

Brief cases

Richard had a fight to get his deposit back

Solar water-heating firm's statements turn out to be false

RICHARD'S STORY

When Dr Richard Justice was sent a flyer about solar water-heating systems, his curiosity was aroused, so he rang the company to arrange for a rep to visit him.

It transpired that SolarBank, a trading name of Gillingham-based ProTec Assert Ltd, had contacted Richard because he lived in an area in which SolarBank needed one monitoring home – that is, a home in which ‘a solar heating installation will perform at its best’. As a monitoring-home customer, Richard would get a high-tech system, which used only the best-quality tubes – better, indeed, the rep assured him, than the tubes in the system he was demonstrating. Richard signed the contract and

gave his credit card details, having been assured that the £3,900 deposit on the £6,900 system wouldn't be debited until he'd spoken to his brother-in-law, who had his own energy consultancy.

Not long after the rep left, Richard ran an online check of his credit card statement, only to find the £3,900 had already been debited. Beginning to have doubts, he checked the contract and then made some enquiries. These revealed that the tubes in his system were in fact inferior to those in the demo system. So the next morning, he phoned SolarBank to cancel the contract and to ask for his £3,900 back. It refused, saying it needed the money to cover cancellation costs.

Richard contacted Which? Legal Service. Our lawyers told him that,



Richard was lured into entering into a contract by false statements

as he had entered into the contract on the basis of statements that turned out to be untrue, he would have a claim for misrepresentation. This meant he was entitled to cancel the contract and get his money back, or alternatively to claim compensation. In addition, we advised him that if he could show that the £3,900 didn't reflect SolarBank's losses, he could

challenge the cancellation terms as unfair under the Unfair Terms in Consumer Contract Regulations 1999. Armed with this information, Richard again asked for his money back.

RESULT

SolarBank sent Richard a cheque for £3,900, saying it was doing so as a goodwill gesture.

CANCELLING A CONTRACT: WHAT YOU AND THE SUPPLIER ARE ENTITLED TO

STEP ONE

Suppliers' rights

In most cases a company will take a deposit as security against you cancelling a contract. If you cancel, the supplier may be entitled to keep the deposit, particularly if it can show that the amount was a reasonable pre-estimate of what it would lose through cancellation.

A supplier may also be able to claim for losses

over and above the amount of the deposit – if, say, you cancel because you change your mind and the supplier ends up with an item that can't readily be sold to someone else. But if a contract term is deemed unfair under the Unfair Terms in Consumer Contracts Regulations 1999, you may be able to challenge the supplier's right to keep all your deposit.

STEP TWO

Consumers' rights

You are entitled to cancel a contract if you enter into it on the basis of a statement, either oral or written, that turns out to be false. This is known as misrepresentation. In such cases, you are entitled to all your money back, including any deposit you had to pay.

However, for a misrepresentation claim to succeed, you will have to

prove that it was the statement that induced you to enter into the contract in the first place. Alternatively, you can let the contract stand and claim compensation.

In cases of misrepresentation, the aim of awarding damages is to put the injured parties back to the position they would have been in had the misrepresentation not been made.

STEP THREE

If in doubt, don't sign

Once you've signed a contract, you will normally be legally bound by it, whether or not you've read it. So before you sign make sure that you take time to read everything through – including all the small print. Ask to keep the contract so you can read it through at your leisure. If you are in any doubt at all about anything, don't sign.

Two cases from the files of our Which? Legal Service consumer lawyers, plus legal advice. This month: mobile-phone cashback deals that backfire



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COMMON FOB-OFFS AND HOW TO DEAL WITH THEM

'Try the manufacturer'

If goods are faulty, your rights are against the retailer. Manufacturers' guarantees are legally enforceable but tend to offer more limited rights than those against the retailer. They are in addition to your rights against the retailer.

'You caused the fault'

Goods must be of satisfactory quality (and so durable) and fit for their purpose, though you may need expert evidence to support your case. In the first six months of ownership, it's for the retailer to prove an item isn't defective, rather than you to prove it is.

'It's too late to complain'

You don't have to accept this: although after three or four weeks you may have lost the right to reject the goods and get your money back, you'll still be entitled to a repair or replacement. If you're acting outside a reasonable time (defined on case-by-case basis), and a repair or replacement is not possible, you'll be entitled to a remedy called rescission (basically, you can cancel the contract and claim your money back). If you are starting a claim, you have six years (in Scotland, five) from taking delivery of the goods in which to do so.

Alan's £699 laptop failed after 15 months

Your rights if a retailer tries to deny its responsibility

ALAN'S STORY

Alan Martin found himself locked into a six-month-long battle with PC World when it tried to wriggle out of its responsibilities after his computer went wrong just 15 months after he'd bought it.

Alan bought the £699 Fujitsu Siemens laptop from the computer superstore's Tottenham Hale branch, in north London. Fifteen months later the soundcard stopped working and the hard drive failed. The Fujitsu Siemens helpdesk said he needed a new hard drive and motherboard, which surprised Alan given that the laptop was so new.

Alan knew that, under the Sale of Goods Act 1979, retailers are liable if goods aren't of satisfactory quality and fit for purpose, so he went back to the store. The manager denied

PC World was responsible, adding there was nothing he could do. Alan came to Which? Legal Service. Our lawyers confirmed that what he'd been told was wrong, so he wrote to PC World to remind it of its rights.

At PC World's insistence Alan got an independent report detailing the faults and giving a breakdown of the repair costs. But PC World dismissed it, saying the expert hadn't made it clear whether the faults were due to an inherent defect or caused by wear and tear. It insisted on another report from a different expert. This did make it clear that the faults were inherent and that it wouldn't be economical to repair the laptop as the cost would outweigh its value.

RESULT

PC World finally refunded Alan £700 in the form of vouchers.



Alan had to get two reports to prove his laptop was inherently faulty

Legal tip

Phoney deals

Avoid getting caught out

Rings a bell?

Company A cold calls you to say it will give you cash if you agree to upgrade your mobile phone with your current network provider. You sign up, only to find that Company A goes bust...

Many of you have told us you've signed up to this kind of offer. Sadly, in many cases, you may not have a claim if the cashback contract was with Company A, not the network provider. But there are some things you can do to avoid being caught out.

Don't get stung

- Confirm who your contract is with. A contract with your network provider gives you a better chance of redress.
- Before signing up, ask to see the terms and conditions – often the terms about how and when to claim your cash back are vaguely worded.
- Note any dates by which you need to take specific actions, to ensure you don't miss them. If you miss a deadline, you lose the right to claim the cash back unless the terms fixing the deadlines are unfair under the Unfair Terms in Consumer Contract Regs and so unenforceable.
- Send any documents by registered post, so you know the address is bona fide.
- Finally, trust your intuition. If a deal sounds too good to be true, it probably is.

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