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MONEY BOX LIVE

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LEWIS: Hello. Broken, failed, damaged, wrong, late. Ah, the joys of Christmas presents that don't arrive, aren't what you ordered or go wrong before lunch is served - or, come to that, aren't quite what you wanted. Most things of course do work and they're greeted with enthusiasm, but today we're here for you if things have gone wrong. And not just with Christmas presents. If you've been out in the sales this week, are your rights the same as if you paid full price? Can shops and retailers really insist you give up your rights for a few quid off the ticket? If you paid with a credit or debit card, can you go to the card provider as well as the retailer? And what about things bought online? Are your rights the same or even better? And what if they're supplied from abroad or through an online auction? Whatever your consumer rights question, you can call Money Box Live now: 03700 100 444. With me today to answer your questions are in Birmingham Jenny Driscoll, who's Senior Campaigner at the consumers organisation Which?. In West London with me is David Cresswell, Head of Communications at the Financial Ombudsman Service. And in Cardiff, we've got David Sanders, Lead Officer for Civil Law from the Trading Standards Institute. And our first question is from Gary in Wolverhampton. Gary, your question?

GARY: Good afternoon, Paul.

LEWIS: What's your question?

GARY: Yeah the question is my Mrs bought me a DVD for a Christmas present and it wasn't at all what I wanted. So we went back to possibly exchange it yesterday, which I couldn't see anything to exchange it with, and so you know I just wanted a refund. After we queued for about 40 minutes at HMV, we were told that they don't do refunds, only exchanges. It's in perfect condition, the wrapper's still on it, got the receipt and even the bag that it come in.

LEWIS: Right, well I think that's probably a very common thing to happen after Christmas. And let's take another one in the same vein, if we could Gary, with yours. George from the West Midlands. George, your question?

GEORGE: Oh good afternoon.

LEWIS: What's your question, George?

GEORGE: Well I bought a fire a couple of weeks ago from Argos, a well-known catalogue store, and I took it back last Friday. And I spoke to the manager there and he said I couldn't have a refund; I should have to take the fire back. Well after a bit of dialogue, he agreed as a goodwill gesture to give me the value of it in a voucher.

LEWIS: Okay, George, can I ask you two things. First, could you turn your radio off because we're getting a bit of an echo.

GEORGE: I haven't got the radio on. I haven't got it on.

LEWIS: Oh right, okay. We can hear an echo. And, secondly ...

GEORGE: I haven't got the radio on.

LEWIS: ... why did you take it back?

GEORGE: Because when I brought it back home, I took it out the box, switched it

on and wasn't happy with the flame effect of it.

LEWIS: Ah right, so it was a flame effect electric fire, okay.

GEORGE: So I put it back in the box and took it back last Friday.

LEWIS: Okay, so that's two people who bought things one way or another, didn't like them, wanted to take them back and get their money back. Let's start first with Jenny Driscoll from Which? Jenny?

DRISCOLL: Yeah, this is probably one of those popular things that we come across at Which? - is when people say I expected to be able to get my money back when I took something back, and legally you cannot expect to have a refund simply because you didn't like something. Now my aunt did the same thing with Argos. She bought a video camera from there and was really surprised. She asked the person when she bought it, "Can I bring it back and get a refund?" and Argos said no. Now I think the thing that people should think about is where they buy things and think about shops that do give you your money back. So in the Which? survey the top retailers like John Lewis do give you your money back, and other companies it's their policy not to. So unfortunately in this case, you cannot guarantee to get a refund.

LEWIS: Yes, so just because you don't like something or it doesn't quite suit you, David Sanders from Trading Standards, you can't take it back and get your money back?

SANDERS: That's correct. But if you're buying for somebody else, you could always say to the seller, "I am buying this as a present. If they don't like it, may I return it?" If they say no, then try and get the item somewhere else where they will take it back.

LEWIS: Yes, so it's a question of finding the right retailer who will give you your money back?

SANDERS: You can create your own bargain. Most shops won't bother you know to bargain with you, but there's nothing to stop you asking and it's good to bear that in mind.

LEWIS: So it's that initial conversation. And David Creswell ... We've got two David's. This is David Cresswell from the Financial Ombudsman Service.

CRESSWELL: Hello there. I think the point that David from Trading Standards just made is really true. In many cases, it's not just a question of queuing up and arguing with a harassed junior Saturday worker in the store. In these kinds of cases, it's not always the question of the technicality of the law. Often it's about having a more serious debate by asking to talk to the manager or maybe writing to the head office.

LEWIS: Okay, so I think that's a shop policy - whether you can take things back. And I suppose because some shops do let you take them back and get your money back, they've perhaps spoiled it for the rest who say ... And I must say we did have an email from another David who runs some kind of retail business and he said, 'A plea from us retailers. Could you point out that we have rights too? We do get heartily sick of some customers thinking they know their rights when in fact they don't.' Well we're moving onto what rights you do have, I think now, when you can take things back, and a good example of this is Jane who's calling us from Beckenham, I think. Jane?

JANE: Yes, hello.

LEWIS: Hello, what's your question?

JANE: The question is I bought two radiator covers from a company called Churchill Cabinets in Macclesfield, which were delivered in October, and they turned out to be defective. They were delivered as flat packs - very expensive ones, £700 worth. They turned out to be defective and they are disclaiming all responsibility. And I was advised by Trading Standards to get in touch with the credit card company and make a claim under the equal liability regulations, and they've turned down my request to

have this investigated on the grounds that the goods are not in the original condition as when they were delivered. That is, that I painted them before discovering the defects.

LEWIS: Jane, can I just ask you what was wrong with them? These are boxes, cabinets that go over a radiator, aren't they?

JANE: That's right, they're just covers really for radiators.

LEWIS: And what was wrong with them?

JANE: The shelf at the top of the cabinet has sunk slightly, and also the magnets holding the front of the cabinet in place are set too far back to be effective.

LEWIS: Right but you didn't discover that immediately, so you fitted them and painted them? Right, okay.

JANE: No, it wasn't until they were fitted on the wall. It's a very simple fitting - a little bracket either side which is screwed in. But they're making the excuse that they have been wrongly fitted, but they're not explaining how this could affect the top of the cabinet.

LEWIS: So there are two issues here. One is should the company have given you your money back? And the second is if they wouldn't, could you get it back through your credit card? Let's deal with the company first. I must say we've had a lot of emails about similar things - everything from people who were sold some lobsters that were underweight - that's Brian and he couldn't get his money back - to a charm bracelet that wouldn't fit the bracelet. So I think there are a lot of people who buy things that aren't as described. So let's deal with that first if we could. Jenny Driscoll again from Which?

DRISCOLL: Yeah, I mean the law says that in the first 6 months the onus is on the

retailer to prove that it was something that the customer actually did that caused the damage, so they should accept liability on this one. It was good that you dealt with this very quickly. I mean you should act quickly if you think you've got a problem. Under the Sale of Goods Act, if it's not as described, if it's faulty, if it's not in reasonable standard, you should be able to go back to the retailer and claim your money back.

LEWIS: And that's an important point - that 6 months, isn't it - because in the first 6 months, as you say, you don't have to prove that you're right; it's them that has to prove you're wrong?

DRISCOLL: Exactly, they have to do the work in terms of proving that you did something you know that was above and beyond daily wear and tear. And Section 75, this is the Consumer Credit Act and Section 75 means that if you paid over £100 on your credit card, even if it was part of the total bill, you should be able to claim the money back from your credit card company as well and it may be worth trying that.

LEWIS: Well I think Jane has tried that and they've also said no. David Cresswell, this is the kind of thing that might come to you eventually if somebody made that claim on their credit card, they've gone to the retailer, the retailer said no. Can they then go to the credit card in all cases?

CRESWELL: They can indeed. We deal with thousands of complaints against credit card companies about so-called Section 75. I think the point to remember is just slightly managing expectations here though. Your credit card company is going to be jointly liable with the supplier for misrepresentation or breach of contract, so things have got to have gone seriously wrong effectively. It's not just over time things started not working out as you'd hoped. But certainly the Ombudsman will make a decision whether it was misrepresentation by the credit card company.

LEWIS: So having been turned down by the credit card company, Jane could go to the Financial Ombudsman Service?

CRESSWELL: That's absolutely right.

LEWIS: Have you thought of that, Jane?

JANE: Yes, Trading Standards suggested that if they wouldn't play ball, then that's what I should tell them that I was going to do. There are just two things. They're quoting the Mastercard operating regulations which they say forbid them making an investigation because the goods have been tampered with, as they put it.

LEWIS: But was this a credit card?

JANE: This is the credit card company. John Lewis Financial Services are saying that in fact we can't do anything because the Mastercard operating regulations tell us that we can't.

CRESSWELL: Well the credit card company by law still has to investigate your complaint, and if they've not settled it within 8 weeks by law, they have to tell you that you can come to the Ombudsman and we can get involved at that stage.

LEWIS: So I think there may be a bit more work to do, Jane. I think that you've got to establish that they were wrong when you first got them. I think that's the issue. What you've done to them since probably doesn't seem to me that great an issue. But good luck with that. There's often a lot of work to enforce your rights. We often give people what their rights are, but enforcing them is a different matter. Let me raise another faulty goods question we've had. This raises another interesting question. This is from Jane in Trowbridge. She says she purchased a Belling cooker in November from a local retailer, and on Christmas Eve - wouldn't you know it - just as she was about to cook her Christmas dinner, it broke down and that left her with food that she couldn't cook and she then got in touch with Belling, I think, and the retailer. And I think her question really is she can presumably get her cooker replaced at some stage, but what about the consequential loss? What about the other things that have gone wrong as a result of that - the food she couldn't cook and presumably was inedible by the time she gets it all sorted out? David Sanders, is that something that

you would deal with at Trading Standards?

SANDERS: It's something we would advise on. If it is genuinely consequential loss and it should be foreseeable that if a product is faulty and it fails at a crucial time there will be other damage as well, then that consequential loss is something that the trader may be liable for.

LEWIS: Right, so not only could she get either her money back because it went wrong or another cooker, but she could get some restoration of the loss she made?

SANDERS: Yes.

LEWIS: Okay, well that's good advice for Jane in Trowbridge. I hope you're listening, Jane, and thanks very much for your email. And thanks to all of you who've sent us your faulty goods emails, which raise a number of interesting issues. Next is Charlotte who's in Chelsea in Kensington in London. Charlotte?

CHARLOTTE: Hello. Yes, I sent a parcel from London to the United States and when I went to the Post Office last Monday, the 19th, they said, "Oh well if you pay for global express, it will be delivered within two days", which seemed an awful lot better than the other price. Well it was a lot more expensive, but it seemed worth it as it was my son's Christmas present. And I tracked online this parcel to him and I was getting tracked, received and processed, forwarded. It never actually arrived until the 27th, and I wondered if I can get some sort of compensation as they did assure me that global express and paying £61, over £61 for it, would be to the maximum service.

LEWIS: And this was at the Post Office?

CHARLOTTE: It was.

LEWIS: And you got a receipt?

CHARLOTTE: I have.

LEWIS: Does it say something like that on the receipt?

CHARLOTTE: Well they didn't ask how much the goods were worth. They didn't ask for any receipts for the goods ...

LEWIS: No, but you got a receipt for the postage?

CHARLOTTE: ... but I have got a receipt, yes.

LEWIS: Okay. There's another Royal Mail question from Jane. Let's take that one at the same time. Jane, you're from Derbyshire. Your question?

JANE: Hi, hi. Yes, well I had a little slip put through our letterbox to say that the postman couldn't deliver a package because it was too large and we were out. And so I went the following seven days later to the local depot to collect it with my card and they couldn't find it. They took my details and said they'd ring me. They didn't. And I went back again two days later and they still couldn't find it. So I tried to do online where you can arrange to get it redelivered and arranged that for Friday, and of course it still didn't turn up. And I don't actually know what this package is because it's nothing that I'm aware of that I've ordered, so I don't kind of know what to do next because they've obviously lost it between trying to deliver it to my house and taking it to the depot.

LEWIS: Okay, so there we've got a parcel that didn't arrive at the promised time - Charlotte's - and Jane's parcel that seems to have completely disappeared. Jenny Driscoll?

DRISCOLL: Yeah, I mean it's worth checking the terms and conditions in terms of the Royal Mail's policy and also the delivery companies as well. I mean at Which? one of the things that people really complain about is when you know particularly

Christmas presents don't turn up. I mean you know unfortunately a lot of the companies won't compensate, but if you did have a specific delivery time agreed with them, then you could negotiate that they had in fact broken their contract, and at least if you bought items from a company then you could say right, okay, well I want my money back. I mean it's one of those problems that it's going to require going back to the terms and conditions and it's a real common problem that people come across.

LEWIS: But with Royal Mail, I mean if it's the special delivery they do in the UK the next day, they guarantee it; and if you don't get it, then you can get your postage back - though in my experience you only get the postage, which is £2 or £3, which is not much compensation.

DRISCOLL: Yeah.

LEWIS: But a parcel to America, do you think there would have been an absolute guarantee for Charlotte on this or was that just what someone at the counter said?

DRISCOLL: Yeah, I mean the problem is that a lot of companies get out of it that we've found. When we've looked at the terms and conditions, most of them actually say this is an estimated delivery and unfortunately then it's very, very difficult to argue well you broke your contract because they haven't guaranteed a time.

LEWIS: And what about the missing parcel? If it's something you know has to be delivered, then the sender is liable ultimately, aren't they?

DRISCOLL: Yeah, I mean that's another thing - is that the sender is liable for that. If goods don't turn up, then you can say look you've broken the contract because nothing's turned up. And we've had people say to Which? you know some of the items were actually thrown over the garden fence in terms of you know left with different addresses and it's really something that is just a careless problem that can cause people a lot of grief. So if it doesn't turn up, then go back to the company and say look, you know you broke your end of the bargain because I didn't get that item.

LEWIS: And Jane, if you're still there in Derbyshire, your problem is that you don't know what this parcel was, so it could have been a present from a relative that you didn't know about.

JANE: Yeah, so I don't know who I can you know ... Because basically the Royal Mail have tried to deliver it, so it's in their hands somewhere, isn't it, so I'm not sure who I should complain to or if I'm entitled to compensation or obviously I don't know how much the item is worth or if it's worth anything.

LEWIS: David Cresswell?

CRESSWELL: I think the point here, Jane, is make sure when you do complain that it's not just to someone at the counter who's probably just very harassed, who's got a whole line of people who aren't happy, he wants to get home for Christmas or whatever. I think you've got to make it clear that you're complaining with a lot of authority, with a lot of confidence. Do it in writing. Find out the name of the chief executive. Send it to the head office. Make it absolutely clear what you want them to do about it and get them to sort it out formally like that.

JANE: Yes, okay.

LEWIS: Yeah. And I think it's generally true that the chief executive's office does have a fast track complaints person who gets things done. Just very briefly, I've had a tweet from Vicky who says she had a parcel that did arrive and the note in it said two items had been put in but there was actually only one in it when it arrived, and when she rang the company presumably she only got an answering machine. How can she prove that she didn't get both items? Well that's a bit tricky, I would have thought. David Sanders?

SANDERS: It is a bit tricky, but you know unfortunately the sender is liable for the condition of the goods until they're actually delivered, so that you know it is something in the favour of the receiver of the item - you know I've got the parcel, I've opened the parcel, it should have two items, it's clearly only got one. I don't know

what you do if there's signs of damage. I mean this may have turned up looking completely undamaged and clearly the item didn't go in, so you know it must have been the person sending it who's at fault. If it comes damaged, was it somebody else's fault? But, nevertheless, you have to go back where you started and say you promised me two items. There is only one and you're liable.

LEWIS: Yes, so it is the sender who's liable. I think that is a very important message to get over: even if the Post Office lost it or somebody nicked it or whatever, it's the sender who is liable. Well thanks very much for that tweet, Vicky. I hope that works out for you. And another email coming in now from Kate who says, in London: 'Bought a second-hand computer for my daughter's Christmas present, £300. Came with a 28 day guarantee but it's faulty. The mouse pad is sticky and doesn't work. Took it back, asked for my money back, but they say as it's second-hand, I have no rights.' Jenny Driscoll, is that right?

DRISCOLL: Yeah, you do have rights if it's second-hand. I mean it's slightly more complicated because you know if you bought the second-hand computer, then if it was say slightly scratched or something, then obviously you can't say right, I'm bringing it back because it's scratched. You should be able to prove that the fault you know wasn't something that was explained to you. But you do absolutely have the same rights under the Sale of Goods Act that you can take something back if it wasn't as described or faulty. And at Which? we went to 60 shops. Only 17 of the sales staff knew about the Sale of Goods Act. And you know it's something that really drives people up the wall - sales staff who are adamant that you can't take it back and will say go to the manufacturer. But they're wrong. You go back to the retailer and you say you have got to give me a refund or repair the item because I'm going to reject it.

LEWIS: And I think that's why it's important to talk to the manager because I'll put another word in for hard pressed, overworked and underpaid people at the counter who probably have not been trained in these things.

DRISCOLL: Yeah. What we've done is Which?, following up that survey, is we've actually produced a wallet-sized handy shoppers' rights card for the staff. I mean it

shouldn't really be down to Which? to be training staff, but it's something we're trying to do to help people.

LEWIS: Okay, I'll stop you there, Jenny, before you try and sell them to every retailer in the country. David Sanders?

SANDERS: Yes, the only caveat I would add there is that age and condition are a part of the way you judge satisfactory quality. So if you buy a second-hand item that is some years old, you can't sort of say two years down the road oh this is now worn out or this is now broken, I want all my ... You know you may have less right to ... You know you've still got your right to goods of satisfactory quality, but you know their life expectancy will be diminished and age and quality enter into the equation.

LEWIS: And especially for computer items, I think. Okay, let's move on now. David is calling us from Marlow. David, your question?

DAVID: Hello, yes. My son sold a guitar effects pedal on eBay at an agreed price, posted it on 14th December, and got an email back on the 23rd from the buyer basically saying it didn't fit in with what he wanted and he wanted his money back. My son said well he'd stated that there were to be no returns. Got an email on the 24th urging him to reconsider. Then Christmas happened, and when he checked his email yesterday evening he discovered that the person had emailed on Christmas afternoon and initiated a formal complaint action against him on Boxing Day. And I think he just wants to know, we'd like to know what his rights are as a seller of a good ... The thing was working perfectly. Basically the person didn't like what they'd got.

LEWIS: No, but your suspicion is because they didn't like it and he wouldn't change it, they then said there was something wrong with it ...

DAVID: Yeah.

LEWIS: ... which I suppose is a technique if that's the truth. Well that's an eBay

question, the online auction site of course. And Laura also has a question about the same online auction site. Laura, your question from Addiscombe.

LAURA: Yes, hi. I bought a chandelier from Italy on eBay and paid nearly £600 for it. And it arrived on 19th December, but when we took it out of the box it was a different item. Nothing on the chandelier I have received matches the picture that was represented online. So I initiated a complaint and you have to go eight days on eBay to try and negotiate with the seller. And I at this point just want my money back, but I don't want responsibility for sending the item back because posting to Italy is supposed to be notoriously bad.

LEWIS: And not cheap, I imagine, either?

LAURA: I imagine not. But the item I received is definitely not the item that was pictured.

LEWIS: Right, so we've got one seller and one buyer there, both with problems. And this is a bit different, isn't it, David Sanders, because these aren't commercial sales? These are both ... Well one's an individual sale and one is a purchase from a foreign or at least EU retailer, I presume. What are the rights here?

SANDERS: With respect to the chandelier, I presume that it is a trader sale in Italy. European law is the same there and here. The goods are not as described and they should be replaced and they should be replaced at the trader's expense.

LEWIS: And that's fine and I'm sure that's absolutely right, but how can you enforce that if somebody's just saying no?

SANDERS: Actually help is available. There is a call centre based in Basildon that will have a contact in Italy, so there's a UK centre that can talk to an Italian centre and help to mediate in the situation.

LEWIS: And how do we find that call centre?

SANDERS: You'll have to go online and look for the Trading Standards Institute. You'll find the references to the call centre.

LEWIS: Trading Standards Institute Swindon call centre.

SANDERS: No, Basildon.

LEWIS: Basildon. You said that - Basildon call centre, okay.

SANDERS: With the other one, we've got a private sale to another private individual and clearly sort of in a face to face transaction you would not expect to be able to insist on merchantable quality, satisfactory - all the three statutory rights. So in that case, I would think that there is within the eBay system a mediation scheme to sort that one out.

LEWIS: There is, though we do hear complaints about it. David Cresswell, I think you do as well.

CRESSWELL: eBay themselves have the buyer and seller protection schemes that form the basis of how they would handle complaints from either side. But underpinning that as well in both these cases - I don't know how people actually paid for the purchases, but if they used PayPal, for example, PayPal again is a financial services company covered by the Ombudsman. So people not happy with how PayPal resolve these disputes between buyers and sellers using eBay, people are then able to come onto the Ombudsman in the usual way as though it were a complaint say against a bank or a credit card company.

LEWIS: But PayPal of course is not covered by the credit card and the debit card rules that we were talking about earlier - Section 75 and the chargeback rules?

CRESSWELL: That's right, they're not, because they deal with electronic money. They're not actually a credit card company.

LEWIS: Okay, so I think ...

DRISCOLL: (*over*) And finally there's a good point. If you do want to reject an item and you've bought it online, then if they don't say about the delivery ... If you're just sending it back, for example - if they don't say about the postage cost, then they pay. I mean if you reject an item, if you say I don't want it and you've bought it online, they have got to pay the postage.

LEWIS: And that's true, is it, online even if you just don't like it because that's a rather different thing?

DRISCOLL: Yeah, that's it exactly. If they don't say, they pay. That's the rule when it's online.

LEWIS: And that's the distance selling regulations. And you can send something back within how long, Jenny?

DRISCOLL: Well your legal rights are the day after it arrives on your doorstep, then you have seven days to return it. So you do have to act quickly. But then Amazon and a lot of companies will give you a longer time, you know even up to 30 days to return items.

LEWIS: Okay. And I'm just going to take a quick email finally. Thanks very much, David and Laura, for your questions. This is about an online purchase of a cooker. Again it went wrong just before Christmas. 'Can't get engineers till 3rd January. Who is liable, the trader or the manufacturer?' Now I'm raising that because I think it's probably quite straightforward. Jenny?

DRISCOLL: Yeah if you've bought something and it's faulty, it's the retailer. And

again you know it's the thing that drives people mad - if it's wrong, it's the retailer.

LEWIS: The retailer. Okay, I must stop you there, Jenny. Thanks very much for that and thanks for that email from Julie about her hob. That is all we have time for.

Goodness, we could have gone on for an hour. Jenny Driscoll from Which?, thanks; David Cresswell from the Financial Ombudsman Service; and David Sanders from Trading Standards Institute. Thanks to you for all your calls and emails. And I should say you can hear the programme again and I'm here to take more of your calls on Money Box Live next Wednesday afternoon when the subject is consumer rights.