

2.11 It is not clear to what extent such a provision would shorten or remove a consumer's right to reject in the circumstances currently envisaged in S14(2C) of the Sale of Goods Act (SOGA). We would not be adverse to the retention of these provisions but it is important that if this is done it is done in a way which clearly defines the limits of the right to reject in a way that the trader and consumer can understand and apply.

¹ S35 of the Sale of Goods Act

(2) the consumer to argue for a longer period where

(a) it was reasonably foreseeable at the time of sale that a longer period would be needed ('objective circumstances')?

2.12 We are wary of complicating the remedy by introducing this type of exception. It will potentially give rise to legal disputes and is thus likely to give rise to costs that would tend to be passed on to consumers. We refer above (in response to 10.1(3)) to the type of scenario when this could be used but would prefer the option of defining the start date to encompass such situations. In the case of products bought in end of season sales, such as skis, we feel that the consumer should either reach an express agreement with the retailer or they will have the alternatives of repair, replacement, or reduction in price, if the goods do not conform. We favour clarity of the remedy combined with consumer education. Although we appreciate that this is an area where that could reduce protection slightly in limited circumstances, the consumer should not be left without a remedy.

(b) the parties agreed to extend the period?

2.13 We agree that the parties should be able to agree to extend the period subject to it being possible to challenge, as unfair, the use of pre-drafted contract terms whose effect is to reduce the period (as seems likely by reference to Annex 3(1)(a) of the CRD).

(c) the consumer's personal circumstances made it impossible to examine the goods within the 30 day period? If so, should this justify only a short extension, such as an additional 30 days, or a longer extension of six months or more?

2.14 We do not think that an extension should be available in these circumstances as it introduces too much uncertainty and room for abuse and argument, and thus (again) increased costs and prices. Provided consumers are aware of their rights and understand that they have a strict limit of 30 days in almost all circumstances, they can plan their purchases accordingly. Combined with a careful definition of when the time period starts and the other remedies available we think that this should be adequate protection for consumers. We appreciate that in

some limited circumstances this might deprive a consumer of the right to reject, for example, due to illness. On balance, however, and given the other rights available, the benefit of precision overrides this.

(d) there were fundamental defects which took time to be discovered?

2.15 For the reasons given in 10.1(2) we do not think that there should be an extension in these circumstances.

10.4 Are there other reasons to justify a shorter or longer period (8.76 to 8.77)?

2.16 There could be circumstances where purchases are made at a physical distance from the consumer's home, which could make it difficult to return a product within a short time-frame. In order to encourage cross-border purchases an extension of the time may be appropriate, but we would see this as an issue to be agreed between the retailer and the consumer at the time of purchase rather than a legislative requirement. For traders to be required to give a longer period depending on where the consumer lives could be seen as a potential barrier to the free movement of goods for cross-border purposes.

Other issues

10.5 We provisionally propose that a consumer who exercises a right to reject should be entitled to a reverse burden of proof that the fault was present when the goods were delivered (8.81)

2.17 We agree. In our view there is no basis for there being a difference between the right to reject and the rights to repair and replacement in this respect. In practice this is likely to be the reality. This also simplifies the regime by eliminating legal issues which consumers and, indeed, traders are unlikely to appreciate in any event.

10.6 We provisionally propose that legal protection for consumers who purchase goods with 'minor' defects should not be reduced (8.91)

2.18 Again we agree. This supports the need for simplicity but, also, in our view, any erosion on this basis may result in a significant reduction in

consumer protection in an area which is important to consumers. The incentive for traders to produce high quality goods could also be eroded.

3 THE RIGHT TO REJECT IN OTHER SUPPLY CONTRACTS

10.7 We ask consultees whether the normal 30 day period for rejecting goods should also apply to other contracts for the supply of goods in which property is transferred, or whether the current law should be retained (8.104)

3.1 We believe that it should also apply to other contracts. While in legal terms consumers' rights may be limited by doing so it is an area of the law which is so little known and appreciated by consumers and traders alike, we do not believe that in practice the change would result in real disadvantage for consumers. On the contrary, the simplicity of having a specified time within which a right to reject existed is likely to be advantageous on balance.

10.8 We provisionally propose that in hire contracts, the current law should be preserved. When goods develop a fault, the consumer should be entitled to terminate the contract, paying for past hire but not future hire (8.108)

3.2 We agree. Although currently even in hire contracts the remedy can sometimes be wider ranging it would seem that the appropriate remedy in a hire contract is termination of the contract with a release from the obligation to make further hire payments. We assume that a right to claim damages would remain.

10.9 We welcome views on the issues raised by hire purchase contracts, and whether they cause any problems in practice. In particular should hire purchase be treated as a supply contract to transfer property in goods, or as analogous to a hire contract? (8.112)

3.3 It is our view that consumers view hire purchase contracts very differently to simple hire contracts. There is an expectation of gaining a property right at the end of the contract, and having continued use of the product for which they have been paying after the hire purchase contract has been performed. We are unable to obtain any meaningful data in relation to complaints concerning hire purchase and suspect that this may be because consumers consider such contracts as sales contracts. We believe that given consumers' expectations, the remedies

available under hire purchase should be analogous to those given under sale and supply of goods contracts rather than the more limited rights under hire contracts.

4 REFORMING THE CONSUMER SALES DIRECTIVE

Clarifying when consumers may proceed to a second tier remedy

The number of repairs

10.10 We provisionally propose that the directive which replaces the CSD should state that after two failed repairs, or one failed replacement, the consumer is entitled to a second tier remedy (8.135)

- 4.1 In our view the trader should be given only **one** opportunity to repair or replace per item and not per fault. The trader's obligation is to provide the goods free from fault at the first attempt. We see no reason why the trader should be given more than one attempt to rectify his breach if the consumer then wishes to rescind the contract. In some circumstances the failure to perform the contract as agreed by that stage will result in the consumer having lost confidence in either the item or the trader, and we see no reason why the trader should have further attempts to perform unless the consumer agrees to this course of action. As a matter of policy, choice for the consumer is conducive to markets working well. We think that it is inappropriate and unfair that a consumer should be locked into a cycle of repairs in the event that multiple faults arise in the product. Clearly the trader has failed to perform the contract as agreed and the consumer should be entitled to rescind notwithstanding that the trader may have repaired the first fault adequately.
- 4.2 A potential disadvantage of consumers being locked into a cycle of repairs is that consumers may seek to avoid the risk of making purchases from new market entrants who would tend to be small and medium enterprises or traders from other member states taking initial steps to establish a cross-border presence. Larger mainstream traders who are able to offer refunds in any circumstance could prosper, ultimately to the extent that they no longer feel the need to offer such refunds. This would be to the permanent disadvantage of all consumers and would tend to drive standards down rather than up. We also think that there is a risk of consumers being locked into unsatisfactory

transactions rather than being able to take business away from less efficient providers and giving it to more efficient competitors.

10.11 We provisionally propose that further guidance should be provided stating that the consumer should be entitled to rescind the contract:

(1) where the product is in daily use, after one failed repair;

(2) where the product is essential, immediately;

unless the retailer has reduced the inconvenience to the consumer by, for example, offering a temporary replacement (8.136)

4.3 We do not agree that this is an appropriate matter to be dealt with by way of guidance. We feel that in this area the consumer needs certainty which can only be achieved if the law prescribes that in the event that the product is of a nature that is in daily use or is essential the consumer should be entitled to rescind the contract immediately. If this is mere guidance which traders can choose to follow or not, some will offer this in full or in part and some will not. The result is that consumers will be confused about what their statutory rights are and what is being offered voluntarily in much the same way as is currently happening. We would like the simplicity of a legal obligation which can be communicated to traders and consumers.

4.4 We do not agree that a trader should have the opportunity to repair a product that is in daily use once, or that any immediate right to rescind in such circumstances should be subject to the trader offering a temporary replacement. The reasoning for this is that we think that only one repair should be allowed in any event, as stated in our response to 10.10. We do not see why a distinction is being made between something in daily use and something that is essential, as something in daily use is likely to be essential for the individual consumer. While we can see that potentially this could be extremely wide, if it were limited to products which by their nature are in daily use or essential we believe that a fairer balance can be achieved.

- 4.5 It would also avoid consumers being required to give personal details about their circumstances to traders in order for the **trader** to then decide if those circumstances meet the requirements and the consumer is entitled to rescind. We think that this would be a breach of an individual's right to privacy and would give the trader too much jurisdiction over the entitlement to rescission.
- 4.6 Problems could arise in relation to offering replacements as these could take time to be provided and questions arise as to whether the temporary replacement should be of comparable standard or the same product. What is the measure of reducing inconvenience? If the product is essential or in daily use providing a replacement for a few days will do so, but only to a limited extent. The consumer is still going to be inconvenienced. We believe that in these circumstances the consumer should have the choice of rescission. Again it should be borne in mind that it is the trader who is in breach of contract.

10.12 We welcome views on the form such guidance should take (8.137)

- 4.7 For the reasons given in our response to 10.11, we do not think that this is an appropriate subject to be dealt with using such guidance.

The process of repairs

10.13 We provisionally propose that there should be best practice guidance on the process of repairing and replacing goods under the CSD (or any replacement to the CSD) (8.141)

- 4.8 We agree that this would be a useful and appropriate topic for guidance which should deal with topics such as timing of deliveries of replacements and details of faults and repairs that should be provided to consumers. Any such guidance should not deal with damages for a breach of contract but could give indications of the appropriate level of payments to compensate inconvenience and so on. We feel that the guidance should be issued at EU level to ensure that traders across the EU are aiming to operate on the same levels.

10.14 We ask consultees what form that guidance should take. In particular, should it be issued at EU or national level? (8.142)

4.9 See our response to 10.13

Dangerous goods and unreasonable behaviour

10.15 We provisionally propose that the CSD should be reformed to allow a consumer to proceed to a second tier remedy when a product has proved to be dangerous or where the retailer has behaved so unreasonably as to undermine trust between the parties (8.146)

4.10 We would prefer a more objective test perhaps by reference to best practice in the industry and/or to wilful, negligent or incompetent behaviour by the trader.

4.11 We agree in principle that there needs to be a provision to cover this type of situation. However, we would wish to avoid using terminology that is likely to give rise to legal disputes as far as is possible. We are also concerned that if any such provision was to be included in the CRD that there was no danger of overlap with the provisions of the Unfair Commercial Practices Directive (implemented by the Consumer Protection Regulations). Dangerous goods are defined in some circumstances, so we feel that this expression may limit the extent of any such right.

4.12 In addition, we feel that as expressed there would be a heavy burden on a consumer to establish that a trader has behaved in the way necessary to undermine trust.

Rescission: the deduction for use

10.16. We ask consultees whether they agree that the 'deduction for use' in the event of rescission should be abolished (8.157)

4.13 We agree.

The six month reverse burden of proof

10.17 We provisionally propose that the six month reverse burden of proof should recommence after goods are redelivered following repair or replacement (8.136)

4.14 We agree.

Time limit for bringing a claim

10.18 We provisionally propose that the time limits for bringing a claim should continue to be those applying to general contractual claims within England, Wales and Scotland (8.170) 10.19 We welcome views on whether there is a need to prevent consumers from pursuing remedies where faults come to light more than two years after delivery. We welcome views on whether this might cause problems in particular cases (8.171)

4.15 We agree that the time limits for bringing claims should continue as they are. We see no reason for a two year limitation applied across the board without discrimination as to the value and intended longevity of the product involved. We feel that this could cause problems in some cases, and no action should be taken without careful assessment of how significant these would be and whether there would be any real benefit to traders. In most cases consumers are unlikely to pursue claims or seek to exercise rights under the CRD after two years. The ability to establish that the fault existed at the time of purchase is likely for many products to be difficult at that stage. Therefore, in our view it is likely that a consumer would only wish to pursue a claim against a trader after two years has elapsed in the more serious of cases where the products are high value, expected to have longevity or the damage resulting from the fault is significant. If a consumer is able to prove that the fault did exist we see no reason why traders should be exempted from claims.

5 WRONG QUANTITY, LATE DELIVERY AND DAMAGES

Wrong quantity

10.20 We welcome views on whether there are reasons to retain section 30 of the SoGA for consumer sales, or whether cases where the wrong quantity is delivered can be dealt with through the application of general principles (8.174)

5.1 In our view there are good reasons to retain the specific provisions relating to delivery of the wrong quantity of goods. S30 of the SOGA gives detailed remedies for all the different circumstances that may arise in relation to wrong delivery, that is, too few, too many and mixed goods. The remedies are specific to the problem and well thought out. We do not believe that the remedies that would be available if these specific remedies were removed would necessarily resolve the problems arising as a result of delivery of the wrong quantity satisfactorily for consumers. The consumer may wish to reject all the goods and in some circumstances this would be reasonable. If rejection is not necessary or desirable or is no longer a remedy and, if the goods do not conform giving the consumer recourse to a remedy under CRD, the CRD first tier remedies of replacement or repair are inappropriate. This potentially leaves the consumer with rescission or, as currently proposed, a reduction in price which might or might not be the most appropriate remedy in the circumstances and does not give the consumer the range of options currently available.

Late delivery

10.21 We seek consultees' views on whether consumers should be entitled to a full refund whenever the trader fails to meet an agreed delivery date, or whether the current law should be retained (8.179)

5.2 We are of the view that the current law is confusing for consumers and many consumers are not aware that when they agree a delivery date that a failure to deliver does not entitle them to withdraw from the contract unless they have made that clear at the time they contracted. We think that the proposal in the CRD would simplify the law in a way

consumers could easily understand and probably more accurately reflects what consumers believe they are entitled to do. Many complaints revolve around late delivery and we believe that this type of provision will encourage traders to give greater consideration to the delivery dates that they agree with consumers, thereby, reducing consumer dissatisfaction and complaints generally. It will also encourage traders to communicate sensibly with consumers when there is a problem with delivery leading to better customer service.

Damages

10.22 We provisionally propose that the right to damages should be retained in UK law (8.186) 10.23 We seek views on whether the issue of damages should be left to the common law or whether guidance would be helpful on the circumstances in which damages should be payable to consumers. In particular, should damages be available for loss of earnings, distress, disappointment, loss of amenity and inconvenience? If so, for which types of goods, and in which circumstances? (8.187)

5.3 We agree that the right to damages should be retained in UK law. The CRD remedies are not sufficient on their own. We have referred above, in our response to 10.1, to our reservation about Article 27 of the CRD and the impact that it may have on the right to damages under UK law. Consumers should be able to claim damages for any reasonably foreseeable losses arising from the trader's breach of contract, particularly, in the case of damage to property and person that result. While we would envisage that many consumers and traders may deal with compensation for lost days off work and expenses incurred in connection with non-conformity of goods in accordance with any guidance issued in this respect, consumers whose circumstances are such that their losses are greater for some reason should retain the option of pursuing damages. While compensation is often sufficient for the most straightforward cases, the level of compensation set is usually on the low side, not revised sufficiently often and suitable only for the most straightforward cases where the damages would be low in any event.

5.4 We consider that guidance on circumstances for claiming damages would be helpful, but not on the amount to be claimed.

6 INTEGRATION OF CSD REMEDIES WITH THE RIGHT TO REJECT

10.24 We provisionally propose that SoGA and the CSD remedies should be better integrated in a single instrument, by use of the concept of rejection (8.193)

10.25 We provisionally propose that once a consumer has accepted a repair, their right to reject ceases. If the repair fails, the consumer should proceed to a second tier remedy along the lines we have proposed in relation to the reform of the CSD.

- 6.1 We agree that the CRD remedies and the right to reject should be integrated into one system for the sake of simplicity making the rights easier for consumers, traders and advisers to understand. We also agree that it would be simpler for consumers to understand that if they accepted a repair they would lose the right to reject but could proceed to rescission if the repair was unsuccessful or another fault surfaced. However, we would only think that this limitation of consumer rights would be appropriate if the consumer could proceed to the second tier remedy of rescission after one failed repair or replacement per item not per fault. Otherwise the loss of the right to reject following repair could result in the consumer being locked into a cycle of repairs which would significantly disadvantage the consumer. Further, consumers may refuse repairs and reject goods if they anticipated that by accepting a repair their ability to reject or rescind the contract may be much more difficult to exercise.
- 6.2 We are concerned that, if the right to reject is integrated into one system with the remedies for non-conformity, the right to repudiate (that is, reject) a contract for breach of a contractual condition under UK law should be retained generally. The way in which the CRD is drafted, and indeed the Consumer Sales Directive, does not make the requirements that goods are of satisfactory quality, fit for the purpose, and so on, conditions of the contract in the same way as the SOGA. Therefore, the remedies contained in the CRD are for non-conformity rather than breach of contract. Currently, the right to reject exists for breaches other than terms implied into the contract by the SOGA. We would be concerned if such rights were lost as a result of integration of the right into the CRD.

7 CONSUMER EDUCATION

10.26 We ask consultees to comment upon how the aim of increasing awareness of consumer legal rights for faulty goods might be achieved (8.216)

10.27 In particular, should there be a summary of consumer legal rights for faulty goods available at point of sale? If so, which form should it take? (8.217)

- 7.1 Consumers are often not concerned with knowing their legal rights for faulty goods until something goes wrong. Because of this, a consumer's first experience dealing with a faulty good is likely to shape how they believe faults should be rectified and how they will behave when they purchase faulty goods in the future.
- 7.2 Making the rights easier and simpler for consumers, traders and advisers to understand will help to ensure consistency in the process for managing claims when faults arise.
- 7.3 If the rights are amended there should be a national co-ordinated programme to inform advisers, traders and consumers of the changes, how it affects them and most importantly where they can get advice if something does go wrong in the future.

10.28 We ask consultees whether they agree that notices displayed in shops should:

(1) use the expression 'This does not reduce your legal rights' rather than 'This does not affect your statutory rights'.

(2) say how a consumer could obtain further information about their legal rights (8.218)

- 7.4 We agree that the wording 'this does not affect your statutory rights' lacks clarity for most consumers, and have challenged terms under the Unfair Terms in Consumer Contracts Regulations (UTCCRs) on that basis². However, the alternative phrase is considered just as confusing.

² OFT (2008): *Unfair contract terms guidance: Guidance for the UTCCRs 1999*

We do not think that the problem with the usual formula is that consumers do not understand 'affect' and 'statutory', rather that they are unclear on what their statutory rights are³. We would recommend that wording of the summary and any additional lines should be tested on consumers to ensure they understand what is being communicated.

- 7.5 We would also support the reference within notices that consumers should be directed to the Consumer Direct **website** for further information. We agree that further discussions regarding cost implications for a potential increase in referrals to the service are appropriate.

³ See OFT (2008): *Unfair contract terms guidance: Guidance for the UTCCRs 1999*, Annexe A, for examples of what we have accepted to be fairer drafting of 'this does not affect your statutory rights' produced by traders in response to our enforcement action

8 ASSESSING THE IMPACT OF REFORM

10.29 We welcome comments and information about the costs and benefits of our proposals (9.68)

- 8.1 We support the proposals which we believe will help clarify the law for both consumers and traders and which assist enforcers when considering potential infringements of legislation. Rights need to be clear to empower consumers and enable them to use the law effectively.
- 8.2 Consumers are entitled to goods which are free from fault and we think that this should be the overriding consideration when assessing costs. Retaining the right to reject with a clear cut off point together with improved consumer awareness of their rights will in our view provide incentives for businesses to provide fault free products and for consumers to have more confidence when making purchasing decisions.

10.30 Do consultees agree that:

(1) keeping the current law ('doing nothing') would retain the avoidable administrative burden on retailers and would continue to produce unnecessary disputes?

- 8.3 We agree that the current lack of clarity is a factor which gives rise to a number of disputes.

(2) abolishing the right to reject would damage consumer confidence?

- 8.4 We strongly support the retention of the consumer's right to reject in order to ensure that they have a strong bargaining position when asserting their rights, and to provide greater confidence when buying from **all** traders, not just those with voluntary returns policies.

(3) extending the right to reject would increase costs to business and might lead to increased landfill?

8.5 In our response to 10.1 we have said that the right to reject should be retained for most products as a short term remedy with an extension only applying to those goods with a much longer life span.

(4) the greatest benefits stem from retaining the right to reject but providing appropriate clarification about how it operates? (9.69)

8.6 Simple, clear and straightforward regulations make it easier for businesses to understand what is required from them and to comply. In addition, it makes it easy for consumer to understand what their rights are and to implement them. Any proposed changes to the regulations should be communicated simply. For example, the use of terms such as 'rescind' and 'reverse burden of proof' should be communicated in the body of the document (not just the glossary) using words that are more easily understood by the general public.

8.7 Raising awareness of rights is important to help improve business and consumer interactions. Education plays a complementary role by developing consumer's skills and confidence so they become confident exercising their rights.