

The complaint

Mr H complains that Creation Consumer Finance Ltd rejected his claim under section 75 Consumer Credit Act 1974 in respect of a faulty carpet

What happened

In December 2019 Mr H bought a carpet from a company I will call S. It cost £1006 and was funded by a fixed sum loan agreement with Creation.

The carpet became discoloured and Mr H made a section 75 claim to Creation. It rejected the claim and said that the manufacturer did not consider there was any manufacturing fault. It suggested he get an independent report if he wished to pursue his claim.

Mr H brought his complaint to this service where it was considered by one of our investigators who recommended it be upheld. He noted the photographs and testimony supplied by Mr H and concluded that carpet had worn inside 12 months and was discoloured. He noted Creation had said the merchant had consulted the manufacturer who stated there was no manufacturing fault. However, Creation didn't supply details of the manufacturer's conclusion until after our investigator had issued his view.

This information was not sufficient to persuade our investigator to change his opinion so the matter has been referred to me.

I issued a provisional decision as follows:

I said I had considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement and
- A clear breach of contract or misrepresentation by the supplier in the chain.

I said there was no dispute that the chain was intact and so I had to consider if there had been a breach of contract or misrepresentation.

I reviewed the photographs provided by Mr H and it did seem that there was some discolouration. I couldn't tell from these if the carpet was showing further signs of wear such that the tacks underneath in places can be felt underfoot as he has claimed.

I also reviewed the evidence supplied by Creation. I gathered a representative from the

merchant inspected the carpet and reported as follows:

“The carpet is starting to flatten, felt and mat in the main walkways and turn points, this is pretty much in line with expectations of the type and age of the product, though the customer says he asked for a hard wearing carpet in store. There are patches which do look like the colour is starting to change, very difficult to pick up in a photo but it's not through dirt (the carpets are well cared for and the house very clean with shoes removed before entry)”

The merchant also said:

“The manufacturers confirmed that the concerns raised by the customer were not due to a fault/defect with the product and the carpet was reacting normally as advised in the surveyor report. The change of appearance in the carpet is due to the way in which the pile has settled unevenly with use and can show in some areas more than others. This is caused by the heavy traffic concentrated onto a small area coupled with the twisting of feet as you turn.

All carpets have places where it is walked on more than others. This is a normal characteristic of any carpet and pile reversal and pile compression is not considered a manufacturing defect and is a natural occurrence in any carpet with some showing the effect more than others.”

Creation had said it is open to Mr H to provide an independent report if he disagrees. I didn't consider this was appropriate. He raised the matter within six months and the onus is on the merchant or Creation to demonstrate the carpet is satisfactory. It hadn't provided an independent report. What it had done is inspect the carpet and note there are colour changes. I presumed the inspector has some knowledge of carpets and would have been able to identify faults. I also noted that he has said that it is difficult to capture the discolouration in the photos.

I said that we had the person who inspected the carpet and Mr H both expressing some concern about the quality and the change in colour. Set against that we had the manufacturer, presumably looking at the photos reaching a different conclusion.

I thought that on balance I could only conclude the carpet was not fit for purpose and Mr H was entitled to some redress. Our investigator had suggested the carpet be repaired or replaced.

I wasn't sure a repair was possible and replacement may not be the best solution. Therefore I thought rejection and a refund of the money paid may be preferable. Mr H has had the use of the carpet for almost three years and I thought some deduction to take into account that use was necessary. I thought a figure of £250 would be fair. I also thought a payment of £100 to address the distress and inconvenience suffered by Mr H is merited.

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.

Creation has not responded and Mr H confirmed he accepted my proposal and was happy to take the money. As such my provisional decision remains unchanged.

Putting things right

Mr H should be allowed to reject the carpet and receive a refund of the cost less £250. He should also receive compensation for the distress and inconvenience he has suffered.

My final decision

My final decision is that I uphold this complaint and I direct Creation Consumer Finance Ltd to allow him to reject the carpet and end the agreement with nothing further to pay. It should refund all payments made to date less £250 to reflect the use he has had of it. It should also pay him £100 compensation and remove any adverse entry it may have made on his credit file. If Creation wishes the carpet to be returned it should arrange for this to happen at no cost to Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 December 2022.

Ivor Graham
Ombudsman