

Brief cases

Car dealer sued for shoddy repairs

Irving gets £1,800 refund for 'dangerous' car

IRVING'S STORY

Irving Goldin bought a second-hand Ford Fiesta for his 19-year-old son Tony from Fifth Gear Workshop in Hatch End for £1,800. He knew that Fifth Gear had bought the car after an accident but was told that it had carried out full repairs.

Shortly after collecting the car, the battery went flat and Fifth Gear had to replace it. About a week later, Irving checked the oil and found it was so low that he took the car back. Fifth Gear refilled the oil, admitted it hadn't carried out a pre-sale service and booked the car in for a service a couple of weeks later.

However, shortly before the service could be carried out, Tony noticed a rattling sound coming from the engine. He called in the AA. It found that there was no oil

and that the engine had been damaged as a result. It towed the car back to Fifth Gear, where the engine was replaced and the car serviced.

By now, Irving was so concerned about the condition of the car and the standard of the repair work that he asked the AA to carry out an inspection. The AA said that the car was unroadworthy and dangerous to drive and that the accident repairs were not up to industry standard.

Irving immediately rejected the car and asked for his money back but Fifth Gear refused. Exasperated, Irving came to Which? Legal Service for help.

Our lawyers told Irving that he had a claim for breach of contract and misrepresentation, as the car was not of satisfactory quality or fit for its purpose under the Sale of Goods Act 1979. Fifth Gear had led



The car Irving bought for his son, Tony, was not of satisfactory quality

Irving to believe that it was selling him a car that had been repaired to the highest quality, when this was clearly not the case. We advised him to go back to Fifth Gear. When it still refused to do anything, we advised Irving on how to take his case to court.

RESULT

About three months later, and before the case actually went to court, the matter was settled. Fifth Gear offered Irving £2,000 – £1,800 for the car and £200 to cover his court costs. Irving duly accepted the offer.

HOW TO GET A REFUND FOR UNSATISFACTORY GOODS

STEP ONE

Reject the goods

If goods are not as described or are of unsatisfactory quality, you can reject them and get a refund. Ideally put your rejection in writing, though you can tell the company verbally. You must do this within a 'reasonable time'. What is reasonable depends on the circumstances.

STEP TWO

If the seller refuses to give a refund

Before you do anything else, make sure that you have proof of the poor quality – for example, photographs or video or evidence from an expert. It's also a good idea to always try to agree with the seller to use one expert that you are both happy with.

STEP THREE

Send the seller the expert opinion

You should ask your expert to include in the report details of the problem and what is causing it, what needs to be done to put the matter right and how much this will cost. Your expert should also state their qualifications and experience.

STEP FOUR

If the seller still refuses

You may have to consider court action. The final stage before taking court action is to send 'a letter before action' telling the company that unless you receive your money within a specified time (usually 14 days) you will be taking the matter to court.

STEP FIVE

Go to the small claims court

If the seller doesn't give you a reasonable offer, you can take any claim for up to £5,000 (£2,000 in N Ireland, £750 in Scotland) through the small claims track of the county court. This offers a fairly cheap, informal way of dealing with straightforward cases.

Two cases from the files of our Which? Legal Service consumer lawyers, plus topical legal advice: this month, what to do about noisy neighbours



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Credit card company pays up **Getting money back after cancelling**

VERONICA'S STORY

Veronica Hunt's credit card company came to the rescue when the company she had been dealing with originally went bust.

In October 2003 Veronica visited the Ideal Home exhibition at Earl's Court, London, where she was impressed by the Inada Medical Chairs being displayed by Inch by Inch. She placed an order for delivery in February 2004, when the chair was to be released in the UK. The chair cost £2,950 and Veronica paid a deposit of £1,500 using her NatWest credit card. The balance was due on delivery.

Unfortunately, a month after placing her order, Veronica had to cancel. She wrote to Inch by Inch to say she was cancelling and asked for her deposit back. It refused to refund her in full, arguing that its terms and conditions allowed it to keep a minimum of 25 per cent (£737.50). Veronica then offered to pay what she felt was a reasonable sum. When Inch by Inch rejected this, Veronica came to Which? Legal Service.

We told Veronica that Inch by Inch was entitled to recover only those costs it had incurred in relation to her order and its loss of profit. If there was any term in the contract which entitled Inch by Inch



Veronica pursued her claim against her credit card company

to keep more than this, it could be considered 'unfair' and, under the Unfair Terms in Consumer Contract Regulations 1999, not binding.

By the end of the year Inch by Inch had gone into liquidation but as Veronica had paid the deposit on her credit card, we recommended

she pursue her claim against NatWest under section 75 of the Consumer Credit Act 1974.

RESULT
In February 2006, NatWest credited Veronica's account with £1,500.

WHAT TO DO IF YOU CHANGE YOUR MIND

STEP ONE

Check whether your contract can be cancelled

Some contracts – for example, those made after an 'unsolicited visit' by a sales rep to your home and those made at a distance (by phone, mail order or online) – can be cancelled within seven days. For unsolicited visits, the seven days start from the day of the visit; for distance selling, the day after you receive the goods.

STEP TWO

If it can't be cancelled

The company will be entitled to retain a sum to cover its loss of profit and costs up to the date of cancellation, so your request for a refund should be reasonable.

STEP THREE

If the company refuses

Consider court action. If you paid by credit card, try pursuing the card company first.

Legal tip

Don't let drilling drive you mad

Noisy neighbours

With two bank holidays in May, it's a great time for DIY enthusiasts to get cracking on home improvements. What can you do if your neighbour is constantly drilling and sanding – or simply playing loud music late at night?

Talk to your neighbour

You should always try talking to your neighbour, as they may be unaware of the disturbance they are causing. You could probably come to an agreement that they use noisy machinery for only a few hours each day or turn the music down.

Contact your local council

If talking fails, keep a diary as evidence of the problem and contact your local authority's environmental health department. Environmental health officers (EHOs) have powers to visit the neighbour, issue a warning and order them to reduce the noise. If the neighbour doesn't comply, the EHO can issue a fine of up to £2,000. Under the Noise Act 1996 (Environmental Protection Act 1996 in Scotland), if the excessive noise occurs between 11pm and 7am, EHOs can also confiscate equipment, such as tools or a hi-fi system.

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