



# Consumer protection

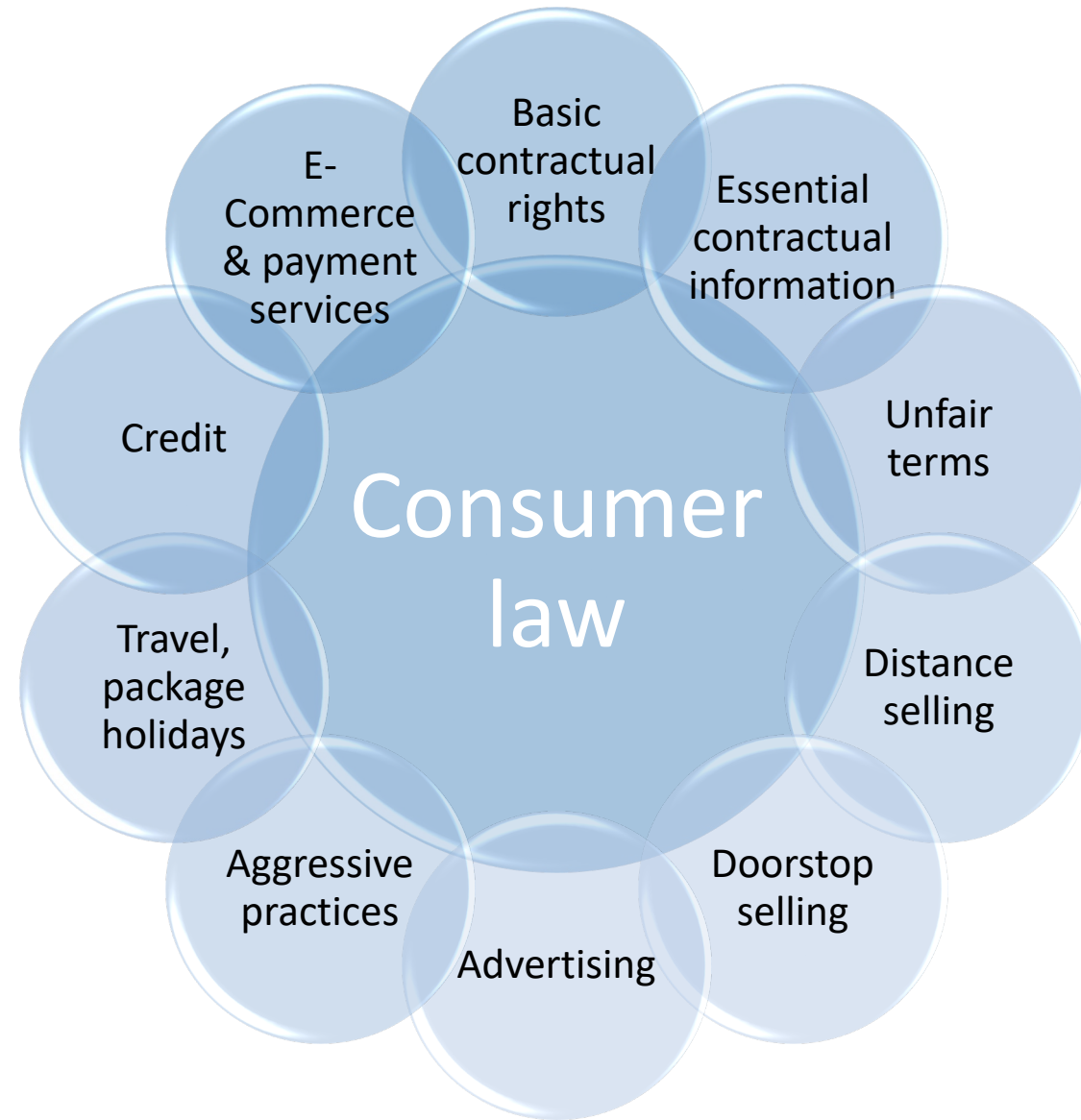
Introduction to consumer law & enforcement

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Session 2

# What is consumer law?

# Consumer law is largely EU derived...



# Interpreting Consumer Law -sources

## EU consumer & competition policy

- Consumer protection
- Level playing field
- Full harmonisation of laws
- Limited protection for businesses

## EU consumer law

- Directives
- Regulations
- EU court judgments
- Guidance from Commission

## UK consumer law

- Consumer & competition policy
- Consumer legislation
- Court judgments
- Sectoral rules –ASA, Ofcom, FCA...
- Guidance from enforcers –CMA, CTSI



# Enforcing consumer law

## Criminal prosecution

- Consumer Protection from Unfair Trading Regulations 2008
- Business Protection from Misleading Marketing Regulations 2008

## Enterprise Act 2002 Part 8

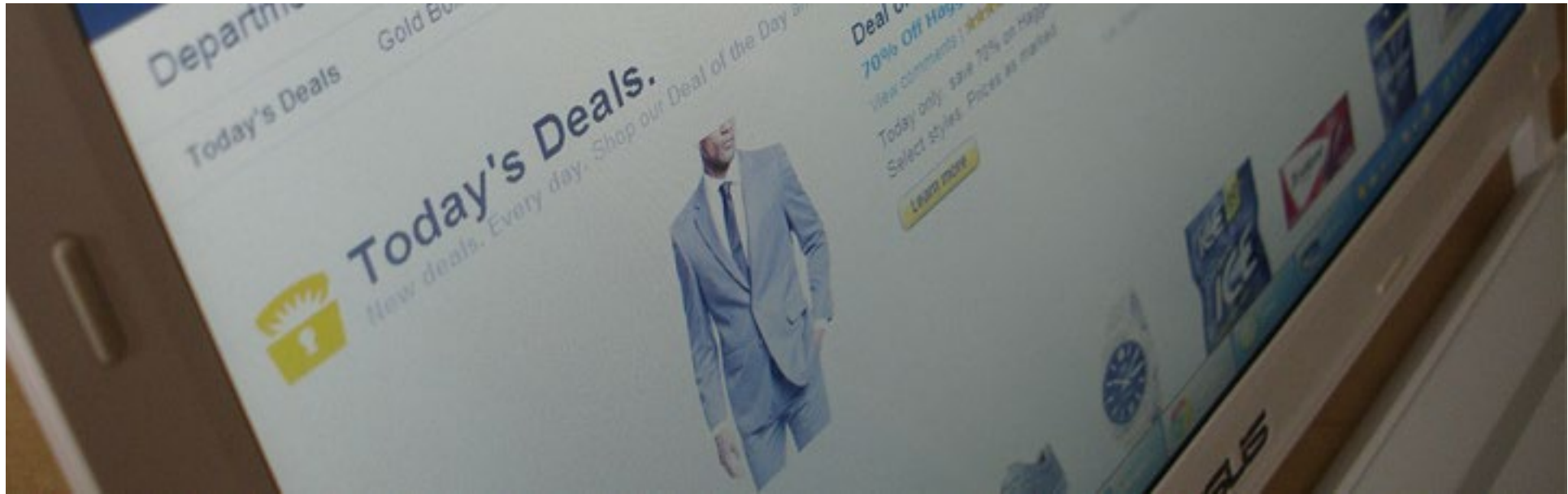
- CMA (and other enforcers) can seek an Enforcement Order to stop traders breaching the law and secure redress for consumers
- Relates to UK (domestic infringements) and EU origin (Community/Sched 13 infringements) laws
- Failure to comply with Enforcement Order is contempt of court

## Private Rights

- Breach of Contract
- CPUTRs Redress
- ADR

# Impact of Brexit...

- EU consumer law –including CJEU rulings- “fossilised” as at 31 December 2020
  - Future CJEU rulings = “persuasive”
- EU and UK law diverging Since 1 Jan 2021
  - Non implementation of EU law (Omnibus...)
  - UK domestic policy developments (REUL?)
- TCA preserves some limited consumer rights (esp in digital markets) (see also air travel rights)
  - Protection from deceptive & bad faith practices
  - Right to information
  - Right to access to redress
  - Risk of discrimination against UK businesses in the EU
- TCA level playing field rights
  - Restrictions on technical & legislative barriers to trade



# The main cross cutting rules

Consumer Protection from Unfair Trading Regulations 2008

Consumer Rights Act 2015 (Part 1 & Part 2)

Consumer Contracts (Information, Cancellation and Additional Charges) Regs 2013

# Consumer or Trader?

Consumer

Private individual

Wholly or mainly  
outside course of  
business

Trader

Any legal person

Acting for  
purposes related  
to business, trade  
or profession



Session 1

# Advertising and unfair trading

# The Consumer Protection from Unfair Trading Regulations 2008 – Key facts

Implement the Unfair Commercial Practices Directive (UCPD)

Intended to provide a high level of consumer protection

Sets the legal standard across the whole EU

# What do the CPRs cover?

- **Commercial Practices**
- Basically everything a business does



# What is the standard of protection?

Must (be likely to) have an effect on

The decision making

Of the average (vulnerable / targeted) consumer

# What is actually illegal?

<b>General prohibition</b> (Regulation 3)	Contrary to the requirements of professional diligence (ie special standard of care/skill expected of trader)	(Likely to) appreciably impair the average consumer's ability to make an informed decision And as a result	Causes (or is likely to cause) the average consumer to take a different transactional decision
<b>Misleading action</b> (Regulation 5)	<b>False</b> or <b>deceptive</b> practice	And	
<b>Misleading omission</b> (Regulation 6)	Omission (or unclear / untimely provision) of <b>material</b> information	And	
<b>Aggressive practice</b> (Regulation 7)	Aggressive practice by harassment, coercion or undue influence	(Likely to) significantly impair the average consumer's freedom of choice or conduct And as a result	
<b>Banned Practice</b> (Schedule 1)	One of 31 specified practices	No impairment or transactional decision tests	

# Is it illegal?

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Andrew describes an old board game as 'in pristine condition'. This is true, but a couple of pieces are missing

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Barbara advertises "Free tyres with every MOT", but charges a fitting fee of £25

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Colin tells salesmen to charge a high price for products, and if customer doesn't buy, to offer a 50% discount "valid today only", and if they still quibble tell them the salesman needs the sale to pay his mortgage

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Derek's labelling describes his cleaning products as "100% organic".

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Elizabeth does work on some guttering, but gets the guttering crooked, so that water leaks

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Frank's Market Place display a disclaimer stating "we accept no responsibility for any misleading content displayed by retailers on this site. Buyer Beware!"

# What are the consequences of infringement?

## 1. Criminal prosecution

- Most infringements are criminal offences

## 2. Consumer's private right of redress

- If a consumer entered into a contract with, or made a payment to, a trader after 1 October 2014 **as a result of a *misleading action* or an *aggressive practice***
- Potential remedies
  - Unwind the contract and get money back
  - Discount on the purchase price
  - Damages

# John and the Garage

John took car to Barbara's garage to be fixed. Garage said it would cost about £100.

When John picked up car, garage said they had to do extra work –bill was now £500. If John did not pay, he could not get car back.

John needed the car for work, as well as to take his elderly mother to her day care centre, so he paid the £500.

What do you advise?



Session 2

**Fundamental contract  
rights –Consumer Rights  
Act 2015 Part 1**

# What is a contract?

“Give me £2.50 and I will get you a coffee.”

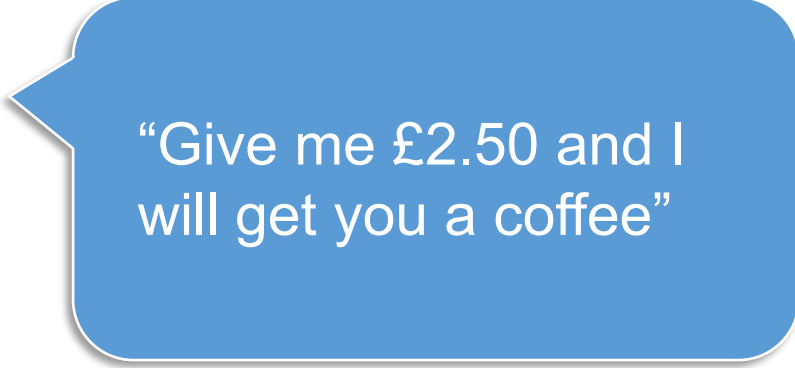
- Is this a contract?
- What sort of contract is it?



# Features of a contract

- **Think about**

1. Invitation to treat or Offer?
2. Acceptance?
3. Consideration (moving from promisee)?
4. Intention to create legal relations?
5. Certainty of terms?



“Give me £2.50 and I will get you a coffee”

# What terms get into a contract?

## Express

- Oral or written

## Implied under common law

- Course of dealing
- Intention of the parties

## Implied by statute

- Cannot be excluded from consumer contracts

# Terms implied by statute

	Goods	Digital Content	Services
Satisfactory quality	✓	✓	
Fit for a particular purpose	✓	✓	
As described	✓	✓	✓
Provided with reasonable skill and care			✓
Provided within a reasonable time (where not agreed)			✓
Reasonable remuneration (where not agreed)			✓

# Is it a breach of contract?

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Andrew sells a 'nearly new' dress. When Anne puts it on, the stitching comes loose and underwiring digs into her flesh.

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Chris orders a pair of green glasses. When he collects them, they are yellow. The optician says it's OK as the prescription is right.

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Dave is going hiking in Morocco. He asks the shop if a pair of boots is suitable. When he uses them, the soles melt in the heat.

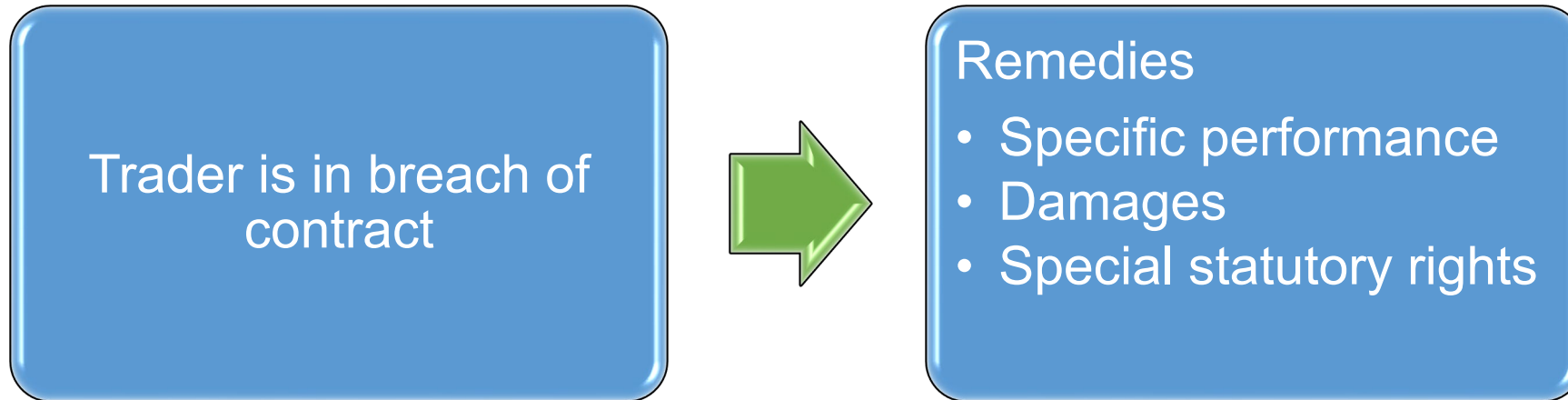
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Erik buys a phone with several in built apps. One of them drains his phone's battery.

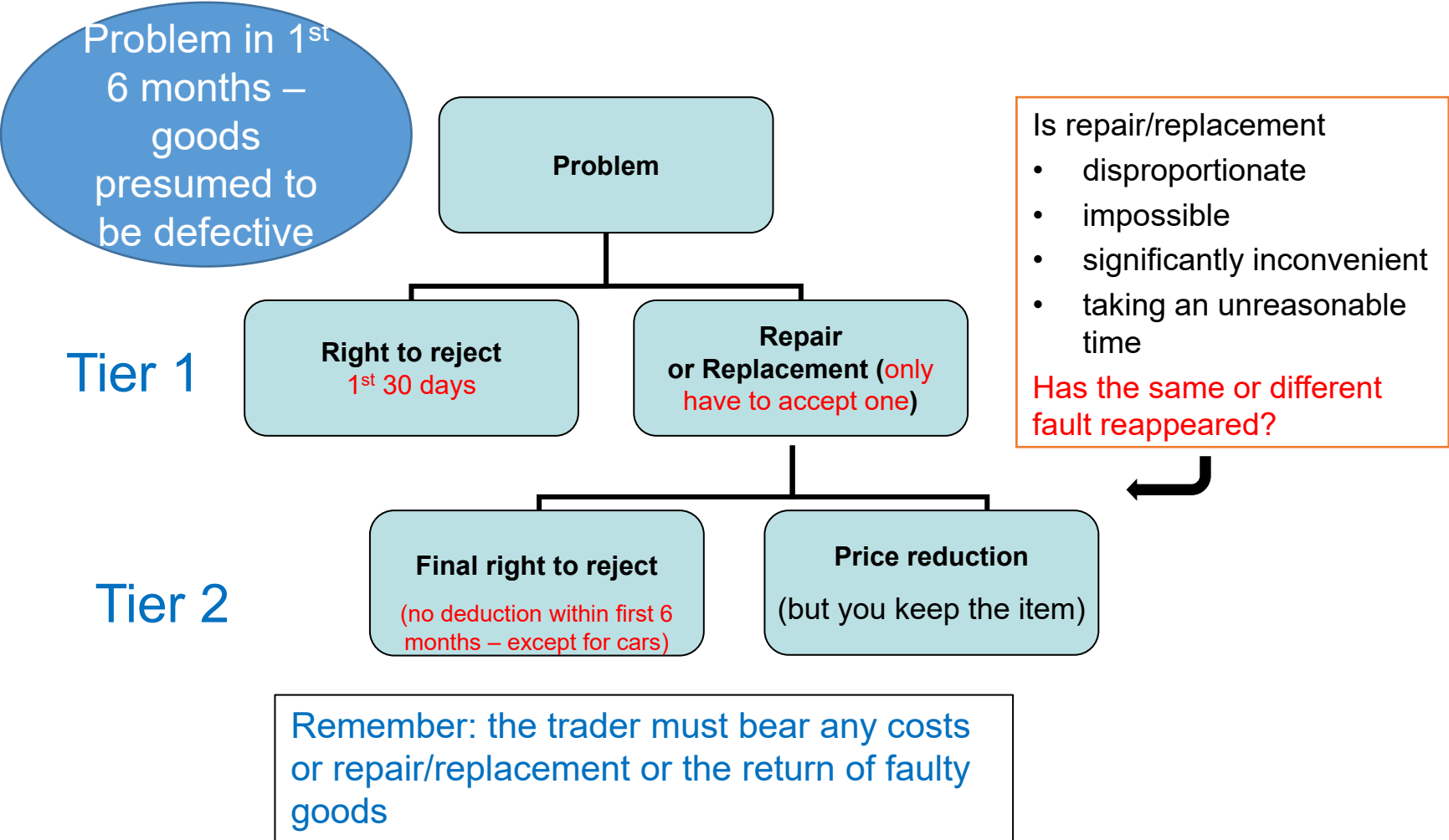
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Barbara is asked to repair a gear box. But when Jeff collects the car, it seems to be no different. What can he do?

# What if I don't get my rights?

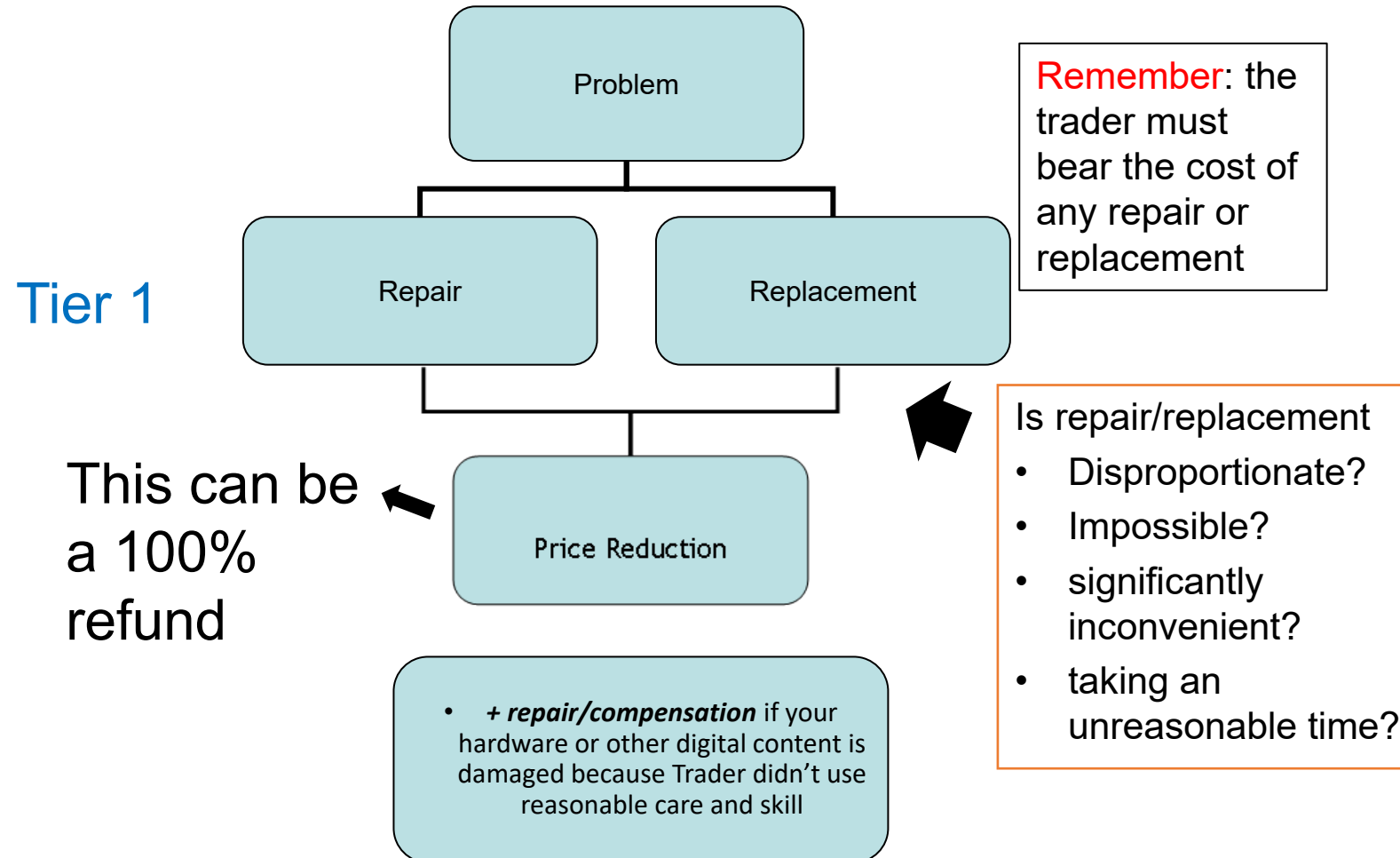


# Remedies for Goods

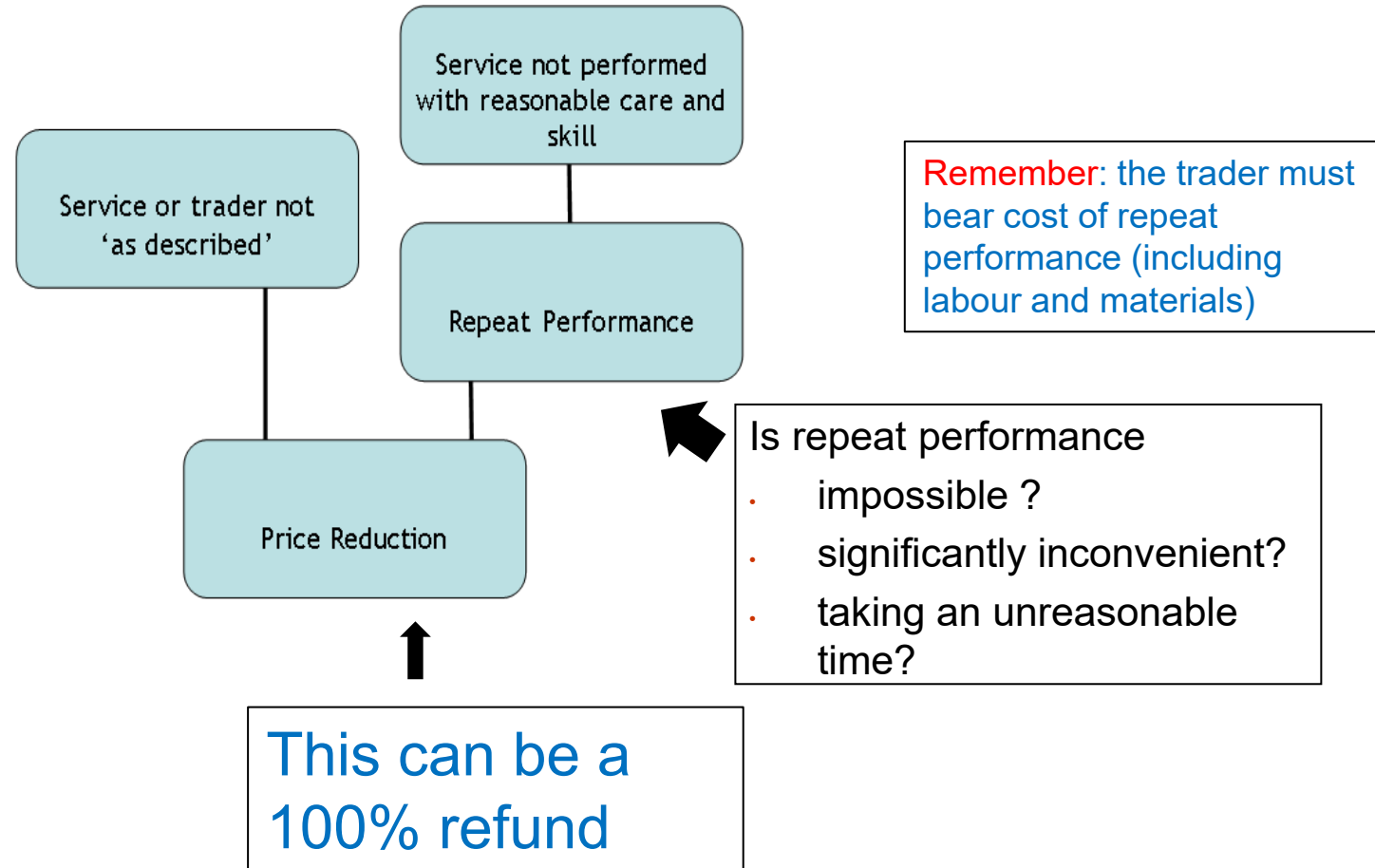




# Remedies for Digital Content



# Remedies for Services



# What can I do?



Frank buys a new TV to watch at Christmas. On 20 December, it breaks down. Store offer him replacement to be delivered on 27 December.



Elizabeth the builder installs some bathroom tiles for a customer. Half of them are a slightly different shade of green.



George's lawnmower has overheated, and broken after only 3 months. Store say he didn't use it properly, and in any event ought to pay for the 3 months' use he had.



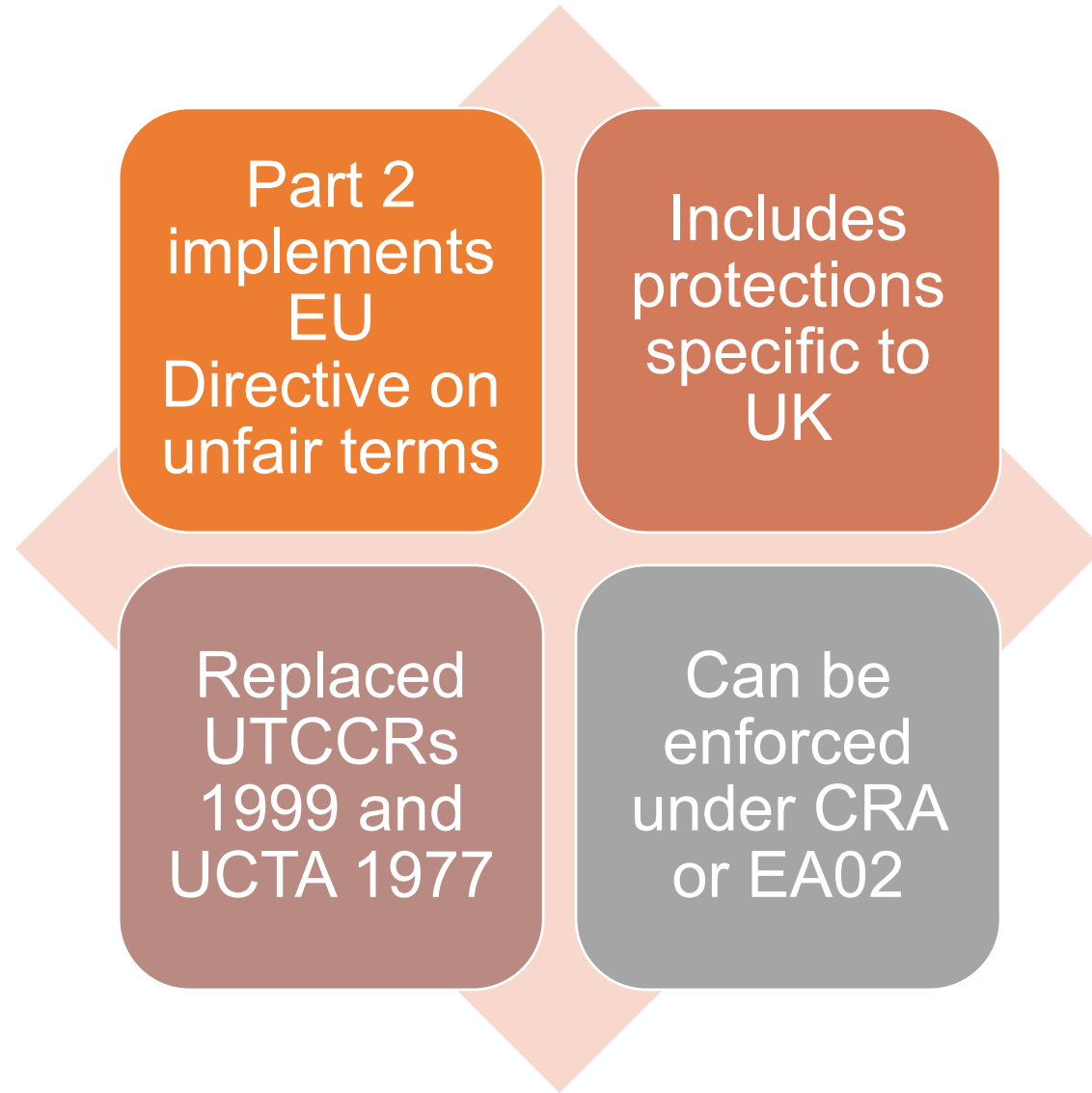
Harry buys a DVD player program for his laptop for £10. However when he updates his operating system, it stops working.



Session 3

**Unfair contract terms –  
Consumer Rights Act  
2015 Part 2**

# The Consumer Rights Act



# Is it unfair...?

What factors do you think are relevant to deciding?

A term that makes you responsible if you get injured

A very clear notice, in a sale, excluding any right to a refund

A charge of £150 for staying more than 2 hours in a parking space

A requirement that you take out a mobile phone contract for 3 years

# What the law says

## Certain terms are **Blacklisted**

- Eg excluding right to satisfactory quality

## All terms must be **Transparent**

- So consumer can understand what their rights and obligations actually are

## Is the term objectively weighted against the consumer? (**Significant imbalance**)

- Balance risks to trader vs benefits to consumer
- Changes ordinary legal position?
- Does it defend a legitimate interest of trader?
- Is it surprising?
- Likely to be unfair if on the Grey List

## Does the term exploit the consumer? (**Fair dealing**)

- Behavioural biases
- Strength of bargaining positions

## Is the term presented openly? (**Openness**)

- Did consumer actively negotiate the term?
- Does it act as a trap?

# Scope of the Unfairness Test

Applies to all terms in contracts & notices, except

- Price &
- Main Subject Matter &
- Terms set out in legislation

Price & Main Subject Matter are narrowly construed

- To be exempt, term must be
  - very clear to consumer,
  - not on grey list, and
  - objectively set out 'price' or 'main subject matter'



# Unfair terms often relate to... (Grey List)

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EXCLUSIONS



ONE SIDED  
OBLIGATIONS OR  
RIGHTS



PENALTIES /  
COMPENSATION



LOCK INS & AUTO  
ROLLOVERS



INCORPORATION  
& VARIATION OF  
TERMS



DISPUTE  
RESOLUTION



ASSIGNMENT OF  
RIGHTS

# Is it unfair?

“This contract will automatically renew for a further year, unless you tell us you don’t want it to, 13 days before renewal date”



“The caravan park reserves the right to increase the pitch fee by up to 15% each year”



“If for any reason you do not proceed with your wedding, the venue will charge you a cancellation fee of 100%”



“Any disputes under this contract must be referred to a Chartered Surveyor appointed by the builder”

Session 4

**CONSUMER CONTRACTS  
(INFORMATION,  
CANCELLATION AND  
ADDITIONAL CHARGES)  
REGULATIONS 2013**

# CCRs overview



Pre-contract  
Information



Control over  
surprising charges



Cancellation rights



Delivery rights



Telephone  
helpline charges

# What are the information rules?

## Clear and prominent Information to consumers

- Price, delivery charges, what product is, who trader is
- More information for distance and doorstep contracts

Information is a **term** of the contract

Information **cannot be changed** without consumer's consent

**Implied term** that the trader has complied with information requirements

# Cancellation rights

Generally speaking you have a 14 day  
cancellation period

- When you buy at a distance or off premises
- Extends to 1 year where proper information not given
- Special rules for
  - Work you ask for during cancellation period &
  - Digital downloads

# Is it legal?

Sam the Solicitor takes instructions for a will in a consumer's home. He immediately starts work, and presents the will, and his bill 3 days later.

Terry buys a new coat on line. He wants to return it, but the seller says he will have to pay £5, and also can't have the delivery cost back.

- Because he opened the packaging, the seller also says Terry has to pay £15 for diminished value of the coat.
- Terry wants to complain, but the phone calls are costing him a lot of money, as they are to an 0870 number

# Surprising charges online

Clear and prominent information, directly before consumer places order

- Price
- Total costs per billing period of a subscription
- Minimum duration of consumer's obligations

Information must be confirmed on 'durable medium'

Consumer must 'explicitly acknowledge' the obligation to pay

'Express consent' for any payments going beyond trader's main contractual obligations

Cannot use pre-ticked boxes



# Subscription trap...


Gale gets a weightloss product on free trial online. It arrives, but there is no paperwork.



A month later, she is surprised to find another product, and £15 is debited from her card.



She reads the ts and cs –it says she has signed up for a 3 year supply of weightloss product, for £15 a month, because she didn't cancel within the trial period.



She can't find any email address on the trader's website.



Her bank says she has to get the seller's permission to stop making monthly payments.



# Consumer enforcement

Section three

# Where can I go for help?

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Trading Standards	Most compliance activities nationally Local and regional enforcement
Sectoral regulators	Airlines, telecoms, water, energy, rail
Self Regulation	Industry bodies –eg ADR providers Code schemes –some statutory
Consumer bodies	CitA, International Consumer Centre Which?
Intermediaries etc	Your credit card, market place platform Review sites etc

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# Who can resolve my dispute?

- Retail Ombudsman
- Financial Ombudsman Service
- Parliamentary and Health Ombudsman
- Energy Ombudsman
- Communications Ombudsman
- Legal Service Ombudsman
- Furniture Ombudsman
- The Property Ombudsman
- Housing Ombudsman
- Phone Paid Services Authority
- The Glazing Ombudsman
- The Removals Industry Ombudsman
- Tenancy deposit protection schemes
- International Consumer Centre
- Citizens Advice
- CTSI Approved Code Schemes
  - Eg removers, will writers, debt managers, cars...
- New ADR providers