



Brief cases

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

After nine attempts to find an air-conditioning fault, Fiona is told she must pay for repair

Car owner resorts to claiming on credit card

FIONA'S STORY

Fiona Williams bought a two-year-old Volkswagen Sharan for £12,700 in April 2005. The car had 25,480 miles on the clock.

The following month, with the weather warming up quickly, Fiona switched on the air conditioning, only to find that it didn't work.

She took the car to Volkswagen Redditch – the franchise dealership where she bought it – but the problem took months to resolve.

Fiona said that she had the car looked at on nine occasions during this time, four within the one-year warranty period. Also, she said, mechanics changed the air conditioning system's valves, but then gas started leaking, and the problems continued.

When Fiona asked Volkswagen UK if it could intervene to get the problem resolved, while it was initially helpful, the company decided that it couldn't get

involved, particularly as Fiona had taken the car to a non-Volkswagen dealership to be serviced.

Then, in May 2007, Redditch Volkswagen found a fault with the air-con evaporator.

But Fiona was told she'd have to pay £1,000 to fix it because the franchise was under different ownership from when she bought the car, and the contract had been with that original company.

Not knowing where to turn, she called our lawyers.

Fiona had put a £200 deposit for the car on her Royal Bank of Scotland (RBS) credit card, so we advised that RBS was jointly liable if she could show that the car wasn't of satisfactory quality when she bought it.

She wrote to RBS informing the bank of its liability, but it said that it was 'unable to assist', as time limits imposed by MasterCard and Visa International for investigating complaints had been exceeded.

We then advised Fiona to go back and remind the bank of her rights under the Consumer Credit Act – which were separate from any internal procedures and meant that RBS was, in fact, liable.

RESULT As 'a gesture of goodwill', RBS offered **£499.38 for the work to be done, which was quoted at the garage where she'd had her service. She accepted.**



Fiona's waiting for the warmer weather to book her car in to be fixed

YOUR RIGHTS UNDER THE CONSUMER CREDIT ACT

1 Protect payments

Your credit card company is jointly liable for breaches of contract or misrepresentations by a trader – when products cost between £100 and £30,000 – under section 75 of the Consumer Credit Act 1974. And remember that the card company can't limit its liability to the amount put on the card.

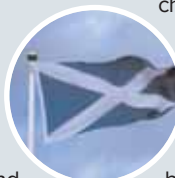


2 Proving losses

However, you won't get compensation automatically. You have to show a valid claim and that you've suffered a loss as a result. For the first six months, the onus is on the seller to prove the goods were as described, of satisfactory quality and fit for purpose; after that the burden of proving they weren't switches over to you.

3 Complain in time

You have six years from the breach of contract to take a claim to court – under the Limitation Act. In Scotland it is only five years, however, under its Prescription and Limitation (Scotland) Act. In Fiona's case, the breach of contract took place on the day that the car was delivered.



4 Court action

Give the trader every chance to settle a claim, including sending a 'letter before action', before you then resort to court action. If you do begin action, check that you're suing the right party. The name on the shop front or website may be just a trading name and not the one you need to put on a claim form. If you're suing a sole trader or partners,

you sue them personally. If you claim against a limited company, you sue the company.

5 Challenge the bank

If you want to pursue your bank under Consumer Credit Act, you must try its internal complaints procedure first. If you're unhappy with the outcome of that process, you could then refer your dispute to the Financial Ombudsman Service.

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calls in January about second-hand cars and car servicing

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 WLS, PO Box 44, Hertford X, SG14 1SH.

AGREEING ON WORK

1 Check your contract

Even if you have total trust in a trader, read a contract from start to end. Otherwise it could be difficult to persuade a judge that you didn't agree to the terms that are written down.

There's a presumption that, if you sign an order form, you agree to the contents, including the small print.

2 Note oral discussions

A judge may look beyond the written contract, however.

If you can show that you made an oral agreement, which is at odds with the written terms, there is case law to say that the oral promise can prevail.

Similarly, if you can show that you were induced into signing a contract by being told misleading information, you could have a claim for misrepresentation. But, in both cases, proving what was said can be difficult.

3 Inviting sales staff in

You don't have an automatic right to end a contract if you change your mind.

If you're cold-called by a trader and agree to a visit, you have seven days to change your mind after the visit.

But if you make the first contact, you don't have cooling-off rights – unless you agreed to discuss a particular product and end up buying an unrelated product that you didn't know the trader sold.



Les is delighted with his new tailor-made bathroom

Les disputes conversation with salesman Bathroom fit for a brochure

LES'S STORY

In January 2006, 83-year-old D-Day veteran Les Gibson spotted an advert for a walk-in bath in his local newspaper.

Thinking he needed help to bathe more easily, Les got in touch with Premier Bathrooms. It offered to send a brochure and price list, as well as someone to visit his home.

In February, a salesman arrived. Having read the brochure, Les pointed to the shower and walk-in bath that he thought would be ideal. The salesman drew up a contract there and then, for £4,850, which Les felt he did not need to check. As he felt comfortable with the Premier representative and was confident he'd get what he wanted, he signed and handed over his card for the deposit.

But when the salesman had left, Les read the contract and saw that the positioning of the bath and shower weren't as he had expected.

He explained to Premier that the brochure had shown the bath in a different position, while the contract drawing meant he would not be able to look out of the bathroom window. Also, the picture showed a wall-mounted shower, but the drawing had it fixed to the taps. Premier responded by stating that its salesman had made it clear that the shower would be positioned in this way.

But Les disagreed, saying they had only discussed money, so he contacted Which? Legal Service for advice. We explained that to succeed with a claim, he would have to show that the verbal agreement was for the bath as it appeared in the brochure. Les believed that he'd made this clear to the salesman.

RESULT While still disagreeing, Premier said Les's wishes could be met as a gesture of goodwill – and he is pleased with the work.

Our services

Which? Legal Service has provided advice from qualified, experienced lawyers for almost 35 years. We advise on a wide range of issues and have just expanded the areas that we cover

New areas

■ **Tenancy** We can now advise private residential tenants, whether you want to know your rights before signing a tenancy agreement or where you stand, say, if your landlord isn't maintaining your flat.

■ **Neighbour disputes** You can now take advice on any civil neighbour dispute, such as noisy neighbours or a boundary disagreement.

Current areas

■ **Consumer** Problems with goods and services.

■ **Employment** Advice for employees on their rights.

■ **Motoring appeals** Speeding, clamping and parking fines only.

■ **Holidays** A range of holiday and flight problems.

■ **Business** We advise small businesses on goods and services that they buy.

New hours

We've extended our opening hours, so you can now call between 8.30am and 6pm.

Legal Service
which?

25% discount

Which? Legal Service is unique and offers anyone

in your household unlimited access to our team of top UK consumer lawyers. Which? members who join now pay just

£39, while non-members pay £51. To join visit www.which.co.uk/legalservice or call 01992 882828.