

The complaint

Mr T complains that NewDay Ltd trading as Amazon Card declined his claim under section 75.

What happened

In March 2020 Mr T purchased a sofa from a retailer using his NewDay credit card. Then amount paid was around £300. The sofa was delivered in August 2020.

In March 2020 Mr T contacted the retailer to complain that the material on the sofa had torn. The retailer advised Mr T to call a helpline to arrange for a technician to inspect the sofa.

An inspection was carried out. The retailer advised Mr T that the sofa didn't have a manufacturing fault and said the issue was caused by wear and tear. The retailer said it wouldn't refund or replace the sofa.

Mr T said the sofa was less than a year old and should've been more durable. But the retailer said the inspection had found evidence of a spillage which was likely to have caused the material to tear.

Mr T replied to the retailer and said there hadn't been any spillages. The retailer said it could only consider the inspection report but said that Mr T could obtain his own report if he wished.

Mr T complained to NewDay. It said it couldn't raise a chargeback dispute because of the length of time which had passed since the purchase date. It considered the claim under section 75 but said that based on the retailer's comments about the inspection report it didn't think there was enough evidence to show that the sofa wasn't of satisfactory quality at the point of supply. NewDay acknowledged that it should have realised that the chargeback claim was out of time sooner than it did and offered £25 compensation for this error.

Mr T remained unhappy and complained to this service. He said he didn't obtain his own report because this would've cost him around £150.

Our investigator didn't uphold the complaint. She said that based on the available information, she wasn't able to say that the sofa was faulty at the point of supply or that it had a manufacturing fault. She didn't think NewDay had acted unfairly in dealing with Mr T's complaint.

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.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr T's complaint, I would need to be satisfied that there's been a breach of

contract or a misrepresentation, and that NewDay's response to the claim under section 75 wasn't fair or reasonable.

Mr T hasn't said that there's been a misrepresentation so I've focussed on whether there's been a breach of contract.

The relevant law says that goods must be of satisfactory quality and fit for purpose at the point of supply. If this isn't the case, then a breach of contract can be said to have occurred.

I've looked at the available evidence including the photos provided by Mr T. I haven't been able to look at the inspection report because this hasn't been made available by the retailer. Mr T has said he doesn't hold a copy. I've taken into account what the retailer told NewDay about the contents of the report and I've noted that Mr T disputes the conclusion that the damage was caused by spillage.

Based on what I've seen in the photos, it's clear that there's damage to the sofa. There's a tear in the arm and the middle cushion. But I can't say, based on the photos alone, whether the damage is due to a manufacturing fault or due to wear and tear.

I've taken into account what the retailer said about the inspection report. The report concluded that there wasn't a manufacturing fault and that the damage was due to wear and tear.

I appreciate that Mr T disagrees with the report. From what I've seen, Mr T could have obtained his own report, but he chose not to. I understand the reasons for that. However, in the absence of any evidence to the contrary, I'm persuaded by the report which concludes that there wasn't a manufacturing fault.

I understand the point Mr T makes about the sofa not lasting as long as he expected, and not being durable. But on the available evidence, I'm unable to conclude that the sofa wasn't durable.

Taking everything into consideration, I don't think NewDay's response to the section 75 claim was unfair or unreasonable. So I won't be asking it to do anything further.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 February 2022.

Emma Davy
Ombudsman