



# Brief cases

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

Niagara agrees to refund £200 'costs' when massage equipment is refunded

## Therapy makes problem 'much worse'

### ANN'S STORY

**W**hen Ann Panter bought some massage equipment to ease symptoms of her spondylosis and arthritis, she didn't think that her pain would get 'much worse' and that she would feel 'barely able to walk'.

Ann learnt about the equipment after filling in a market research survey that came through her door, in which she described the conditions that she had. Ann soon received a call from Niagara Therapy (UK) Ltd, offering to demonstrate its massage therapy equipment, and she booked a salesman's visit for 13 February this year.

The salesman told her that, though his company's products would offer no cure, they would help her pain and make her feel a lot better.

After a 20-minute demonstration of a £996 'cycloid-action' vibrating pad, Ann thought that her back felt a bit better and, as



Ann hoped that massage therapy equipment would help ease her back pain

she could pay by credit card, she decided to buy one.

The salesman brought a new pad in from his car and worked out a programme for Ann.

She says that she stuck to the

programme exactly, but felt that her back pain was getting much worse each day. After several days, Ann's doctor prescribed strong painkillers and told her to stop using the pad.

Having parted with almost

£1,000 for a product that she could not use, Ann called Which? Legal Service for advice.

We explained that goods should be fit for their stated purpose and, as she felt her symptoms had been made worse by the pad, she could try to claim that Niagara was in breach of contract.

Also, if Ann could show she was told that her symptoms were likely to be relieved, she might have a claim for misrepresentation.

As Ann was outside Niagara's seven-day cancellation period, she was offered a refund of £776 – minus £200 'costs'. She stood her ground and wrote again, claiming a full refund.

**RESULT** A few days later, Niagara agreed to pay back the full £996 to Ann.

See our investigation into mobility aid sales, p24.

### RIGHTS ON GOODS BOUGHT IN YOUR HOME

#### 1 Doorstep selling

If you receive an unsolicited phone call or knock at the door, and buy a product there and then, you have seven days to change your mind and get your money back. If you call a trader and a visit follows, this isn't unsolicited and you'll be able to

cancel or return goods only if the seller's terms and conditions allow it. However, if you buy a completely different product from the one that you agreed to discuss when booking the visit, you also have seven days to change your mind.

#### 2 Fit for purpose

Goods have to be fit for their



purpose, which can be quite specific in some cases, so it's important to tell sales staff about your needs. In Ann's case, for example, it may be

enough that she told the salesman about her medical conditions and that he described the goods as suitable for her.

#### 3 Cancellation rights

The law sometimes allows you to cancel a contract. Traders can extend the length of time during which you can cancel it, but they can't shorten it.



# 1,274

complaints to our lawyers  
were logged in May 2008

WHICH? LEGAL SERVICE

# 41

calls in May were about  
home maintenance

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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.

## RIGHTS TO CLAIM

### 1 Who is liable?

A manufacturer is liable for the quality of goods if it offers a guarantee, but it can set any terms. Contrary to popular belief, guarantees do not have to last for at least two years – there's no minimum.

A manufacturer will also be liable for compensation if a product is unsafe and causes damage to an individual or their property. Damage to property must be more than £275. You can't claim the cost of the product from the manufacturer – but you could try claiming against the seller as the goods weren't of satisfactory quality.

### 2 Seller's role

Rights against a seller are separate from the guarantee, so if it expires it won't affect any claims against the seller. Whether you have a claim against a seller depends on whether you would ordinarily expect a problem at that stage in a product's life.

### 3 Relevant laws

Sellers are liable if they don't 'conform to contract' – if goods aren't of satisfactory quality, for instance. If goods are bought on their own, the Sale of Goods Act 1979 applies. If they're supplied with other services – a kitchen, for example – the Supply of Goods and Services Act 1982 applies.



John and Maureen almost spent Christmas without an oven

Our advice leads to a goodwill gesture

## Neff offers oven repair

### JOHN AND MAUREEN'S STORY

A broken oven led to an expensive and stressful Christmas for John and Maureen Turner, so the least they expected was to get the problem fixed afterwards without a fuss.

Having used Neff appliances for years, the Turners opted for a Neff oven, hob, hood and microwave in their new kitchen in January 2005. Southport-based L&R Manufacturing Ltd fitted the kitchen and supplied the appliances.

On 23 December 2007, the oven broke down. John called out an independent engineer, who thought that the problem was with the oven, but said that a specialist would need to be called in.

With a fridge full of Christmas food and guests about to arrive, John decided the only option to tide them over during Christmas was to buy a new oven, which cost £319.

Once the festivities were over,

John wrote to Neff asking it to put the situation right. But Neff said that, as its guarantee had expired, it wasn't liable. It also said that any claim that the goods weren't of 'satisfactory quality' was against the supplier. John wrote to L&R, but it said that Neff was responsible.

Not knowing who was right, John called Which? Legal Service. We explained that Neff was correct. If he could show that the oven should not have developed its fault so soon, he could have a claim against L&R under the Supply of Goods and Services Act 1982. But we also confirmed that there was nothing stopping John from asking Neff to fix the oven as a gesture of goodwill. John wrote again to Neff, reminding it of his loyalty over the years.

**RESULT** Neff agreed to fix the oven free of charge.

## Legal tips

### Garage services

#### ■ Law that applies

Whether you're having your car repaired or serviced, the Supply of Goods and Services Act 1982 says that the garage must use reasonable care and skill, and parts used must be of satisfactory quality and fit for their purpose.

#### ■ Work agreed

You must be clear about work you're prepared to have done, and the garage should also only carry out and charge you for work that you agreed.

For example, if you're handed a £1,000 bill because mechanics felt your clutch showed signs of wear and tear and replaced it, you could refuse to pay. This wasn't part of the contract so there's no right to charge for it. However, the garage can remove the new part and put the old one back.

You should tell the garage to contact you if it feels that major work is required – and try to agree a price when called.

#### ■ What you should pay

Whenever you agree to work but not the price, the trader can charge only a reasonable amount. If the bill seems high, find out what the market rate is in your area and let the garage know you are prepared to pay that sum but no more.

Legal Service  
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