

# Brief cases

John threatens court action against bed and finance companies

## Bed fails to relieve pain despite promises from rep

### JOHN'S STORY

John Carr suffers from severe back and neck pain, so when he saw an ad for Craftmatic Adjustable Beds, which he felt could help alleviate some of his symptoms, he rang the Abingdon-based firm and arranged for one of its reps to call.

During the visit, John made it clear to the rep why he needed the bed. The rep assured him a Craftmatic bed would help, and jotted down the benefits he could look forward to. These included help with neck pain and circulation and an improved quality of life. On the strength of these assurances, John placed an order for a Model I bed costing £1,995. The rep said that his firm could arrange finance through a credit agreement with Clydesdale

Financial Services Ltd. John accepted the offer and signed a contract. The total, with interest, was £3,187.

To John's dismay, the bed didn't help – indeed, its massage feature gave him a headache. So he wrote to say he was rejecting it and wanted a refund. Craftmatic wouldn't agree, so John rang Which? Legal Service.

Our lawyers told him he might have a claim for misrepresentation, as the bed hadn't helped, and for breach of contract, as it wasn't fit for the specific purpose John had made known. As he'd acted quickly (he'd had the bed for just 14 days) he could end the contract at no cost.

Craftmatic refused to accept John's claim, saying the brochure and form he'd signed made it clear the bed might provide only temporary relief. The contract gave him him ten



John took court action against the seller and the finance company

working days to change his mind, it added. As these had now passed, he couldn't cancel.

Our lawyers advised John that rights to cancel a contract because of a change of mind and the rights to end one because of breach of contract or misrepresentation are quite different. He could also end the finance agreement as it was a 'linked transaction' (because Craftmatic had arranged it). Under section 75 of the Consumer Credit Act 1974, the

finance company shares liability with the seller, so John could also claim against Clydesdale. When neither Clydesdale nor Craftmatic would settle, John took them both to court.

### RESULT

**A few weeks before the final hearing Craftmatic agreed to take the bed back and refund the payments John had made. Clydesdale also said it would end the finance agreement.**

## THE RIGHT TO CANCEL A CONTRACT: WHAT YOU SHOULD KNOW

### POINT ONE Sold a pup

Goods don't just have to be fit for their everyday purpose. They also have to be fit for any specific purpose you make known to the seller and to which the seller agrees. It isn't always sufficient just to mention the purpose you want the goods for. In case of a claim, get everything agreed in writing. If you enter into a contract on

the basis of a statement that turns out to be false, you may have a claim for misrepresentation. As soon as you discover that there has been a misrepresentation, tell the seller. If you act quickly, you should be able to end the contract and get your money back. Alternatively, you could claim compensation – to bring the goods up to the standard promised, say.

### POINT TWO Linked transactions

If, like John, you are entitled to end a contract, the law says that a finance agreement arranged by the seller should also come to an end. Had John arranged his own finance (through a bank loan, say), there would have been no link. As John did, always get confirmation the finance agreement is at an end as part of any settlement.

### POINT THREE Cancellation rights

Sometimes the law gives you the right to cancel a contract; sometimes the contract itself gives you the right. Even if the time for cancelling a contract has passed, you still have the right to ask for your money back if there has been a breach of contract or misrepresentation as long as you do so within a reasonable time.

### POINT FOUR Cancellation periods

Here we list some basic rights; other conditions may apply, depending on circumstances.

■ Cold calling: seven days if you sign on the spot.

■ Distance selling (phone, post, online): from when you order the goods to seven working days starting the day after you receive them.

■ Extended warranties: 45 days.

Two cases from the files of our Which? Legal Service consumer lawyers, plus legal advice on everyday topics. This month: taking on work for the summer



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## Holiday ruined by awful accommodation Travel agent saves the day

### RICKY'S STORY

A travel agent flew to Ricky Hoggard's rescue when his holiday accommodation proved so abysmal he couldn't stay there.

The holiday, at the Cala D'Or Park Apartments in Mallorca, was with Excel Holidays of Crawley, and Ricky booked through a local travel agent, Andrew Earle Travel in Hull. He paid £1,500 for two weeks for himself, his wife and their two children.

The brochure had described the three-star-plus chalet as 'clean and modern with modern appliances'. In fact, it was filthy and dusty. The cooker was rusty, the fridge hadn't been cleaned out and basic appliances were missing. The cupboards were dirty and warped and the windows were rotten. There was sand in the bedding and ants everywhere. The sides of the pool were black with dried suntan oil so thick that Ricky said his two young daughters 'could write their names on it'.

Ricky complained straightaway but the rep said nothing could be done, as the whole of Mallorca was full. On hearing of their plight, Ricky's father-in-law, Terence, contacted Andrew Earle. The travel agent was so shocked that, unusually, he arranged to fly out to inspect the chalet. He took one look and paid for Ricky and his family to fly home.

## HOLIDAY HORRORS: WHAT YOU CAN CLAIM

### POINT ONE How holiday claims differ

Holiday claims are one of the very few where you can claim compensation for distress, disappointment and loss of enjoyment. You can also claim for any difference in value between the holiday you got and the one you should have had, plus any out-of-pocket expenses you have incurred.

### POINT TWO Amount of compensation

The court allows the defendant a specific length of time in which

to file a defence. If the defendant fails to file a defence in that time, you can ask the court for 'judgment in default'. This assumes that the defendant (in this instance, Excel Holidays) is in the wrong and the only issue the court has to decide is how much compensation to award. Holiday claims, however, usually include an amount for loss of enjoyment. In this case, the amount is not fixed, so the judge will normally hold a short hearing where all parties can say what they think the compensation should be.

**RESULT**  
**Excel Holidays failed to put in a defence, so Ricky applied for judgment in default against it. At first the company didn't pay up, but finally Ricky received a cheque for £3,070.**

Ricky rang our lawyers, who advised him to claim compensation for the ruined holiday and loss of enjoyment. Excel Holidays offered him £1,240, which Ricky rejected. We advised him how to start court proceedings.



The Hoggard family: happy to be home after their holiday nightmare

## Legal tip

## The law on casual working Summer jobs

### Know your rights

### Casual vs employee

If there is an ongoing contract extending beyond one week (with a week running from Sunday to Saturday), you are considered an employee rather than a casual worker – even if the work is very part-time. In one case, for example, someone contracted to work 5.5 hours on alternate Fridays was held to be an employee. If you're under 15 there may be legal restrictions on the number of hours you can work.

### No contract?

If your employment is meant to last at least four weeks, you're entitled to a written statement of terms (a form of contract). This sets out the terms under which you are employed – location, hours, pay and so on. You don't have to sign a statement or a contract – the fact that you start work shows you accept the conditions.

### Giving notice

You should be given a start and end date but if not, you're entitled to at least one week's notice if you've worked at least four weeks.

### Rates of pay

The minimum hourly wage (until October 2007) is:

- £5.35 if you are over 22
- £4.45 if you are 18 to 21
- £3.30 if you are 16 to 17.

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