

Brief cases

Keith's car cost £248 to repair

Owner of car wash pays up after threat of court action

KEITH'S STORY

MB car wash at Newbury service station, Berkshire, was charging £3 for a car wash and wheel scrub, which was good news as far as Keith Turner was concerned, as his Honda CRV needed a bit of a clean. So, having first familiarised himself with the operating instructions, Keith paid his money and settled back while the machinery got to work.

When Keith looked at his car immediately afterwards, it was still wet and everything seemed fine. However, about 30 minutes later, Keith was dismayed to see a number of deep parallel scratches.

Keith couldn't understand it: the paintwork on his Honda had been in a perfect, blemish-free condition. He went straight back to the garage

to complain. Staff on duty told him that they couldn't do anything about it, as the car wash was nothing to do with the garage itself. Infuriated, Keith insisted that they give him the car wash owner's contact details.

Remembering the importance of gathering evidence in circumstances like this, Keith took photos of the damage and then drove his car to a local garage to get an estimate for its repair. He was quoted £248. Armed with this information he contacted the owner, James Boret.

Mr Boret suggested that an assessor take a look at Keith's car. The assessor told Keith that the damage was not the result of any kind of impact and then went to look at the car wash. Later Keith got a phone call from Mr Boret, who



Keith was prepared to take the owner of the car wash to court

told him that, following the assessor's inspection of the car and the car wash, the assessor had concluded the car wash hadn't caused the damage. Also, he'd had no other complaints about the car wash and so would not be paying out. Keith was certain the car wash had damaged his car, was not prepared to accept this and asked Which? Legal Service for help.

Our lawyers advised him to send a 'letter before action' advising Mr

Boret of his intention to start court proceedings if he wasn't prepared to cover the £248 cost of repairs. When it became apparent that Mr Boret had no intention of paying up, we advised Keith on how to start court proceedings.

RESULT

Mr Boret decided not to go to court and sent Keith a cheque for £278. This covered the cost of repair and £30 court fee.

WHAT TO DO IF A SERVICE YOU'VE CONTRACTED FOR GOES WRONG

STEP ONE

How you're protected

You enter into a contract when you pay for a service such as a car wash. Terms you see at the time form the basis of the contract. Contracts for services are covered in England, Wales and N Ireland by the Supply of Goods and Services Act 1982 and by common law in Scotland. The supplier must carry out the service with reasonable care and skill.

STEP TWO

What you can get

You are entitled to:

- have the supplier put the problem right for free, where possible, or
- have someone else do the repair if the supplier isn't in a position to do so or won't. You can charge the cost to the supplier.

If the supplier won't put the problem right or meet the cost of someone else doing so, you can bring a claim to recover the costs.

STEP THREE

Who to sue

Who you sue depends on the situation.

- If it is a sole trader (as here) or a partnership, you will need to sue the owner(s) personally.
- If it is a company, you will need its main place of business or registered office address; go to www.companieshouse.gov.uk, or phone 0870 33 33 636 for help (Monday to Friday, 8.30am to 6pm).

STEP FOUR

Preparing for court

In cases where the supplier won't pay up, you may have to consider going to court. The onus will then be on you to prove your claim, and its value, so you will need to gather as much evidence as possible. This can include photographs, quotes for repairs, expert evidence – in short, anything that shows the losses you've incurred.

STEP FIVE

Legal costs

Court fees vary according to how much you're claiming. There's a limit on what you'll get back for things like expert evidence, so keep expenses in proportion to your claim. In the small claims court (for cases under £5,000 in England/Wales; £750 in Scotland; £2,000 in N Ireland), you shouldn't have to pay the other side's legal costs if you lose but it's at the court's discretion.

Two cases from the files of our Which? Legal Service lawyers that show how threatening court action if you have a valid case can pay off, plus consumer law



Amy Shipton
Paralegal
Co-ordinates our monthly 'Brief cases' feature



Joanne Barker
Senior solicitor
Specialises in consumer law and employment law

Brian rejected his new laptop

Computer firm refunds £1,187

BRIAN'S STORY

Brian Sherrad took on computer giant Evesham after it sold him a laptop that not only was faulty but also couldn't do what was promised.

Brian chose an Evesham Voyager laptop because staff at Evesham's Bournemouth store said it could 'capture and process photos from a variety of cards'. It cost £1,016 and Brian paid in full on his Barclaycard.

But when he got it home and his wife Jean switched it on, the screen started flickering. At first, the fault

wasn't too bad but over the next month or so the flickering got worse. Brian took the laptop back. The shop repaired it free, but a few weeks later, Brian and Jean were unable to load photos. The store sent the laptop to

its workshop and told Brian he'd be contacted when the technical report was ready. He wasn't.

The workshop diagnosed an incompatible card reader. Brian was given a new one but when that also didn't work, he said he was rejecting the laptop and wanted a refund. Evesham refused, so Brian came to Which? Legal Service.

We told Brian he had a claim for breach of contract under the Sale of Goods Act 1979 (as the laptop was not of satisfactory quality or fit for its purpose) or, alternatively, under the Misrepresentation Act 1967 (as the laptop couldn't do what had been promised). Brian knew credit card issuers are jointly liable under the Consumer Credit Act but when Barclaycard did nothing, we advised him how to prepare for court.

RESULT

Before the case was heard, Evesham sent a cheque for £1,187, which included £51 interest and the £120 court fee.



Brian finally got a full refund from Evesham for his faulty laptop

REJECTING FAULTY GOODS

STEP ONE

Deciding to reject

As soon as you've decided to reject the goods, tell the seller that they are faulty, that you've ceased using them and that you're rejecting them. You can reject faulty goods within a 'reasonable' time (this varies from case to case).

STEP TWO

If a repair is offered

Agreeing to let the seller try to put things right doesn't affect

your rights. Play safe by making it clear in writing that, if the repair fails, you will reject the goods and ask for a refund.

STEP THREE

If your rejection is refused

If the seller refuses to accept your rejection, you have two choices: if you paid on credit card or under a credit agreement, you may be able to pursue the card company or credit provider. Alternatively, consider court action.

Legal tip

What to do if you have a complaint

Your rights

Quoting the relevant legislation can help

Sale of Goods Act 1979

This says that any goods (new or second-hand) you buy from a retailer must:

- match their description
- be of satisfactory quality and reasonably fit for both their general purpose and any specific purpose you make known to the retailer at the time of sale
- match any sample shown.

The act applies when you buy from a shop and at a distance (by phone, online or by mail order).

Supply of Goods and Services Act 1982

This applies when you enter into a contract for a service. It requires a supplier to:

- carry out the service with reasonable skill and care, using materials that are of satisfactory quality
- carry out the service within a 'reasonable time' where no time limit has been agreed beforehand; and
- to make a 'reasonable charge' where no charge has been agreed in advance. (Note: in Scotland, common law covers these.)

Misrepresentation Act 1967

This protects you if you lose out when you enter into a contract on the strength of a statement made by a trader that proves to be false.

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