

## **complaint**

Mr F complains about some garden furniture and a solar powered water fountain which he bought from Studio Retail Limited ('Studio') in April 2018 using his catalogue shopping account.

## **background**

In summary, Mr F says the garden furniture is poor quality. He says it is cracking and the tables are wobbling. He says the solar powered water fountain doesn't work either. He wants Studio to take it all back and refund him.

When Mr F initially complained to Studio it replied in August 2018 to say that Mr F had only shown a photograph of a crack in one of the chairs and he needed to provide more evidence to show other items were faulty. It offered him a £20 discount for the faulty chair.

Studio carried on sending Mr F requests for payment and eventually defaulted the account and assigned the debt to a third party in January 2019.

Mr F is unhappy with how Studio has handled things. In summary, he says it refused to collect the faulty items when he reported the problems (because he was unable to dismantle them). And it took action on the debt (adding interest and charges in the process) when it should've put the account on hold.

Our investigator looked at the evidence showing the quality of the tables and chairs. And he thought their quality was not acceptable. He said Studio should purchase the debt back and refund Mr F for the tables and chairs (including any interest and charges). He said if it wants the items back it should arrange to collect them at no further cost to Mr F. He also said that if Mr F is able to provide information to show the water fountain doesn't work then it should refund him for that too. He said it should also correct his credit file and compensate Mr F £100 for the distress and inconvenience he has experienced.

Studio did not agree with this. In summary it says:

- it offered to collect the goods (as long as they were dismantled) but Mr F refused as it was unable to provide him with a specific date and time;
- Mr F only provided a photo of one cracked chair when he had bought five sets of furniture and did not provide further evidence that the other sets were faulty;
- the goods might be for commercial use due to the amount that were ordered and the area where Mr F's video evidence was taken – it says the goods are not intended for commercial use; and
- Mr F bought goods totalling £555.93 and only made an £18 payment plus a credit for the £20 discount it had given – and as he had not made payment for other goods received it had every right to sell the account on

Because of the matters still in dispute this case has come to me for a decision.

I issued a provisional decision on this matter on 7 February 2019. In it I said:

***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.*

*Studio supplied the goods to Mr F through his catalogue shopping account and is responsible for their quality. The Consumer Rights Act 2015 says that goods should be of 'satisfactory quality'. In essence this is what a reasonable person would consider to be satisfactory taking into account all the relevant circumstances, such as their price and description. Aspects of the quality of the goods include their fitness for the purpose for which the goods are usually supplied, their appearance and finish, safety and durability.*

*did Mr F buy the furniture for business use?*

*Studio suggests the furniture is for commercial use. However, although Mr F bought several sets I note that a set only consists of a small table and two chairs. And the place where the videos are filmed isn't obviously a commercial site – it looks like a relatively large domestic garden. Mr F has denied the goods are for commercial use – and I think that is plausible. So I am continuing on the basis that Mr F got the goods for private consumer use.*

*are the goods of satisfactory quality?*

*I can see from system notes and email correspondence that Mr F reported issues with the water fountain (not working) and the furniture (cracking chairs and wobbly tables) within a couple of months of first receiving these from Studio.*

*On 25 July 2018 I can see Mr F sent an email to Studio (after he said he had already spoken to customer services on the phone) outlining the timeline of his purchases and the subsequent problems with them. He also follows this up in mid-August 2018 explaining more about the issues with the cracks in the chairs and his concerns about elderly relatives potentially falling and hurting themselves. The emails are credible and detailed and add weight to his claim that goods were either broken at point of sale or lacked reasonable stability/strength so broke easily.*

*Mr F has provided this service photographic and video evidence to show a lot of the furniture he bought appears to be cracking and wobbly. And he has also provided a video to show that the water fountain hooked up to the solar panel (in the sun) does not appear to be working.*

*The advert for the patio set says it is 'strong but light' and 'weather resistant' so I wouldn't expect it to be cracking and wobbling so soon after purchase through normal use in a domestic garden.*

*I note the advert for the water fountain indicates the fountain is operated by a solar panel attached to it and does not need another power source. In which case Mr F's video appears to show that it isn't working as it should.*

*On balance, the evidence shows that chairs and tables and the water fountain were not of satisfactory quality at the time of supply. It doesn't look like Mr F has caused the issues, and I note that he reported matters to Studio relatively soon after purchase and supplied some supporting evidence.*

*the evidence provided*

*Studio has pointed out that Mr F bought several sets of the patio furniture and they might not all be problematic. It says he only sent one photo to support his claim that they were faulty.*

*I can see in the email Mr F sent to Studio in August 2018 he refers to two attached 'videos'. So it seems he did send more evidence around the time. But in any event, at the time Mr F also provided Studio with a detailed account of what was happening with more than one chair and table and he was clearly concerned about the long term durability and safety of all the furniture. So I think that even if all of the furniture had not failed at that point there was enough overall concern for Studio to offer to collect the items and take a further look. And I note that it did in fact offer to do that, but it appears to have made this conditional on Mr F dismantling and repacking the furniture. I will deal with this in a moment but the point remains that in my view Mr F did provide sufficient evidence to support his case for returning the furniture.*

*It doesn't appear Mr F sent the video of the fountain not working to Studio at the time he initially raised problems with his purchases. But in the July 2018 email he sent to Studio he says he had already discussed it with an agent the month before who had agreed to take it back for a credit and promised him a call back in 10 days to arrange collection (but never did). The call notes Studio sent in don't appear to cover this period. But what Mr F says sounds credible and I note that Studio's case notes acknowledge that it agreed to collect the water fountain due to a fault on 1 June 2018. It seems Mr F would've had no reason to send more evidence of the water fountain problem. So I don't think it fair if he is penalised for not sending more about this at the time.*

*did Mr F refuse collection?*

*It seems Studio were willing to take the goods back. However, I can see there is a bit of a dispute about whether Mr F wanted to have the goods collected or not. He says he didn't refuse to have them collected – he took issue with Studio telling him he had to disassemble the items and return in the original packing.*

*I find what Mr F says to be more persuasive here. The evidence I have seen indicates he is keen to have the items collected but Studio want him to dismantle them. I note call notes from Studio specifically say no return can be arranged for either the fountain or furniture as 'customer does not have time to disassemble'. But it seems Mr F is open with Studio about not being able to dismantle and repack the goods and it isn't simply because he doesn't have time. I note in the July 2018 email he sent to Studio he says the furniture has locking plastic nuts on it which are not possible to remove without breaking the chairs. And because a couple of months had passed since purchase he didn't have all the packaging.*

*I don't find what Mr F said about not being able to comply with Studio's requests to be unreasonable. And I don't think he refused collection – I think it was unreasonable for Studio to refuse to take the furniture and the fountain back in these circumstances.*

*a fair remedy*

*I have considered the remedies in the Consumer Rights Act 2015, and note that repair or replacement would have been the initial options when Mr F first complained to Studio about the goods. However, I don't think repair (if even possible) or replacement of the goods would be a proportionate remedy at this stage. Particularly considering how protracted this dispute has become and now Mr F has understandably replaced the furniture. I think it is better if Studio now collect the goods, buy back and write off the debt, and refund anything Mr F has paid to date (plus interest).*

*I note the account had been sold on due to non-payment. I accept Mr F could have continued to pay under protest, however I note he has said that on several occasions Studio agreed to put the account on hold while the items were in dispute. He mentions this in an email to Studio in August 2018. And I note he has written on an arrears letter from November 2018 about a phone call he made to Studio in response to said letter. The note is very specific about the time and date and what was said. The effect being that the manager of the collections department appeared to agree the account should be on hold with no charges (and previous charges to be removed). This seems to a credible note of what occurred (and the call notes Studio sent in don't appear to cover this time). I think it more likely than not Studio told Mr F the account was on hold. So it wasn't fair to send him arrears letters and default the account.*

*I think it is arguable that selling the debt while the matter was clearly in dispute was not fair in any event. Studio indicates it had every right to do this as there were items owed other than those in dispute. But I don't see evidence supporting this. Mr F has indicated these were the only purchases he made. And it appears the sum Studio says he owes is for the items in dispute plus interest and charges. I invite Studio to provide further evidence on this point if it wishes.*

*All things considered I think it would be fair for Studio to arrange for the removal of any adverse information added to Mr F's credit file in relation to these purchases. And it should also pay him compensation for the trouble and upset this matter has caused him. Had Studio arranged the return of the goods when it should've he wouldn't have had all this hassle with chasing the matter up, and being chased up by debt collectors (particularly when it appears Studio had agreed to put the account on hold). Mr F has said this has caused him considerable anguish and concern about his credit file. I can see why. So I think it should pay him £100 compensation too.*

### **my provisional decision**

*I uphold this complaint and direct Studio Retail Limited to:*

- *arrange for collection of the garden furniture and water fountain at no cost to Mr F;*
- *buy back the debt from the third party which bought it and write it off – refunding Mr F anything he has paid toward it to date including 8% simple yearly interest calculated from date of payment to date of settlement;*
- *arrange for the removal of any adverse information in relation to these transactions (for the furniture and fountain) from Mr F's credit file;*
- *pay Mr F £100 compensation for the distress and inconvenience this matter has caused him; and*
- *if Studio does not pay the £100 compensation within 28 days of days of the date on which we tell it Mr F accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment*

In response to this Mr F agreed with the decision.

Studio said they were broadly happy with the findings. However, they were going to find it difficult to collect the packages due to limited space in their courier vehicles. They asked if Mr F could either dispose of the items himself or break them up into bin bags for collection.

### **my findings**

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

Both parties broadly agree with my provisional decision. So I don't see any reason to go over the key findings again. I still think my proposal is a fair way of putting things right for the reasons set out above.

However, I will address the issue which Studio has raised regarding collection of the goods. In summary, it thinks it isn't unreasonable for Mr F to break apart the furniture or dismantle it (it has said it has been in contact with its supplier which has suggested the nuts are not in fact locking). It also says it offered Mr F collection from the start but he refused this because he didn't have time.

I have already responded to Studio to say, in summary:

- Mr F can of course dispose of the items himself if he agrees with this option
- but he should also have an option to have them collected without further inconvenience – so he shouldn't be forced to take them apart
- even if there are no locking nuts ultimately Mr F doesn't appear confident in dismantling the furniture himself and I think dismantling it all will cause notable inconvenience regardless. Because he has been supplied with goods which are not of satisfactory quality, in these particular circumstances I don't think it is fair that he should be expected to dismantle the sets for collection if he doesn't want to
- it might be that Studio have to arrange to collect the goods without dismantling (presumably in a bigger vehicle) or send along someone who is able to dismantle them before loading

After thinking about everything again I stand by this. At the outset Mr F was supplied with unsatisfactory goods by Studio and should not be put to further inconvenience now.

I have also considered that Studio offered Mr F collection from the start. However, (as I already established in my provisional decision) this was conditional on him dismantling and repacking the goods - something which he didn't feel confident doing. I don't think this was unreasonable in the circumstances. And even if Studio had informed him the nuts were not in fact locking (which I can't see it did at the time) it is fair to say that taking all that furniture apart would have caused Mr F notable inconvenience anyway. Studio should have done more at the time. And I think it needs to do that now.

Studio need to work out the logistics here. The important thing is there is minimal inconvenience to Mr F. For the reasons I have explained it should cover the cost of collecting the goods from Mr F if he is unwilling to dispose of them himself. And it should arrange to collect these whether they are dismantled/broken apart by him or not.

### **my final decision**

I uphold this complaint and direct Studio Retail Limited to:

- arrange for collection of the garden furniture and water fountain at no cost to Mr F if he is unwilling to dispose of the items himself – collection should not be conditional on the goods being taken apart (if Mr F is unwilling to do this) and any arrangements should be of minimal inconvenience to him;
- buy back the debt from the third party which bought it and write it off – refunding Mr F anything he has paid toward it to date including 8% simple yearly interest calculated from date of payment to date of settlement;
- arrange for the removal of any adverse information in relation to these transactions (for the furniture and fountain) from Mr F's credit file;
- pay Mr F £100 compensation for the distress and inconvenience this matter has caused him; and
- if Studio does not pay the £100 compensation within 28 days of days of the date on which we tell it Mr F accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment

If Studio considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 16 April 2020.

Mark Lancod  
**ombudsman**