

The complaint

Mr R complains that furniture he purchased using a credit card was misrepresented to him and was of unsatisfactory quality. He says NewDay Ltd ("NewDay") should therefore have supported his claim.

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 Mr R, 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 credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim or a chargeback. Section 75 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 Mr R made a claim through them for breach of contract or misrepresentation.

Breach of contract

The relevant law says, amongst other things, that the goods should have been of satisfactory quality when supplied, it says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

These were new goods and I don't think a reasonable person would expect them to have any faults.

I am persuaded by the photographic evidence, taken by the suppliers when they unpacked and assembled the goods, that the damage Mr R complains of wasn't present when the goods were supplied. That's the point at which NewDay were responsible for the quality of the furniture and it would not therefore be fair to suggest there's been a breach of contract.

Mr R suggests that the damaged paintwork on the bedside units was caused by the cleaning fluids used by the assemblers. I haven't seen evidence that the assemblers used cleaning fluids and I note that doesn't explain why the chest of drawers is undamaged in the delivery photographs. On balance I'm still not persuaded the goods were of unsatisfactory quality.

In those circumstances I don't think there was sufficient evidence available to NewDay to support a claim under section 75 for breach of contract or for them to dispute the chargeback scheme providers decision not to uphold a chargeback for breach of contract.

Misrepresentation

If Mr R was told something that was false and if that false statement of fact led him to enter into an agreement he would not otherwise have entered into, I'd consider the agreement had been misrepresented to him and I'd ask NewDay to take some further action.

I'm not persuaded there has been a misrepresentation here.

Mr R says he was promised a warranty on the goods but I can see the warranty excludes mirrored goods and, regardless, as I'm not persuaded the goods were delivered in that condition and the damage is therefore likely to be accidental damage, the warranty would not support a claim.

Mr R also says the goods were supposed to be wood, but he's now discovered they are particle board. I'm not persuaded this is a misrepresentation. The furniture wasn't described as solid wood and was a wooden product.

Overall, I'm not persuaded there is sufficient evidence of either a breach of contract or misrepresentation here and I don't think NewDay were therefore unreasonable to reject Mr R's claim.

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 Mr R to accept or reject my decision before 31 December 2021.

Phillip McMahon
Ombudsman