

The complaint

Mrs B complains about the quality of a washing machine she bought using finance provided by Shop Direct Finance Company Limited ("Shop Direct").

What happened

Mrs B has a finance account with Shop Direct, in July 2019 Mrs B used this account to buy a washing machine from a retailer on a buy now pay later basis. The deal was that if Mrs B paid for the washing machine in full by the end of a certain period then she would not need to pay interest on her purchase.

Within the first three to four months of purchase the washing machine stopped working correctly. Initially Mrs B contacted the retailer. The retailer tried to put things right by sending out a repairer. But the washing machine was worked on by engineers on a few separate occasions. Each time the repair did not work. Mrs B is a key worker. She worked throughout the Covid pandemic in close proximity to others. She explains therefore she had to wash her clothes every day and it was therefore extremely inconvenient that her washing machine kept on breaking down during part of this period. In the end Mrs B contacted her insurer (she had appliance insurance) who replaced the washing machine for her, and she disposed of the original washing machine. The reason why her insurer replaced the washing machine was because its expert engineers were unable to repair it. Mrs B is now being charged interest by Shop Direct on the purchase price as she did not repay in full before the interest free promotional period ended.

Due to the type of finance that Mrs B used to buy the washing machine she suggests that Shop Direct is equally responsible as the retailer for the quality of the washing machine. In particular, Mrs B relies on the rights that she suggests she has under Section 75 of the Consumer Credit Act 1974 ("Section 75"). Therefore, Mrs B complained to Shop Direct asking it to take responsibility.

However, Mrs B was not satisfied with how Shop Direct dealt with her. Specifically, Mrs B complained that when she contacted Shop Direct, she did not get the level of customer service that she is entitled to expect.

Shop Direct suggested that the most appropriate remedy if the washing machine wasn't working properly would be to send out an engineer. It would only replace an item if a repair could not be carried out successfully. It did accept that Mrs B did not always receive the level of customer service she ought to have done and it offered her £25 to make up for this.

Dissatisfied, Mrs B came to our service.

Once the complaint was with us Shop Direct contacted us with further information. In summary, Shop Direct let us know that the first and it says the only time it knew anything might be wrong with the washing machine was in November 2020. Shop Direct asked if the insurer's experts had prepared a report at the time, and if so, it wanted to see it. Further, it directed Mrs B to the manufacturer so it (the manufacturer) could investigate what was wrong with the washing machine (if anything). It suggested this was the correct approach because it was Mrs B's responsibility to demonstrate to it that there was an inherent fault with the washing machine before it had to act. It was not aware of any earlier repairs.

Moreover, Shop Direct indicated that Mrs B had not come back to it for a remedy. Further from its perspective since Mrs B's insurer had replaced the machine, she was back in the position she would have been in had the machine not been defective and therefore if the contract had been properly performed. Alternatively, Mrs B was in an even better position than she would have been in if she had the original machine, that is because she once again has a brand-new washing machine. For all these reasons Shop Direct did not agree it was obliged to do anything further.

Mrs B responded to say she had contacted the retailer at least three times and each repair failed. The last time she contacted the retailer it told her the washing machine was no longer covered by the warranty and it suggested she make a claim on her insurance.

One of our investigators investigated Mrs B's complaint. She was satisfied that the washing machine was not of satisfactory quality. She concluded that it was fair and reasonable to tell Shop Direct it had to take responsibility for this. Our investigator recommended that Shop Direct could not charge Mrs B interest on the amount she borrowed to purchase the washing machine. She recommended that Shop Direct refund any interest Mrs B had paid and not charge interest on this sum in future. Further, she recommended that Shop Direct pay Mrs B £100 for distress and inconvenience.

Mrs B accepted our investigator's recommendation, Shop Direct did not. Shop Direct reiterated its previous stance save that it did accept that it ought to pay Mrs B £100 for distress and inconvenience as we had recommended.

Shop Direct asked that an ombudsman take a fresh look at Mrs B'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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mrs B relies on the provisions of Section 75 in her complaint against Shop Direct. Mrs B has the benefit of this provision because of the type of credit she used to purchase the washing machine from the retailer. The general effect of Section 75 is that if Mrs B has a claim for misrepresentation or breach of contract against the retailer, she can also bring a like claim against the finance provider that financed the purchase - here that is Shop Direct.

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, in deciding what's a fair way to resolve Mrs B's complaint, I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mrs B pursued a claim for breach of contract or misrepresentation. This service is an alternative to the courts.

Where a consumer buys goods from a business as in this instance, the law implies a term into the contract that the goods supplied will be of satisfactory quality. What counts as satisfactory is determined by what a reasonable person would think is satisfactory, looking at all the relevant circumstances. I think in the case of a brand-new washing machine a reasonable person would expect that it would run without issue for much longer than a few months. I'm satisfied that the washing machine did not meet this standard.

Shop Direct disputes that the retailer (or anyone else) had several unsuccessful attempts at repairing the washing machine within the first few months. But I am persuaded by the information I have available to me that the washing machine was faulty, and that Mrs B contacted the retailer. I am also satisfied that the retailer's engineers tried several times to fix the washing machine but could not. Further, I find that the history of repairs with the retailer speaks for itself, I don't think a further expert report was necessary. In other words, I think the information from the retailer showed the machine was beyond repair. This was underlined by the information from and the actions of Mrs B's insurer.

Incidentally I don't agree that Shop Direct acted fairly in directing Mrs B to the manufacturer to provide it with evidence of a manufacturing fault. It had Mrs B's evidence about the running of the machine and the numerous repairs. It could easily have contacted the retailer to verify her version of events. Mrs B appears to have thought the retailer and Shop Direct are one and the same due to the similar names. In any event they appear to be part of the same family of companies. I think Mrs B's misunderstanding of this point was not surprising in the circumstances, whereas Shop Direct could have cleared up this point easily and contacted the retailer itself. Shop Direct talks about a reverse burden of proof. But I think Mrs B had already met that bar with the information that she provided and that the retailer could have backed up.

Given that I have found that the washing machine was most likely not of satisfactory quality the next question is what Shop Direct needs to do to put this right. It suggests that Mrs B has been put in the position she would have been in if the contract had been properly performed. This is the redress for a breach of contract and therefore Shop Direct indicates it needs to do nothing further. However, its stance does not take account of the months that Mrs B was without a functioning washing machine. Further, it also does not take account of the fact that it was responsible for the breach of contract and for putting right the breach. But instead, it was a third party, a third party that is totally unconnected to Shop Direct that remedied the breach of contract.

Moreover, it seems to me that Mrs B went to her insurer very much as a last resort when all other avenues had failed. Ideally Mrs B should have been able to look to Shop Direct to take back the faulty machine. In those circumstances, I find it unlikely she would have accepted a replacement. Instead on balance, she would have returned the machine and would not now be facing interest repayments for a washing machine that did not work as it ought to have done. That said it is not possible now for Mrs B to return the original machine. She has got rid of it.

Taking all of the above into account, I don't agree that it is fair and reasonable that Mrs B must now pay interest on the money she borrowed to buy the washing machine. Rather, I think it is fair and reasonable that Mrs B pay for the cash price of the washing machine. Otherwise she will have got a washing machine for free. But that is all she must pay for. She must be refunded any interest she has already paid, and she must not be charged any interest in future. Shop Direct must also ask the credit reference agencies to remove any negative information it might have asked them to register in relation to Mrs B's payment history in relation to this purchase.

In addition, I think that Shop Direct did not behave as it ought to have done here as I have explained above. I find it likely this did cause Mrs B distress and inconvenience and that it should pay Mrs B £100 for distress and inconvenience as it has already agreed to do.

My final decision

My final decision is that Shop Direct Finance Company Limited must:

- Refund any interest that Mrs B has already paid and must also not charge any interest in future on the money that Mrs B borrowed to pay for the washing machine. In addition, it must pay interest on any such refund at the rate of 8% a year simple. The interest to run from the date that Mrs B made the interest payment to the date of settlement.
- Pay Mrs B £100 for distress and inconvenience as it has already agreed it will do.
- Ask the credit reference agencies to remove any negative information it or its agents asked the credit reference agencies to register, in relation to Mrs B's payment history in relation to the purchase of the washing machine.

Shop Direct Finance Company Limited must pay the compensation within 28 days of the date on which we tell it (Mrs B) accepts my final decision. If it pays later than this it must also pay interest on the £100 from the date of my final decision to the date of payment at the rate of 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 9 June 2022.

Joyce Gordon
Ombudsman