

Brief cases

Ann felt pressurised into buying a bed

Unsolicited visit leads to an unwanted purchase

ANN'S STORY

Two weeks or so after entering a competition to win a Quality of Life adjustable electric bed, Ann Lucas received a telephone call from the company telling her that someone would be visiting her in a week to give her a demonstration. Ann didn't know quite what to make of this – after all, she might not even win. Nevertheless, she felt obliged to agree to the visit.

The man from Quality of Life duly arrived and set about demonstrating how the adjustable bed worked. But before long Ann realised that he wasn't just giving a demonstration; he was in fact trying to sell. Ann asked for more time to consider but the rep told her he couldn't call back, making Ann feel

that she had no choice but to buy. She wrote a cheque for £2,800, the full amount, after first getting the rep's assurance that nothing further would happen until she had seen her GP and consultant.

So Ann was surprised when, a few days later, she received another phone call from Quality of Life, this time to arrange a date for the bed to be installed. In a fit of panic, Ann stopped the cheque and turned to Which? Legal Service.

Our lawyers advised Ann that, since she had bought the bed as a result of what was an unsolicited visit, and she had acted within seven days, she was entitled to cancel the contract under the Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations



Ann stopped a cheque after signing up for a bed she didn't want

1987. We also warned her that, as she had stopped the cheque, Quality of Life could take her to court to recover its money, though if that did happen, she would be able to claim it back again under the regulations.

RESULT

In the event, neither side went to court. Ann didn't need to take further action as Quality of Life

didn't try to get its money back. A few days later, it phoned Ann to say that it was sorry that the cheque had been cancelled but that it would keep in touch with her all the same. Ann knew she didn't want this and so asked Quality of Life to withdraw her name from the competition. It complied with her wishes – and the matter was put to rest.

YOUR RIGHTS IF YOU CHANGE YOUR MIND AFTER AN UNSOLICITED VISIT

STEP ONE

What counts as an unsolicited visit

Unsolicited visits are those which you have not initiated. They include:

- visits from doorstep sellers
- visits from a trader following a phone call from the trader which you didn't request
- visits at the request of someone acting on your behalf that you didn't know about.

STEP TWO

Buying as a result of an unsolicited visit

Under the Cancellation of Contracts Concluded Away from Business Premises Regulations 1987, you have a seven-day cooling-off period, during which, if you change your mind, you can cancel the contract without penalty and get your money back. You should not stop any cheque you've written.

STEP THREE

Why you shouldn't stop a cheque

Changing your mind isn't a legal defence for stopping a cheque. There are only three legal defences for doing that – see 'Step four'. If none applies, you can be taken to court. Stopping a cheque won't negate any claim you have, but you may have to defend your claim and issue a counterclaim as a result.

STEP FOUR

The three defences for stopping cheques

- If you can prove you got nothing in return for your payment (known as 'total failure of consideration'). Beware: if you did get something, no matter how small, your defence will not apply.
- If you can prove there is a threat of real violence to you or people connected to you (known as 'duress').
- In cases of fraud.

STEP FIVE

If you do stop a cheque

You must:

- notify the branch at which your account is held
- give clear details to identify the relevant cheque – its number; date; amount; and the name of the payee.

Unless the cheque has been lost or stolen, your bank or building society may make a charge.

Two cases from the files of our Which? Legal Service consumer lawyers, plus topical legal advice: this month, your shopping rights



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Philip got his £600 deposit back

Challenging an unfair contract term

PHILIP'S STORY

Philip Taylor used his rights under the Unfair Terms in Consumer Contracts Regulations when his request for a refund of a £600 deposit was refused after he had to cancel a booking.

Philip and his daughter Kate spent a long time choosing a venue for her wedding reception before finally settling on a local golf club. The cost to hire the club was £3,000 and Philip paid the £600 deposit a year in advance.



Philip looked set to lose £600 because of a term in the contract

HOW THE REGULATIONS WORK

STEP ONE

Protection for consumers

The Unfair Terms in Consumer Contracts Regulations protect you from attempts by traders to take away or reduce the rights you have in law. They also ensure that traders can't benefit by putting you at a disadvantage – by not using plain English, say. They do not apply to terms negotiated individually or to the price.

Unfortunately, six months before the wedding was due to take place, it had to be cancelled. So Philip asked for his deposit back. The club refused, saying it was a term of its contract that deposits would be kept in the event of a cancellation. This seemed unreasonable to Philip,

STEP TWO

Protection for suppliers

Terms can be worded to protect business interests. But they must not go beyond that and be worded in such a way that they unfairly favour the trader to the detriment of the consumer. A term that does disadvantage the consumer could be considered 'unfair'. Terms that are judged unfair are not binding.

given that the club would most likely get another booking and not be out of pocket. He asked our Which? Legal Service lawyers for advice.

We explained to Philip that the club was entitled to recover only those costs it would lose in relation to his booking – that is, administration costs and loss of profit. If the club would be getting over and above this by keeping the £600 deposit, its gain could be considered disproportionate. This would make it invalid under the Unfair Terms in Consumer Contracts Regulations 1999. Armed with this information, Philip again requested a refund.

RESULT

The golf club didn't challenge the claim this time and 14 days later a delighted Philip received his £600. Philip told us that, although he felt that the club had reacted unreasonably to begin with, he was pleased with the way it had finally dealt with the matter.

Legal tip

Shopping rights

What the law says

Receipts

Shops often want proof of when and where you bought goods if you return, them, so make sure you get a receipt.

Sale items

The Sale of Goods Act 1979 applies. Goods must:

- match any description and any sample shown
- be of satisfactory quality and reasonably fit for their general purpose and any specific purpose you tell the retailer about when you buy.

Sale goods can be sold with a defect. If the defect is obvious or was pointed out, you can't reject goods and ask for a refund unless something else is wrong with them.

Returns

Shops don't have to give you an exchange or a refund if you change your mind. They are entitled to insist on a receipt if you return unwanted goods but not faulty goods, though you may have to prove you bought the goods there.

Buying online

The Sale of Goods Act still applies. But you have from the date you place the order to seven working days from the day after you receive the goods to return them (you don't need a reason) and get a full refund.

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