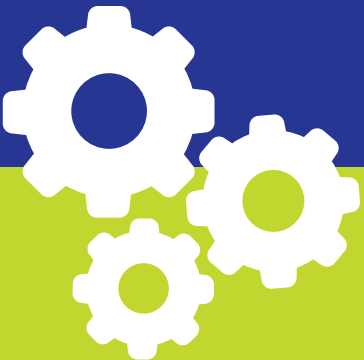




Guide to the Sale of Goods Act for Retailers



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Promoting Confident Consumers and Responsible Traders

Guide to Sale of Goods Act 1978

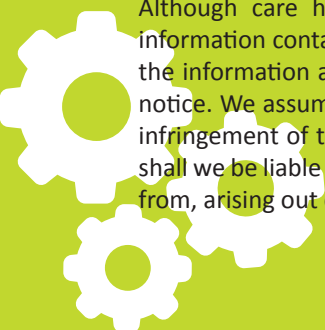
The Guide to the Sale of Goods Act 1978 is intended to assist you as retail owners, traders, managers, supervisors and team leaders who are engaged in selling and providing goods.



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Guide to the Sale of Goods Act for Retailers

Introduction:

The Sale of Goods Act 1978 (“SOGA”) sets out the law on sales of goods in Bermuda. It gives your customers some legal rights when they return items they have bought from you.

As a retailer you need to know how SOGA affects you and your customers. This guide to SOGA (“Guide”) has been prepared by Consumer Affairs (“we”, “our” or “us”) and is intended to assist you as retail owners, traders, managers, supervisors and team leaders who are engaged in providing goods to customers (“Retailers”, “you” or “your”) on the main points of SOGA.

The aim of this Guide is to help you feel confident about SOGA when dealing with customers who are returning goods they have bought. It will also assist you so that your customers can stay happy, and you stay on the right side of the law.

This Guide will explain the following:

- 1 When do customers have rights?
- 2 When don’t customers have rights?
- 3 Your responsibilities as retailers
- 4 Refund, repair or replacement?
- 5 Refunds for faulty goods (what the law says)
- 6 Repair and replacement for faulty goods (what the law says)
- 7 Warranties, store policies and store credits
- 8 Delays in deliveries
- 9 Summary
- 10 Dealing with a customer complaint
- 11 Sale of Goods Act 1978 (SOGA) in practice (examples of complaints)
- 12 Guide for redress through SOGA

Note: Reasonable time is not defined under SOGA, and is a determination of fact. Sale of Goods Act 1979 (UK) provides that reasonable time is six months. The courts in Bermuda may use this timeframe as a guideline.

1. When do Customers have rights?

Customers have rights when the goods they have bought are faulty and SOGA protects these rights for goods that:

- 1.1 Do not match the description – by law everything that is said about the product must not be misleading – whether is it said by a salesperson, written on the package, on a label, in store or on advertising materials.
- 1.2 Is not of satisfactory quality – quality of goods include appearance and finish, freedom from minor defects (such as marks or holes), safe to use, in good working order and durable.
- 1.3 Is not fit for its purpose – if a customer says or when it should be obvious to you, that the item wanted is for a particular purpose, then it has to be reasonably fit for that particular purpose. This includes even if it is for a purpose that the item is not usually supplied for or if you agree that it is suitable, or do not say that it is NOT fit for that purpose. If you disagree with the customer about a particular purpose, you need to make it clear, perhaps on the sales receipt to protect yourself against claims.

The contract is the legal agreement you have with the customer when you sell them something. If the item is faulty for any of the reasons listed above, the customer has rights and they are entitled to ask you to do something about the problem.

These rights apply even if the goods are reduced in a sale or they are being sold as secondhand goods by you.

YOU and NOT the manufacturer or supplier are legally obliged to resolve the matter with your customer at any time up to six years from the date of purchase.

2. When don't Customers have rights?

Under SOGA, customers do NOT have any rights if:

- 2.1 They accidentally damaged the item;
- 2.2 They misused it and caused a fault;
- 2.3 They tried to repair it and damaged it;
- 2.4 They knew it was faulty before they bought it. The fault was clearly pointed out to them prior to the sale;
- 2.5 They've changed their mind (e.g. wrong colour, doesn't suit them, they found something else they like more, or it was cheaper at another store);
- 2.6 It would not be reasonable to expect the item to have lasted this long; and
- 2.7 If it is over six years since they bought the item since they discovered the problem.

Your store policy may provide for an exchange or store credit if the customer has changed their mind, however, under SOGA it is not required by law.



3. Your responsibilities as a retailer

Anything you or your staff say about an item such as advertising, labeling or advice you give, regardless of whether it comes from manufacturers, importers, producers or you, **MUST** be correct. These statements made are part of the contract with your customers.

You cannot remove a customer's legal rights by saying you do not accept returns. Because **YOU** sold the goods to the customer, you are responsible for their complaint. You cannot pass it on to the manufacturer or someone else.

4. Refund, repair or replacement

Even when goods are faulty, the customer may not be entitled to a full refund. In some instances they may not be entitled to anything at all.

There are several factors that will affect the amount that the customer may be entitled to claim from you.

- 4.1 If a reasonable opportunity to inspect the goods has passed, then acceptance is implied.
- 4.2 If you can prove the item was not faulty when the customer bought it.
- 4.3 If the customer can prove the item was faulty when they bought it.



5. Refunds for faulty goods

- 5.1 SOGA says the customer is entitled to a reasonable opportunity to inspect or examine the goods after buying and this must take place within a reasonable time. SOGA does not state what a reasonable time is, and this may differ depending upon the goods being examined.
- 5.2 If the goods are faulty and the customer wishes to return them to you during this reasonable time, the law says they have not accepted the goods. They have rejected the goods and are entitled to a full refund.
- 5.3 You can ask the customer to prove the goods are faulty to receive their full refund if you choose to. You must remember the level of proof is what a reasonable person would accept. An example of this would be a statement from the customer saying the item does not work correctly would be acceptable for a faulty electrical item such as a toaster or electric kettle.
- 5.4 A customer may sometimes say they do not want a full refund but would prefer a replacement item or a repair. SOGA says you can try and repair an item and additionally, you may replace an item, but if it is impossible, or the cost is greater than the value of the item, you can say no and give a full refund.
- 5.5 If you organise a repair or replacement and it is taking an unreasonable time that in turn causes an unreasonable inconvenience or not of satisfactory quality, the customer can still claim a full refund.
- 5.6 Unfortunately SOGA does not state what a reasonable time is to inspect the goods and reject them. This depends on the circumstances. It is what a reasonable person would think is reasonable in the circumstances.

- 5.7 If a reasonable time for the customer to inspect or examine and reject the faulty goods has passed, SOGA says the customer has accepted the goods and is no longer entitled to a full refund. The customer may be entitled to repair of the goods.

6. Repair for faulty goods

If a customer returns faulty goods to you after a reasonable time has passed for them to examine and reject the goods, the customer may be entitled to a repair or replacement if replacement is agreed by the customer who bought the goods:

- 6.1 Within a reasonable time of buying the item from you, the customer is entitled to a repair if the item is faulty, unless you disagree that the item was faulty and you can prove that.
- 6.2 Following a reasonable amount of time AFTER buying the item from you, you can ask the customer to prove that the item was faulty when they bought it. If the customer can prove this, or if you choose not to ask them to prove this, the customer is entitled to a repair of the faulty items. Always remember the level of proof is what an impartial person in a court would accept.

7. Partial refund and price reduction for faulty goods

If the customer has a right to a repair of their faulty goods, you should try to provide this, but:

- 7.1 If this is impossible, or the cost is greater than the value of the item, or
- 7.2 If the customer believes it is taking an unreasonable time or causing an unreasonable inconvenience, or
- 7.3 The repair or replacement is not of satisfactory quality.

The law says you can offer a partial refund or price reduction.

Partial refund – the customer returns the item to you and you give them a partial refund. The amount of money the customer receives is the purchase price minus some money to reflect the use or benefit they have had from the item.

Price reduction – the customer keeps the item and you give them a price reduction. The amount of money the customer receives should reflect the difference between the price of buying the item in perfect condition and buying the item in its faulty condition.

8. The cost of faulty goods

Any refund or repair you arrange with a customer for faulty goods must NOT cause them too much inconvenience, and the retailer has to pay for other costs such as collection or delivery.

- 8.1 If a customer suffers personally (monetary loss, damage or injury) because of a fault with an item, they may be able to claim money to make up for this. This is called consequential loss, e.g.
- (a) If a customer had to pay out more money (perhaps to hire another item) because of a faulty item that you sold them; and
- (b) If they suffered an injury or damage because of a faulty item.

This applies in situations where it is clear the loss would arise as a result of the fault.

Claims for consequential loss do not normally cover distress, inconvenience or disappointment and can only be claimed for loss through faulty goods.

9. Proving the customer bought a faulty item from you.

If a customer returns the item and complains it is faulty, you are entitled to check that it was bought from you and on the date claimed.

One way of checking is to ask for a sales receipt or credit card statement.

Sales receipts are not legally required, but you should always give one to the customer for both sides' sake in case there is a complaint. Sales receipts provide written proof that the goods were sold to the customer.

If a customer has lost their receipt but can prove the item came from you, you must accept their proof.

10. Warranties

Many of you offer a warranty to your customers. Some of you may offer the manufacturer's warranty or have your own store warranty. It is important to remember that a warranty does NOT replace or limit a customer's rights. Your customer is entitled to raise a problem with you regarding a product they have bought from you for up to six years from the date of purchase, regardless of any terms of any warranty.

This means that if a customer complains to you about an item that is not fit for purpose, does not match the description, or is not of satisfactory quality, you MUST deal with their complaint. You cannot force them to use their warranty.



11. Store Policies

You may also have a store return policy that offers your customers more rights than they have under the law.

If you choose to offer your customers any of these rights, you can impose:

- 11.1 A requirement to produce the original sales receipt;
- 11.2 A requirement to return the goods unused and in unopened packaging;
- 11.3 A deadline for returns;
- 11.4 An offer to exchange the item; and
- 11.5 An offer of a store credit.



These conditions will only apply to the additional rights you are offering. However you cannot impose these conditions where your customer has a legal right to return the goods.

12. Store Credits

Store credits are offered as a gesture of goodwill if an item is not faulty, such as if a customer changes their mind.

If the item is faulty, your customer does not have to accept a store credit instead of a full refund, repair or replacement. You should not mislead them into thinking that a store credit is their only option.

13. When someone returns an item they did not buy originally

Sometimes a faulty item may be returned by the person who did not originally buy the item. This may be because they received it as a gift, or they may be returning it on behalf of a family member or friend.

When you sell an item, the contract is between you and the person who bought the item. Contractual rights are given to that person under SOGA.

This means that the person who receives an item as a gift does not legally have the same rights as the customer, except in certain situations. Most retailers will deal with the person returning faulty goods they received as a gift as an act of goodwill.

14. Gift Certificates and Gift Receipts

If you issue a gift receipt or gift certificate, you as the retailer usually tell your customer that the person they are buying the gift for can return the item. This is because:

- 14.1 You have implied that the person who receives the gift item purchased from you has rights under the contract; or
- 14.2 The promise that the person who receives the item can exchange it or have a store credit if the item is unsuitable, may be a term of the contract.

Often Retailers who issue gift receipts state that such receipts only entitle the bearer of the receipt to an exchange or store credit. However this does not affect the original customer's rights to a refund if the item is faulty.



15. Delays in Deliveries

If you provide your customer with a date for delivery and you cannot deliver the goods by that date, then the customer may be entitled to compensation.

If you did not give your customer a date for delivery, then they cannot claim compensation for costs (financial losses) arising as a result of a late delivery. If your customer believes they have waited a reasonable time and the goods have not arrived then they can write to you asking you for a firm date for delivery.



When your customer has made clear the delivery date is an important term of the contract, or it is clear from the nature of the contract that it is and the goods do not arrive by the delivery date, your customer is entitled to cancel their order and receive a full refund.

Your customer also may be entitled to compensation for any wasted expenditure or financial losses arising from a late delivery. An example of this would be if the customer has to pay for a professional to be available to install an item on an agreed date of delivery and the item does not arrive, your customer may be entitled to receive financial compensation from you for the cost of paying the professional to be available on that day.

Another example would be if the customer is self-employed and has turned down paid work to be available to receive a delivery on a certain day, they may be entitled to receive financial compensation from you for their lost earnings on that day the delivery did not arrive.

16. Summary

Remember a number of factors can influence what customers can claim from you if the goods are faulty.

- 16.1 Customers are entitled to a reasonable opportunity to inspect the goods they buy from you before they accept them. If they reject the faulty goods during this time they are entitled to a full refund.
- 16.2 If a customer returns faulty goods after the reasonable opportunity to inspect or reject faulty goods have passed:
 - (a) the customer may be entitled to a repair, unless you can prove the item wasn't faulty when the customer bought it;
 - (b) you are entitled to ask the customer to prove the item was faulty when they bought it. If they can prove this or if you do not request proof, the customer may be entitled to a repair; and
 - (c) The law says you should try to provide repair. You may also offer replacement if you both agree. You may also offer a partial refund or price reduction.
- 16.3 Returning a faulty item should not cause a customer an inconvenience, nor should they have to wait an unreasonable amount of time for a repair or replacement. You should also pick up the costs, such as collecting a faulty item.
- 16.4 Customers may ask for additional money if they believe they have suffered consequential loss as a result of a faulty item.
- 16.5 You are entitled to ask a customer for proof that they bought the item from you. If the customer has lost their receipt, you must accept other types of proof.
- 16.6 A store policy does not replace the customers' rights under SOGA.
- 16.7 The customer does not have to accept a store credit if the item they bought from you is faulty.



17. Dealing with a Customer Complaint

There will be times when a customer will complain to you about an item they have bought from you. Recognize that swiftly resolving a complaint helps to improve delivery of service to your customers. It also helps to have a structured complaint system in place. When you do receive a complaint, follow these steps.

- 17.1 Be sympathetic and show concern.
- 17.2 Ask questions to determine if the reason for the return of the item is a SOGA complaint.
- 17.3 Check the facts before committing to a solution.
- 17.4 Ask for proof of purchase.
- 17.5 Explain carefully to the customer the reason for your decision and what the law says.
- 17.6 If the customer is entitled to a refund as a result of faulty goods and paid by a credit card, you can insist that the refund is paid to the credit card used to make the purchase. This is because the credit card company paid you originally and therefore you are entitled to pay them, not the customer directly.
- 17.7 If the customer accepts a repair or replacement, tell them the time frame it will take for this to be completed. Remember, the proposed solution should not be an inconvenience to your customer.

If you cannot reach a solution with the customer, and you feel you need to seek advice, you can call Consumer Affairs, or you can refer the customer to Consumer Affairs.

If the customer decides they want to proceed with their claim in court, it will be a civil action through the small claims court procedure at Magistrates Court.

In the majority of cases if you know what the law says, you and your customer can reach a satisfactory solution without having to call Consumer Affairs or having to go to court.



Real Life Situations in Practice

1. Unwanted Gift

A customer returned a CD she had bought as a gift for her brother last week because he received an iTunes card and downloaded the music from iTunes and no longer needs the CD. She wants a refund.

If she can't have a refund, she wants to swap the CD for another one. Do I have to give her a refund?

ANSWER: *You are not obliged to give her a refund or to even replace the item. Customers who simply change their mind do not have a legal right to a refund or exchange.*

You can consider exchanging the CD for the one she wants as a gesture of goodwill, but you are not legally required to do this.

2. Wrong Version

My store sometimes sells secondhand computer games. A father bought a secondhand computer game for his son for his birthday. At the time of the sale he was informed that it was secondhand and it was written on the receipt. He has returned to the shop to say that it was the wrong version. It is not compatible with his son's gaming system – the son has version 3 and he bought version 2.

I don't want to get on the wrong side of the law and I'm not sure how it applies to secondhand goods. What do I say?

ANSWER: *There are two things you have to remember. Firstly, under the SOGA, goods must be as described and must not be misleading. So if the label says secondhand or the sales assistant informed the customer it was secondhand then the customer does not have the right to return the item.*

Secondly, the SOGA applies to secondhand goods and customers have the same rights as those who purchased new goods. In this instance your customer does not have a right to a refund or replacement as the law does not apply when customers buy the wrong goods.

You can consider providing a refund, exchange or store credit, but you are not legally obliged to do this.

3. Missing Handle

A customer wanted to buy a floor model cabinet that was on display, but the handle was missing from one of the drawers and it was the last one in the shop. We explained to him that the handle was missing and he said he thought he would be able to buy a similar handle and fix it himself.

We reduced the price by 40% because of the missing handle and we made a clear note of this fault on his receipt. He has now returned to say he cannot find a handle to match and he wants to return the cabinet. He says he is entitled to a full refund or replacement because it is faulty. This was clearly pointed out to him when he bought the cabinet. Surely this isn't right?

ANSWER: *You are correct. Under the SOGA a customer does not have the right to claim a refund, repair or replacement for a fault that was made clear to him before the item was sold. If the item were to develop any other faults, you customer might have a right to claim for these, but not the missing handle.*

4. Squeaky Sofa

We delivered a sofa to a customer four weeks ago and she has called to say the sofa is faulty and she wants a full refund. She says the sofa squeaks loudly whenever anyone sits on it and it can be

very embarrassing. She also says that she wants compensation because the sofa legs have dented her thick wool carpet and the next sofa she buys may not sit exactly where the dents are and they may show.

A sofa is designed for sitting on so it shouldn't make any noise when you sit on it as that is what it was designed for. I think we should do something but what are her rights?

ANSWER: *It does sound as if the sofa is not of satisfactory quality. You need to consider if the customer is rejecting the sofa after inspecting it within a reasonable time or if she is returning the sofa after accepting it. This affects her entitlement.*

If you believe the customer is rejecting the sofa within a reasonable time then she is entitled to a full refund.

If you believe the customer has accepted the sofa, then she is entitled to a repair. You may also offer replacement of the sofa.

It is possible the customer could make a claim for consequential loss regarding the dents in her carpet, but for this type of claim the damage should be foreseeable (it would be obvious that this would happen). This may be difficult to establish so it is up to you to consider if you feel her claim for consequential loss is valid and if you wish to accept it.

You should be aware that if you don't accept the customer's claim for consequential loss, her next step would be to pursue the claim at Magistrate's Court.

5. Not One Hundred Percent

A customer ordered some made to measure curtains from us after looking at a sample of fabric online on our company website. She collected them yesterday and today she's returned them demanding a refund. She says they are not the right fabric, even though they match the sample. The label on the sample says 100% cotton. It turns out the label was wrong and the label on her curtains say 60% cotton and 40% polyester. It is this label that is correct. These curtains were made to measure, making it much harder for us to sell them to anyone else. Does she have the right to get her money back?

ANSWER: *Yes she does. You have breached your contract with her because the description of the goods does not correspond with the sample. The curtains should match both the sample shown and the description you gave i.e. they should be 100%.*

Your customer has inspected the curtains and she has rejected them – all in reasonable time (she has not accepted the goods). She is entitled to a full refund (or a replacement if that is her preferred option).

6. Loss of Suction

A lady has come into the store with a vacuum cleaner which has stopped working. It was purchased two months ago and the receipt is still in the box. The lady has tried to vacuum, but even though the item switches off and on, it has no suction.

The lady explained that she did not buy the vacuum originally; she has borrowed it from a neighbor who has only used it once herself. The neighbor is away on holiday and she is keen to organize a replacement before she returns. I agree the item is not of satisfactory quality which would normally mean a repair or replacement when she returns. But she did not buy the item originally and what if her neighbor decides she is not happy with the repair or replacement when she returns? What should I do?

ANSWER: *You can explain to the lady that you believe her neighbor has a right to a repair of the faulty item. Remember, her neighbor may feel she has a right to a full refund after inspecting it within a reasonable time.*

Because she is not the person who originally bought the vacuum, you need to resolve the matter directly with her neighbor who purchased the item, on her return. This is because your contract as the seller is with her neighbor (the buyer) and as her neighbor has rights under the contract, she needs to decide how to exercise them.

7. A loose switch

A customer has returned an electric kettle he bought three days ago because he says it is faulty. The on/off switch is loose. We have no more of these kettles in stock and he is demanding a more expensive model as a replacement, saying he needs the kettle immediately. He is not willing to pay the difference in price. What should I do?

ANSWER: *If the fault is due to a flaw in the kettle when it was sold (and this appears to be the case), there has been a breach of contract (the item is not of satisfactory quality). The customer has returned the kettle within a reasonable time after inspecting it. (He is rejecting the goods before accepting them). Therefore he is entitled to a full refund (repair if this is his preferred option).*

But the customer is not entitled to be better off because of this, so he is not entitled to a more expensive replacement. You could offer one of the following:

- *A full refund; or*
- *A replacement of the same type or value in a reasonable time (although it sounds as though your customer won't want this option).*

8. Deep Freeze

A lady has put in a service call for a refrigerator we delivered to her apartment last week. She says the freezer is not working properly and her food is not remaining frozen. She is asking for an immediate repair because the item is not fit for purpose.

Our records show we did deliver this particular fridge last week, after it was ordered and paid for by someone else who lives at a different address. The lady has explained the person who bought the fridge is her landlord and he is off the island for the next six months. It does sound as if the item is faulty and I could send an engineer out, but we don't usually deal with anyone other than the person who bought the item. What should I do?

ANSWER: *When you sell something, your contract is with the person who buys that item and only they can enforce the terms of the contract. However, in some circumstances third parties may obtain rights under the contract if it is clear that they were intended to benefit from the contract.*

In this case the fact that you agreed to deliver the goods to a different person at a different address may imply you agreed to give this person some contractual rights under the contract. In this instance it sounds as if it is not possible to deal with the original purchaser and you should send an engineer to repair the item or provide a replacement as requested.

As you have the Landlord's details on the original order you could write to him to advise what action has been taken.

9. Car Won't Tow

A customer asked us for advice about buying a car that would be suitable for towing a trailer. He needed the car quickly for domestic use, but as he runs a small contractor's firm he wanted to be able to tow a trailer to transport building materials to and from jobs in the trailer attached. He gave us the details of typical weights he would be carrying. He purchased a car based on our recommendations that we assumed would suit his needs. He is now saying that the car is not powerful enough to tow his trailer and is making a claim against us.

ANSWER: *Having assured the customer that the car was suitable to tow a trailer even though the vehicle is not usually supplied for this purpose, you are liable to provide a remedy under the SOGA.*

As you only assumed the car was suitable and did not check with the manufacturer or the specifications, you should have made this clear to the customer and should not have recommended this vehicle for his particular needs. If he still wished to buy it you would be well advised to have put all of this in writing to protect yourself against his claim.

10. Wrong Label

A gentleman wants to return an expensive tie his girlfriend bought for him a month ago. After wearing it once he sent it to be dry cleaned following the instructions on the label. Even though the dry cleaner cleaned it according to the instructions on the tie, the tie shrunk.

It does appear that the tie is not of satisfactory quality and possibly not as described. (It was described as being suitable for dry cleaning and it is not). He is rejecting the tie and wants a refund as he has only worn it once and he could only have discovered it is faulty on having it cleaned. He believes this is within a reasonable time of purchase.

He has the receipt. The problem is his girlfriend paid for it by credit card. I am happy to give a refund, but I'm not sure what to do as we usually only refund using the original method of payment, which in this case would be his girlfriend's credit card, but she is not here.

ANSWER: *When you sell something, your contract is with the person who buys that item. You can tell the gentleman that as the item was paid for by credit card, you will only refund to the credit card that was used to purchase the item. As a gesture of goodwill you may offer the gentleman an exchange or store credit as an alternative.*

11. No Parts in Stock

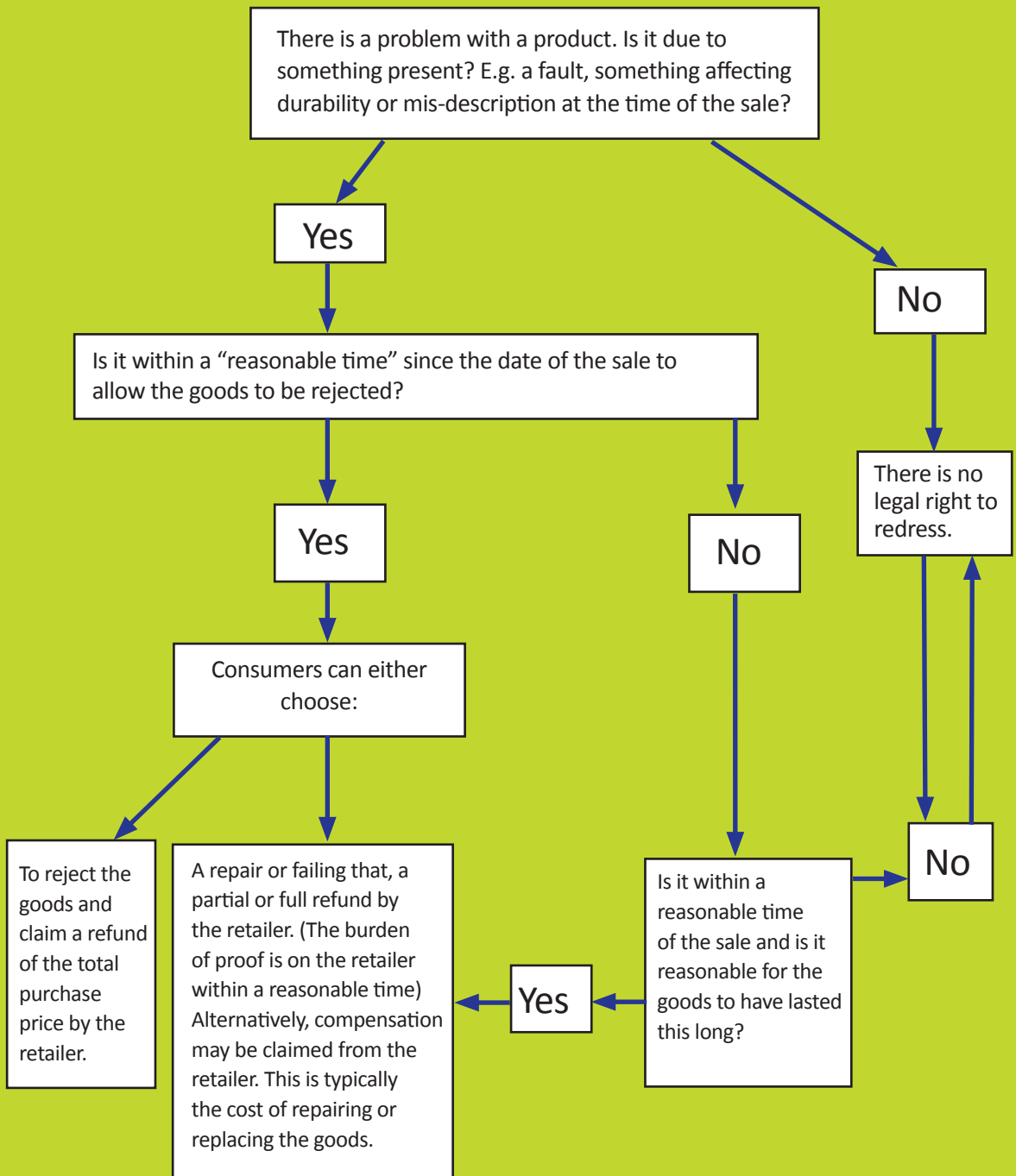
A customer bought a bike from us two weeks ago. He has returned to say that while riding the bike to work, there was a terrible noise from the engine and the bike immediately stopped working. We have examined the bike and have determined it needs a new engine due to a fault in the engine. Unfortunately we do not have that particular engine in stock. It has to be ordered and it will take 8 weeks to arrive.

The customer wants to reject the bike saying it is not of satisfactory quality and it is unreasonable to expect him to wait 8 weeks for a new engine. This wait will severely inconvenience him as he bought the bike specifically to ride to work as he starts work two hours before the buses start running. What should I do as the bike is still under warranty for another 10 weeks?

ANSWER: *If the fault is due to a flaw in the engine when it was sold (and this appears to be the case), there has been a breach of contract (the item is not of satisfactory quality). The customer has asked for a refund. Customers are entitled to a reasonable opportunity to inspect the goods they buy from you before they accept them. If they reject the faulty goods during this time they are entitled to a full refund.*

The next problem arises because the engine is not in stock and it will take 8 weeks to arrive. The customer should not be inconvenienced whilst waiting for the new engine to arrive.

GUIDE FOR REDRESS THROUGH THE SALE OF GOODS LEGISLATION





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