



Brief cases

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

Taking precautions to ensure valuable goods arrive at their destination safely

Precious piece of art smashed

KARIN'S STORY

Artist Karin Hessenberg often needs to transport her garden ceramic works round the country and regularly uses the same delivery firm.

So she was surprised when one of her sculptures, worth £1,500 ended up being smashed.

It was May 2007 when Karin had to send a pair of robust stoneware clay sculptures, a king and queen, from her Sheffield studio to an art gallery in Warwickshire. She called Amtrak Express Parcels as she had used them for five years.

The sculptures were worth £1,500 each, so according to Karin, she put them in sturdy cardboard boxes marked 'fragile' on all sides and packed them with bubble wrap and polystyrene chips. She paid for extra insurance, the total bill coming to £79.75. But the next day, the gallery owner called to say that



the queen sculpture had arrived broken beyond repair.

Karin made an insurance claim and was surprised when Amtrak Express Parcels didn't accept it.

The company said fragile goods such as ceramics weren't covered by her insurance, even though her account lists her goods as garden ceramics and it had accepted her

extra insurance payment.

The company had provided a good service since she started using them in 2002 and had previously paid out for a small breakage.

Thrown by the company's response, Karin called Which? Legal Service.

We said she could argue that

Amtrak Express Parcels was in breach of contract if she could show it had failed to use reasonable care and skill while delivering the sculptures.

The damage was so great that Karin was confident that the sculpture must have been dropped from some height. She put in her claim again.

This time, Karin got a response, which said: 'As our records show that the parcels were delivered and signed for in a good condition, no further investigation can be done.'

Our lawyers recommended that Karin begin court action, which she did in February this year.

The company said that it would credit her account with the £1,500 she had lost – to pay for future deliveries. Karin said she would settle if Amtrak Express Parcels gave her £1,500, and refunded her delivery charge and her £75 court fee.

RESULT Karin received a cheque for £1,575 and confirmation that the £79.75 delivery charge would be waived from her account.

MAKE SURE YOUR GOODS ARRIVE SAFELY

1 Reasonable care

A trader must use reasonable skill and care when providing a service, according to the Supply of Goods and Services Act 1982 (common law in Scotland). If it fails to do so, the trader will be in breach of contract and will be responsible for reasonable losses that result from this.

2 Delivering goods

If you're sending valuable goods by post or courier, always check the service's



terms and conditions. Look out for restrictions, such as the items they'll carry and any caps on liability. If in doubt, explain exactly what you're sending and get confirmation in writing that the

company will carry and cover those goods.

3 Delivery notes

If a delivery person asks you to sign to confirm the goods have been received, check the wording of the note. If it says that you're confirming that goods have been received in good condition, cross this out and write that the goods have not been inspected.

But even if you sign, you should still be able to reject the goods if they turn out to be damaged or faulty, under the Sale of Goods

Act 1979. You must though, 'act within a reasonable time' so take action straight away.

4 Small business rights

A small business can still be a 'consumer' if goods or services it buys aren't directly connected with its specific business. For example, a plumber's computer that is used to manage accounts will be protected when bought. But in business-to-business contracts there is a lot less protection; it can be reasonable to exclude statutory rights.

408

calls to our lawyers from Jan-March
were about electrical goods

WHICH? LEGAL SERVICE

112

of these were
about TVs

WHICH? LEGAL SERVICE



Comet settles claim after Which? steps in TV fault's a turn off

BABU'S STORY

When Babu Zainulabdeen spent £1,999 on a hi-tech TV, he expected to enjoy many years watching his favourite films.

He even paid £269 for a five-year extended warranty to protect himself if anything went wrong. But a problem developed within four years and repeated attempts to repair it made things worse.

Babu bought the Sagem DLP projector TV from Comet in 2004

together with a warranty provided by Landmark Insurance Company Limited.

He had the TV for three-and-a-half years when streaking lines appeared across the screen. Babu contacted Comet as the warranty suggested and, after an engineer visited, the projector part of the TV was taken away.

It was returned four weeks later, with the streaking reduced. But Babu found there were lines across the screen every 30 seconds

and he felt the picture was too bright and had a green glow.

Babu contacted Comet again, and an engineer arranged for the TV to be taken away.

Nearly three weeks later, it was returned. The streaks on the screen were less severe, but still he found the picture 'blindingly bright' and with a greenish tinge.

Comet sent two more engineers to try to fix the problem. One thought the brightness was fine and there were no streaks. A second engineer said there were minor problems, but said these happened as the TV got older.

Unsure what to do next, Babu called Which? Legal Service. Our lawyers said he could have a claim against Comet under the Sale of Goods Act if he could show the problems shouldn't have occurred at this stage in the TV's life.

He might also have a claim against Landmark if he could show the warranty covered the faults. Babu wrote again, but unhappy with Comet's response, he started court action.

RESULT Comet offered £850 and a refund of Babu's £80 court fee to settle his claim. He accepted.

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 W?LS, Which?, Gascoyne Way, Hertford SG14 1LH.

Legal tips

Cheque the facts

Issues to be aware of when dealing with cheques

Stopping a cheque

If you buy goods or services and end up in dispute with the seller, you may want to stop payment. If you have paid by cheque, you may be tempted to cancel it. This is risky, even if you can show there's a problem with the goods. Normally, you have no right to stop a cheque and the trader could sue you for the cheque's value regardless of whether they're in the wrong. If the trader's claim succeeds, you can bring a claim for the amount you'd lost as a result of the trader's breach of contract.

Credit-card cheques

If you use a credit card to buy goods costing £100 or more, your card company is jointly liable for any breach of contract or misrepresentation by the trader. You're not protected if you use a credit-card cheque.

Post-dated cheques

Post-dating a cheque doesn't mean it can't be cashed until that date; it can be cashed immediately. If this happens, you could take issue with your bank going against your instructions, and may be able to put a claim to the Financial Ombudsman Service for losses you incur as a result.

BUYING GOODS: YOUR RIGHTS

1 Satisfactory quality

The Sale of Goods Act 1979 says products sold must be of satisfactory quality – they must last a reasonable time. How long this is depends on factors such as the type of goods and whether it's a top-end or budget model.

2 Cash back

If goods can't be replaced or fixed, you can ask for your money back minus a sum for use. How much this is will depend on how long you have had an item and how long you could have reasonably expected it to last.

3 Extended warranties

You have 45 days to cancel and get your money back on such a warranty bought for electrical goods. After 45 days, you can get a pro-rata refund. A seller offering such a warranty, must give you 30 days to buy it on the same terms.

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