



Brief cases

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



VW was little more than a year old

Driver blamed for 'new' car fault

GEOFFREY'S STORY

When Geoffrey Douglas bought a one-year-old Volkswagen (VW) Eos in April this year, he didn't expect a fault to develop within three months, or to be blamed for it.

But that is what happened after he bought the convertible (with two years left on its warranty) for £20,354 from Inchcape, a franchised main Volkswagen car dealership in Telford.

Warning lights

Geoffrey was driving from Bristol to his home in Malvern when a warning light came on.

He pulled over and looked at the manual, which said the light meant there was a problem with the diesel particulate filter (DPF). This is designed to reduce emissions by burning off soot.

The manual recommended driving the car at a constant speed of at least 60km (about 37 miles) an hour, or 2000rpm (revolutions per minute), for 15 minutes to correct the problem.

He did this, but the light stayed on – and two more came on, warning about faults in the engine management and exhaust systems. The display indicated 'engine fault – garage'.

The manual said that if such problems happened, a specialist workshop should be contacted, so he called at the nearest, Listers in Worcester.

Geoffrey said he was informed there wasn't a problem with the

car and that the light was due to driving short distances. He was charged £116 for a 'computerised regeneration' of the DPF.

How much it cost

Geoffrey was unhappy at being charged. He called VW head office and was advised to consult the manual in such circumstances. This recommends trying to avoid making only short journeys. A month later, when driving from Milton Keynes to Malvern, all three lights came on again, as well as the engine-fault warning.

VW head office told him to visit one of its garages. Back at Listers, he was told the DPF had to be replaced, at a cost of £1,246. He was told he'd have to pay as the problem was due to driver error – he was driving distances too short to make the exhaust hot enough to burn off soot.

Our advice

Geoffrey called Which? Legal Service. We told him he could have a claim against Inchcape if he could show the car wasn't of satisfactory quality when he bought it, and against VW if he could show the DPF was faulty and this was covered by his warranty. Geoffrey wrote to Inchcape claiming back the £1,363.31 he'd had to pay out.

RESULT After consulting with VW, Inchcape agreed to refund Geoffrey in full. It also offered to inspect the car to ensure the problem was resolved.

YOUR RIGHTS

1 Warranty rights

There's no legal requirement on a manufacturer to provide warranties on its products. However, any warranty that is provided is a contract with the person buying it. The manufacturer can offer as much or as little as it wants in the warranty, but must meet the terms offered or it will be in breach of contract.

2 Beyond warranties

When a warranty expires, your rights against the manufacturer end, but you could still have a

claim against the seller. If goods don't last a reasonable time, the seller will be in breach of contract. No product can be expected to go on forever – the test is whether you could reasonably have expected the problem to occur at that stage in a product's life.

3 Payment under protest

If you're asked to pay a sum you don't think a trader is entitled to, you can pay 'under protest' so you have a chance of claiming back. To do this, when paying, include a covering letter saying you're making it under protest, explain why and that you're reserving your right to claim the sum back. You can also write 'payment under protest' on the back of the cheque, in case the covering letter gets lost.



145

calls to our lawyers from Aug-Oct
were about cars

WHICH? LEGAL SERVICE

10

calls were
about kitchens

WHICH? LEGAL SERVICE

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, call 01992 822828 or write to **W?LS, Which?, Gascoyne Way, Hertford SG14 1LH.**

FIXING FAULTS

1 Who is responsible?

Even if a seller arranges for a third party to fix a problem with goods, the seller is responsible for that individual's actions and any failure to do a job properly.

2 Faulty goods

Goods must be as described, fit for purpose and of satisfactory quality, under the Sale of Goods Act 1979. If they're not, the seller will be in breach of contract and you can reject the goods for a refund if you act in a reasonable time – often three to four weeks. Alternatively, you can ask for goods to be repaired or replaced. The seller can choose whether to repair or replace if the cost of one is disproportionate to the other.

3 Problem services

A trader providing a service must use reasonable skill and care and materials must be of satisfactory quality, fit for purpose and as described, according to the Supply of Goods and Services Act 1982. You must ask for a refund as soon as you find a problem. If you've had goods a while, it's likely a refund will be reduced for the use you've had.

4 Proving faults

For the first six months after you receive goods, the onus is on the seller to show that faults weren't there when the goods were sold and have been caused by the consumer.



Leaking dishwasher damages kitchen

Who can I turn to?

JENNIFER'S STORY

What happens if you contact a company to repair goods you bought from them, but they send out another firm? Who do you turn to if things go wrong?

That was the situation faced by Jennifer Jermy after she bought a dishwasher from coopelectrical shop.co.uk in April last year.

Jennifer heard a noise at the back of the £271 Bosch dishwasher when she started using it.

The Co-operative told her an engineer would be sent to look at the machine. It was 10 days before someone came, and they were from a different company.

When the engineer took off the side panel, there was about 5cm of rusty water in the bottom, which the engineer emptied. Jennifer asked what caused the problem, but he didn't answer.

Six months later, Jennifer noticed water leaking from under the dishwasher. She also saw that the side of the kitchen unit next to it had expanded, so the doors wouldn't close flush.

Another engineer visited and said it would cost £125 to put the damage to the kitchen right. Jennifer was upset, as she'd paid a lot of money for a fitted kitchen some years earlier. Neither The Co-operative nor the service firm agreed to cover repair costs.

Jennifer called Which? Legal Service for advice. We told her she could have a claim against The Co-operative for supplying a dishwasher that wasn't of satisfactory quality or for arranging an engineer that hadn't used reasonable skill and care when working on the machine.

RESULT The Co-op agreed to meet Jennifer's claim in full.

Legal tips

Food websites

Knowing your rights

■ Buying food online

You usually have seven working days starting the day after you receive goods you've bought at a distance, to return them, under the Consumer Protection (Distance Selling) Regulations 2000. Many perishable goods, such as food, can't be returned.

■ Price rises

It's perhaps a little-known fact that prices can be set when products are taken off the shelves to be sent to you, rather than when your order is placed. Check the online seller's terms and conditions to see whether you'll have to pay for such price increases. You can cancel your order on those products with higher prices, though.

■ Fit for consumption

It is an offence to sell food that is past its use-by date, under the Food Safety Act 1990. Food that has gone past its best before date can still be sold. But regardless of dates on food, it's an offence to sell food that isn't fit for human consumption. If you think you've bought such food, contact environmental health at your local council. We test sell-by dates of food bought online, see p5.

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