

## Complaint

Mr A complains that NewDay Ltd rejected his claim under Section 75 Consumer Credit Act 1975 in respect of faulty doors.

## Background

Mr A ordered seven doors by phone. They were delivered on 19 June and in early July a carpenter fitted three of these while Mr A was out. On his return he discovered that the doors didn't match. He contacted the merchant which said that its terms and conditions allowed for the doors to be returned or replaced within 30 days, but they must be unopened and unfitted.

Mr A contacted NewDay and it raised a chargeback, but this was defended by the merchant. NewDay then considered a claim under section 75, but it concluded there hadn't been either a breach of contract or misrepresentation. It acknowledged there had been a delay in handling his claim and offered him £65 compensation for this. Mr A brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld.

Our investigator noted the photographs provided by Mr A showed differences between doors, but she couldn't say that this was such to allow her to uphold the complaint. She noted the merchant's website stated:

*"we cannot 100% guarantee a colour match for a product from an image that is displayed online on our website. Displays and graphics hardware can produce slight variations in colours displayed and it's always difficult to ensure colours are accurately displayed on every display. The appearance of finished & unfinished doors are not warranted in any event. Natural variations of texture or colour of the timber aren't considered as defects"*

Mr A said he had ordered by phone and wasn't aware of the merchant's terms and conditions and they hadn't been brought to his attention. Our investigator noted that Mr A had said he had searched for the doors online and he would have had an opportunity to check out the merchant's terms and conditions.

She also noted that when Mr A raised the issue with the merchant it had given him the opportunity to return any of the doors which hadn't been unwrapped or hung. However, when our investigator raised this during the course of her enquiries it said that it couldn't take them back as they had been with Mr A for many months and may not have been stored correctly.

Mr A submitted a letter from his carpenter which said the door were cut differently and this had caused the variation in colour. However, this wasn't deemed to carry the weight of an independent report. The photos submitted by Mr A were noted but not considered to be sufficient to demonstrate that the differences went beyond the natural variations.

Mr A didn't agree and said he had been treated as a liar.

## My findings

I've 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 am satisfied there is a debtor-creditor-supplier link and it follows that I need to be satisfied there was either a breach of contract or misrepresentation to uphold this complaint.

Mr A ordered the doors by phone, but it seems that at some point he looked at the merchant's website. This describes the doors and shows several photographs. It also sets out its terms and conditions. These refer to the fact that there will be natural variations in wood and therefore in the colour of doors. It also tells customers that doors can be returned or replaced within 30 days as long as they haven't been unpacked or altered.

I appreciate that they were heavy and Mr A says he wasn't able to lift the doors to inspect them. He left his carpenter to hang them and only discovered the discrepancies too late. I must admit it isn't clear why the carpenter continued to hang the doors if the difference was so noticeable.

Nor is it clear why Mr A didn't take the opportunity to return the unopened doors which he felt were unsuitable when he had the chance.

I have looked at the catalogue and cannot say with any certainty that the doors supplied were not as ordered or as described. Mr A said to K I want seven doors of "X" type and these were delivered. The merchant said they may vary due to natural variations, but if you want to return them or have them replaced we will do so, but don't open the packaging or hang them. That seems to be perfectly reasonable to me, but Mr A didn't check or arrange for his carpenter to be satisfied the doors were as required. As such I don't believe I can uphold his complaint.

NewDay has offered Mr A £65 compensation for delays in handling his claim and I consider that to be fair.

**my final decision**

NewDay Ltd has already made an offer to pay £65 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that NewDay Ltd should pay £65. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 April 2020.

Ivor Graham  
**Ombudsman**