

# Brief cases

The Mitchells' persistence pays off when their flight from Pisa is cancelled

## Ryanair pays compensation after failing to defend claim in court

### GRAHAM'S STORY

Graham Mitchell was looking forward to a few days away in Florence and Pisa. He'd been seriously ill all summer and wanted nothing more than to spend a relaxing holiday, their first since his illness, with his wife, Lynne.

The trip went without a hitch, but when the couple arrived at Pisa airport to fly home, there was no Ryanair flight – and no information about whether it had been cancelled or simply delayed. And when Ryanair did announce that the flight had been cancelled, the Mitchells also learned that there were no seats on any of its flights from Pisa to Liverpool for three days. They decided to take up Ryanair's offer of a flight from Rome two days later.

Once back in England, Graham approached Ryanair for compensation. When it refused, he

contacted Which? Legal Service. Our lawyers told him he might be entitled to claim compensation under European law. This awards compensation in proportion to, among other things, the distance covered – in the Mitchells' case €250 each, around £360 in total.

We advised Graham to write to Ryanair, asking it why the flight had been cancelled and to compensate him. Ryanair replied that it wasn't obliged to compensate Graham, as the 'flight disruption was outside the control of the airline' – though it didn't say what had caused it.

Graham wrote again and finally Ryanair explained there had been a mechanical problem with the plane. Our lawyers warned Graham this was an untested area of law and, depending on the situation, may or may not fall within the 'extraordinary circumstances' exemption provided by the European regulation. If it did fall within the exemption, Ryanair wouldn't have to offer compensation.

Graham decided to go to court. Ryanair failed to file a defence, so the court ordered 'judgment in default', meaning that Graham's claim went unchallenged.



The Mitchells took Ryanair to court when their flight was cancelled

### RESULT

Ryanair applied to the court to 'set aside' the judgment in default and the court arranged a hearing date to consider the request. But a week before the hearing, Ryanair agreed to pay Graham £360 and his £50 court fee.

## YOUR RIGHTS IF A FLIGHT IS CANCELLED WHEN YOU'RE AT THE AIRPORT

### STEP ONE Your options

You have a choice of either:

- a refund of the full cost of the ticket for the parts not used (plus the cost of any other parts already used if the journey now serves no purpose), as well as a return flight to your departure airport; or
- rerouting to your final destination at the earliest opportunity (or at a later date if more convenient).

### STEP TWO While waiting

While you are stuck at the airport you should be offered:

- free refreshments/meals appropriate to your waiting time
- two free phone calls, faxes or emails; or
- a hotel, and transport costs to and from it, if you choose to be rerouted and the rerouted flight means you have to stay overnight.

### STEP THREE Compensation

In addition, you may be entitled to compensation. Under the European Union Denied Boarding Regulation, airlines must compensate you for cancelled flights in certain circumstances. However, this does not apply if the cancellation is due to 'extraordinary circumstances that could not have been avoided even if all reasonable

measures have been taken'.

There is no precise definition of 'extraordinary circumstances', though examples given include: unexpected safety issues, political instability, 'meteorological conditions incompatible with the operation of the flight concerned', security, and strikes.

### STEP FOUR More information

Our online 'Flight rights' action pack includes letters drafted by our Which? Legal Service lawyers that you can use if an airline refuses help or compensation, as well as tips on how to deal with common excuses. There's also a handy card with details of your rights for you to download for free – go to [www.which.co.uk/flightrights](http://www.which.co.uk/flightrights).

Two cases from the files of our Which? Legal Service consumer lawyers, plus legal advice. This month: cancelling and terminating a contract



**Amy Shipton**  
**Paralegal**  
Co-ordinates our monthly 'Brief cases' feature



**Joanne Barker**  
**Senior solicitor**  
Specialises in consumer law and employment law

## WHAT YOU NEED TO KNOW

### STEP ONE

#### Buying from a trader

The Sale of Goods Act 1979 applies. The car must be of satisfactory quality and fit for purpose and match any description. The quality you can expect depends on the car's age and price.

### STEP TWO

#### Buying privately

The principle of *caveat emptor* ('let the buyer beware') applies. You have a claim only if the car doesn't match any description given or the seller was guilty of misrepresentation or isn't the rightful owner. Be wary of buying a car from an auction: it's particularly risky and you could have minimal comeback if problems arise.



### STEP THREE

#### Take precautions

However you buy, it's almost impossible to protect yourself fully but you can take some precautions – for instance, by getting an engineer to inspect the car before you buy or taking an independent witness who can vouch for what was said.



Dom asked for a refund after a garage found faults in his car

## Dom had rights under the Sale of Goods Act Buying second-hand

### DOM'S STORY

When a local garage found serious defects in the second-hand car that Dom Lafferty had bought just a few weeks before, he asked the dealers he'd got it from for a refund. It took the threat of court action to get his money back.

Dom bought his £1,295 Renault Espace from Castle Cars, in Bath Road, Woolhampton, Berkshire, after taking it for a test-drive.

A few weeks later, he booked the car in for a service at a local garage. It reported several serious defects, so Dom went back to Castle Cars to ask for a refund. It refused, offering instead to carry out necessary repairs, to exchange the car for another or to pay him £900. Dom wasn't satisfied with any of these and contacted Which? Legal Service.

We reminded Dom of his rights under the Sale of Goods Act 1979. This says that goods must be of satisfactory quality and fit for purpose when you buy them. Since this clearly appeared not to be the case, Dom was entitled to a full refund plus the £179 it had cost to have the car serviced and inspected. This time Castle Cars just agreed to cover the cost of repairing the car.

Dom sent numerous letters and Castle Cars finally sent him a cheque for £1,295. Dom felt he had no choice but to start court proceedings for the remaining £179. He sent Castle Cars a letter before action, informing the company of his intention.

### RESULT

Dom received the balance of £179 within a week.

## Legal tip

## Ending a contract

**There's a legal difference between cancelling and terminating**

We've heard from members who want to switch from ISPs and phone companies that aren't providing the service. They're told they will have to pay a cancellation fee – but this isn't so.

### Breach of contract

Internet and phone services are governed by the Supply of Goods and Services Act 1982 (common law in Scotland). If the service isn't provided within a reasonable period of time, the company is in breach of contract. You're entitled to terminate the contract without financial penalty and to have a refund for the time the service was not operating.

### Terminate the contract

Contact the company by phone and in writing to say you're 'terminating' the contract because of its breach of contract. By doing this you shouldn't have to pay, since ending a contract because a service is not being provided doesn't count as cancellation.

### Cancelling a contract

Ending a contract because you change your mind does count as cancellation and you'll be charged for the company's loss of profit (unless you have a specific right to cancel).

Legal Service  
**which?**

## Half-price offer

Which? Legal Service is a unique service that offers

anyone in your household unlimited access to our team of top UK consumer lawyers. Join now and get six months for the

price of three. You pay just £9.75 for six months. Visit [www.which.co.uk/legal-service](http://www.which.co.uk/legal-service) or call free on 0800 252 100.