

The complaint

Miss B feels that Creation Financial Services Limited ('Creation' for short) has treated her unfairly in relation to the purchase of a mattress.

What happened

In May 2019 Miss B purchased from a bed merchant a mattress using a Fixed Sum Loan Agreement with Creation to pay for it. Shortly after its delivery Miss B decided she didn't want the mattress anymore as she felt it wasn't fit for purpose and wanted a refund. Miss B suffers from serious medical conditions which mean comfortable sleeping is important to her. Miss B called the Merchant and the Merchant says it told her she could exchange it after 30 days, but a refund wasn't available under the terms and conditions. Miss B says she didn't want to exchange because she didn't feel that this was fair. Having reached deadlock with the Merchant she complained to Creation.

Creation looked into the matter, but it felt that under Section 75 of the Consumer Credit Act 1974 that there wasn't a breach of contract or material misrepresentation in the sale of the mattress. So it didn't feel that it had done anything wrong and so it didn't have any more to do. Miss B felt this wasn't fair. So she complained here.

Our investigator considered the matter and didn't uphold the complaint. Miss B doesn't agree. So, this complaint comes to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Creation and Miss B don't agree on some of the key issues here. So I can only make my decision based on the evidence provided to me by the parties. In short I must decide what is most likely to have happened. Or in other words, what happened on the balance of probabilities.

Miss B says she wants to bring a claim under Section 75 claim of the Consumer Credit Act 1974 and other relevant legislation. The general effect of section 75 is that if Miss B has a claim for misrepresentation or breach of contract against a supplier of goods or services, she can also bring that claim against Creation provided certain conditions are met. I've considered these conditions and am satisfied that they are met in these particular circumstances.

I can see the Merchant made clear soon after Miss B raised concerns with it that it does an exchange after 30 days. Miss B says she didn't want to do an exchange it because she believes she bought the most expensive mattress the merchant had and consequently she'd suffer a loss of sorts as any exchange would be for a cheaper mattress. I've considered this and considered the Merchant's offering. I note it sells a number of mattresses at the same size and of the same brand for significantly more than the mattress here. And it sells more

expensive mattresses of other brands also. So I think Miss B could have exchanged and not suffered the loss she points to.

Miss B says she wanted to exercise her short term right to reject the mattress. But she can only do this if the goods are of unsatisfactory quality, not fit for purpose or not as described. Miss B says she finds the bed very uncomfortable and cannot sleep on it. But she hasn't argued that the mattress delivered to her was not the one she bought or that its different to the description of the one she bought. She accepts she got what she bought-the issue is she doesn't sleep well on it.

Miss B says its not fit for purpose as she cannot sleep on it. But this isn't a mattress that was designed or build for her particular individual sleep needs. It is a mass-produced mattress that is widely available. People generally (and also people with the same conditions Miss B has) are all different shapes and sizes and have differing individual sleep requirements. Miss B points to some advertising and what she says the Merchant's representative in the store said about the quality of sleep she'd have on this mattress. Clearly such adverts and comments are made generally and aren't implying that this particular mattress was designed for her specific requirements. Or that there was any sort of guarantee that all people were guaranteed to sleep well on it.

So although Miss B says she doesn't sleep well on it doesn't mean its not good for sleeping generally or that its not fit for purpose for people generally or people with the same conditions as she has. And although Miss B is right in her argument that the goods have to be fit for their intended purpose (in this case -being slept on) I'm not persuaded this mattress isn't fit to be slept on or that someone with her condition cannot sleep on it. I think this is a personal taste situation where she doesn't like sleeping on it. But this doesn't mean it's not objectively fit for purpose (sleeping) for people generally or people with her conditions.

Miss B hasn't described any particular fault with the mattress. She just doesn't like sleeping on it. So I'm not persuaded that this mattress is of unsatisfactory quality, not fit for purpose or not as described. So I don't think Miss B can reject it.

Miss B has pointed to wanting to cancel within fourteen days. But this only comes into play for distance selling under the Consumer Contract Regulations. As Miss B went into store and tried other mattresses but then decided to order a different mattress and did so in store I don't think these regulations apply here. Just because she bought a specific mattress with particular specifications which wasn't in store at the time doesn't make this distance selling.

And having considered the Merchant's terms and conditions I'm satisfied that the only option it offered was an exchange-which Miss B has chosen not to take. The Merchant is entitled to run its commercial enterprise as it sees fit. And as long as its sales processes don't contravene any regulation or laws or are unfair or unreasonable, this service wouldn't get involved in such matters. Miss B had the option of exchange and didn't take it.

So overall I'm not persuaded that the Merchant has breached the contract it has with Miss B. But was Miss B materially misrepresented into purchasing the mattress?

Miss B has explained in detail what she says was said to her in the store the day she bought this mattress. Our Investigator has spoken to the Merchant's employee who advised Miss B the day she bought it and I have listened to that call. The employee says they remember the sale well and described various facets of what happened. They say they've been an employee for over two years and know the Merchant's sales processes and policies regarding such situations where buyers are unhappy with their purchases from the merchants. He says that he didn't incorrectly describe the Merchant's policy on returns or

exchanges to Miss B. So having considered this and my earlier comments I'm not persuaded that Miss B was materially misrepresented into buying the mattress.

I've also seen an email written shortly after Miss B called the business (shortly after receiving the mattress). In this it describes the content of that call and that Miss B was told at that time what the Merchant's policy was. I think this written relatively contemporaneous note is more persuasive to me of the events than Miss B's recollections sometime later. So I don't think she's been treated unfairly with regard to her options after the purchase. Miss B has pointed to a 100 day return policy on the brand of mattress she bought. But this policy is only available when she buys that brand mattress from that specific brand retailer. But she didn't buy this mattress from the brand retailer, she bought it from the Merchant in this case. And this merchant only offered exchange.

Ultimately this is a complaint about Creation and under the legislation it is equally liable as the merchant where breach of contract or misrepresentation is found. But I've considered how Creation have considered Miss B's claim and I'm not persuaded it has treated her unfairly or unreasonably. In response to our Investigator's view Miss B points to the Mattress being extra-large width leading her to have to get new sheets. She was buying a new Mattress and got what she bought. I don't think it fair to hold Creation responsible for this because I've not found they've treated her unfairly. And I'm not persuaded that it or the Merchant were asked to sell a mattress to fit her sheets.

Miss B points to calls with the employee in the Merchant's store. Our investigator asked for these call recordings, but it's been confirmed these calls are not recorded. But bearing in mind I've heard the call between the employee and our Investigator I'm not persuaded by what Miss B says about these calls.

Miss B also points to making a subject access request and the delays therein. In regard to the Merchant I cannot comment here as this decision is about Creation. And in relation to Creation I cannot comment on a complaint about the subject access request as Creation hasn't had fair opportunity to look into this under this complaint investigation. If Miss B wants to complain separately about the subject access request she should approach Creation about this first.

In short, I've considered everything that Miss B has said, and I appreciate how Miss B feels about the whole situation. However, I don't think what Creation has done with regard to the Section 75 has meant that Miss B has been treated unfairly. So this complaint doesn't succeed.

My final decision

For the above reasons I do not uphold this complaint about Creation Financial Services Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 14 October 2020.

Rod Glyn-Thomas
Ombudsman