

complaint

Mr N complains that the carpets provided to him under a finance agreement with Creation Consumer Finance Ltd weren't satisfactory and that not all of the carpets were delivered. He'd like to reject the carpets and cancel the agreement.

background

Mr N entered into a finance agreement with Creation in October 2016 for the purchase of some carpets. Mr N says, on delivery day, one of the carpets wasn't delivered and the ones that were delivered had problems with their fitting. He says he asked the retailer numerous times to resolve the problem but despite two home visits the issues remain and the "missing" carpet has still not been delivered.

Mr N says he tried to make a s75 complaint, but Creation didn't accept it as it considered the issue related to the fitting rather than the carpet itself. It told him to go back to the retailer about the missing carpet.

Creation also said Mr N wasn't entitled to bring a s75 claim as while the finance agreement was in his name and the order with the retailer was in his wife's name. As such he couldn't bring a claim regarding the carpet as he hadn't ordered it.

Our investigator however disagreed and said the purchase was intended for both Mr N and his wife and there was sufficient link between them to say they were acting as agents for each other in both the order and the finance. This approach was supported by the courts in a case *Citibank Trust Ltd v Allen* [1991] and taking this into account, she felt s75 could apply.

In this case the order hadn't been fulfilled and as the provider of the finance, Creation was jointly liable for this. In view of the time that had passed since the carpets were ordered - and the time the retailer had had to put matters right - she felt the appropriate outcome was to allow Mr N to cancel the finance agreement. She recommended Creation also refund the deposit of £350 paid by Mr N and all of the payments he'd made under the agreement together with interest at 8% simple from the date of payment to the date of repayment. In addition it should also arrange to collect the carpets at no cost to Mr N.

Creation disagreed and it had to take this on as s75 claim. However it didn't agree to uphold the claim as it said the issue was with the fitting and as this had been arranged with a third party, it wasn't covered by s75. And it said Mr N hadn't complained within the first two years after purchase and that it wasn't now possible to take back the carpets as they'd been cut to fit.

Mr N accepted much of the recommendation but said the problems had caused him and his wife significant inconvenience over the past two years and he felt they should be compensated for this as well as for the fact he hadn't been able to let one of his rooms as intended because of the missing carpet.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I've decided to uphold Mr N's complaint for the reasons set out below.

Under s75 Consumer Credit Act 1974 a consumer has the right in certain circumstances to claim against the provider of the credit if there's a breach of contract or misrepresentation by the supplier of the goods or services. However to do so there has to be a direct relationship between the purchase, the supplier and the creditor.

Mr N and his wife arranged to buy some new carpets with the benefit of a finance agreement with Creation. Although the finance agreement was signed by Mr N and the purchase order by his wife I'm satisfied this was intended to be a joint purchase for their shared use at the property they both lived in. On that basis I consider that there was a sufficiently close link between them to say that this was to all intents a joint purchase and on that basis, that when there was a problem, Mr N was entitled to bring a claim.

I've seen Creation has said that even if that's the case, the problem is with the fitting not the carpet and fitting wasn't part of the credit arrangement. On that basis it says the claim isn't covered.

However in this case, I'm not satisfied that the fitting is the issue. It appears that the carpets that were delivered weren't the right size and so couldn't be fitted adequately. In other words the problem occurred before the fitting. And it's clear that one of the carpets ordered still hasn't been delivered, despite Mr N chasing this up on several occasions. Taken together I'm satisfied the carpets supplied weren't satisfactory and weren't of the standard Mr N and his wife were entitled to expect. For that reason I consider Creation has liability for this under s75 CCA.

Looking at the information available, I don't think it's reasonable to try and arrange a repair or replacement. Mr N's been in frequent contact with the retailer about the problems since shortly after the purchase and there've been several efforts to try and resolve the issues, but without success. And even if this was done it wouldn't resolve the question of the missing carpet, which has still to be delivered some two years after it was originally ordered. Understandably Mr N has now lost confidence in the ability of the retailer to put matters right.

In the circumstances I've decided considerate would be reasonable for Creation to allow Mr N to cancel his agreement with it and mark it as settled on Mr N's credit file. As Mr N has had issues from the start it should also refund his deposit of £350 and also all of the payments made by him under the agreement together with 8% simple interest from the date of payment to the date of repayment. Creation will also need to arrange to collect the carpets from Mr N's home at no cost to him.

I've seen Mr N considers he should also receive compensation for the inconvenience and for the potential loss of rent. But in order to make an award for financial loss I'd need to see evidence of that loss and in this case I haven't done so. And while I can see there has been some inconvenience, I consider the remedy above has taken this into account and is adequate.

my final decision

My final decision is that I uphold Mr N's complaint and direct Creation Consumer Finance Limited to

- cancel the finance agreement taken out by Mr N in April 2016 and to mark it as settled on Mr N's credit file;
- repay the £350 deposit paid by Mr N and all payments made under the agreement together with interest at 8% simple from the date of payment to the date of repayment;
- collect the carpets at no cost to Mr N.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 December 2018.

Cerys Jones
ombudsman