

# Brief cases

Catherine won an out-of-court settlement for a breach of contract claim

## TalkTalk is sued for cutting off customer without permission

### CATHERINE'S STORY

Catherine Macmillan took TalkTalk to court when it pulled the plug on her broadband connection without her express consent while continuing to take payments from her account.

Catherine, from Glasgow, upgraded to TalkTalk's £10-a-month broadband offer in March 2006. Though she was dissatisfied with the service, which she found unreliable and intermittent, she persisted with it until January this year – when her connection packed up altogether.

As just the second customer to sign up to TalkTalk's broadband service when it went live in Glasgow, Catherine put the problem down to yet another blip. Nevertheless, the next morning she phoned TalkTalk to see what was going on. She was told that she'd been disconnected as,



Catherine had to pay for broadband, even though she'd been cut off

according to its records, she had twice asked for this to be done. Catherine was dumbfounded: she'd made no such requests.

Calls to TalkTalk's helpdesk, based in India, proved fruitless and frustrating, so Catherine wrote to the

company's offices in London. This, too, got her nowhere. She was merely advised that she could begin a new contract. This was despite the fact that TalkTalk had carried on taking direct debit payments for four months after it had cut her off.

Catherine phoned Which? Legal Service for advice. Our lawyers said that she had a claim for non-performance, since TalkTalk wasn't performing the service it had contracted for. We told her that she could pursue her claim through the small claims process in the Sheriff Court in Scotland. Alternatively, she could pursue it through the courts in England, since that's where TalkTalk is based.

Catherine decided to pursue her claim through the Sheriff Court. Doing so meant she was able to claim not just for her direct loss (which came to approximately £40 in direct debit payments taken after the service had been suspended) but also for the upset she'd been caused. The latter would not have been possible in English courts in most cases.

### RESULT

**TalkTalk agreed to settle out of court. Catherine received £312. Of this, £125 was for stress and inconvenience. This sum amounted to more than three times her direct loss (£40).**

## BREACH OF CONTRACT CLAIMS AROUND THE UK: THE MAIN DIFFERENCES EXPLAINED

### POINT ONE Small claims limits

There are differences in how much you can claim.

- In England and Wales, the maximum is £5,000.
- In Northern Ireland the maximum is £2,000.
- In Scotland it's £750.

Fees and expenses you can claim also differ. Scotland has different rules from the rest of the UK about claiming for emotional upset (see 'Point four', right).

### POINT TWO Subject to contract

In Scotland, you can enter any contract at 16, but in the rest of the UK, you have to be 18.

Across the UK a contract consists of:

- an offer
- acceptance of the offer
- a commitment that the contract is binding and not just a casual promise
- a benefit (monetary or otherwise), though this is not essential in Scotland.

### POINT THREE Breach of contract

If either party of the contract fails to honour their obligations, the contract is breached. Ending the contract at this stage, if it hasn't ended already, is called rescission or repudiation across the UK. In Catherine's case, above, the contract had already ended because the supplier had stopped its service.

The parties involved can ask the courts to enforce the contract (specific performance in England and Wales and Northern Ireland; specific implement in Scotland) – that is, to insist the service outlined is carried out. This is rarely applied and the most common or effective remedy in claims for breach of contract is to seek damages/compensation.

### POINT FOUR Damages for distress

In England and Wales and Northern Ireland damages for distress are payable only in contracts for pleasure or enjoyment, such as holidays, whereas Scottish courts can award nominal sums for inconvenience or other upset in any contract, as in Catherine's case, above. Under Scots law, damages may also be paid where there's no direct loss.

Two cases from the files of our Which? Legal Service consumer lawyers, plus legal advice on everyday topics. This month: your rights if a bailiff calls



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## LIQUIDATION: KNOW YOUR BASIC RIGHTS

### STEP ONE

#### Protect yourself

- Find out about a trader's status before signing a contract. Companies House ([www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)) holds details on company liquidations; the Individual Insolvency Register in Birmingham on sole traders ([www.insolvency.gov.uk](http://www.insolvency.gov.uk)). In Scotland, the Accountant in Bankruptcy ([www.aib.gov.uk](http://www.aib.gov.uk)) has details on Scottish sole traders and companies.
- You can also contact a branch of the official receiver's office ([www.insolvency.gov.uk](http://www.insolvency.gov.uk)), check the local press or the *London Gazette* ([www.gazettes-online.co.uk](http://www.gazettes-online.co.uk)).
- If you can, and the goods cost more than £100, pay at least in part with a credit card (as little as £1 is enough).

### STEP TWO

#### If the worst happens

- Contact the official receiver or the insolvency practitioner handling the matter. You will rank in order behind other unsecured creditors, so you're unlikely to recover very much. You may be able to take possession of goods that have been stored in a warehouse, if you can identify them as yours.
- If you paid by credit card, pursue a claim against the credit card issuer.

## Clause stated Pamela wouldn't get a refund Unfair solar heating contract

### PAMELA'S STORY

Pamela Noble signed a contract with Bournemouth-based Solar Technik for an £11,000 solar heating system, paying a deposit of £2,860 on her MBNA credit card.

Pamela signed at her home after inviting a rep to call. The next morning, on reading the contract in detail, she realised she'd be getting only hot water. She said the rep had told her the system would provide central heating as well – which it couldn't technically do.

Pamela couldn't cancel since she'd asked Solar Technik to call and so the visit wasn't unsolicited. Yet the rep's assurances were at odds with the contract, so Pamela had a case for misrepresentation. The problem was that it was her word against his.

Pamela argued that the contract was unduly harsh about refunds. It said that she could not cancel and that if she tried to do so, she could

be liable for even more than the deposit she'd paid, to cover expenses. In a further sub-clause, Solar Technik also reserved the right to veto any claim for a refund.

The term lacked clarity and was unfair, which meant it wasn't legally binding. The Office of Fair Trading and Pamela's trading standards department, both of which are among the organisations that determine whether a term is unfair, agreed – but Solar Technik stood firm. Then it went into liquidation.

When appeals to MBNA and the Financial Ombudsman Service failed, Which? Legal Service gave Pamela advice and guidance on how to take MBNA to court, as credit card issuers share liability with suppliers under section 75 of the Consumer Credit Act 1974.

### RESULT

**MBNA offered a refund before court documents were issued.**



Pamela grew alarmed when she read the terms of her contract

## Legal tip

## Bailiffs

### Know your rights

#### What they do

Bailiffs are authorised to collect debts on behalf of creditors (people you owe money to) – for instance, if you have a county court judgment against you or owe council tax. They can seize goods and sell them to recover the debt (including items outside your house, such as a car), though there are restrictions.

#### Before they call

Contact the court or your local authority as soon as you know of an impending visit: often other payment arrangements can be made, such as paying in instalments.

#### Confirm their identity

Always ask for proof of identity and who they're representing. Creditors may themselves send people, often called 'debt collectors' or 'advisors', to negotiate payments if you're in arrears. They do not have the powers of bailiffs.

#### If they call

- Do not allow them in, even if they insist (more on p77).
- Confirm their ID and ask to see a warrant.
- Don't sign anything you're unsure of.
- Contact a citizens advice bureau.

#### More information

- [www.adviceguide.org.uk](http://www.adviceguide.org.uk) (website of Citizens Advice)
- [www.direct.gov.uk](http://www.direct.gov.uk)