

The complaint

Mr R complains that Creation Financial Services Limited (“Creation”) were wrong to reject a claim he 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 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. 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 Mr R made a claim through them for breach of contract or misrepresentation.

If there was difference in the colour or shade of the flooring to that which Mr R was shown in the sample I would think there had been a breach of the implied terms of the contract Mr R had with the supplier because the goods would not be of satisfactory quality.

I’m not persuaded here, however, that there is sufficient evidence there has been a breach of contract.

I say that because:

- I don't think the photographs provided by Mr R show much of a difference, in the shade or colour of the flooring when compared to the sample.
- The supplier has explained that the flooring is multi-tonal, and the colour variation is part of the rustic look. The photographs in the sales information demonstrates that and I think explains that variation adequately.

In the absence of an expert opinion I'm afraid the evidence doesn't persuade me that the flooring is of a different shade/colour than was promised.

Mr R has explained that his possessions had to be removed to allow fitting and that he made unanswered calls to the supplier on the day of fitting. He's explained that the fitting cost as much as the flooring but, as I'm not persuaded there is sufficient evidence the product wasn't to specification, it wouldn't be fair for me to suggest Creation were wrong not to consider those details and compensate Mr R.

Mr R has explained that the supplier has since changed its samples, but I don't think that demonstrates there was necessarily anything wrong with them and I'd expect samples to be changed as they age.

I don't have sufficient evidence to suggest that Creation made a mistake when rejecting Mr R's section 75 claim and as there was insufficient evidence of a breach of contract I don't think they needed to raise a chargeback as that would have been likely to be rejected by the scheme provider.

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 13 January 2022.

Phillip McMahon
Ombudsman