



# Brief cases

Cases from the files of our consumer lawyers at Which? Legal Service, plus general legal tips

Our lawyers explain rights to compensation for late flights

## Payout for three-hour delay

### FRED'S STORY

When Fred Smith booked flights for himself and his wife Beverly on a trip to celebrate his father's 95th birthday, he didn't expect that the £295.40 bill would include a bus journey and that it would delay him by more than three hours.

When the Smiths arrived at London Heathrow on 11 April for their BMI flight to Durham Tees Valley airport, they checked in without a fuss. But the flight was cancelled as they waited at the departure gate due to an unexplained 'technical issue'.

They were offered an alternative flight to Leeds Bradford airport, after which a bus would take them to Durham Tees Valley airport – but it wasn't due to leave for almost an hour and a half after their original flight.

With little choice, Fred and Beverly took the flight and arrived at Durham Tees Valley three hours and 10 minutes later than they had expected.

This meant that Fred's brother was unable to meet them and they arrived too late at their hotel for dinner.

Fred thought that they were entitled to compensation under the European Denied Boarding



Fred Smith had problems flying out to celebrate a 95th birthday

Regulations, so he wrote to BMI.

The airline responded by saying that as the flight was cancelled because of an 'unexpected technical issue' it amounted to 'extraordinary circumstances' so it wasn't required to pay out. However, it offered Fred and Beverly a £75 discount on a future flight as a gesture of goodwill.

Fred wasn't satisfied, believing that they should have been offered more compensation, so he called Which? Legal Service for advice.

Our lawyers told him about a recent opinion given during a

case at the European Court of Justice – that airlines must show that technical problems are truly out of the ordinary.

Fred wrote again to BMI claiming the €250 (around £200) that can be paid out per person under the European Denied Boarding Regulations. He warned that if it didn't settle, he would take action.

BMI responded by explaining that a smell of oil in the cabin shortly before the flight amounted to extraordinary circumstances. But Fred, a retired airline pilot, felt that this still didn't explain what the problem was, so he went ahead and served court papers.

**RESULT** BMI then offered Fred £250. He didn't want the hassle of court action so said he would settle if BMI increased the offer to £300. BMI agreed.



Cancellation of BMI flight led to a slow journey

### YOUR RIGHTS

#### 1 What you'll get

The European Denied Boarding Regulation 261/2004 provides compensation if your flight is overbooked and you're denied boarding, or if your flight is cancelled less than 14 days before you were due to fly.

Your entitlement depends on where you were flying, the timings of any alternative flights offered and when any cancellation occurs.

As Fred's flight was shorthaul and cancelled on the day, and he wasn't offered an alternative flight leaving no more than one hour before and arriving no more than two hours after the original flight, he could claim €250 per person.

#### 2 Justification

An airline can avoid paying compensation if it shows that the cancellation was due to extraordinary circumstances. These could include bad weather, industrial action or technical problems – but they mustn't be those that 'typically occur from time to time' on 'a specific or any aircraft', or those that are 'known to have affected the aircraft in question before'. If a flight is cancelled for these reasons, a judge can consider whether steps were taken to bring in a replacement plane.



97

complaints about travel experiences in June 2008

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89

calls about home maintenance services in June 2008

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## Legal service success

Has advice from Which? Legal Service helped you pursue a claim? The team would love to hear from you. Email [wls@which.co.uk](mailto:wls@which.co.uk), call 01992 822828 or write to **W?LS, Which?, Gascoyne Way, Hertford SG14 1LH.**

New regulations should help stop businesses from using underhand sales techniques

# Rogue trading tackled

## CONSUMER LEGISLATION

Legislation introduced in May to tackle hard-sell tactics has seen its first prosecution – of a father-and-son firm offering handyman services.

James and Shane Stockwell were aggressive with customers – often pensioners – and work was poor and often not what was agreed.

Under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), the Salisbury County Court judge told them to sort out their practices – or face the possibility of prison. Judge Cutler ordered the pair to stop being aggressive and misleading customers with false information – and they were told to inform people of their cancellation rights.

These regulations may be a tool for those tackling rogue traders, such as Wiltshire Trading Standards, which brought the case, but what about the consumers left behind?

## Consumer rights

The CPRs can't help you to end a contract or get your money back, but there are often corresponding consumer rights to resort to.

And from 1 October this year, certain rights are strengthened, including the right to end contracts made in your home (see 'Take action yourself', right).

Your rights combined with the new regulations should help deter

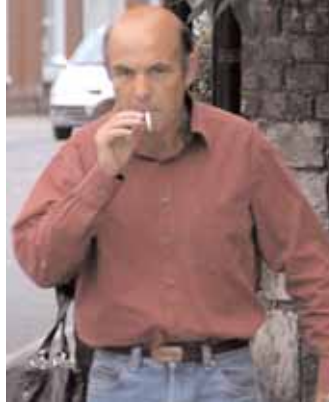
businesses from rogue trading. And the CPRs can help you understand what you should or shouldn't expect from a business, whether it's a decorator at your home or a department store selling you a fridge-freezer.

Thirty-one practices are banned under the CPRs, including:

- misusing a quality mark
- saying something is free if it isn't
- falsely claiming someone has won a prize
- pyramid selling
- inertia selling (sending goods without permission and requesting payment)
- masquerading as a consumer
- claiming that failure to buy will jeopardise the trader's livelihood
- persistently cold-calling
- ignoring requests to leave someone's home.

There are also certain banned 'actions, omissions and behaviours' if it's proven that they have distorted, or have the potential to distort, your decision-making as a consumer. Trading standards officers and others can take action even where goods aren't bought.

For example, a trader mustn't mislead you by lying about a product's characteristics, capabilities or price. It must also provide all the information you need to make an informed decision about a purchase in good time – such as extra items required to make audiovisual goods work.



The Stockwells were ordered to change their business practices

## TAKE ACTION YOURSELF

### How you can use the law to tackle rogue traders

#### Misled about products

You may have a claim for misrepresentation or breach of contract under the Sale of Goods Act 1979.

#### Unsolicited goods

A consumer would potentially be allowed to keep the goods under the Consumer Protection (Distance Selling) Regulations 2000.

#### Solicited sales at home

From 1 October, you have rights to cancel contracts made with sellers invited to your home or work. The Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations give seven days to cancel most contracts worth more than £35 made via solicited visits – rights already existed for unsolicited visits.

And aggressive behaviour is banned, including threatening language or exploiting a personal misfortune – for example, saying you'll need extra security at home after the death of your husband.

## Court action

Civil action can be taken following most CPR breaches; criminal action is also available in certain circumstances. Criminal cases can result in up to two years

in prison and/or an unlimited fine. Civil measures might include banning trading or demanding that a certain practice stop or else further action will occur.

## Which? says

If you think CPRs have been breached, contact your local trading standards office.

Tell the trader about your concerns – they may change their behaviour immediately.

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