

The complaint

Mrs H has complained about how Etika Finance UK Limited (Etika) handled her refund claim she made to them.

What happened

Mrs H purchased a bed and mattress from a retailer I shall call “T” in November 2023. She paid for this with a finance agreement taken out with Etika. For the purposes of this decision I shall refer to the bed and mattress together as the ‘bed’ when talking about the entire product.

Unfortunately Mrs H was subsequently unhappy with the bed following delivery. She said the mattress wasn’t properly attached to the bed and dangled off. Mrs H also said she had been told that the bed would be compatible with her existing headboard. However she says there remained a gap between the headboard and the bed.

T subsequently fitted a bracket around the bed to help address Mrs H’s issue. Mrs H said that she found the mattress still moved onto the bracket and the issue remained unresolved. She also said she didn’t like how this made the bed look and she wouldn’t have purchased it had she known it would end up looking like this. She therefore wanted the bed to be collected and to be refunded.

T arranged subsequent visits to Mrs H and concluded there wasn’t a fault with the bed. They considered any movement may be due to Mrs H sitting at the end of the mattress and it may move when she gets up.

Mrs H didn’t agree and as the matter remained unresolved, she contacted Etika to raise a Consumer Credit Act 1974 (“CCA”) section 75 claim (“S75”) against them.

Etika considered the claim and issued a final response letter (FRL) in September 2024. This said that they hadn’t heard back from T regarding the claim but they felt that as over six months had elapsed since purchase, it was for Mrs H to show that there were faults with the bed that had existed at the point of delivery. They felt they had insufficient evidence of this and so they couldn’t say there had been a breach of contract by T.

Mrs H didn’t agree and so referred her complaint about Etika’s handling of the claim to this service. Our investigator reviewed the complaint and attained more information from T regarding their position on the complaint and also shared this with Etika.

Etika’s position remained unchanged and after consideration of all the available evidence, our investigator also reached the conclusion that there was insufficient evidence that there had been a breach of contract or misrepresentation by T. They therefore felt Etika need not do anything more.

Mrs H disagreed and asked for an ombudsman to issue a final decision on the matter.

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.

It's important to note that Etika aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mrs H paid for this transaction using a finance agreement, a S75 claim could possibly help her. So in deciding what is fair and reasonable I've focussed on this.

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

To assess a valid claim, Etika would've needed to consider all relevant evidence for the alleged breach of contract or misrepresentation. But for there to be a valid claim under S75 there are certain technical requirements and I'm satisfied they've been met here.

The crux of Mrs H's complaint is that she feels the bed she purchased was misrepresented to her as the mattress moves off the bed and in addition her headboard purchased didn't align with the bed. I've therefore considered this under S75 in terms of whether there was a breach of contract or misrepresentation to Mrs H.

Misrepresentation

For a misrepresentation to have occurred, there must be sufficient evidence to show T likely made a false statement of fact that caused Mrs H to buy the bed.

I agree with our investigator here that there isn't much information available on what was discussed at the point of sale. I've reviewed the order receipt and this confirms the model of the bed and its dimensions along with the details of the payments under the finance agreement taken out with Etika. It also confirmed that Mrs H's existing bed and mattress would be removed and it references a part exchange.

There are a couple aspects of Mrs H's complaint that I need to specifically address here:

- Mrs H mentions the headboard as a part of her complaint and the fact there was a gap between it and the bed. However she had been given reassurances that the headboard would be compatible with the bed.

While I appreciate Mrs H's position, I'd need sufficient evidence that there was a false statement of fact here that induced Mrs H into this purchase. In this case Mrs H has said a gap remained – however this wouldn't mean that her headboard wasn't compatible but that the mattress may not fit as snugly as Mrs H would like. I've insufficient evidence here that the compatibility of the headboard to the bed was misrepresented here.

- Brackets were later added to the bed to address the mattress movement and Mrs H has said the bed no longer looks like she'd expected.

While I appreciate this, I don't think this is tied to a false statement of fact. T has said there is insufficient evidence there is a fault with the bed but fitted the bracket to try and alleviate the issues Mrs H was experiencing. So to clarify, the brackets wouldn't be added to this bed as standard but was in this case to try and assist further with Mrs H's situation.

I understand the movement with the mattress continued to occur but T is of the position this is less likely an issue with the bed but more the movement of the mattress as Mrs H interacts with it. In addition T has said that as a part of the delivery demonstration of the bed, the customer is shown there can be some slight movement during usage too such as when someone slides out of the bed.

I'll go into the considerations of the quality of the bed shortly but based on the evidence available I can't say there has been a false statement of fact that induced Mrs H to the purchase.

Breach of contract

Under S75, Etika is responsible for any breach of contract by T. This is with consideration of both explicit terms of the contract and also implied terms into contract by law. This responsibility however won't extend to the service provided by T outside the sale of the goods and the finance – I say this as I note Mrs H has raised some aspects of this as well and so I won't comment on these here.

Implied and explicit terms

The Consumer Rights Act 2015 (CRA) does imply a term into the contract that goods must be of satisfactory quality and are fit for the purposes for which the goods are supplied. In Mrs H's case she has said the goods aren't fit for purpose as the mattress moves off the bed and shouldn't do so.

From Mrs H's complaint and the movement of the mattress, the issue would likely either be with the frame or the mattress itself. I've considered T's explicit terms and it says the bedframe would be covered under the 15 year guarantee, however the mattress wouldn't be covered unless it was a particular model.

I've also reviewed the description of this bed on T's site and can't see any information on the mattress being specifically resistant to movement. It does mention using technology to keep the top of the bed by the headboard as it adjusts, which then allows the user to stay in arms reach of nearby objects such as items on a bedside table. While the product description doesn't address the issue described by Mrs H, I'd consider the bed would need to be of a satisfactory quality as required under the implied terms of the CRA and so I've considered this further below.

Evidence relating to the fault

From the outset I note that T hadn't responded to Etika by the time they issued their FRL in September 2024. This means further evidence was later provided to them by our investigator after they contacted T. This meant that Etika was initially limited to the photographs Mrs H had provided and her comments on what'd happened. Etika mentioned that as the complaint was raised with them after six months from the point of delivery, under the CRA it would be for Mrs H to prove there was an issue.

They didn't consider there was sufficient evidence at the time to say there was. I've reviewed

the photos of the bed and while it is evident that the mattress looks to be pushed to the side, it is difficult to see where the issues lie and if there is an intrinsic fault with the bed. And so while I appreciate Mrs H's comments about the mattress moving and the gap caused, I do agree with Etika that without any further information, they didn't have sufficient evidence at the time to show there had been a breach of contract or misrepresentation by T.

However since then T has provided further information regarding their communication with Mrs H and what they've done to try and address the issue. These are as follows:

- T arranged for their third party 'V' to visit Mrs H's home to fit mattress brackets in February 2024. This was done to try and address the movement of the mattress.
- T's system notes show Mrs H notified them in June 2024 that the mattress was still moving and was nearly on top of the brackets. T then organised an inspection by 'V' in July 2024. I've reviewed their report and under 'Fault reported' it said. *'Mattress still moving and is nearly on top of bracket'*

However while this was noted under 'fault', it seemed more of a confirmation of what Mrs H had said regarding the movement. I say this because there isn't any further explanation about what specifically was of fault with the bed itself that was causing this issue.

- T visited Mrs H again on 1 October 2024 to inspect the bed and noted there was no gap between the headboard and mattress as well as between the kickboard and mattress. The agent said that Mrs H sits on the edge of the mattress and it needed moving back when she stands.

They concluded that everything was fine and the mattress would need adjusting slightly if sitting on the edge of the bed for too long.

I've reviewed a picture of the bed provided from the inspection and the mattress does look to be in position. It's also not clear how the agent knew Mrs H sat on the bed and needed to move it back when she got up i.e. whether he observed it or whether Mrs H told them of this. Mrs H told our investigator however that she doesn't sit on the edge of the bed in this manner.

Nonetheless I have to consider the available evidence in determining if there is a breach of contract here with mind to both the implied terms under the CRA and T's express terms. And while brackets were fitted, I've insufficient evidence this was due to an inherent fault with the bed and so this looks to be more a case of T attempting to address the issue Mrs H was experiencing under the circumstances.

I also appreciate that while there is evidence from the photos and the second report that there was movement, there isn't an explanation for why, beyond the possibility that this is due to how Mrs H uses the bed and it may be moved when she stands up from it.

While I'm not able to comment further on the reason for the mattress moving, I do think I've insufficient evidence this is due to a fault with the mattress or the frame itself, or even an issue of compatibility between the two. This would mean that I can't say the bed isn't of a satisfactory quality and there has therefore been a breach of contract here by T. So I don't think Etika need do anything further.

I'm also aware that Mrs H notified our investigator of an additional point that the brackets have sharp edges which could be dangerous and are damaging the mattress. Our investigator spoke to T who has said alternatives are available. They also advised they would arrange for T to contact Mrs H if she wished. I won't be commenting on this further as these brackets weren't under the finance agreement and so wouldn't comprise a part of my considerations of her S75 claim.

In Summary

I know this'll be disappointing to Mrs H but I've insufficient evidence that there has been a breach of contract or misrepresentation by T. While I appreciate the mattress moves off the frame, and the installation of the brackets didn't alleviate this, I don't think Etika did anything wrong in fairly concluding, based on the evidence available, that this isn't borne from an inherent defect in the bed itself. And likewise I've insufficient evidence that the gap Mrs H says is present between the headboard and her mattress means that this is to a level that they are both incompatible. Because of this I won't be asking Etika to do anything more.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 22 August 2025.

Viral Patel
Ombudsman