

The complaint

Mr M complains that Creation Consumer Finance Ltd refused his claim under Section 75 Consumer Credit Act 1974 in respect of a faulty bed.

What happened

In April 2018 Mr M ordered a new mattress, from a company I will call D, at a cost of £679 funded by a conditional sale agreement. Mr M says he had bought a similar mattress in December 2016 which was extremely comfortable. The new mattress was used in his spare bedroom and he didn't sleep on it until the spring of 2019. He says he then discovered it was softer and it dipped making it uncomfortable and causing back pain.

He complained to D and it sent an independent inspector. His report states: *"I have carried out a lay test and pressure test and in my opinion the mattress is offering a good level of support consistent with a firm mattress the settlement is approximately 10 mm. this is within manufacturers tolerance. The slats are 8cm apart. In my opinion there is no manufacturing faults with this mattress however there is a noticeable difference between the 2 in the home. The double does feel softer then the king-size. The customer is unhappy with this and would like this investigated with the manufacturer's. Regarding my findings of the mattress there is no manufacturing faults and the mattress is offering a good support."*

Mr M says the inspector told him the mattress wasn't as thick as the other and that this could be due to the supplier's mistake. He allegedly said that Mr M would be entitled to a replacement or a 50% refund. Mr M also said the inspector made a couple of factual mistakes.

In October 2019 Mr M complained to Creation. It arranged a second inspection which was carried out by a different inspector from the same company. His conclusion was: *"Liability explanation: No manufacturing faults found, normal settlement. Action taken: Upon inspection I found the mattress is set upon a twin slatted bed. When customer was questioned, it's been established the customer hasn't been rotating the mattress head to toe he states its occasional use, so that's why he hasn't been rotating it. I have done a string line check and recorded 0 0 cm of settlement as the interior fillings are returning 100%. A hand compression and lay check was carried out however no support issues were found. A check of the customer own bedstead also found no faults as its correctly supporting the base of the mattress. In my opinion the mattress is displaying normal natural settlement."*

After considering both independent reports Creation rejected Mr M's claim and so he brought the matter to this service. It was considered by one of our investigators who didn't recommend it be upheld. She said that it was up to Mr M to demonstrate that the mattress wasn't of satisfactory quality. She noted that both the independent reports concluded the mattress was of satisfactory quality and was within the manufacturer's tolerances.

She acknowledged that Mr M considered the performance of the two mattresses to be different, but that didn't mean the second one was of unsatisfactory quality. She also noted that D thought it unlikely that an inspector would have suggested the mattress could be replaced or a 50% refund offered. It wasn't in his remit to make such offers.

Mr M didn't agree and submitted photographs and a video. He said the difference in depth of the two mattresses showed that the second one had reduced tensile strength.

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.

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

I am satisfied there is a clear debtor-creditor-supplier link and so I have to consider if there was a clear breach of contract or misrepresentation. On the later issue Mr M has indicated he chose the mattress based on his experience with the one he bought in 2016. He has not suggested that he was misled by the seller as to the qualities of the mattress. I have seen nothing from the seller to say it told Mr M the two mattresses would be identical.

Although the new one wasn't identical to the other it seems he presumed the qualities would be identical or close to identical. The two mattresses were made by the same manufacturer, but were of a different size and it would appear they were different models. Mr M hasn't said whether he inspected the second mattress before buying, but it is implicit that he did not.

When considering this complaint I have to consider if the mattress wasn't fit for purpose, not whether it was similar to the first one. This is the approach Mr M has taken and has said that because the second one is softer than the first the second must be faulty.

We have two reports by independent inspectors both of whom conclude that the mattress is not faulty. I cannot see how I can go against their conclusions. They are experts and have inspected the mattress. I have noted Mr M's evidence and photos plus the video and I regret I don't consider those are such that I can reach a different conclusion to that of our investigator. Nor do I consider the claimed comments of one inspector to have any meaningful influence on my decision.

In summary I cannot safely conclude that there has been a breach of contract or misrepresentation.

My final decision

My final decision is that I do not uphold this complaint.

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

Ivor Graham
Ombudsman