

## **complaint**

Mr G complains that Creation Financial Services Limited (Creation) hasn't refunded him the cost of an engagement ring that he purchased using his credit card.

## **background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 31 October 2016 - a copy of which is attached and forms part of this final decision.

In my provisional decision, I explained why I felt Mr G's complaint should be upheld. I then invited both parties to provide further submissions before I reconsidered the complaint.

Mr G responded to say that he accepted the provisional decision – but he asked that I consider further costs he had incurred. These included the interest he had been charged, balance transfer fees and the cost of the report he had commissioned. The interest I had already addressed in my provisional decision by indicating that the interest should be recalculated. I thought the balance transfer fees and report costs should also be refunded and so I invited Creation to include any comments it wished to make in relation to those in its response to my provisional decision.

Creation responded, primarily by setting out the observations of the supplying jeweller and designer. In summary, it said:

- The designer was very upset at the whole incident as he takes great pride in creating precision jewellery;
- That parts of the report obtained by Mr G contained incorrect comments or analogies;
- The “five, three, two, one” pattern was the most appropriate pattern to reduce the gaps between the stones and produce the most high quality finish;
- A specific number of stones or gem weight for the pave area was never requested or quoted;
- An advance knowledge of jewellery was not required to know that if a smaller centre stone and ring finger size was chosen - then the number, size and separation of the pave stones was likely to be different;
- If Mr G was concerned about the changes – he should have requested more CAD images at that stage;
- The change in the number of stones in the pave was a minor change that Mr G hadn't previously focused on and it has not impacted the material aspects of the design requested by Mr G; and
- The report it had commissioned had found that the ring was fit for purpose and it had been prepared by an accredited assessor.

Creation didn't comment on the proposed slight change to redress.

## **my findings**

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

I am sorry to hear that the designer is so upset at the findings in my provisional decision. I've taken on board his comments but I'm afraid I will disappoint him further as I still intend to uphold this complaint.

It seems the designer/jeweller now accept that the CAD image wasn't in fact a reflection of how the finished ring would look with the smaller stone. This is contrary to what it has said up until now – which was that the sample ring and CAD image matched the commissioned ring. It now says that it should have been obvious to Mr G that the smaller centre stone and smaller ring finger size would have impacted on the overall dimensions of the ring and logically the number of stones in the pave.

I don't agree. Mr G was not the expert here. And I don't think it's fair to say that Mr G should've realised that choosing a slightly smaller stone would have had the impact on the overall finish of the ring that it did. Particularly given, as I highlighted in my provisional decision, an email sent to Mr G suggested that the stone eventually chosen by Mr G was "as you viewed in store". I think the commissioned ring changed sufficiently from the sample ring and CAD image to mean that the additional changes should, in my view, have been brought to Mr G's attention.

I acknowledged and considered the report commissioned on behalf of the jewellers and I weighed that up carefully against all of the other evidence in this case. That report relied on the premise that the CAD image matched the commissioned ring. But as I set out in my provisional decision – and as the designer/jeweller now seem to accept – I don't think that it did.

Having very carefully considered all of the circumstances of this complaint and all of the evidence, I don't think that the commissioned ring was of satisfactory quality. I think the removal of eight diamonds from the pave and the resultant gaps between the remaining diamonds in the shoulder pave negatively altered the overall finish and appearance of the ring. I don't think a reasonable person would say it matched the sample or indeed the CAD image (which now appears to be accepted). I do not accept that any differences are within an acceptable tolerance to be expected from handmade pieces of jewellery. And I am not satisfied that the differences were adequately brought to the attention of Mr G. And I don't think that it is fair to say that Mr G should have anticipated the differences.

I therefore think Mr G should be refunded the amount paid on his Creation credit card towards this purchase and his credit card reworked accordingly. He should also be refunded the percentage of any balance transfer fees that relate to the cost of the ring. He should also be refunded the cost of the report he obtained. Simple interest should be applied to any refunded amounts.

### **my final decision**

My final decision is that I uphold this complaint. To settle it, Creation Financial Services Limited should:

1. refund Mr G £7,280 and depending on Mr G's repayments to his credit card account, either re-calculate interest he paid on his account or add 8% simple interest to that amount from the date of payment to the date of settlement.
2. refund the percentage of the balance transfer fees paid by Mr G that relate to the £7,280;
3. refund the cost of the report which was £150; and
4. pay 8% simple interest per year on the refunded amounts in points 2 and 3 above from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 December 2016.

Siobhan Kelly  
**ombudsman**

## **provisional decision**

### **complaint**

Mr G complains that Creation Financial Services Limited (Creation) hasn't refunded him the cost of an engagement ring that he purchased using his credit card.

### **background**

Mr G split the cost of an engagement ring across his Creation credit card and debit card from another provider. The ring was bespoke and based on a sample ring in the shop. However, when the ring was finished – Mr G was not happy with it.

He complained to the jewellers. It didn't think there was anything wrong with the ring.

Mr G then raised a section 75 Consumer Credit Act 1974 claim with Creation which was unsuccessful. So he asked us to look at his complaint.

Our adjudicator thought Creation had dealt with Mr G's complaint fairly and so he didn't ask it to do anything else. Mr G didn't agree and so he asked for an ombudsman's decision.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having considered all of the information, I am departing significantly from the findings of our adjudicator and my reasons for doing so are set out below.

The effect of the section 75 Consumer Credit Act 1974 is that if Mr G has a claim for breach of contract or misrepresentation against the jewellers - then he has a like claim against Creation. So the issue I need to consider is whether Mr G has a claim against the jewellers which could give rise to a claim against Creation.

Legislation says that goods should be of satisfactory quality. I have to decide if the ring was of satisfactory quality, taking into account any description of the goods, the price, the appearance and finish and whether it is free from minor defects. In the case of a sale by description or sample, there is also an implied condition that the goods shall correspond with the description or sample - save for differences disclosed by the seller.

Mr G said there were only two agreed differences between the finish of the commissioned ring and the sample ring. Firstly, instead of platinum the commissioned ring would be white gold. Secondly, it would use black instead of white diamonds in the pave setting.

After Mr G collected the ring, and once he had shown it to his partner, he complained to the jewellers. He said the shoulder diamonds were too spread out and so the overall pave effect was spoiled as the surrounding metal was very evident. This he said negatively impacted on the overall finish of the ring. And he said the centre stone hadn't been set properly and that one of the triangular sections looked smaller than the other. When he visited the jewellers to discuss his complaint, he noticed that in fact the commissioned ring had eight fewer diamonds on each shoulder than the sample ring.

The jewellers said the overall finish of the commissioned ring was affected by the fact Mr G had chosen a smaller centre stone to that of the sample ring. It said it had explained to Mr G the smaller centre stone would mean the ring would have to be scaled down slightly. It sent Mr G a computer-aided design (CAD) image which, it said, clearly showed four rows of diamonds on each shoulder. That design was agreed by Mr G and therefore Mr G received exactly the ring that he had ordered. It said this was a case of 'buyer's remorse'.

The designer of the sample and commissioned ring said the amount of diamonds shown in the CAD imagery matched the commissioned ring. He explained that the amount of metal around the stones was within a reasonable tolerance and to be expected from handmade pieces. He said the reason it looked so different to the sample ring was because of the contrast between the black diamonds and the metal.

In addition, the jewellers instructed another jeweller to examine the commissioned ring. In summary, his report said the sample and commissioned ring were similar in design and the commissioned ring matched the CAD image – save for the fact that the commissioned ring had a smaller centre stone and the pave was set with black as opposed to white diamonds.

He said the scale of the commissioned ring kept with the original design, but just used a smaller centre diamond and the claw measurements were reduced proportionately. This left a smaller area to be covered by the pave black diamond settings with the metal/grain setting being more visible on the commissioned ring. He explained it was inevitable that when a smaller diamond was chosen the ring would be scaled down accordingly and that is what happened here. He did accept that the CAD image didn't show as much white grain as the commissioned ring. But he concluded there was no incongruity in the design of the commissioned ring.

Mr G also asked a jeweller to prepare a report. That jeweller pointed out that the number of stones and layout on the shoulder panels were different in the sample ring, the CAD Image and the commissioned ring. He described the layout as follows:

- Sample ring: five rows on each shoulder with 15 diamonds - with a decreasing number of diamonds in each row - in the pattern: five, four, three, two, one;
- CAD image: four rows on each shoulder with ten diamonds - with a decreasing number of diamonds in each row - in the pattern: four, three, two, one;
- Commissioned ring: four rows on each shoulder with 11 diamonds - with a decreasing number of diamonds in each row - in the pattern: five, three, two, one.

He said this contradicts with the statement made by the designer that the number and layout of the diamonds in the commissioned ring was identical to the CAD image. He also commented that the additional stone in the top row of the pave on the commissioned ring threw the spacing and sequence of the shoulder stones. He said although this was cosmetic the visual impact couldn't be dismissed.

The jewellers commented on this report. He reiterated that Mr G was aware that the commissioned ring would be scaled down to accommodate a smaller centre stone than in the sample ring. And, he said, that scaling down was reflected in the CAD image with four rows of pave. He didn't agree that there had been a change in pattern of the pave from the sample ring – which he said had a "five, three, two, one" pattern in the lower four rows.

Clearly, I don't know what was discussed between the parties at the time the ring was chosen and when any alterations to the ring were decided. But I have considered what each

party has told me, what was set out in the reports and I have looked at all of the documentation that has been provided.

I note from the timeline provided by both parties that the CAD image was sent to Mr G before he had chosen the centre stone. At that point, according to the jewellers, Mr G wanted an exact replica of the centre stone in the sample ring. Two stones were subsequently sourced for Mr G – one which was the same size as the centre stone in the sample ring and a smaller stone, which Mr G later chose.

The email which attached the CAD image said *“these are obviously quite basic, but it will give ... an idea of how the ring will look in different colours”*. In addition, the notes section on the first invoice said *“to get CAD imagery sent to ...show the different possible metal colours and finish with black diamonds”*. And it wasn't until a few days later that he was emailed about the diamonds that had been sourced for the centre stone.

So, on balance, I think the CAD image was created to show how the ring would look in different colours and not how the use of a smaller centre stone would impact on the overall finish and scaling of the ring. I don't think Mr G had chosen the centre stone at the time the CAD image had been created. And as the centre stone hadn't been chosen when the CAD image was created – I don't think it can be said to be a reflection of how the smaller stone would impact on the finish of the commissioned ring.

In any event, I cannot agree with the designer that the amount of diamonds visible in the CAD image matches that in the commissioned ring. Although it appears that there are four rows of diamond pave on the CAD image – there is no clear side view of the ring. So the number of diamonds in the top row cannot clearly be seen. On balance, I think the CAD creates the impression that there were four diamonds on the fourth row. But, I cannot be certain that there isn't another row above that cannot be seen – as the fifth row of the sample ring cannot be seen in photographs taken from similar angles.

But what is clear, is that a photograph of the sample ring taken from above and the same CAD image view – show at least four rows of diamonds, whereas in a similar photograph of the commissioned ring - only three rows can be seen.

Nor can I agree with the jewellers that there was no change of pattern between the four rows of pave on the commissioned ring and the four lower rows of pave on the sample ring. It said the sample ring had a sequence of “five, three, two, one” diamonds on the lower four rows. Having looked at images of the sample ring, I think the lower four rows have a sequence of “four, three, two, one” diamonds.

I also note that in the CAD image and the sample ring, a single diamond is set in the very corner of the triangle. But on the commissioned ring, the same corner starts with metal and not a diamond.

Given the impact that the use of the smaller centre stone has had on the finish of the commissioned ring, I would have expected to see a CAD image or something that specifically drew Mr G's attention to the fact that the commissioned ring would have fewer diamonds, which would be set further apart and in a different sequence.

Instead, an email sent to Mr G a few days after the CAD image, setting out the cost of the two centre stones and after the CAD image had been sent, has no mention of the fact that a smaller centre stone might have a knock-on effect on the number of diamonds in the pave.

In fact, rather misleadingly, it stated that the stone eventually chosen by Mr G was “as you viewed in store”.

Nor is there any reference to the impact of the smaller centre stone in the notes section of the invoice drawn up once the centre stone had been chosen. The first recorded reference I have seen that reflects that the commissioned ring will only have 22 diamonds in the pave - was in an email sent in June - after there had been difficulties with the ring's first casting.

Mr G also raised an issue with the symmetry of the ring. As I understand it, the designer indicated that the triangles on either side of the ring were symmetrical. None of the jewellers who have examined the ring have commented on this. However, there appears to be some agreement that there was a 'visual illusion' of the ring being skewed. I wouldn't expect a ring of this price to have a visual illusion of being skewed. And whilst the remedy for this might have been more straightforward at the time (the designer suggested a slight adjustment) this clearly is no longer workable as Mr G, understandably, went on to purchase another engagement ring.

Having very carefully considered the circumstances of this complaint, I don't think that the commissioned ring was of satisfactory quality. I think the removal of eight diamonds from the pave and the resultant gaps between the remaining diamonds in the shoulder pave negatively alters the overall finish and appearance of the ring. I don't think a reasonable person would say it matches the sample or indeed the CAD image. I do not accept that any differences are within an acceptable tolerance to be expected from handmade pieces of jewellery. And I am not satisfied that the differences were adequately brought to the attention of Mr G.

I therefore think Mr G should be refunded the amount paid on his Creation credit card.

#### **my provisional decision**

My provisional decision is that I intend to uphold this complaint. To settle it, Creation Financial Services Limited should refund Mr G £7,280 and depending on Mr G's repayments to his credit card account, either re-calculate interest he paid on his account or add 8% simple interest to that amount from the date of payment to the date of settlement.

I now invite both parties to respond by 28 December 2016, after which time I will reconsider the complaint.

Siobhan Kelly  
**ombudsman**