



Brief cases

John Lewis gives refund, not a replacement

Salim gets £1,100 when his PC fails after less than a year

SALIM'S STORY

Salim Peerbaccus became suspicious that all was not right with his £1,400 Sony Notebook computer when it seemed to become excessively hot if it was left switched on for long periods of time. When it crashed on two separate occasions, Salim got in touch with John Lewis, in London's Oxford Street, where he had bought it less than a year previously.

The store agreed to take a look at the computer as it was still under warranty, but much to Salim's dismay, it claimed that it could find nothing wrong. Salim, however, remained convinced that there was a problem and persisted until John Lewis agreed to replace the hard drive.

Shortly after the hard drive had been replaced, Salim became aware of other, different problems, including documents and web pages randomly disappearing from the screen. So he contacted John Lewis again. This time, it sent round one of its technicians. After the visit, John Lewis acknowledged that one or two problems had come to light and offered to try to repair the computer again.

Salim's patience was running out. He rejected the offer and called in an independent expert. His report suggested the computer would never work properly so Salim asked Which? Legal Service for help.

Our lawyers advised Salim that he had a claim for breach of contract under the Sale of Goods Act 1979, as the computer was not of



Salim was told his Sony Notebook would never work properly

satisfactory quality. We also told him that if the computer couldn't be repaired or replaced because it had been discontinued, he was entitled to ask for a refund (less a deduction for the use he had already had from it).

Salim was all set to ask John Lewis for a replacement when it told him that it wanted one of Sony's technicians to inspect the computer. As a result of this inspection, John Lewis offered £1,100. It told Salim

that the refund would be in cash and also made it a condition of the settlement that Salim would not be allowed to buy a replacement from the store, as the store was not prepared to offer him anything.

RESULT

Salim was pleased with the offer, though, as a long-standing customer, he was disappointed with the way John Lewis had treated him.

WHAT TO DO IF SOMETHING YOU BUY TURNS OUT TO BE FAULTY

STEP ONE Know your rights

Goods must, among other things:

- live up to their description
- be of satisfactory quality, and
- be fit for their usual purpose or any specific purpose that was made known before entering into a contract.

If they don't, you have rights under the Sale of Goods Act 1979.

STEP TWO Warranties

Any warranty the goods come with or that you buy extra is in addition to your statutory rights under the Sale of Goods Act. A warranty gives you a set time during which the seller or maker agrees to put right any problems. Your statutory rights may give you longer. How long you could reasonably expect something to last varies from item to item.

STEP THREE What the law entitles you to

The Sale of Goods Act allows you to reject the goods and get a full refund on the goods provided that you do so within a 'reasonable' time. What is reasonable is decided on a case-by-case basis. If it is too late for you to reject the goods, you still have the right to ask for a repair or a replacement.

STEP FOUR If the goods are beyond repair

Where the goods are beyond repair and a replacement is not practicable, because an item's been discontinued, for example, you may have a right to compensation. You can ask for a refund but bear in mind that a deduction should be made for any use you've already had from the goods.

STEP FIVE When do I involve the small claims court?

If the seller still won't help, you may have to consider court action. Don't forget that before 'issuing' and 'serving' your claim, you must send a 'letter before action', giving the seller 14 days in which to put forward his proposal before you take the matter to court.

Two cases from the files of our Which? Legal Service consumer lawyers, plus topical legal advice. This month: what happens if you can't use tickets for events



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Willie gets £3,770 for a faulty fridge-freezer

What to do if your claim isn't defended

WILLIE'S STORY

The courts awarded Willie Stewart £3,770 when the company he'd brought a claim against failed to put in a defence.

Willie signed a contract with Kuchen Matters Limited to design, supply and install a luxury kitchen. As part of the deal, Kuchen was also to install a Kuppersbusch American-style fridge-freezer, worth £3,200.

Unfortunately, a number of things went wrong with the fridge-freezer – most importantly, the ice dispenser didn't work properly. Over a period of nearly two years, Willie had to put up with ten attempts at repair and three replacements. But his fridge-freezer still wouldn't work properly. Not surprisingly, he was at the end of his tether. When Kuchen Matters was dissolved, complicating things even more, he came to Which? Legal Service.

Our lawyers found out that Kuchen had been taken over by Top Interiors and told Willie that he still had a claim under the Supply of Goods and Services Act 1982 because his fridge-freezer was not of satisfactory quality. Unusually, Top Interiors had taken over the responsibility for Willie's contract when it had taken on Kuchen's other business, so we advised Willie to ask



Willie's brand new fridge-freezer had to be replaced three times

Top Interiors either to replace his fridge-freezer with one of another make or to compensate him so that he could buy a fridge-freezer from somewhere else.

When it became obvious that Top Interiors wasn't prepared to settle, Willie started court action. Top Interiors didn't defend the action and Willie was awarded judgment in default; the court told Top Interiors to pay Willie £3,770. This included £120 towards his court fees and the cost of a replacement fridge-freezer, as its price had since gone up. When Top Interiors didn't pay, Willie arranged to call in the bailiffs.

RESULT

Before the bailiffs arrived, Top Interiors confirmed that it would pay the amount it owed. Four months after getting judgment, Willie got his money back.

HOW TO REQUEST JUDGMENT IN DEFAULT

STEP ONE When it applies

Judgment in default applies when a defendant fails to acknowledge that a claim has been served within 14 days or to file a defence within 28 days of the date they are deemed to have received the claim.

STEP TWO How to apply

Complete a request for judgment form. The court usually sends you this when it confirms your claim has been sent. You can also get a copy from your local court or at www.hmcourts-service.gov.uk

Legal tip

Your rights if you can't use a ticket

Unused tickets

June means Wimbledon and open-air festivals. But what happens if rain stops play or a late train leaves you with a ticket you can't use?

Rained off

If you buy a ticket, you enter into a contract, so check the terms and conditions. Wimbledon, for example, has its own policy for what happens if it rains and allows for a full or partial refund in specific circumstances. Visit www.wimbledon.org for all the details. Open-air festivals tend to go ahead if it rains.

No show

If an event's cancelled, again check what the terms and conditions entitle you to – such terms and conditions must be fair; otherwise they can be challenged and may be held unenforceable. If cancellation is due to circumstances beyond the organiser's control (a singer falls ill, say), it's likely the contract is 'frustrated' and you'd normally be entitled to your money back. But if you miss an event because of things such as a delayed train or traffic jams, the organiser isn't obliged to compensate you.

Don't buy from touts

You have no rights if you buy from unauthorised sellers.

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