

The complaint

Mrs D complains that V12 Retail Finance Limited (“V12”) haven’t supported a claim she made to them under section 75 of the Consumer Credit Act 1974 (“section 75”).

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my reasons for my decision.

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.

I know it will disappoint Mrs D, but I agree with the investigator’s opinion. Please let me explain why.

Where the information I’ve got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or whole, with a fixed sum loan, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there’s either a breach of contract or misrepresentation by the supplier.

When considering a complaint about a financial services provider, I’m not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what’s a fair way to resolve the complaint, but I don’t have to reach the same view as, for example, a court might reach if Mrs D made a claim through them for breach of contract or misrepresentation.

I think an implied term of the contract is that the sofa should be of satisfactory condition. If the sofa wasn’t of satisfactory condition I may therefore think there had been a breach of contract. But here I’m not persuaded the sofa was of unsatisfactory quality when supplied as there have been two inspections and neither suggest that there is a fault. I understand that the second inspector put some extra padding in the arm but at the same time he confirmed that he didn’t think there was a fault, so I think it was more likely he was trying to help alleviate any concerns.

I'm also not persuaded there has been a misrepresentation. I understand Mrs D would have wished for the sales agent to explain the care of the sofa to her. But I can see she was provided with a sofa care leaflet that explained those guidelines and I don't think it was necessary for the sales agent to explain the guidance to her.

Overall, I'm not persuaded there is sufficient evidence there has been a breach of contract or a misrepresentation here and I therefore don't think V12 were unreasonable when they rejected Mrs D's claim. I'm not asking them to take any further action.

My final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 28 January 2021.

Phillip McMahon
Ombudsman