

Brief cases

Tracey's car was beset with problems

Dealer spends a year trying to fix faults, only to fail

TRACEY'S STORY

Tracey Charlesworth paid out £5,300 for a car that was beset with faults that couldn't be fixed. Two years and one court action on, the dealer that sold it to her offered her a replacement.

Tracey bought the three-year-old Vauxhall Corsa 1.2i from Perry's Motorsales Ltd's Broadstairs dealership in June 2004. During the test drive it became clear there was a problem with the clutch. But as Perry's promised to fix this before the car was delivered, Tracey went ahead with the sale. Perry's arranged finance through a credit agreement with Black Horse Ltd.

When Tracey got the car a few weeks later, the clutch was still playing up. So she went back to

Perry's. Things were fine for the next couple of months, but then the engine warning light and exhaust emission light started to come on, meaning more trips to Perry's. A month later, the engine started to function erratically and to misfire.

Between September 2004 and October 2005, despite Perry's attempts to track down and fix the faults, the engine warning light continued to come on periodically and the engine continued to misfire. Tracey called in an expert. He said that if Perry's hadn't been able to fix the car by now, it was unlikely it would be able to do so in the future.

Tracey contacted Which? Legal Service. Our lawyers told her she had a claim for breach of contract, as it appeared the car was not of satisfactory quality. Her type of credit



Tracey accepted the dealer's offer to exchange her car

agreement meant Perry's and Black Horse were jointly liable (had it been a hire purchase agreement, only Black Horse would have been).

When neither party would settle, we advised her to take both to court.

During the proceedings, Black Horse objected that Tracey hadn't consulted with either itself or Perry's over the choice of expert and asked the judge to appoint another, whom

all three agreed on. The judge ruled in favour of a preliminary hearing to decide whether this was necessary.

RESULT

At the hearing, the judge urged all parties to try to resolve the dispute and suggested Perry's offer a replacement car or partial refund. Perry's offered to replace the car, which Tracey accepted.

BUYING ON CREDIT AND GOING TO COURT

POINT ONE

Credit agreements

When you buy goods via a credit agreement that the supplier arranges, you have the same rights under the Consumer Credit Act 1974 as when you buy on a credit card. That means that if something goes wrong with the goods, or there is a breach of contract or misrepresentation, you can claim against either the seller or the finance

company, or both. This doesn't mean, though, that you can recover your loss twice over, as the courts won't allow 'double recovery' of compensation.

When bringing a claim, the same criteria apply to credit agreements and credit cards. Goods must cost more than £100 and less than £30,000, and the credit mustn't exceed £25,000.

POINT TWO

Hire purchase

With most credit agreements, you usually own the goods straight away. However, with hire purchase, the goods are yours only when you've paid the final instalment, and any claim is against the hire-purchase company, not the supplier. For more on buying on credit, see 'Legal tip', *Which?*, October 2006, p81.

POINT THREE

Preliminary hearings

If your case goes to court, there may be issues that need to be dealt with before the final hearing. If so, the judge can hold a preliminary hearing. All parties would normally be expected to attend. While everyone's together, the judge is at liberty to see whether there's any common ground and to encourage settlement without a final hearing.

POINT FOUR

Expert evidence

If you think you need expert evidence to prove your claim, you must choose someone all parties are happy with and agree on the points that will be covered. If you don't, your opponent(s) could request that another expert be appointed, on the grounds that the one you chose is prejudiced in your favour.

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



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



Joanne Barker
Senior solicitor
Specialises in consumer law and employment law

HOW TO HELP YOUR CLAIM

STEP ONE

Be insurance savvy

An insurance contract is a 'contract of utmost good faith'. You must disclose any factor you think may affect a firm's decision to offer you cover or not. If you don't, the company could void the policy. It may not be enough just to answer questions. If there's anything relevant that you think could make a difference, disclose it.

STEP TWO

Take care

Drivers are required to take reasonable care of their car. If they don't, and the car is stolen or damaged as a result, insurers may not pay up. The same principle applies to the car's contents.

STEP THREE

Always remove the keys

As Joe's case shows, whether you are able to claim for your losses could come down to something as simple as how far you were from the car. Court decisions suggest that if you are close enough to be a deterrent to a potential thief, and thus make a theft unlikely, the insurance company may not be able to argue that you have failed to take all reasonable steps to protect the car. To avoid any doubt, always remove your keys.

Joe's £3,000 claim was initially rejected Insurance company forced to pay out for damaged car

JOE'S STORY

Joe Faust was cleaning the wheels of his wife Dawn's car at a garage when someone jumped in and drove away. The car turned up later – but with £3,000 worth of damage. So Joe put in an insurance claim. More Than asked whether Joe or Dawn had any motoring convictions, to which Joe mistakenly said 'no'. Three weeks later, More Than, part of Royal & Sun Alliance, wrote to say it was rejecting the claim as Joe had failed to disclose a speeding offence from more than four years ago.

More Than continued to reject the claim and finally Joe paid to have the car fixed. He then called Which? Legal Service, which suggested he refer his case to the Financial Ombudsman Service.

More Than defended its decision, saying the key was in the ignition when the car was recovered, contravening the clause that stated drivers had to 'take all reasonable steps to protect the car against loss or damage'. (Joe swore he hadn't left the key in the ignition.) It added it was a term of the policy that the immobiliser be activated in the event of theft, implying this hadn't been the case. Finally, the failure to disclose the speeding offence allowed More Than to void the policy.

The ombudsman agreed that Joe had in all probability left the key in the ignition, but as he'd been so close by when the theft occurred, it didn't amount to a failure to protect the car. He also said More Than should have raised the issue of non-disclosure earlier; it was too late now to use it as grounds for rejection. More Than was unable to prove the policy said the immobiliser had to be activated, so lost on that point, too.

RESULT

Royal & Sun Alliance was ordered to refund the cost of repairs.



Joe fell foul of an opportunist thief while washing the wheels of his wife's car

Legal tip

Package holidays

Know your rights

Is it a package?

■ As a guide, a package is a ready-made deal consisting of a combination of two of the following: transport, accommodation and 'other ancillary tourist services' that constitute a significant part of the deal (tickets for a concert, say).

■ If you put the holiday together yourself (you select, say, flights for £100 and then a hotel for £200), it's probably not a package.

Why do I need to know?

There's a big difference in the protection you have if something goes wrong. Packages must be financially protected, which means you get your money back if the travel company goes bust. If you don't buy a package, you may have to take legal action against someone based in another country.

Does how I pay count?

No. The key is how you book, not how you pay. Paying one lump sum doesn't make it a package. On the other hand, if it was a ready-made deal, being sent separate invoices for each part to make it look as if you bought them separately won't stop it from being a package.

More advice

■ Which?, May 2007, p80.
■ www.which.co.uk/holidayprotection



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