

# Brief cases

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

TalkTalk charges customer for free broadband and to cancel the contract

## Fee for free service

### GORDON'S STORY

In May 2006, Gordon Kelly signed up for free broadband – but it ended up costing him money for the duration of his contract.

He chose TalkTalk's package, Talk 3 international, because it offered broadband for nothing. But when signing up, he was told that it would only be free following work on his local telephone exchange – in Allesley, Coventry – so there would be an additional monthly charge until July at the latest.

But in December 2006, he was still paying £10 extra a month for broadband and was shocked when he called TalkTalk to be told that work on the exchange might not be completed until 2008.

Further attempts to get his broadband free of charge were

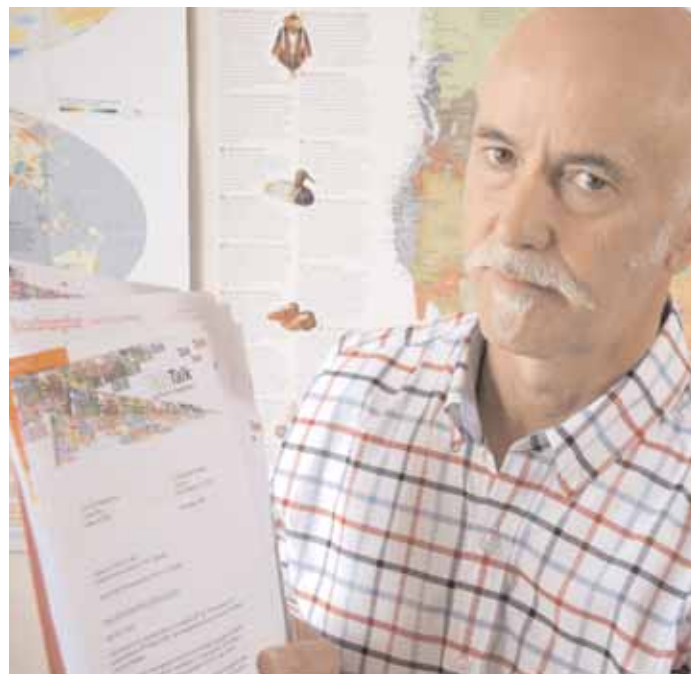
ignored, so David decided to let the contract run its course until November 2007.

At this time, Gordon wrote to TalkTalk saying he wished to cancel, but the company called him offering a new contract and a refund of £140 for the broadband.

He was also told that his monthly charge for the first six months would be 89p rather than £5.89.

As TalkTalk seemed to be putting everything right, he decided to give it a second chance but, a few days later, he received a bill without the £140 credit and at the standard monthly rate of £5.89. As the contract only gave him seven days to change his mind, Gordon told TalkTalk that he was cancelling immediately.

In January 2008, TalkTalk sent a final bill demanding £94.10. This included £24.10 he did owe and a



Gordon decided to pay his bill and claim back what he didn't owe later

£70 cessation fee – even though he had cancelled within seven days.

Despite this, Gordon decided to pay by telephone and that he would claim the cessation fee back later.

But in March, Gordon received a letter from a debt agency demanding that he pay a debt of £104.10 immediately – which included a £10 fee for the debt collector. He learnt from his bank that no money had been taken from his account.

Over the phone, he persuaded the agency that he had tried to pay TalkTalk and would pay it £94.10 but not the £10 fee. The agency agreed, but he then received a letter from it threatening legal action over the £10 fee.

At a loss, Gordon called Which? Legal Service and was advised to write to TalkTalk and claim £265 to cover the broadband he'd paid for, the £70 cessation fee and £15 of expenses.

When TalkTalk didn't pay, we advised Gordon to send a 'letter before action' threatening to take the company to court.

**RESULT** TalkTalk sent Gordon a cheque for £265. He's heard no more from the debt agency.

### STEPS TO GETTING MONEY BACK ON A CONTRACT

#### 1 Payment under protest

If you're threatened with legal action, or receive letters from debt collectors, you may feel better paying to take away the threat. If you do, make sure you pay 'under protest' and make it clear to the company that you don't accept it is entitled to the money and that you reserve the right to claim it back.

#### 2 Debt collectors

If a company instructs a debt collector, note that it can't take your property to cover a debt. Unless the trader you're in dispute with has successfully taken you to court, and you've failed to hand over the sum the judge ordered you to pay, the trader cannot 'enforce' the judgment and ask that bailiffs (or sheriff's officers in Scotland) seize property from you to cover the debt.

#### 3 Contract issues

If a trader's statement induces you into a contract that doesn't deliver what was promised, and turns out to be inaccurate, you could have a claim for misrepresentation. If so, you might end the contract and get your money back. If you can't or don't want to end a contract, you can claim damages. You might also claim for breach of contract – but you can't claim your losses twice over.

#### 4 Alternative dispute resolution

In case of broadband disputes, you may want to check whether a provider is a member of Cisas ([www.cisas.org.uk](http://www.cisas.org.uk)) or Otelo ([www.otelo.org.uk](http://www.otelo.org.uk)). Both organisations offer dispute resolution processes as alternatives to going to court. You aren't bound by their decisions and are still free to go to court if you don't agree with them.



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complaints about TalkTalk  
during April 2008

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calls about car  
repairs in April

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

Persistence pays off following a pricey car part repair

# Court action resolves car case

## DAVID'S STORY

David Parsons' Kia Sedona met all his driving needs for more than four years before requiring an unexpected and costly repair.

He bought the car in April 2002 from Kia dealership Norfolk Motor Company – trading as Norfolk Motor Group (NMG) – but only in December 2006 did problems begin.

On occasion, the engine warning light would flash and the car would momentarily lose power, but no fault was found during two visits to NMG. He was told that the car could be taken to a fuel injection specialist, but the recommendation was to continue driving it.

In June 2007, the car broke down and the AA transported it to the nearest Kia dealership, EMG Anglia Ltd in Kings Lynn. The garage said that the high-pressure diesel pump had failed. David later found out that this was a known problem with early versions of that type of pump.

Although he had not given NMG

a further chance to fix the problem, he wanted to get back on the road quickly and ended up paying EMG £3,691 for the car's repair.

David discovered that the pump shouldn't have failed so soon, so he called Which? Legal Service to see if he could claim anything back.

The original contract was with NMG, so we told him to approach the company. We also said that, if he showed the pump had failed too soon, he could argue that the car wasn't of satisfactory quality when it was sold.

David wrote to NMG twice, on the

second time saying that court action would follow if it didn't respond. With no offer made, David began action in July 2007, deciding to claim 75% of the cost – £2,775 – as he had the car for some time without problems.

NMG said it wanted to bring Kia (UK) in to the proceedings but then invited David to discuss the case informally. He was told that Kia (UK) would pay for parts and NMG would meet the rest of his claim.

**RESULT** David received a cheque for £3,000 to include court fees.



David was offered money back after serving court papers

## DECISIONS TO CONSIDER ABOUT CLAIMING

### 1 Life of goods

Judging whether a product is of 'satisfactory quality' under the Sale of Goods Act includes checking if it is durable. The test is whether the problem should have occurred by the time it did. If the answer is no, as in David's case, a claim might be possible.

### 2 Breach benefits

You can claim for reasonable losses resulting from breaches of contract. A judge will usually aim to put you in the position you would have been in if the breach hadn't occurred – for example, granting the cost of replacing a part that failed before it should – so don't just claim a percentage.

### 3 Minimise losses

In a breach of contract claim, you have a duty to 'mitigate your losses', that is keep them to a minimum. You should usually give the party responsible for the contract the opportunity to put the problem right, as another's bill is likely to include a profit element.

## Legal tips

### Restaurant rules

#### Know your rights when eating out

##### ■ Cancelling a table

When you book a table, you enter into a contract, so check the restaurant's cancellation procedure.

If you cancel, in theory the restaurant can recover any loss of profit. But if the table is filled you could argue that there's been no loss.

##### ■ Complaining about food

Food quality is subjective, but it should be cooked properly and match its description.

If you're unhappy, speak to the manager and ask for the dish to be replaced. If there is nothing else on the menu that you'd like, you can deduct the amount from the bill.

If you can prove that you became ill due to poorly cooked or stored food, the restaurant would be liable for personal injury and you should consult a personal injury solicitor.

##### ■ Challenging service

If service charges are compulsory, this should be clearly displayed on the menu. Service charges can also be suggested but are at your discretion. Tips, however, are entirely up to you. See 'Restaurant tipping', May, p78.

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