



## **The Association of 16mm Narrow Gauge Modellers**

### **Advice to Members – Trader Default**

#### **Introduction**

While the Association is not a Trade policing body, nor is it setting out to be a consumer arbitration organisation it recognises that there are occasions when its members have problems when dealing with traders. The Association will not get involved in individual cases of dispute between Members and Traders, however it provides the following as a means of advice where things go wrong.

#### **Legal Background**

The Consumer Rights Act came into force on 1 October 2015, this legislation effectively replaces and updates the old Sale of Goods Act and the Trade Descriptions Acts. The new legislation gives protection to the consumer when buying both new and second hand goods. However, the legal protection that they provide is little changed. The principle being: "Where the supplier is acting in the course of a business there is an implied term that the supplier will carry out the service with reasonable care and skill." If they fail, you don't have to pay.

That said, it's no real help if they have taken your money and failed to deliver, or they have your loco for repair for the last 9 months!

#### **Actions You Can Take**

So what to do, well initially make contact by phone, be forceful, but remain polite, keep a record of the date and time and what was said by both sides. If this fails, from here, forget the phone and do everything in writing. Formal letters are usually better than emails. Send these to the traders registered address.

Write down your complaint in plain English, outline any financial losses and give the trader seven days to suggest an "amicable" solution. Keep calm and don't be abusive.

If there's no response after a week (but be reasonable and allow for holidays) repeat the letter but this time warn of further action if your complaint remains unresolved. Again, keep the tone polite; friendliness and understanding is always better than aggression.

## Recovery of Money

If this approach fails, then you need to decide if it is worth going down a formal route.

If you paid by Credit Card, then the Credit Card Company is obliged to refund your money if the goods or services were not delivered or are not of 'Merchandisable Quality'.

If you paid by PayPal then, if the goods are not received there is a mechanism (see the PayPal website) by which they will refund your money.

However, if you paid by cheque or cash the most appropriate route to compensation is probably the Small claims court.

The small claims court. It deals with cases up to £5,000 in England and Wales, £3,000 in Scotland and £2,000 in Northern Ireland. You can claim back the money you have paid plus anything extra you've spent regarding the damage/loss you have incurred.

The small claims route is intended for ordinary people, not lawyers. You can't claim legal costs, although the winner can claim court fees, plus travel and certain other costs. However the process is never quick.

In general, you set out your case in the paperwork you send the court. This is then given to the other side, which may enter a defence. Some cases are resolved at this stage - your opponent knows you are right and concedes, or you realise your case is weak and is not worth continuing.

But many go to a hearing. This is usually at a county court near where you live. The court is informal. You must be prepared with material sufficient to convince a judge so paperwork, records of phone calls and photos can all be useful.

It is a court of law, which means you are under oath. In many cases, the other side fails to appear or enter a defence, so you win. The [hmcourts-service.gov.uk](http://hmcourts-service.gov.uk) website has details of court addresses and costs plus how to use the service online.

Winning your case and obtaining judgement is not always enough to get your money back. A minority of traders refuse to pay even though this adverse judgement stays on the record for six years. Bear in mind that enforcing a judgement costs and you could throw more good money after bad.

The most common remedy against traders is to send bailiffs to grab assets to sell. The most common legal method for this is called a 'warrant of execution'. It costs £100 on a small claim.

In the end you need to do your homework and be aware that winning your case is no guarantee of getting your money back.

## Disclaimer

**Note: This document is written to assist Members, it is not definitive legal advice. It is given in good faith by the Company Secretary who has wide experience of the commercial world but is not a lawyer.**

Prepared by Mike Riley Company Secretary

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Registered in England and Wales No. 3117166.

Registered Office: 7 Bagley Close, Loughborough, Leicestershire LE11 5XU

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