

Brief cases

The second week of the Regans' holiday was spoilt by a series of distressing problems

Thomson package falls short of the law

THE REGANS' STORY

For Sue and Bernard Regan, a holiday in the sun seemed the perfect way to escape the British winter. They booked a two-week trip for £1,792 with Tui UK Limited, trading as Thomson. They would be spending the first week cruising the Canaries and the second in Tenerife. Here they would be allocated a hotel on arrival, either in Los Gigantes, on the west of the island, or in the northern resort of Puerto de La Cruz.

The first week went well and Sue and Bernard looked forward to a relaxing second week. On the rep's instructions, they left their cabin by 7.30am to await the transfer coach. It finally turned up five hours later.

Before boarding, the couple had confirmed that they'd be staying at Los Gigantes, as their luggage labels indicated, and were assured that they would be. But when they arrived at the hotel, at about 3pm, there was no booking for them.

After an hour or so, the rep told them there had been a mistake and that they were in fact staying at Puerto de La Cruz, two hours away.

They had not had anything to eat or drink since breakfast and were feeling drained, and then Bernard started to feel unwell.

The Regans suggested to the rep that it would be better to stay put, and they considered finding their

own accommodation nearby (but it's unlikely that they could have claimed the cost back, as they were offered the hotel two hours away). However, the rep insisted that they continue on to Puerto.

In the end, they agreed to move, reaching the hotel at 8.20pm, after what Sue described as a 'horrendous taxi journey over a mountain road in the dark', and

booked in successfully. By now Bernard's condition had worsened and Sue was so worried that she called a local GP, who diagnosed hypertension brought on by stress. Sue had to find an out-of-hours chemist and felt she got no help or support from the rep. Bernard spent four days in his room recovering.

Safely back in England, they complained to Thomson, but it refused to do anything. So Sue rang Which? Legal Service for advice. Our lawyers told her that she might have a claim for breach of contract and of the Package Travel, Package Holidays and Package Tours Regulations 1992. These say, among other things, that a tour operator must carry out its services properly. Acting on this advice, Sue claimed for distress, disappointment and loss of enjoyment.

RESULT Before the case was heard, Thomson offered Sue and Bernard £350 plus their £50 court fee, which they accepted.



Sue and Bernard faced delays and a mix up with their hotel booking

WHEN A PACKAGE HOLIDAY GOES WRONG: QUESTIONS TO ASK

QUESTION ONE

For what can I claim?

If something goes wrong with a package holiday and spoils your enjoyment of it, you can put in a claim for compensation because of the 'distress, disappointment and loss of enjoyment'. You can also consider claiming compensation for 'loss of bargain' for any difference in the value between the holiday that

you booked and the holiday that you actually got. If you incur any out-of-pocket expenses as a result of the holiday company's failings, these can also be claimed back. For example, if the beach-front hotel you were supposed to get is actually 20 miles inland, you could claim for the costs of getting to and from the beach each day.

QUESTION TWO

What will I get?

There's no set formula for working out damages, so calculating how much compensation you should get for a problem holiday can be tricky. As a guide, most judges tend to look at what you paid, how many days were affected and how much, if any, enjoyment you could have had on those days. They then work out the percentage of the holiday

that was worthless and order the holiday company to return that sum. It's not always this simple, though. For instance, if you had a particularly harrowing experience or your life was put at risk, a judge may take into account the after effects and could award substantial damages, even though the incident itself was short-lived.

QUESTION THREE

Whose fault was it?

Under the Package Travel Regulations, the holiday company is responsible for all parts of a package holiday. It isn't responsible for problems outside its control – for example, if your room is burgled. However, even where a problem is not a holiday company's responsibility, the regulations say that the company's rep must do all they can to help you.

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



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Vera's contract wasn't honoured

Claiming on a guarantee

VERA'S STORY

Vera Grigg's £541 washing machine came with a two-year manufacturer's guarantee, so when the appliance broke down 22 months after she'd bought it, she phoned Siemens and asked for it to be repaired under the terms of the guarantee. Siemens referred her to BSH Home Appliances Ltd, which carries out its warranty work.

BSH wanted proof of purchase and, as Vera couldn't find the receipt, it agreed that she should initially pay for the repair herself and that BSH would reimburse her when she had found it. The repair (replacing the flow sensor) cost £78.

Vera still couldn't find the receipt. After several weeks, she gave up and contacted BSH, which agreed that she could send a copy of the Visa statement showing details of the transaction. But BSH said the copy was unacceptable because the year wasn't legible. Vera sent another copy on which the date was clear.

Nearly a month passed with no reply, so Vera sent yet another copy, this time by recorded delivery. When ten days passed with still no word, Vera phoned BSH. It promised to chase up her money. After several more weeks of letters and calls without result, Vera contacted Which? Legal Service.

Our lawyers explained that the guarantee was a contract between



Vera had trouble getting money back for a repair to her machine

her and the manufacturer and said that if BSH, acting as Siemens' agent, refused to refund the £78 on proof of purchase, it would be Siemens that would be liable. On our lawyers' advice, Vera sent a final

letter warning that she would start court action within two weeks if she didn't get her money.

RESULT Vera received a cheque 14 days later.

GUARANTEES AND PROOF OF PURCHASE

POINT ONE Legally binding

A manufacturer's guarantee is a contract between the consumer and the manufacturer. Such guarantees do not have to be offered, but if they are, their terms must be honoured. A manufacturer can choose the remedy if something goes wrong (a repair, say, or a replacement), so always check the terms.

POINT TWO Additional rights

A manufacturer's guarantee is

over and above your statutory rights against the retailer. Your rights under a guarantee end when it expires but, under the Sale of Goods Act, goods must be durable and last a 'reasonable time'. For most items, this will be well beyond one year.

POINT THREE Proof of purchase

Losing a receipt doesn't mean losing rights to redress. If you have another way to prove what you bought, where and when, this will be acceptable in law.

Legal tip

Spare parts

Your rights if an item needs repairing

No legal requirement

There's no law that says a manufacturer or retailer has to keep spare parts for items. However, trade associations can require their members to commit to producing spare parts for an agreed length of time. For example, the Society of Motor Manufacturers and Traders has a code of practice that requires its members to produce spare parts for a reasonable period after the end of a car's production.

Your Sale of Goods rights

Where no spare parts are available, you may still have legal protection if a product is faulty and can't be fixed. Provided that you can show that an item has failed before you could reasonably have expected it to, the Sale of Goods Act says that you have the choice between having the item repaired or being offered a replacement.

Getting a refund

If there are no spare parts and repair is out of the question, you can still ask for a replacement. However, where a supplier can show that the cost of replacing an item would be disproportionate (because of its age, for instance), you are entitled to a partial refund of the amount you originally paid for the product. This will take into account the usage that you have been denied because the item cannot be repaired.