

The complaint

Mr B complains that Jaja Finance Ltd has unfairly declined a claim, made under section 75 of the Consumer Credit Act 1974 ("section 75"), in respect of a caravan that he had purchased which he says wasn't of satisfactory quality.

What happened

In April 2019, Mr B purchased a nearly new caravan from a dealership. He paid for the caravan using both his credit card with Jaja and cash. The total cost of the caravan was £16,500.

Mr B says, having only used the caravan on a few occasions, he and his wife decided that it was too small and to sell it privately. The caravan was advertised for sale at £15,500 and Mr B received an acceptable offer from a third party. As part of the sale, the third party requested that they be provided with a damp proof certificate and the service record for the caravan.

In September 2019, Mr B arranged for a technician at the supplying dealership to undertake a damp check, and for the service record to be collected. Mr B says that the service record actually revealed that the caravan had been manufactured in August 2017, and not in 2018, as he'd been informed by the salesperson. Mr B says he was also informed that substantial damp had been found in the caravan, which had been there for some time. A report was prepared by the technician setting out the damp proof readings, which ranged from 10% to 40% at various points in the caravan.

Mr B was advised by the supplying dealership that, as the caravan was still under warranty, the damp issue could be repaired by the manufacturer. Mr B says that he informed the supplying dealership that he was unhappy about the quality of the caravan, as it must have been damp at the point of sale and, had he known that, he wouldn't have purchased it. He says the supplying dealership informed him that the caravan would have been damp checked prior to his purchase and declined to allow Mr B to reject it.

Mr B says that there was a discussion with the supplying dealership as to options regarding returning the caravan, but he was unhappy when it offered him £12,000 for it. Mr B agreed for the caravan to be repaired under the warranty by the manufacturer.

Mr B contacted the manufacturer regarding the repair and was advised that this had been registered under the warranty. Mr B says he was then told that the caravan had earlier been returned to the manufacturer in December 2018, for the same issue to be fixed. Mr B was also advised that his repair couldn't be arranged until December 2019.

At Mr B's request the manufacturer provided an email confirming that damp had been found by a recall engineer in August 2018 and a repair had been carried out on the caravan in February 2019, after which the caravan had been returned to the dealership in March 2019.

Mr B complained to the supplying dealership about the damp issue, the length of time

taken to arrange any repairs, and that it hadn't re-registered the warranty into his name, as it said it would, and that it had misled him as to the caravan's age. Mr B told the supplying dealership he wished to reject the caravan under the Consumer Rights Act 2015 and required a full refund. At the same time as sending this letter, Mr B raised a claim under section 75 with his credit card provider, who at that time was not Jaja, (Jaja subsequently took over as the credit card provider from another business).

The supplying dealership responded to Mr B's complaint and said that no water ingress had been found with the caravan when it had been subject to a pre-delivery inspection prior to its sale to Mr B; that there had been no misrepresentation as to the age of the caravan because the model year for caravans runs from September to August; the transfer of the caravan had been actioned and that an earlier repair date had now been arranged with manufacturer. It said that it wouldn't agree to the caravan being rejected.

Mr B declined the offer of the repair but, in February 2020, the then credit provider declined Mr B's claim under section 75, as it said Mr B should provide the dealership with an opportunity to fix the fault. It said that, if the repair failed, then Mr B may be able to reject the caravan.

Mr B agreed to have the caravan repaired and it was returned to the manufacturer. Unfortunately, due to Covid, there was a delay in the repair being undertaken until August 2020. The caravan was returned to Mr B the following month. Mr B requested that a damp report be provided with the caravan on collection and this was done, the report indicated that the caravan was totally dry.

Mr B says that around two weeks later he carried out his own damp readings in the caravan and found them to be significantly higher than those provided when it had been returned to him. He also noticed lumps on the inner front wall.

Mr B contacted his credit card provider to reject the caravan and pursue his section 75 claim. While waiting for a response, Mr B arranged for the caravan to be serviced so as to comply with the manufacturer's warranty conditions. This service was conducted by an independent manufacturer approved technician. Mr B requested that the technician also carry out a damp check. They reported damp readings higher than those found in the manufacturer's report, and that the timber on the floor was rotten and hadn't been replaced during the repair which was "*poor practice and will lead to further deterioration*". Mr B says he was also advised other repairs would be required to the caravan's walls due to the damp.

Mr B supplied this report to both the supplying dealership and Jaja. He asked that either the caravan be fully repaired with a new flooring fitted, or for a full refund to be received. The manufacturer and the supplying dealership said the damp readings were within the acceptable range and the supplying dealership asked to be able to inspect the caravan.

Jaja responded to Mr B that, due to his further concerns about the caravan, he should arrange for it to be inspected by the supplying dealership. However, our investigator, having reviewed all the evidence gathered, recommended that Mr B's complaint should be upheld. He said that he was satisfied that the issue with the damp had been present at the point of sale and, although Mr B had agreed for the repair to subsequently be carried out, later inspection had revealed that there were still elevated damp readings and the timber floor was rotten. He said he didn't think it was reasonable for the supplying dealership to further inspect the caravan, and it was fair for Mr B to now be able to reject it as it hadn't been of satisfactory quality at the point of supply.

Our investigator asked that the caravan be collected and for Mr B to be reimbursed the £16,500 cost together with interest.

Jaja said that the later readings of damp taken when the caravan had been serviced came with a proviso that they were subject to atmospheric conditions and wouldn't be evidence of the condition of items at other times. It said that the guidance for the range of readings found in the caravan was for further investigation and that they should be checked again in three months. Jaja said the caravan had been repaired in accordance with guidelines and queried the findings regarding the rotten flooring. It said it should be verified that the repairs had failed.

Jaja also said that Mr B had asked for the caravan to be repaired when sending in the report from October 2020, and the dealership had indicated a willingness to assist in getting the matter resolved. It said that Mr B should allow the dealership to inspect the caravan to see if it could be repaired, and so disagreed with the view of our investigator that Mr B was now entitled to reject the caravan.

Mr B said he would agree to the supplying dealership inspecting the caravan but, as he was concerned his relationship with it had broken down, he also arranged for the caravan to be inspected by another independent engineer. A number of photos were also taken showing that the flooring was lifting due to damp.

The supplying dealership said it needed to inspect the caravan in a workshop under specific conditions to measure any damp. Mr B had some concerns about the proposed arrangements and so it was eventually agreed with Jaja that an independent inspection would be arranged for which it would cover the cost.

In March 2021, the caravan was independently inspected, and the flooring was found to be rotten and delaminated along the full width of the front of the floor. A number of photos were supplied confirming this finding. It was also reported that the previous repair had been inadequate. A number of damp readings were taken and a reading of 100% was found on the front nearside door. There were also isolated areas on the upper outside and nearside walls at 20%, which were recommended for rechecking after three months.

In response to this report Jaja said that the caravan should have been inspected in controlled conditions as all the reports set out that atmospheric conditions would have an impact on the readings taken. It said it was unknown what the conditions were for this final inspection. Jaja said its view was unchanged that Mr B should allow the dealership to assist in repairing the caravan as he'd requested.

As the parties were unable to reach an agreement this complaint was passed to me and I issued a provisional decision along the following lines.

This complaint had unfortunately taken a long time to reach this stage and it had been complicated by a change in the credit card provider, as well as the Covid situation. But, looking at all the evidence that had been provided, I was satisfied I'd seen enough evidence on which to reach a fair and balanced decision.

The general effect of section 75 of the Consumer Credit Act 1974 is that if a consumer has paid for goods or services with a credit agreement, such as a credit card, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider which here was now Jaja.

My role was to decide whether Jaja had acted fairly and reasonably in its response to Mr B's claim. I'd seen that Jaja had looked at evidence from both Mr B and the supplying dealership in reaching its decision. It said that, at the current time, Mr B didn't have a right to reject the caravan because the dealer was willing to assist him in respect of his complaint about the condition of the caravan. Jaja said Mr B had asked for the caravan to be repaired. However, I'd also seen that Mr B had asked to reject the caravan on a number of occasions.

Mr B had originally raised his section 75 claim based on both the caravan having been misrepresented to him, and that the contract was breached due to its condition because of the damp and damage to the flooring.

In regard to misrepresentation, I would have needed to be satisfied that Mr B had been told an untrue statement of fact, and that this statement had induced him to enter into the contract to buy the caravan. I'd seen that the dealer had explained that, although the caravan was manufactured in August 2017, this would be considered as a 2018 model because of the way the year was counted. Following my own research, I'd seen this was correct, so I was satisfied that the year of the caravan hadn't been misrepresented.

I'd also seen that Mr B had been unhappy about the registering of the ownership of the caravan and a warranty, but these issues appeared to have been resolved. So, I didn't think these in themselves would have amounted to a right to reject the caravan for misrepresentation.

Mr B also said that, had he been aware of the repairs undertaken on the caravan for damp prior to his purchasing it, he wouldn't have agreed to buy it. While I didn't know what the supplying dealership knew about these repairs, I also didn't have any evidence that it had misled Mr B about them. I hadn't seen that it had told him there had been no repairs carried out in the past for instance. I accepted the dealer had said that there was no damp found with the caravan prior to its sale to Mr B, but had produced no evidence to that effect. But I didn't think I had sufficient evidence to say that the dealer misrepresented the damp issue to Mr B at the point of supply.

So, as I wasn't persuaded the caravan had been misrepresented to Mr B regarding the damp issue, its age or in respect of the warranty. I therefore needed to consider whether Jaja had acted fairly as to whether there had been a breach of the contract in respect of the quality of the caravan.

I thought the evidence produced supported that there had been an issue with damp in the caravan prior to the time Mr B purchased it. And, although repairs had been carried out by the manufacturer, I hadn't seen any evidence as to what those repairs were. On the evidence I'd seen it was unclear how long the caravan had been damp for, when the readings were taken in September 2019. I appreciated Mr B said that he was told by the technician these were longstanding, but that wasn't in their report. The report stated that the damp readings were at a high level around the nearside front of the caravan, the nearside floor and at its nearside rear door. It said that "*immediate action is required to prevent further damage or deterioration*". The readings taken ranged from 89% to 20%.

I'd seen that repairs hadn't been carried out immediately, due to Mr B requesting to reject the caravan and making a claim under section 75. There was also the complication of Covid delaying when repairs could be arranged and carried out. This meant the repairs weren't carried out until around September 2020. However, while I appreciated this may have resulted in some additional damage to the caravan, I thought it was reasonable to have expected any deterioration in the caravan's condition (in particular to the flooring) to have been picked up during the repairs. Jaja said these repairs were carried out as

approved by the manufacturer.

I'd seen that when the caravan was returned to Mr B the damp readings indicated that the caravan was dry. Mr B repeated the damp readings himself a couple of weeks later and found them to be higher than as reported by the dealership. This led him to obtain his own independent report, as well as having the annual service carried out on the caravan in October 2020. While I appreciated the level of the damp readings indicated that further investigation may be required, I thought it was important to note the finding that the timber in the floor was rotten and hadn't been replaced during the damp repair. This was described as "*poor practice*" and the report stated this "*will lead to further deterioration*". The annual service report also said that the flooring had rotted from previous water ingress and had not been repaired. The flooring had been marked as a fail on the annual service check sheet.

So, on the evidence of the independent report carried out in October 2020, I thought it was reasonable to say that the repair hadn't been carried out to a satisfactory standard due to the condition of the flooring. While I appreciated Mr B indicated that he would seek a new floor as part of the repairs for the damp, I thought he had been clear since making his section 75 claim that his preference was to reject the caravan and be reimbursed. I'd seen that the original credit provider informed him that if the repair, carried out in September 2020 was unsuccessful, he might have the right to reject the caravan.

However, Mr B had agreed for the caravan to be inspected again. I could appreciate why Mr B had been unhappy about the supplying dealership arranging this, as I thought after all this time it was fair to consider the relationship had broken down. There was a lot of discussion about how this inspection would be undertaken, and the need for a controlled environment was raised due to the way that the atmosphere could affect damp readings. Eventually, it was agreed between Mr B and Jaja that an independent report could be carried out. This inspection found damp readings similar to the previous report, but it also found that there was 100% on the front nearside floor, meaning it was saturated.

So, while I appreciated some of the damp readings have been within acceptable levels, taking all the evidence together I was satisfied that the caravan has had a long standing issue with water ingress, which had led to damp and damage to the flooring over time. The photos supplied by Mr B clearly showed mould and delaminating.

I thought it was more likely than not that there was a damp issue at the time the caravan was supplied to Mr B, taking into account the repairs for damp carried out in February 2019 and that damp was again found in September 2019. As set out above, I didn't think the subsequent repairs carried out in September 2020 had repaired the issue, particularly as the floor had been inadequately repaired. I also didn't think a reading of 100%, as found in the latest report, was solely due to atmospheric conditions.

This meant that the caravan wasn't of satisfactory quality at the point of supply, as required by the Consumer Rights Act 2015, and that there had been a breach of contract between Mr B and the supplying dealership. Jaja as the credit provider under section 75 was responsible for remedying that breach.

I thought Mr B had always been clear that his preference was to reject the caravan, even though he'd raised the possibility of the flooring being repaired in his later correspondence with Jaja and the supplying dealership. And I wasn't persuaded that Mr B had lost his right to reject the caravan when he later suggested he would agree to repairs. I thought in these circumstances that it was fair and reasonable for him to reject it and for Jaja to reimburse him its cost. I intended to uphold Mr B's complaint.

I asked Jaja to do the following:

- Collect the caravan at no cost to Mr B
- Reimburse Mr B the £16,500 he paid for the caravan together with interest at the yearly rate of 8% simple from the date of payment until the date of settlement.

Mr B says that he agrees with my provisional decision. He has also provided a copy of the most recent service report dated November 2021 which again records elevated damp readings in the same areas as recorded at the last service and notes that the floor is rotten.

Jaja says that it is possible there would have been a different outcome to this complaint had Mr B co-operated with the supplying dealership in having the caravan inspected by it after the repairs in September 2020.

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 have reviewed the conclusions that I reached in my provisional decision and I haven't changed my view. I don't think it was unreasonable for Mr B to decline the supplying dealership a further opportunity to inspect the caravan as I think that by this time the relationship between them had broken down. I also don't think it's likely that had the supplying dealership inspected the caravan there would have been a different outcome for this complaint. As set out above, Mr B arranged for the caravan to be inspected by an independent technician with the agreement of Jaja (rather than returning it to the supplying dealership) and the subsequent report set that damp was found in the walls and that there were issues with the rotten floor.

I am still persuaded by that final report which found a damp reading in one area of the caravan of 100% that the readings were not just affected by the atmospheric conditions. This report also confirmed that the wooden floor was rotten.

Looking at the various reports together with the photos showing the condition of the caravan, I'm satisfied that the caravan had a damp issue at the point of supply and that the repairs subsequently carried out in September 2020 didn't repair the issue. These repairs had also left the caravan with rotten flooring which had been noted by the technicians as being of poor practice and warning that it would lead to further deterioration over time.

I therefore still think it would be fair for Mr B to now reject the caravan and be reimbursed the purchase cost. I've seen that Jaja has said it doesn't have the facility in place for collecting the caravan, however it is responsible for remedying Mr B's complaint. Jaja may need to liaise with the supplying dealership or another third party about how the caravan can be collected from Mr B. Any cost incurred in collecting the caravan is to be borne by Jaja.

So, for the reasons set out above, I'm upholding Mr B's complaint.

Putting things right

I'm asking Jaja to do the following:

- Collect the caravan at no cost to Mr B
- Reimburse Mr B the £16,500 he paid for the caravan together with interest

at the yearly rate of 8% simple from the date of payment until the date of settlement.

My final decision

For the reasons set out above I'm upholding Mr B's complaint. I'm asking Jaja Finance Ltd to do the following:

- Collect the caravan at no cost to Mr B
- Reimburse Mr B the £16,500 he paid for the caravan together with interest at the yearly rate of 8% simple from the date of payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 March 2022.

Jocelyn Griffith
Ombudsman