

[brief cases]

Two legal cases from our files

Unsuitable chair

Eleanor's recliner wasn't made to the right spec

When makers of adjustable therapeutic beds and reclining chairs, Willowbrook Ltd, refused to do anything about a recliner for his sister that hadn't been made to the right specification, Alan Bowden threatened to sue. That made the company sit up and take note.

Willowbrook claims that its adjustable beds and reclining chairs 'combine therapy and practicality with comfort and beauty'. So when Alan was told he'd won a prize entitling him to a 35 per cent discount on its recliner chairs, he had no qualms about a sales rep visiting his home to give a demonstration. Alan was interested in buying two chairs – one for himself and the other for his 90-year-old sister, Eleanor.

Though the demo chair was fine for Alan, it was unsuitable for his sister. Eleanor, who is extremely frail, needed a chair that she could sit in for most of the day. Alan and his wife, Joan, discussed all their requirements in detail with the sales rep, who confirmed that Willowbrook could tailor-make a chair that would suit Eleanor's specific needs. On the strength of these assurances, Alan ordered two recliners, paying £4,554 including the discount.

The chairs were delivered 11 days later. Alan's was perfect but, despite attempts by the installers to adjust pads and cushions, Eleanor's chair wasn't. It didn't feature any of the modifications discussed.

The sales rep came back a few days later, inspected the chair and agreed it wasn't satisfactory. He said he would refer the matter to his head office and that the Bowdens would be contacted shortly.

Three weeks passed without any news, so Alan wrote to Willowbrook to ask it to collect the chair and refund the money. It refused to do either, on the grounds that the order hadn't been cancelled within seven days. More letters followed until the company admitted that it hadn't been able to make a chair to the measurements specified, and so had ignored them. Alan came to Which? Legal Service.

Our team advised Alan that he had a claim for breach of contract as the chair was not fit for the purpose and helped him prepare for court. But before the case was heard, Willowbrook agreed to refund £2,309 (the cost of the chair less a £150 collection charge). However, it finally agreed to waive the collection charge and the Bowdens received £2,459.



POINT OF LAW

If goods don't meet any requirements you specify before buying, and which the retailer agrees to, the retailer is legally obliged to sort out the problem. You may be able to reject the goods and get your money back if you act within a reasonable time.

Supermarket car wash rips van

Tesco had to pay £1,763 when Alan's van was damaged

Tesco was faced with damages of £1,763 and a visit from the bailiffs when it refused to accept liability after a £3 car wash at its New Malden store damaged Alan Huckerby's van.

Alan had realised almost immediately from the noise the car wash was making that something was badly wrong. Then he noticed that the arm on the top of the car wash was tearing off the bars fitted on the van's roof.



Alan Huckerby

He dashed across the forecourt to alert staff to stop the machine and then went to confront the manager. But the

manager played down the incident, saying everyone knew that vehicles fitted with roof bars shouldn't be taken through a car wash. Alan replied that he'd used car washes for over 30 years with no problems. The manager's next line of defence was to show Alan a sign in the store itself, excluding Tesco from liability for all accidents unless due to negligence on its part.

Sensing that he was going to have trouble pursuing his case, Alan came to Which? Legal Service. Our telephone advisers told Alan that Tesco was indeed liable and helped him take the case to court. The judge ruled in Alan's favour and ordered Tesco to pay £1,763.

Tesco didn't pay up, so Alan had no choice but to call in the bailiffs. Ten weeks after the court ruling, his cheque finally came through.

POINT OF LAW

Services must be provided with reasonable care and skill. If they're not and something goes wrong, you can claim. Suppliers can't use exclusion clauses as a way of avoiding having to take reasonable care and skill when dealing with consumers.