



# Brief cases

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

## CLAIMS IN COURT

### 1 Small claims

The maximum payout for a small claim depends on where you are. It's £5,000 in England and Wales, £3,000 in Scotland and £2,000 in Northern Ireland (NI). The cost to start action also varies (see *Which?*, July 2008, p19). And, in England, Wales and NI, as long as your conduct is reasonable, you won't pay your opponent's legal costs if you lose. But if you lose in Scotland, you'll pay some costs for claims of more than £200.

### 2 Counterclaims

A party you've sued may counterclaim against you for losses. If so, you have to put in a defence and, at the final hearing, the judge will consider both claims together.

### 3 Upset and distress

As a rule, you can't claim for upset or inconvenience when a contract's breached – but the main exception is where the purpose of a contract is to provide enjoyment, such as a wedding or a holiday.

### 4 Compensation

Higher compensation may be awarded if an extra special event is spoiled, but usually a judge will make someone pay only for losses that they should have known would result in a breached contract. A wedding is important, obviously. For a holiday, such as a honeymoon, tell the holiday company when booking, so it can't say loss of enjoyment and extra distress couldn't have been envisaged.

Wedding venue renovations aren't finished in time

## Dream castle incomplete



The happy couple now, and on the big day that became stressful

### DAVID'S STORY

David Gowar and his fiancée Emily thought that they were going to have their dream wedding when they booked a castle venue, but the day turned out to be filled with disappointments.

Having visited Caverswall Castle, Staffordshire, in February 2007, the couple were persuaded to be the first to get married at the castle after renovations.

The particular selling point was a pool where they would have a party after the ceremony.

They were promised that all the building work would be completed by 27 May 2007 – the first day available for weddings.

This included 'a beautiful Gothic bar and dining area', where

the wedding breakfast was to take place, the moat, which would be cleaned and filled, and the pool.

On a further visit, in April, they were again promised that everything would be finished – so they paid £3,500 to hire the castle (food was to be provided by external caterers) between 10am and 6pm, and looked forward to their big day.

But when they arrived on the morning of their wedding, David and Emily were shocked to find that the moat hadn't been cleaned and filled, the pool wasn't ready so there could be no pool party and the Gothic bar had not yet been created – a makeshift bar had been set up in the room next to the dining area.

Worse still, there was builders' dust everywhere, so tables had to

be cleaned and re-dressed – and news came through that the meal might have to be put back, as one oven didn't work and pans would not fit other ovens. Luckily, the caterers fetched hotplate equipment, so the meal went ahead as planned.

The couple decided to make the best of a difficult situation and say that they now have good memories of the day that outweigh the bad.

But at the time, the stress became too much and Emily broke down in tears several times.

Castle staff seemed apologetic on the day but, once back from their honeymoon, David and Emily's complaints were largely ignored. They had been offered another pool party for their guests, but the couple didn't feel that the offer made up for the upset.

David called Which? Legal Service. We advised him on how to take Caverswall to court, and David put in a claim for £500.

Caverswall defended the claim, saying it never guaranteed that the pool would be ready. It also counterclaimed for damage it said that guests caused – for replacing parts of a suit of armour that had gone missing – and £875 in extra hire charges as, it claimed, the party had overstayed by two hours. David and Emily disputed these allegations and the case went to a final hearing.

**RESULT** The judge found in David and Emily's favour on all counts except the claim over the ovens – and awarded them £500 plus £190 court fees. Caverswall's counterclaim was dismissed.

**3,179**calls to our lawyers  
during June 2008

WHICH? LEGAL SERVICE

**23%**complaints about  
employers in June 2008

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](mailto:wls@which.co.uk), call 01992 822828 or write to WLS, PO Box 44, Hertford X SG14 1SH.

Member told that employer's fee for agency staff can't be enforced

# Battle over wages

**AMY'S STORY**

Having finished a degree in psychology, Amy Evanson was unsure which direction she wanted to take – but she didn't expect that a job to keep her going might hold back her future career.

In June 2007, she started as a nursery nurse with Turtles Nursery, Stafford. But Amy soon heard about a course in motorsport technology and, as she had a passion for motor racing, it



Amy at Rodbaston College, Staffs, where she lectures on motorsports

seemed the perfect next step.

She signed up and was due to start in mid-October. Amy gave the nursery four weeks' notice, but Turtles said she could not leave for six weeks, in accordance with her contract. Amy offered to work the four weeks, and the last two weeks later on during holidays. But Turtles said it would enforce a

term in her contract that meant it could charge her £120 a day for an agency worker for the two weeks – but Amy earned just £46 per day.

The stress took its toll, and Amy was signed off work. Turtles deducted £111 from her wages for the sickness period, and retained the remainder for agency fees.

Having taken advice from Which? Legal Service, Amy wrote to Turtles asking for proof that it had incurred agency fees. Turtles claimed it had paid £100 a day for the two weeks and also for the five days when she was sick.

But our lawyers thought that the clause was a penalty as it demanded too much, so wasn't enforceable.

Despite Amy's letter on this, and a referral to an employment tribunal, Turtles stood its ground. It also claimed that Amy had been overpaid and demanded £258 back. But the tribunal said the contract clause was a penalty and so she had been underpaid.

**RESULT** Turtles was ordered to pay £919.

**Legal tips**

## Contract rights

Contrary to popular belief, you don't have the right to cancel every contract. Here are your rights when buying goods or services

■ **Buying at home** You have seven days to cancel a contract after an unsolicited visit to your home. But if you invited the seller, you can cancel only if you buy something completely different from the product you agreed to discuss.

■ **Distance buying** If you buy goods online or by phone, you have seven working days to cancel and get a refund – from the day after you receive them. With a service, you have seven working days from the day after a contract is agreed. But if you agree to it starting straightaway, you can't cancel. If you buy certain financial products at a distance, you have 14 days to cancel.

■ **Credit agreements** If you sign a credit agreement away from the credit company's premises, or if it's arranged by a trader away from its premises, you have five days to cancel.

■ **No right to cancel** If there isn't a right to cancel, a seller might still have a returns policy. Check whether this is the case and, if so, whether you'll get your money back, get a credit note or can swap the item.

**EMPLOYMENT RIGHTS****1 Money issues**

An employer can't deduct wages unless a contract or statutory provision allows it – or you agree in writing. If you leave but don't give the notice in your contract, an employer could claim for reasonable financial losses that actually occur. Higher penalties are not enforceable.

**2 General rights**

Unfair dismissal claims are heard if employees have worked for a year or more. With less than a year's service, a tribunal can take place, for example, if an employer deducts wages unlawfully; wrongfully dismisses an employee; discriminates against them; or denies them holidays and breaks.

**3 Complaining**

Grievances should be raised in writing, and an employer must follow a formal procedure by having a meeting and giving a chance to appeal the outcome. If you're still unhappy, you may be able to refer to a tribunal. Time limits for this and compensation depend on the case; take advice early on.

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