Satisfactory quality: the current test

Section 1 of the Sale and Supply of Goods Act 1994 inserts in s 14 of the Sale of Goods Act 1979 a reformed definition of the concept of quality, and merchantable quality has gone. There was always doubt about its scope and minor defects were not necessarily covered. Thus in *Millars of Falkirk Ltd* v *Turpie* 1976 SLT 66 it was decided that a new car with a slight leak of oil in the power-assisted steering was even so of merchantable quality. Similarly, a scratch on the dashboard of a new car would not prevent it from being merchantable.

Now a sale in the course of business carries an implied condition that the goods are of 'satisfactory quality'. To be of such quality the goods must meet the standard that a reasonable person would regard as satisfactory taking into account any description, price and other relevant circumstances. This is a general test but the section then explains that the quality of the goods includes their state and condition and gives specific and non-exhaustive aspects of quality:

- fitness for the purpose for which the goods are commonly supplied;
- appearance and finish;
- freedom from minor defects;
- safety;
- durability.

As before, defects specifically brought to the buyer's attention before the contract or if the buyer has examined the goods those he ought to have noticed are not covered. Nevertheless, many more defects will now be covered, and the Law Commission, in Working Paper 85 (which advocated the satisfactory quality test), took the view that in the *Millars* case the car would have failed the new test which it proposed.

The above rules also apply to goods supplied under a contract for work and materials, e.g. an oil filter supplied when servicing a car (see further later in this chapter).

Fitness and satisfactory quality

Private sales

The rules as to fitness for purpose and satisfactory quality do not apply to private sales of second-hand goods and there is still a fairly wide application of the maxim *caveat emptor* (let the buyer beware). In practice only manufacturers, wholesalers, retailers and dealers in new or second-hand goods will be caught by the implied conditions. The courts cannot imply conditions and warranties into private contracts similar to those implied by the Act into sales by dealers, because, as we have seen, s 14(1) forbids it.

Extension to items supplied with goods

The implied terms relating to fitness and satisfactory quality extend also to other items supplied under the contract of sale of goods, e.g. containers, foreign matter and instructions for use.

Geddling v ***Marsh***, 1920 – Fitness and satisfactory quality: returnable bottles (**170**)

Wilson v ***Rickett, Cockerell & Co Ltd***, 1954 – Where foreign matter is supplied with the goods (**171**)

Wormell v ***RHM Agriculture (East) Ltd***, 1986 – Application to instructions for use (**172**)

Injury to third party, purchaser's indemnity

It should be noted that if a retailer sells goods which are faulty and in breach of s 14 he is obliged to indemnify the purchaser if the faulty goods injure a third party to whom the purchaser is found liable. However, no such indemnity is payable if the purchaser has continued to use the goods having become aware that they are faulty and dangerous.

Lambert v *Lewis*, 1981 – Where goods are used by the buyer after knowledge of defects (**173**)

Usage of trade

Section 14(4) provides that an implied warranty or condition as to quality or fitness for a particular purpose may be attached to a contract of sale by usage. Where the transaction is connected with a particular trade, the customs and usages of that trade give the context in which the parties made their contract and may give a guide as to their intentions. Thus, in a sale of canary seed in accordance with the customs of the trade it was held that the buyer could not reject the seed delivered on the grounds that there were impurities in it. A custom of the trade prevented this but allowed instead a rebate on the price paid (*Peter Darlington Partners Ltd* v *Gosho Co Ltd* [1964] 1 Lloyd's Rep 149).

Sale by sample

Section 15(1) states that a contract of sale is a contract of sale by sample where there is a term in the contract, express or implied, to that effect. The mere fact that the seller provides a sample for the buyer's inspection is not enough: to be such a sale either there must be an express provision in the contract to that effect, or there must be evidence that the parties intended the sale to be by sample.

There are three implied conditions in a sale by sample.

(a) ***The bulk must correspond with the sample in quality*** (s 15(2)(a)).

(b) ***The buyer shall have a reasonable opportunity of comparing the bulk with the sample*** (s 15(2)(b)). The buyer will not be deemed to have accepted the goods until he has had an opportunity to compare the bulk with the sample, and will be able, therefore, to reject the goods, even though they have been delivered, if the bulk does not correspond with the sample. He is not left with the remedy of damages for the breach of warranty.

(c) ***The goods shall be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample*** (s 15(2)(c)).

The effect of s 15(2)(c) is to exclude the implied condition of satisfactory quality if the defect could have been discovered by reasonable examination of the sample whether or not there has in fact been any examination of the sample. This is presumably based upon the premise that the seller is entitled to assume that the buyer will examine the sample. The provision is in contrast with s 14(2) where the implied condition of satisfactory quality is not excluded unless an examination has actually taken place.

A reasonable examination for the purpose of a sale by sample is such an examination as is usually carried out in the trade concerned.

Godley v *Perry*, 1960 – When a sale is by sample (**174**)

Implied terms in consumer law – the supply of goods and services

Having looked at the implied terms in a contract of sale of goods, we can now move on to consider the law relating to contracts for work and material, e.g. car repairs where goods and services are supplied *together* and the goods are used or supplied in such a process as distinct from being *sold on their own* (which would be a sale of goods), and for the supply of services and the implied terms therein.

Supply of goods other than by sale

As regards the rights of those who purchase goods, we have seen that the Sale of Goods Act 1979 applies and that ss 12–15 of that Act imply terms to which a buyer may resort if the goods are faulty, defective or unsuitable. Those who take goods on hire-purchase are similarly protected by ss 8–11 of the Supply of Goods (Implied Terms) Act 1973.

As regards contracts for work and materials, the supply of goods (or the materials used) is governed by Part I of the Supply of Goods and Services Act 1982. The services supplied (or the work element) are governed by Part II of the 1982 Act.

Contracts of exchange or barter, hire, rental or leasing are governed by Part I of the 1982 Act, while contracts for services only, e.g. a contract to carry goods or advice from an accountant or solicitor, are governed by Part II of the 1982 Act. The relevant provisions of the Act are dealt with in detail below. Section references are to the 1982 Act unless otherwise indicated.

The 1982 Act was amended by the Sale and Supply of Goods Act 1994. The relevant amendments are included in the material appearing below.

Contracts for the transfer of property in goods

The contracts concerned are dealt with in s 1(1) which provides that a contract for the transfer of goods means a contract under which one person transfers, or agrees to transfer to another, the property in goods, unless the transfer takes place under an excluded contract. These excluded contracts are set out in s 1(2). They are contracts for the sale of goods, hire-purchase contracts, and those where the property in goods is transferred on a redemption of trading stamps. (These are governed by the Trading Stamps Act 1964.) Transfer of property rights in goods by way of mortgage, pledge, charge or other security is excluded, as are gifts.

There must be a contract between the parties. If not, the statutory implied terms cannot be relied upon if the goods supplied prove to be defective. Thus a chemist supplying harmful drugs under a National Health Service prescription will not come within the Act. This is because the patient does not provide consideration. The chemist collects the prescription

charge for the government and not for himself. The payment to the chemist does not come from the patient unless it is a private prescription where the patient has paid the full amount. Otherwise an action against the chemist would have to be framed in the tort of negligence.

As regards promotional free gifts, e.g. the giving away of a radio to a purchaser of a television set, the free gift may not be within the 1982 Act. The matter is not free from doubt, but s 1(2)(d) excludes contracts for the supply of goods which are enforceable only because they are made by deed which would seem to exclude other gifts. Furthermore, the Law Commission Report (No 95 published in 1979) on which the Act is based concludes that gifts are outside the scope of the Act.

Contracts for work and materials

It is impossible to provide a complete list of contracts for work and materials but they fall under three broad heads as follows:

(a) Maintenance contracts. Here the organisation doing the maintenance supplies the labour and spare parts as required. An example would be a maintenance contract for lifts.

(b) Building and construction contracts. Here the builder supplies labour and materials. An example would be the alteration of an office or workshop involving the insertion of new windows and extending the central heating system.

(c) Installation and improvement contracts. Here the contractor does not have to build or construct anything but, for instance, fits equipment into an existing building or applies paint to it. Examples are the fitting of an air-conditioning system, or painting and decorating an office or workshop.

The terms implied

Title

Section 2 implies terms about title. Under s 2(1) there is an implied condition that the supplier has a right to transfer the property in the goods to the customer. Under s 2(2) two warranties are implied:

(*a*) that the goods are free from any charge or encumbrance which has not been disclosed to the customer; and
(*b*) that the customer will enjoy quiet possession except when disturbed by the owner or other person whose charge or encumbrance has been disclosed.

The customer would have an action here if he suffered loss as a result of the true owner reclaiming or suing in conversion where the materials fitted had been stolen. Sections 2(3), (4) and (5) are concerned with sales under a limited title. If under the contract the supplier is to give only such title as he may possess, s 2(1) does not apply but warranties are implied that the supplier will disclose all charges and encumbrances which he knows about and that the customer's quiet possession of the goods will not be disturbed by, for example, the supplier or the holder of an undisclosed charge or encumbrance.

Cases involving bad title have occurred not infrequently in the sale of goods but the problem seems to have arisen only rarely in contracts for work and materials.

Description

Under s 3 there is an implied condition that where a seller transfers property in goods by description, the goods will correspond with the description. If the goods are supplied by reference to a sample as well as a description they must correspond with the sample as well as the description. Section 3 applies even where the customer selects the goods.

Section 3 will operate, for example, where a person is having his house or business premises extended and agrees with the contractor a detailed specification which describes the materials to be installed. It will not operate in some types of maintenance contract where the materials to be replaced are unknown until the maintenance is carried out. The materials fitted in the course of such a contract will not be described *before* the contract is made but probably only in an invoice *after* it has been made, which is too late to apply s 3. It should be noted that ss 2 and 3 apply to supplies in the course of a business *and* to a supply by a person other than in the course of a business, e.g. a milkman 'moonlighting' by doing the odd decorating job, provided there is a contract. They would not apply to a mere friendly transaction without consideration.

Quality and fitness

The first implied term in this area is in s 4 and it relates to *satisfactory quality* (s 4(2)). Satisfactory quality is defined in s 4(9) which states that the goods must be as fit for the purpose for which they are commonly supplied as it is reasonable to expect, having regard to their description, price and other relevant circumstances. This condition of satisfactory quality does not apply to defects:

(*a*) drawn to the customer's attention before the contract is made; or
(*b*) which any prior examination the customer *has actually made* ought to have revealed.

Thus, if the materials used are dangerous, unsafe, defective or faulty, and will not work properly under normal conditions, the supplier is in breach of s 4(2).

However, if the materials are described as 'seconds' or 'fire-damaged', the customer cannot complain if the materials are of lower quality than goods not so described.

As regards defects which ought to have been revealed where the customer has examined the goods, it is not likely that materials used in a contract for work and materials will be identified before the contract or that the customer will examine them. If they are examined, the customer should ensure that it is done properly so that obvious defects are seen and the goods rejected.

The second implied term in s 4 relates to *fitness for the purpose* (s 4(5)). Where a customer makes known, either expressly or by implication, to the supplier any particular purpose for which the goods are being acquired, there is an implied condition that the goods are reasonably fit for the purpose. This condition does not apply where the customer does not rely on, or it is not reasonable for him to rely on, the skill or judgement of the supplier.

If, for example, a factory process requires a lot of water supplied under high pressure, e.g. to clean special equipment, and the factory owners ask for the installation of a system of pressure hoses and a pump, revealing to the contractor precisely what the requirements are, then the contractor will be in breach of s 4(5) if the pressure is inadequate. This will be so even though the pressure hoses and pump are of satisfactory quality and would have been quite adequate for use in a different type of installation.

Of course, the way out of the fitness problem for the supplier is for him to make it clear to the customer that he has no idea whether the equipment will be suitable for the customer's special requirements. In such a case he will not be liable, though he may put some customers off by his unhelpful attitude.

Sample

If under the contract there is a transfer of the property in goods by reference to a sample, then under s 5 there is an implied condition that:

(*a*) the bulk will correspond with the sample in quality;
(*b*) the customer will have a reasonable opportunity of comparing the bulk with the sample; and
(*c*) there will not be any defect making the goods unsatisfactory which would not have been apparent on a reasonable examination of the sample.

Except as provided by ss 4 and 5, no conditions or warranties as to quality or fitness are to be implied into contracts for the transfer of goods. Sections 4 and 5 apply only to a supply of goods in the course of a business, and not to a supply by those such as the moonlighting decorator.

Remedies

In so far as the implied terms are conditions and are broken by the supplier, then the customer can treat the contract as repudiated. The customer is discharged from his obligation to pay the agreed price and may recover damages. The breach of implied warranties gives the customer only the right to sue for damages.

Exchange and barter

The most likely transactions to emerge here are the exchange of goods for vouchers and coupons as part of promotional schemes. Part I of the 1982 Act applies and the retailer who supplies the goods under a contract to the customer is the one who is liable if they are in breach of, for example, the implied terms of fitness and/or satisfactory quality. The manufacturer will be liable to the retailer, of course.

An exchange transaction in which goods are simply exchanged is not a sale but is covered by the 1982 Act. Where part of the consideration is money, as in a part-exchange of an old car for a new one with a cash difference, the contract is presumably a sale of goods because money is at least part of the consideration. It does not really matter now whether it is a sale or a supply, because the implied terms are almost identical.

Often where there has been a sale of faulty goods the seller exchanges them for other goods of the same type, although he is under no legal duty to do so unless a particular contract expressly provides. What happens if the other goods are faulty? The substitute goods must comply with the implied terms as to title, description, quality and fitness, and there is no longer any point in going into legal niceties as to whether the exchange is a sale or supply.

The terms implied

The implied terms in exchange or barter are the same as those implied in a contract for work and materials, i.e. s 2 (title), s 3 (description), s 4(2) (satisfactory quality), s 4(5) (fitness) and s 5 (sample).

Contracts for the hire of goods

The main areas of hiring (or renting or leasing) are as follows:

(*a*) *office equipment*, e.g. office furniture and a variety of machines, including telephones;
(*b*) *building and construction plant and equipment*, e.g. cranes and earth-moving equipment, such as JCBs;
(*c*) *consumer hiring*, e.g. cars, televisions and videos.

Under s 6(1) a contract for the hire of goods means a contract under which one person bails, or agrees to bail, goods to another by way of hire. There must be a contract, so that when the next-door neighbour makes a free loan of his lawnmower the Act does not apply. Also excluded are hire-purchase agreements. A contract is a contract of hire whether or not services are also provided. This would be the case where a supplier rented a television to a customer and also undertook to service it.

The terms implied

Title

Section 7 deals with title. It reflects s 2 except that being a contract of hire it makes provision only for the transfer of possession and not for the transfer of ownership. There is an *implied condition* on the part of the supplier that he has the right to transfer possession of the goods to the customer by hiring for the appropriate period. There is also a *warranty* that the customer will enjoy quiet possession of the goods except where it is disturbed by the owner or other person entitled to the benefit of any charge or encumbrance disclosed to the customer before the contract was made.

If, for example, the undisclosed true owner retakes possession so that the supplier is in breach of s 7, then the customer will have an action for damages. These will reflect the value he had had under the contract before the goods were taken from him. Thus, if C pays S £120 for the year's rent of a television but the undisclosed true owner takes it back after, say, two months, the damages would, on the face of it, be £100.

Neither of the terms in s 7 prevents the supplier from taking the goods back himself provided the contract allows this, as where it provides *expressly* for the repossession of the goods on failure to pay the rental or the court is prepared to *imply* that it does.

Description

Section 8 is the equivalent of s 3. Where the supplier hires or agrees to hire the goods by description, there is an implied condition that the goods will correspond with the description. If the goods are hired by reference to a sample as well as by description, they must correspond with the description as well as the sample. Section 8 applies even where the customer selects the goods. If the goods do not match the description, the customer will be able to reject them and recover damages for any loss.

Quality and fitness

Section 9 enacts the same provisions for hiring contracts as s 4 does for contracts of work and materials and exchange and barter. Except as provided by ss 9 and 10 (hire by

sample), there are no implied terms regarding quality or fitness for any purpose of goods hired.

There are two terms in s 9 as follows:

(a) An implied condition that the goods hired are of satisfactory quality. There is no such condition where a particular defect has been drawn to the customer's attention before the contract was made or to defects which he should have noticed *if he actually examined* the goods.

(b) An implied condition that the goods hired are reasonably fit for any purpose to which the customer is going to put them. The purpose must have been made known to the supplier, expressly or by implication. The condition does not apply if the customer does not rely on the skill of the seller or if it is unreasonable for him to have done so.

Once again, where goods are to be hired for a special purpose, the supplier should make it clear that the customer must not rely on him if he wishes to avoid the implied condition of fitness. This has rather special application to those who supply DIY equipment on hire. A supplier in this area should certainly not overestimate the capacity of, for example, power tools, in order to get business. If he does he certainly faces s 9 liability.

Where the goods are leased by a finance house, it is responsible for breach of the implied terms in the hiring contract. It is in effect the supplier. This is also true of hire-purchase where the implied terms of the Supply of Goods (Implied Terms) Act 1973 apply against the finance company.

As regards fitness for the purpose, it is enough to involve the finance company in liability if the customer has told the distributor of the purpose. Generally, of course, the finance house will have an indemnity against the distributor under which it may recover any damages it has to pay, so it will all get back to the distributor in the end.

The above conditions relate to the state of the goods at the beginning of the hiring and for a reasonable time thereafter. It does not impose upon the supplier a duty to maintain and repair. This must be provided for separately in the contract.

Thus in *UCB Leasing Ltd* v *Holtom* (1987) 137 NLJ 614 the Court of Appeal decided that where a car was the subject of a long leasing agreement, the owner was not under an obligation to provide a vehicle which was fit for the purpose during the whole period of the leasing. Instead, rather like a sale of goods, the obligation is to provide a vehicle which is fit at the outset of the agreement. If it is not, the hirer must rescind quickly if he wishes to return the car. If he does not do so, he cannot return the vehicle but is entitled to damages only.

Sample

Section 10 applies and is in line with s 5 (above). Section 10 states that in a hiring by sample there is an implied condition that the bulk will correspond with the sample in quality; that the customer will have a reasonable opportunity to compare the bulk with the sample; and that there will be no defects in the goods supplied rendering them unsatisfactory which would not have been apparent on a reasonable examination of the sample.

As with ss 4 and 5 (above), the terms of ss 9 and 10 are implied only into contracts for hiring entered into in the course of a business. Thus, if there is a hiring for value with a private owner, or a mere friendly lending without consideration, s 9 of the Act would not apply. Incorrect and express statements by a private owner would be actionable in the common law of contract provided that there was consideration. In a friendly lending there could be an action for negligent misstatements made by the owner about the goods if they cause damage (see *Hedley Byrne* v *Heller & Partners* (1963)).

Exclusion clauses – supply of goods

Section 11 of the 1982 Act applies the provisions of the Unfair Contract Terms Act 1977 to exclusion clauses in work and materials, barter and exchange, and hiring contracts. The effect of this is set out below.

(a) Consumer transactions. In a contract covered by Part I of the Act, the rights given by the implied terms under ss 3–5 and ss 8–10 of the 1982 Act cannot be excluded or restricted. The circumstances in which a person deals as a consumer are described in Chapter 15.

(b) Business contracts. In these circumstances the supplier can only rely on an exclusion clause if it is reasonable. However, the obligations relating to title in s 2 of the 1982 Act cannot be excluded in a business dealing relating to work and materials and barter and exchange any more than they can in a consumer dealing (see Unfair Contract Terms Act 1977, s 7, as amended by s 17(2) of the 1982 Act).

However, the term in s 7 relating to the right of possession in the case of a hiring can be excluded in a consumer or business contract if reasonable.

The supply of services

The main areas of complaint in regard to services have been the *poor quality of service*, e.g. the careless servicing of cars; *slowness in completing work*, where complaints have ranged over a wide area from, for example, building contractors to solicitors; *the cost of the work*, i.e. overcharging. Part II of the Act is concerned to deal with these matters.

The contracts covered

Under s 12(1) a contract for the supply of a service means a contract under which a person agrees to carry out a service. A contract of service (i.e. an employment contract) or apprenticeship is not included, but apart from this no attempt is made to define the word 'service'. However, the services provided by the professions, e.g. accountants, architects, solicitors, and surveyors, are included.

Section 12(4) gives the Secretary of State for Trade and Industry power to exempt certain services from the provisions of Part II. Of importance here is the Supply of Services (Exclusion of Implied Terms) Order 1982 (SI 1982/1771) which exempts services rendered by a director to his company, thus retaining existing common-law liability in this area. This is largely because more time is needed to consult the relevant interests and decide what sort of liability there should be in the areas referred to.

Part II applies *only to contracts*. If there is no contract there cannot be implied terms. This will exclude work done free as a friendly gesture by a friend or neighbour. If, however, injury is caused to a person who is not in a contractual relationship with a supplier as a result of the negligence of the supplier, there may be an action in the tort of negligence at common law (see Chapter 21).

Duty of care and skill

This duty applies to contracts which are purely for service, e.g. advice from an accountant or solicitor, and also to the service element of a contract for work and materials. Section 13

provides that where the supplier of a service is acting in the course of a business there is an implied term that the supplier will carry out that service with reasonable skill and care. This means that the service must be performed with the care and skill of a reasonably competent member of the supplier's trade or profession. In other words, the test is objective, not subjective. Thus an incompetent supplier may be liable even though he has done his best. A private supplier of a service, e.g. a moonlighter, will not have this duty.

There is no reference to conditions and warranties in regard to this implied term. Generally, therefore, the action for breach of the term will be damages. In a serious case repudiation of the contract may be possible. This is rather like the intermediate term concept discussed at p 334.

Cases such as *Woodman* v *Photo Trade Processing Ltd* and *Waldron-Kelly* v *British Railways Board*, which were brought on the basis of the common-law tort of negligence, would now be brought under the 1982 Act (see further Chapter 15).

Time for performance

Section 14 provides that a supplier who acts in the course of a business will carry out the service within a reasonable time. This term is only implied where the time for performance is not fixed by the contract, but left to be fixed in a manner agreed by the contract, or determined by the dealings of the parties. Section 14 states that what is a reasonable time is a question of fact. A claimant can claim damages for unreasonable delay. Of course, if a time for performance is fixed by the contract, it must be performed at that time and the question of reasonableness does not arise. Time is of the essence in commercial contracts unless the parties expressly provide otherwise or there is a waiver (see further Chapter 17).

The charges made for the service

Under s 15 the customer's obligation is to pay 'a reasonable charge' which is, again, a matter of fact. This obligation is not implied where the charge for the service is determined by the contract, left to be determined in a manner agreed by the contract, or determined by the dealings of the parties. The section in essence enacts the common-law rule of *quantum meruit* (see Chapter 18); it protects both the supplier and the customer, and applies to a supply in the course of a business and to a supply by a moonlighter.

Exclusion clauses – supply of services

Section 16 of the 1982 Act applies the provisions of the Unfair Contract Terms Act 1977 to exclusion clauses in regard to services. Section 2 of the 1977 Act is concerned with liability for negligence. There can be no exclusion of liability if death or personal injury is caused. In other cases an exclusion clause may apply if reasonable.

Section 3 of the 1977 Act is concerned with liability for breach of contract. Broadly speaking, there can be no exclusion of liability for breach of contract, or a different performance or non-performance, unless reasonable (see further Chapter 15). The terms implied by the 1982 Act cannot be excluded in a consumer transaction. They can in a non-consumer deal if reasonable. The criteria relating to bargaining power and so on apply only to the exclusion of implied terms in a non-consumer transaction relating to goods, but they will no doubt be applied by analogy to contracts under the 1982 Act.

The Sale and Supply of Goods to Consumers Regulations

This statutory instrument (SI 2002/3045) came into force on 31 March 2003. It implements the 1999 Directive of the EU entitled Directive on the Sale of Consumer Goods and Associated Guarantees. Now that we have completed a study of other UK sale and supply of goods legislation we are in a position to deal with these regulations that give new rights to consumers buying and hiring goods.

A consumer is defined as 'a natural person acting for purposes outside his trade or profession'.

Current law

The implied conditions of other existing legislation that goods are of satisfactory quality and fit for the purpose continue.

The regulations

These can be dealt with under the following heads.

Conformity to the contract

This provision states that where goods sold or hired to a consumer do not conform to the contract of sale or hiring at any time within the period of *six months* beginning with the date on which the goods were delivered to the buyer they must be taken not to have so conformed at that date. This is achieved by inserting a new s 48A into the Sale of Goods Act 1979. Similar provisions are inserted into legislation relating to hire and hire-purchase but the main treatment is in terms of a sale.

The provision in s 48A does not apply if:

- it is established that the goods did so conform on that date; or
- if its application is incompatible with the nature of the goods themselves.

Thus grocery retailers may escape in many ways since for example a dozen eggs will inevitably prove to be defective after six months. The section will not therefore apply.

The effect of the section is that for the first six months after purchase/delivery the burden of proof when reporting faulty goods will be on the seller and thus reversed in the buyer's favour.

If the seller can show that the goods were perfect when delivered and so satisfies the burden of proof and the buyer cannot prove they were defective the buyer could resort to the Sale of Goods Act 1979, for example, by alleging that if the goods were perfect at sale/delivery then they should have lasted longer. This is a possible head of claim under the 1979 Act. After the first six months then only the 1979 Act claims are available.

Repair or replacement

The regulations insert a new s 48B into the 1979 Act. It applies within the first six months' period and if within that period a defect is discovered the seller must, at his own expense, repair or replace the goods at the request of the consumer within a reasonable period of time and without causing any significant inconvenience to the consumer. The seller is not obliged to repair or replace the product if it can demonstrate that replacement or repair is impossible