

The complaint

Mrs K complains NewDay Ltd unfairly declined her section 75 Consumer Credit Act 1974 (CCA) claim for wood flooring that she says was misdescribed.

What happened

On 1 July 2024, Mrs K called an online flooring supplier (which I'll call "S") to ask about oak flooring S sold through its website. Mrs K received a sample floorboard on 4 July 2024.

She was happy with the sample and on 8 July 2024 used her John Lewis credit card (provided by NewDay) to buy around 90 square metres of flooring from S for £3,107.45.

Mrs K was abroad when the flooring was delivered on 15 July 2024. It wasn't inspected until her builders opened the flooring packs in early August 2024. Mrs K said they called to say there were very few long boards relative to short ones, and they were of a lighter colour than the sample. Mrs K tried to cancel but S said she was outside the 14-day cooling-off period.

Around 5 August 2024, Mrs K asked NewDay to help her get her money back. It raised a chargeback for her, but S defended the chargeback on 20 September 2024. NewDay didn't think there were grounds for taking the chargeback further and discontinued the process.

NewDay then considered Mrs K's claim under section 75 CCA. However, it declined her claim as it didn't think Mrs K had shown there was a breach of contract or misrepresentation.

Our investigator looked into Mrs K's complaint and didn't think NewDay acted unfairly. Mrs K disagreed and the complaint has been passed to me for a decision.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent, including Mrs K's further comments following our investigator's assessment.

It's important to note that NewDay didn't supply the oak flooring. So to decide if it acted fairly, I need to consider its role as a provider of financial services only. As Mrs K used her credit card to pay S, I need to consider how NewDay could have reasonably assisted her through the protections offered by the chargeback process and section 75 CCA.

Chargeback

When someone buys something with their credit card, and something goes wrong, the card issuer can sometimes help them obtain a refund by raising a chargeback on their behalf.

There's no obligation for a card issuer to raise a chargeback for a customer – but I'd expect it to do so if a chargeback has reasonable prospects of success.

The rules governing the chargeback process are set by the relevant card scheme – in this case, that would be Mastercard. These rules set out strict conditions that must be satisfied for a chargeback claim to be successful. I'd expect a card issuer like NewDay to apply the scheme rules correctly and conduct the chargeback process fairly.

Mastercard only handles certain kinds of disputes, each linked to a specific "reason code". The scheme rules that apply depend on what "reason code" the chargeback is raised under. As Mrs K claimed the flooring was not as described, NewDay raised the chargeback under the reason code "Goods or Services Were Either Not as Described or Defective". I think that was a reasonable choice given it aligned with Mrs K's claim.

The crux of Mrs K's claim is that the flooring's colour was too light and there were too many short boards. In support, she included photos of the sample and floorboards she received, as well as a picture from the advertisement showing what the floor might have looked like.

However, based on the chargeback rules and the evidence S provided in defence, I don't think her claim was strong enough. The invoice shows she ordered "mixed length" boards, which is what Mrs K received. Further, colour variation is typical in natural oak, and I don't think Mrs K's photos show enough of a difference to prove the flooring's colour was materially different from the floor depicted in the advertisement, especially without an expert report to confirm either way.

Overall, I don't think Mrs K had a strong enough claim. So I don't think NewDay acted unfairly when it discontinued the chargeback here.

Section 75 Consumer Credit Act

Under section 75 CCA, Mrs K can hold NewDay responsible for a "like claim" she would have against S for a breach of contract or misrepresentation. I'm satisfied the criteria for section 75 CCA are met in this case.

Mrs K hasn't sought to rely on any explicit terms of the contract – and from what I can see I don't think they support her claim.

Instead, she's relied on terms implied into her contract by the Consumer Rights Act 2015 (CRA) – that the flooring must be of satisfactory quality, as described, fit for purpose, and match any sample. I've kept these in mind while considering Mrs K's main concerns below.

Are the boards too short?

Mrs K said that although the salesperson promised her over the phone there would be 90% long boards, but she says she ended up with around 85% short boards.

I cannot say for sure what the salesperson promised as, unfortunately, there's no call recording and S doesn't agree the boards were misdescribed. It's possible the salesperson had overpromised the amount of long boards Mrs K would receive. They might also simply have a different opinion about what constitutes a "long" board.

S maintains Mrs K was always meant to get mixed length boards and referred to the invoice that states "this product comes in mixed random lengths". I can also see there's a copy of the original description of the flooring from an internet archive – however, I don't think it helps her claim because it similarly says each pack "contains boards of random lengths".

In a dispute like this, I must decide what likely happened. Given the written disclaimer and absence of any corroboration of Mrs K's recollection, I find it more likely that S didn't promise that most of the boards should have been longer than they were. So I think NewDay was entitled to say there was no misrepresentation or breach of contract here.

Are the boards the wrong colour?

The original advertisement describes the floor as "Natural Oak Brushed and Oiled". It also contained several photos showing how the flooring would look. There's no other reference to colour other than the description stating the floorboards are made of "natural oak".

Mrs K provided one of the advertisement's photos that show floorboards that were darker than hers. However, I can see there were several other photos of flooring from the website that weren't provided - and a similar product from the current website shows how much the colour can vary across photos of the same type of oak flooring.

Some of these photos show a darker floor, while other photos show flooring that appears lighter and of a similar shade to the sample Mrs K received. That might be because of a different camera being used, or because of different lighting. Either way, given how different a floor's colour can look in different conditions, I'm not satisfied there's enough here to say she didn't receive "natural oak" flooring or that her flooring was different from her sample.

To mitigate these differences, our investigator asked Mrs K to photograph her sample alongside the boards she ordered. However, Mrs K was unable to do so as she couldn't locate her sample.

I appreciate it's been a while since Mrs K placed her order, and that she didn't think retaining the original sample would ever be necessary. But without a side-by-side comparison, I'm not persuaded there's enough here to say there's an obvious enough colour mismatch that amounts to a breach of S' contractual obligation to ensure the flooring was as described – especially considering that "natural oak" boards will naturally vary in colour.

Is there too much colour variation?

Mrs K says the photo from the original advertisement shows flooring of mostly uniform colour and only slight colour variation, while her floorboards had a wide range of colours. If she knew there'd be a lot of colour variation, she says she wouldn't have placed the order.

I've looked carefully at the photo in the original advertisement. I can see the boards are generally a bit darker, but I can also see the photo shows quite a bit of colour variation. For example, the board in the bottom-left of the photo is noticeably darker than the board it's next to. The photos in the advertisement's thumbnails, even though quite a bit smaller, also show noticeable colour variation between multiple boards.

I've thoroughly reviewed Mrs K's additional photo, which shows a few of her boards lying side by side. I agree with her that there's noticeable colour variation. However, I don't think there's significantly more variation between these boards than those shown on S' website.

There's also nothing in the wording from the original advertisement that suggests she'd receive minimal colour variation. On the contrary, Mrs K bought "natural oak" flooring, which will inherently have some colour variation. The website advertisement also states she bought "mixed grade" oak, suggesting a greater degree of colour variation than found in higher grades of oak such as "prime" or "select". I think a reasonable person would expect there to

be noticeable colour variation that's similar to the amount seen in the boards Mrs K bought. So I don't think the colour variation in Mrs K's flooring amounts to a breach of contract.

In summary, I don't think Mrs K's evidence is strong enough to show there's been any misrepresentation or breach of contract. It follows that I don't think NewDay acted unreasonably when it declined Mrs K's section 75 CCA claim.

As I think NewDay handled Mrs K's claims fairly, I'm not recommending that it do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 21 May 2025.

Alex Watts
Ombudsman