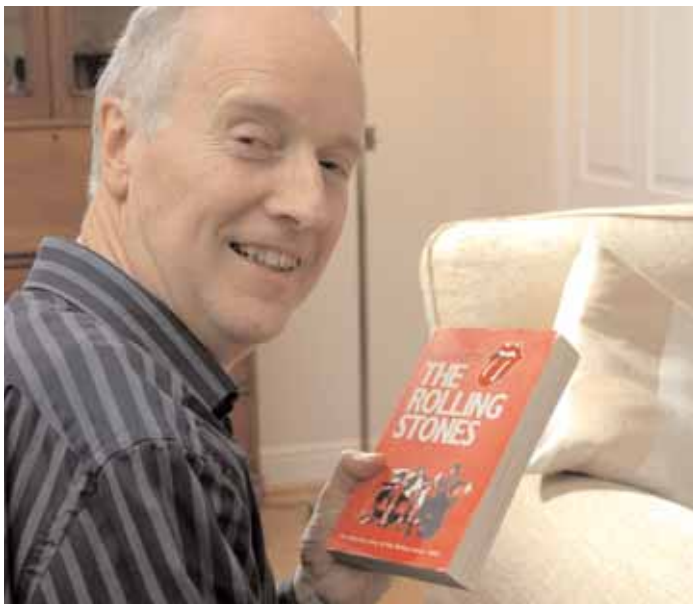


Brief cases

Martin finally got all his money back

Package deal is invalidated when concert is cancelled



Martin's sole reason for booking the trip was to see the Rolling Stones

MARTIN'S STORY

Martin Doughty booked a trip for two to see the Rolling Stones concert in Paris in June last year. The trip, organised by Ticket Genie, cost £379 and provided accommodation at a three-star hotel in the centre of the city, plus two tickets to the concert. Martin arranged his own flights separately.

A month or so before Martin was due to go, Ticket Genie emailed him to say that the concert had been cancelled because one of the group was ill. Though Martin accepted this was beyond anyone's control, he was surprised when Ticket Genie told him it would refund only the price of the two concert tickets, which it said cost £184, declaring that the rest of the booking was still valid. Martin pointed out that the only reason he'd booked in the first place was to see the concert and asked for a full refund, but Ticket Genie merely referred him to its terms and conditions, which it claimed allowed it to offer only a part refund. Dissatisfied with the response, Martin turned to Which? Legal Service for help.

Our lawyers explained that

because the trip lasted more than 24 hours and Ticket Genie had organised accommodation and 'other ancillary tourist services' (the concert, in this case), all for one fixed price, he'd been sold a package holiday and therefore the Package Travel, Package Holidays and Package Tours Regulations 1992 applied. We explained that these gave Martin specific legal rights. In particular they meant that Ticket Genie was responsible for all parts of the package, even those it wasn't itself providing. We also told Martin that as a significant change had been made to the package, he had the right to withdraw from the deal and claim his money back.

Armed with this advice, Martin went back to Ticket Genie but it again referred to its terms and conditions. Our lawyers then told Martin that any contract term that attempted to take away his legal right to his money back could be challenged as unfair under the Unfair Terms in Consumer Contracts Regulations 1999.

RESULT

Ticket Genie finally agreed to a full refund.

PACKAGE TRAVEL REGULATIONS: KNOW WHERE YOU STAND

STEP ONE

Organiser's role

The organiser is responsible for all parts of the package, even if it is not providing them itself. A package doesn't have to consist of flights and hotel. As in Martin's case, it can be a combination of other tourist services, as long as they constitute a significant part of the package, and either transport or accommodation.

STEP TWO

Changes beforehand

If 'significant alterations' are made to your package beforehand, you have the right to choose:

- a full refund, or
- an alternative package of equal or higher quality, or
- a lesser package with a refund of the difference in price.

In some circumstances, you may also be entitled

to compensation. This could cover loss of enjoyment or extra costs – for example, if, rather than overlooking the beach, a substitute hotel is a taxi ride away.

You probably won't be entitled to additional compensation if the changes are due to unusual unforeseeable circumstances that are beyond the organiser's control.

STEP THREE

Changes afterwards

If problems arise once the package is under way, the organiser must take steps to put things right. Always complain as soon as possible and insist on completing any complaint form. If you have the services of a rep, get them to sign the form and give you a copy, so you can prove you gave the organiser the chance to resolve the problems.

STEP FOUR

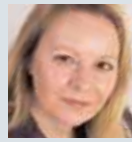
Unfair contract terms

There are many reasons why a term may be unfair, such as aiming to take away or restrict your legal rights, or allowing the trader to change the terms of the contract to your disadvantage while tying you in. A term that is found to be unfair is not legally binding. See 'Challenging an unfair contract term', *Which?*, December 2006, p77.

Two cases from the files of our Which? Legal Service consumer lawyers, plus legal advice on everyday topics. This month: alternative dispute resolution



Peter McCarthy
Senior solicitor
Co-ordinates our monthly 'Brief cases' feature



Joanne Barker
Senior solicitor
Specialises in consumer law and employment law

DECIDING TO USE AN OMBUDSMAN

STEP ONE

What's in it for me?

- Ombudsman schemes are free for consumers.
- The form you have to submit is straightforward and less formal than the form for starting court action.
- You can go to court if you're unhappy with the outcome. Court decisions are binding, as are most decisions taken at arbitration. You can appeal both but you may have to pay your opponent's legal costs if you are unsuccessful.
- The ombudsman can make awards for inconvenience as a result of poor customer service; as a rule, a judge in court can't.

See 'Legal tip', right, for more about ombudsman schemes you can use.

STEP TWO

Any restrictions?

You have to have exhausted a company's own complaints procedure before you can go to an ombudsman. If you've started court action or have already been to court, the ombudsman won't consider your claim.

STEP THREE

Do I have other options?

You could try conciliation or mediation (see 'Legal tip', right).

Barry took his claim to an ombudsman **BT Broadband connection that failed to connect**

BARRY'S STORY

Barry Natton settled his claim against BT Broadband through an ombudsman rather than a court.

Before signing up, Barry made it clear to three staff at BT that he needed a wireless connection for two computers, 12 metres apart. They all assured him there'd be no problem; one even advised him on which BT router to buy. But despite the assurances, the connection worked only occasionally. When BT's helpdesk couldn't help, Barry paid a computer consultant £65 to take a look. He confirmed the system was set up correctly but couldn't improve the performance – the signal on the router was too weak. A resigned Barry told BT he'd put up with the situation but wanted suitable compensation.

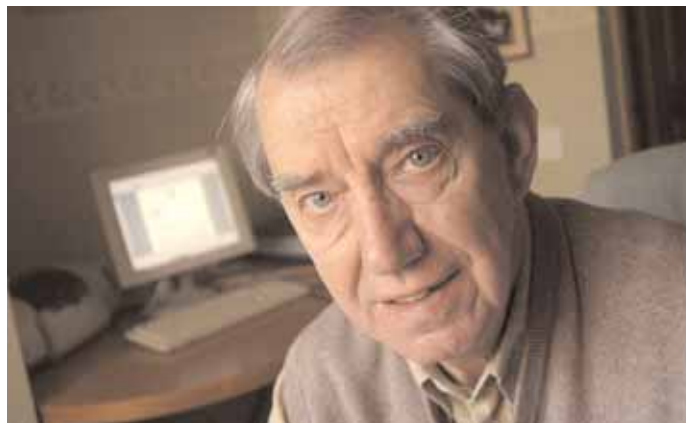
BT offered to refund six months'

rental but Barry wasn't happy. He also rejected its second, final offer of a further three months' rental plus £75 as a goodwill payment. He contacted Which? Legal Service.

We explained that BT was in breach of contract for not supplying the service contracted for. We suggested that if Barry wanted a free and informal way to try to settle his dispute, he could pursue his claim through Otelo, the telecoms ombudsman. If unhappy with its decision, he'd still be able to go to court. Barry took up our suggestion.

RESULT

Otelo ruled that BT's final offer was fair but ordered it to send an engineer to investigate. When this didn't solve things, BT sent Barry a more powerful router. He had to pay to upgrade his aerial but at least his system worked.



Barry waited 14 months for his broadband connection to work properly

Legal tip

Resolving a dispute

If you don't want to go to court to settle a dispute, try alternative dispute resolution, such as an ombudsman scheme (left). Here are three of the most common types

Ombudsmen

There are different ombudsmen for different industries, such as utilities, telecommunications or finance. With some schemes membership is compulsory for companies operating in that industry; others are voluntary. The schemes are normally free and you can usually go to court if you're unhappy with the decision. Check with the relevant ombudsman whether the company you're complaining about is signed up.

Arbitration

The arbitrator (arbitrator in Scotland) hears both sides and makes a decision to resolve the dispute. In most cases there's a fee and the decision is usually binding, so you won't be able to go to the small claims court, only the higher courts, which can be expensive.

Mediation

The parties involved in the dispute decide the terms of any agreement. For mediation to be binding both sides must be happy to sign up to the terms – if they're not, they can go to court. You usually pay for mediation.