

The complaint

Mr C complains that Creation Financial Services Limited refused his claim brought under Section 75 of the Consumer Credit Act 1974. He wants a refund of the cost price of faulty goods.

What happened

Mr C tells us that he purchased a wedding dress from a retailer I'll call "D". This was paid for by his Creation credit card. He says that when he and his partner were able to examine it more closely once they'd taken it home, they discovered several defects. He says a professional inspection report has confirmed the presence of several holes – amongst other faults – and finds that the dress wasn't of satisfactory quality. He explains that D refused to offer a refund saying it had a "no refunds" policy.

Creation said that Mr C had been given the opportunity to inspect the goods whilst in store. And that he'd accepted and signed to agree that the goods were of acceptable quality.

I issued a provisional decision on this complaint on 8 March 2021. I said that I intended to uphold the complaint. I was satisfied that the goods supplied hadn't been of satisfactory quality. And that Creation should've recognised this and accepted that it should've refunded the cost to Mr C.

Both parties have replied to my provisional view and I thank them for their responses. Mr C didn't have anything to add.

Creation said that the customer had been given an individual appointment to view the dress. And it thought that this had provided plenty of opportunity to examine the dress. And that it meant the quality of goods was known to the customer before the contract was signed.

I've considered what Creation has said but I'm not minded to change my provisional view. I'll give my full reasons in my final decision which is set out below.

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'm sorry that Mr C and his partner were disappointed with the quality of the wedding dress they purchased. It's obviously an item for a special occasion and it's to be expected that it would be supplied in perfect condition (unless it is specifically described otherwise).

I think it's important to set out my role here. In 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. Rather, I'm deciding what's a fair way to resolve Mr C's complaint. I have to take account of relevant law, amongst other things. Section 75 is relevant law. As is the Consumer Rights Act 2015 (CRA).

In summary, in some limited circumstances, Section 75 gives a consumer an equal claim

against the provider of finance as they would have against the supplier of the goods or services about which complaint is brought. It requires there to have been a misrepresentation or breach of contract by the supplier.

The CRA states that in order to conform to contract goods must be of satisfactory quality when supplied. Satisfactory quality is defined as being what a reasonable person would consider to be satisfactory. And with a new item this would include aspects of appearance and finish; freedom from minor defects; safety and durability.

The CRA contains a presumption that where goods don't conform to contract within six months of the date of supply that they didn't do so on that date. This presumption applies unless it's shown that the goods did conform to contract at that time. The dress was purchased on 19 January 2020. The faults were identified to D on 1 February 2020.

But the CRA also contains a provision which is relevant to satisfactory quality where the consumer has inspected the goods prior to purchase. And it follows that in the circumstances of this complaint, anything that affects the assessment of satisfactory quality must also be relevant to the application of Section 75.

The relevant part of CRA reads (my underlining):

S. 9 Goods to be of satisfactory quality

(1) Every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.

(2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of—

(a) any description of the goods,

(3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—

(a) fitness for all the purposes for which goods of that kind are usually supplied;

(b) appearance and finish;

(c) freedom from minor defects;

(d) safety;

(e) durability.

(4) The term mentioned in subsection (1) does not cover anything which makes the quality of the goods unsatisfactory—

a) which is specifically drawn to the consumer's attention before the contract is made,

b) where the consumer examines the goods before the contract is made, which that examination ought to reveal.

Here I've seen photographs of the dress, as well as an independent report prepared by an individual I'll refer to as "H". The report confirms that the dress had various faults including holes, and frayed edges.

I'm aware Creation suggests that H isn't an expert in lace dresses. And implies that her report is unreliable. Whether H is an expert or not doesn't alter my decision. I'm able to see the photographic images of the dress for myself. And it doesn't take an expert to identify many of the faults. As H had the benefit of inspecting the dress itself, she's even better placed to judge.

Although Mr C and his partner inspected the dress in store, and I accept that they were given a specific appointment, I think there's still likely to be distractions such as a sales pitch. I don't consider it unreasonable that a consumer should expect the chance to examine the garment at their leisure and under no time pressure. So it's very much open to debate what the in-store inspection "*ought to reveal*". Some of the items such as frayed edges and holes probably show up more readily against a darker background as depicted in the photographs. So I find it reasonable and plausible that they weren't observed in store. Otherwise I'm sure that Mr C or his partner would've pointed them out.

Having examined the dress at home, Mr C complained to D. From the subsequent inspection and photographs it's clear that there are several faults. Some are minor (pin and loose thread). But holes and frayed edges are plainly unacceptable in such a garment.

It's not for me to decide if all the contract terms are enforceable (I suspect not in terms of the "*no refunds*" policy). My determination is on the basis of what is fair and reasonable.

I don't think that the examination in store here, is sufficient to say the faults shouldn't be taken into consideration in relation to quality. And as the faults were unquestionably identified within six months of supply and resulted in the goods not conforming to contract, it's presumed they were present at the point of supply.

Creation hasn't specifically supported D's contention that a "*no refunds*" policy is effective. And it's not apparent why a retailer would seek to try and rely on such a policy if they had confidence that the goods they supplied conformed to contract. If it's suggested the defects are minor so as not to amount to a quality issue, they could've been drawn to the attention of the customer. That would've removed any doubts as to whether Mr C accepted the dress in that condition.

In summary, I find that Creation should've accepted that it had a liability under Section 75. In my opinion it was apparent that this item – also bearing in mind its purpose – was not of satisfactory quality. And I find that Creation's refusal to accept Mr C's claim was unfair.

I'm upholding this complaint and require Creation to refund the purchase price of the dress. It is, of course, entitled to collect it prior to any refund being made.

Putting things right

Creation Financial Services Limited should now take the following action:

1. Arrange to have the dress collected at no cost to Mr C;
2. Refund the purchase price of £1,280 to Mr C.

If Mr C has paid interest whilst repaying the capital amount, he should be refunded the interest on the amount repaid.

And if full payment has been made this should be refunded with simple interest added at the rate of 8% per year from date of final repayment to date of settlement.

My final decision

For the reasons given above my final decision is that I'm upholding this complaint.

I require Creation Financial Services Limited to take the action I stipulated in the preceding section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 April 2021.

Stephen Ross
Ombudsman