

The complaint

Mr M complains that a sofa acquired under a fixed sum loan agreement from V12 Retail Finance Limited ("V12") wasn't of satisfactory quality.

What happened

In December 2021 Mr M purchased a sofa from a merchant and entered into a fixed sum loan agreement with V12. The cash price of the sofa was £1,285.00. the term of the agreement was 47 months with monthly payments of £24.68.

In May 2022 Mr M noticed that the sofa had collapsed. He contacted the merchant and V12 to raise a complaint about the quality of the sofa.

In July 2022 the sofa was independently inspected by Homeserve. The report concluded that there was a manufacturing defect.

In September 2022 the merchant agreed to repair the sofa. Repairs to the interior of the sofa were carried out on 4 October 2022. On 25 October 2022 Mr M contacted the merchant to report that the cushion had collapsed again.

On 1 November 2022 the merchant carried out further repairs to the seat.

In June 2023 Mr M raised a second complaint with the merchant and V12. He said the sofa was still faulty.

The merchant arranged for an inspection of the sofa. The inspector concluded that there was no manufacturing fault.

In July 2023 V12 spoke to Mr M and confirmed that the recent inspection had found that there was no manufacturing defect with the furniture. Mr M said that he had an independent inspection which confirmed a manufacturing fault and that he would send this to V12.

The merchant inspected the sofa again in August 2023. The inspector found that the bracket at the back of the sofa had the lock catch missing and required more fibre in the lumbar section. The inspector also said that the sofa would benefit from a new interior.

The merchant offered to fit the lock catch and replace the interior. Mr M declined and said he wanted to reject the sofa.

The merchant subsequently agreed to collect the furniture and cancel the finance agreement.

In its final response to Mr M's complaint, V12 said it wasn't upholding the complaint because there was no evidence of a manufacturing fault. It said that the merchant had agreed to collect the sofa and issue a full refund as a gesture of goodwill. V12 said it hadn't been provided with the Homeserve report at the time when Mr M had made his first complaint and had only become aware of it when Mr M sent it to them as part of his second complaint. V12 said that Mr M's first complaint had been upheld based on the merchant carrying out repairs but that

the second complaint related to a new issue and wasn't deemed to be a manufacturing fault.

Mr M wasn't happy with the response and brought his complaint to this service. He said he'd had to wait 16 weeks since the sofa collapsed for the repairs to be carried out in 2022 and the repair had failed within a few weeks. Mr M said he felt that he'd been fobbed off by the merchant and V12 and despite sending in photos showing the collapsed sofa he had been told to obtain his own inspection report which had cost him £55. Mr M said he wanted compensation and a refund of the cost of the report.

Our investigator upheld the complaint. He said the initial Homeserve report stated that there was a manufacturing fault and that there had been avoidable delays because V12 didn't review the report at the time. The investigator said that Mr M had been put to the trouble of obtaining his own report to evidence the fault, which he shouldn't have been required to do in light of the conclusions in the Homeserve report. The investigator said that V12 should refund the cost of the independent inspection obtained by Mr M and pay compensation of £200 for distress and inconvenience.

V12 didn't agree. It said there was no requirement for it to have considered the Homeserve report because the issue was raised outside of the first 30 days and the supplier was entitled to one opportunity to repair or replace. V12 said that Mr M had accepted the repair. V12 said that Mr M didn't have the right to reject at this time and that even if it had reviewed the Homeserve report at the time the outcome would've been the same. V12 said that following the second complaint, no manufacturing fault had been confirmed and the cancellation and collection was offered as a gesture of goodwill only.

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 of the Consumer Credit Act 1974 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation.

In order to uphold Mr M's complaint I would need to be satisfied that there's been a breach of contract or a misrepresentation and that V12's response to the claim under section 75 wasn't fair or reasonable.

I've focussed on whether there has been a breach of contract here. 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 and it's up to the supplier to put things right. The supplier has one opportunity to repair the fault and if the repair isn't successful the consumer can reject the goods.

I've reviewed the Homeserve report. Based on what I've seen I'm satisfied that there was a manufacturing fault with the sofa. The fault occurred within the first six months of Mr M getting the sofa, so it's presumed that the fault was present or developing at the point of supply.

Under the relevant legislation, the supplier was entitled to one opportunity to repair the sofa. So although Mr M has referred to the Homeserve report in support of his right to cancel the agreement, I'm not persuaded that Mr M had a right of rejection at this point.

I can see that a repair was carried out on 4 October 2022. However, I can also see that Mr M reported that the repairs had failed and the cushion had collapsed again within a very short

time of this repair. At this point, under the relevant legislation Mr M was entitled to reject the sofa because the attempt at repairs had been unsuccessful.

I can see that further repairs were carried out in November 2022. I haven't seen any evidence that Mr M agreed to these further repairs. The evidence suggests otherwise because Mr M was asking V12 to cancel the finance agreement and continued to pursue this request until August 2023.

In its final response to Mr M's second complaint, V12 said there was no evidence of a manufacturing fault. Whether or not there was a manufacturing fault identified at this stage is, in my view, irrelevant, because the repairs carried out in October 2022 had been unsuccessful and Mr M was entitled to reject the sofa at that point.

Putting things right

I've considered the impact that this has had on Mr M. He's had to spend a lot of time trying to resolve this matter and although the agreement has now been cancelled and a refund issued, Mr M feels that he should have some compensation for the distress and inconvenience he's been caused. He's also seeking a refund of the cost of an independent report he was advised to obtain.

In my view, this matter went on for longer than it needed to. Once the repairs failed in October 2022 Mr M should've been allowed to reject the sofa. Instead, he's had to continue paying for the sofa and has had to continue with his complaint about its quality. Mr M shouldn't have been asked to obtain an independent report in June 2023 because under the relevant legislation he was already entitled to reject the sofa.

Taking everything into account, I'm of the view that Mr M should be compensated for the distress and inconvenience caused to him and should be refunded the cost of the inspection he paid for.

My final decision

My final decision is that I uphold the complaint. V12 Retail Finance Limited must:

Refund the cost of the inspection (£55) together with 8% simple interest per annum calculated from the date of payment to the date of settlement

Pay compensation of £200 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 February 2024.

Emma Davy
Ombudsman