

[brief cases]

Two legal cases from our files

Breach of trust

Jon and Jackie's conservatory hopes were dashed

Double-glazing firm A&A Windows breached its contract when it failed to meet terms it had agreed with Jon and Jacqueline Blackburn about the design of their conservatory. It then tried to force the couple into accepting a niggardly offer of £1,000 off their £9,526 bill by threatening to take them to court if they didn't.

The couple commissioned A&A to build the £9,526 conservatory following a visit from one of the company's consultants. They weren't sure what they wanted so the rep made some suggestions. There would be four windows, all equally spaced and all the same size, and all the vertical framework would line up with the detailing on the roof. Jon and Jackie liked the sound of his ideas so they signed the contract and paid a £1,900 deposit.

When the foundations were laid, one of the workmen mentioned to Jon that the wall would have to be thicker than planned, in order to prevent it from falling down. He didn't say that this would affect the appearance. So Jon and Jackie were shocked to see, when the framework was put up, that the windows weren't equally spaced and were different sizes. Work was halted pending a visit

from an A&A rep. He said that the windows could be changed for an extra £1,552, adding that if they were, the detailing on the roof wouldn't match up with the windows.

It became clear that the matter wasn't going to be easily resolved, so the Blackburns asked Which? Legal Service for help. Our team advised them that they had a claim against A&A for breach of contract. A&A's solicitors proposed that A&A should complete the work for £8,526, on the understanding that getting everything to line up remained impossible. The Blackburns rejected the offer outright. A&A then threatened to take them to court for the balance of the original contract price unless they accepted. We advised our couple to put in a counterclaim for their losses if it did.

About three months later, A&A contacted Jon direct with a revised offer to fit three equally-spaced windows to the front, and to put in a ceiling fan, render the wall and finish building the rest of the conservatory. In return, the Blackburns were to pay a final balance of £5,500. The couple agreed.



POINT OF LAW

Specific requirements, such as design features, that are accepted by a contractor before a contract is signed become 'express terms' of the contract. If it turns out that the contractor can't meet these requirements, you have a claim against it for breach of contract.

The fault that wasn't fixed

Gordon's bill rocketed when his garage didn't repair his car properly

Repairs to Gordon Finlayson's Honda rose from £70 to over £2,000 when a garage failed to fix a fault.

Gordon took his car into the DeVries Honda dealer in York to have the air conditioning repaired. It was to cost about £70. He was then told some pipes needed to be replaced, taking the price to £400. In fitting them, though, DeVries broke existing pipes. This cost Gordon another £400.



Gordon Finlayson

Gordon collected his car and paid £962 by cheque. To his surprise the air conditioning was still not working so he took it back. DeVries

was unable to do the work immediately, and as Gordon needed his car, he decided not to leave it. He was assured it would be OK to drive.

He'd gone less than 200 miles when he broke down. He got the car to the nearest Honda garage, where he incurred repairs of £2,097. The technician said the compressor for the air conditioning had seized up, suggesting not enough oil had been put back when it

was repaired. Gordon stopped the cheque to DeVries, but it denied liability and demanded its money. When he said no, it sued him.

We advised Gordon to put in a counterclaim for the extra £1,135 – but we warned him that stopping the cheque had put him at a disadvantage. In the event, DeVries agreed not to pursue Gordon for the money, provided he dropped his claim. Gordon agreed.

POINT OF LAW

You cannot stop a cheque because you're not satisfied with a service. The courts allow just three defences for stopping a cheque. If none of them applies, the person the cheque is made out to can ask for judgment to the cheque's value, plus legal costs and interest at the court's discretion.

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