

Brief cases

Jean was refused a refund on the grounds that she'd let too much water get into the unit **Wet excuse offered when bathing device fails**

JEAN'S STORY

Nationwide Mobility Ltd's advert in a copy of the *Radio Times* caught the attention of Jean and Frank Wynniatt. The Hampshire-based firm sells a range of items, including bathing products, for people with reduced mobility. Jean, who has trouble getting in and out of the bath, was keen to know more. After speaking to Nationwide, she chose one of its Mermaid bath belts for £1,415 including installation.

The device consists of a belt that you sit on and that you secure into a floor bracket, a wall-mounted unit housing a battery-powered motor, and a cover that you fit over the unit to stop it getting wet. The rep who installed Jean's belt didn't leave a cover, so Jean rang Nationwide. She was assured that one would be sent immediately but in the meantime she should use a plastic bag, which she did. A few days later Nationwide contacted her to say it might take two months for the cover to arrive.

Jean had had the device three days and had used it six times when the button that operated the belt failed. Jean finally managed to get it to work but when she took her next bath, the unit packed up completely. Jean discovered that the back of the battery was waterlogged. She contacted Nationwide and said she wanted to return the belt and get her money back. It refused, saying she must have let too much water get into the unit, which wasn't totally waterproof.

Jean rang Which? Legal Service. Our lawyers advised her that under the Supply of Goods and Services Act 1982 goods must be of satisfactory quality and fit for their intended purpose. As Jean had acted quickly, she had time to reject the bath belt and ask for her money back. She went back to Nationwide and finally it agreed to fix the unit and give her £500.

Nationwide collected the unit and returned it a while later, still minus the protective cover. But after Jean

had taken a bath, her husband, Frank, noticed condensation in the LCD display, indicating that water had again got into the unit. Then the unit seized up, so Jean got back in touch with Nationwide and again asked for her money back.

This time Nationwide offered to supply a new unit. Despite having lost confidence in her bath belt, Jean

was prepared to accept it, but when the couple found a similar product on sale from another company, they asked Nationwide to fit that instead.

RESULT

Nationwide said it would prefer to give a full refund. Jean accepted this offer and used the money to buy the other device.



Jean and Frank are happy with the belt they bought elsewhere

TIPS WHEN SETTLING CLAIMS FOR PROBLEM GOODS AND SERVICES

TIP ONE

Accepting an offer

If you have a legal claim against a trader and the trader makes you an offer to settle, don't indicate that you're happy with the amount unless you are. If what you say can be taken to mean you accept, you will probably have created a legally binding settlement, and you won't be able to ask for more if you realise later you've sold your claim short.

TIP TWO

Part settlements

The position is different if you agree to accept compensation for a specific part of your claim. For example, if a company you've hired to install a new kitchen damages your wall tiles in the process, accepting compensation to cover the cost of fixing the damage to the tiles shouldn't prevent you from claiming later

if there turns out to be a problem with the kitchen itself or with its installation.

To avoid the possibility of any disputes in the future, make it clear when you accept any offer what exactly it covers and that you are reserving your right to pursue any other claims you may have if the goods or service turn out to be problematic.

TIP THREE

Banking cheques

Don't bank any cheque sent by a company you're in dispute with unless you're happy with the amount. If a cheque is sent 'in full and final settlement', it would be very difficult to argue that banking it hasn't settled your claim, potentially leaving you no way to claim for future problems. Return the cheque and restate the sum you want.

TIP FOUR

A different product

If you are too late to reject a problem item, there's no entitlement under the Supply of Goods and Services Act to have it replaced with a different make and model. If it has a design fault, where replacing it like for like would be pointless, you're entitled to a refund (less a reasonable sum for usage) unless a way can be found to put the problem right.

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



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Three replacement phones didn't work

Mobile proves unsatisfactory

BARRIE'S STORY

Bowing to pressure from his family to get a mobile phone, Captain Barrie Glover visited his local T-Mobile store in Gloucester. After explaining to staff that he wanted a phone only for emergency use, he bought a Nokia 3120, for £70.

Barrie had had his phone for two years, during which time he used it to make and receive the odd call. Then in June this year, while in Doncaster, Barrie became stranded in the floods that struck Yorkshire. He tried to call his family but the phone wouldn't work. His family couldn't get through to him, either.

Back in Gloucester, Barrie went back to the store. Staff there said

the phone was quite old and suggested he might have damaged it. They also said it may have been disconnected due to lack of use. This surprised Barrie, who said it had worked fine a few weeks earlier.

The staff failed to get the phone

to work so Barrie wrote to head office. Two weeks later one of T-Mobile's customer services team called. He advised Barrie to take the phone to a Nokia shop and ask for the 'code block' to be erased. This cost £15 and didn't solve anything.

Barrie phoned Which? Legal Service for advice. Our lawyers explained that under the Sale of Goods Act 1979 goods must be of satisfactory quality and fit for purpose. We advised him that if the phone couldn't be fixed, he was entitled to a replacement or a partial refund. T-Mobile agreed to replace it. In fact, it ended up sending three phones, none of which worked.

RESULT

Barrie was referred to a senior customer services adviser who, said Barrie, 'couldn't have been more helpful'. She immediately sent another phone plus some free airtime. This one did work.



Barrie had had his phone just two years and used it only occasionally

SALE OF GOODS ACT: YOUR RIGHTS

POINT ONE Satisfactory quality

Goods must be of satisfactory quality. This means they must be reasonably durable. If a product fails before its time, you could argue that it isn't of satisfactory quality. The fact that the guarantee has expired or you could have taken out an extended warranty is irrelevant and doesn't reduce your legal rights.

POINT TWO Fit for purpose

If you need an item for a

specific purpose, tell the seller and get it to confirm it is suitable. If it turns out it isn't, the seller is in breach of contract.

POINT THREE Remedies

You can reject problem items if you act within a reasonable time. You can also ask for a repair or replacement (the seller can choose whichever is cheaper). If the replacement or repair isn't carried out in a reasonable time, you can ask for your money back less a reasonable amount for use.

Legal tip

Codes of practice

Some codes of practice are voluntary, others are compulsory. We explain what rights you have if a trader doesn't follow a code of practice

Legal enforcement

A few codes stipulate that a trader must include certain requirements in its terms and conditions. If a trader fails to adhere to them, you can take court action for breach of contract to recover losses. The Abta code operates this way.

Other options

If the code isn't part of the terms, you can't take a company to court for breach of contract, but you may have other options. In addition to a code of practice, a trade association or industry watchdog often offers dispute resolution as an alternative to going to court. This may cover anything from mediation to ordering the trader to pay compensation for flouting its code. For instance, the Financial Ombudsman Service can order banks that don't follow the terms of the Banking Code of Practice to pay compensation.

Checking for a code

To find out whether a code applies, read the small print of the contract. If the trader belongs to a trade association or is regulated, its website should give details of any code of practice or alternative dispute resolution scheme.

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