

complaint

Miss S complains that Creation Financial Services Limited rejected her claim under S 75 Consumer Credit Act 1974 in respect of damaged furniture.

background

Miss S arranged to hire a van to move house. She was told on the morning she was due to pick up the van that it had failed its MOT and wouldn't be available. She was offered an alternative van which was in a poor state of repair. Miss S took this and unfortunately it rained heavily and the van leaked causing damage to some of her furniture.

The hire company rejected their complaint and refused to cover the cost of the damage and so she made a claim under S 75. Creation also rejected this as it considered that there had been no misrepresentation or breach of contract. It said that Miss S had accepted a van she knew to be in a poor state of repair and so there could be no misrepresentation. It also said that there would have been a breach of contract if the hire company had not provided a van, but as it had there was no breach.

The matter was brought to this service and the adjudicator who investigated it recommended that the complaint be upheld. He considered that Miss S had been made aware the van was in poor repair, but not that it leaked. He had been provided with photos of the damaged furniture and an independent report which confirmed the damage. In any event the cause of the damage has not been challenged by either the hire company or the business.

The business didn't agree with the adjudicator's view and said that Miss S had chosen to take a risk by accepting the leaky van and it wasn't responsible for her losses. However, it offered to compensate them for the inconvenience they had suffered with a payment of £100.

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 must admit some surprise that this matter has had to be brought to this service and then has had to be referred to me for a final decision. I agree with the adjudicator that the complaint should succeed. Miss S entered into an agreement to hire a van and I would expect the hire company to ensure it provided her with a roadworthy one in good repair. The van that had been allocated to them failed its MOT and the only other one available was clearly in a poor state of repair. The hire company should have sourced a suitable replacement van, even if that meant hiring one in from another hire company.

I don't consider it reasonable to have presented Miss S with the choice of accepting a van in a poor state of repair or nothing on the day she and her partner were moving house. As far as I am aware the hire company didn't offer her a reduction in the hire fee and so it must have regarded the van as fit for purpose albeit somewhat damaged. It clearly wasn't and so Miss S should be compensated for her losses. Miss S has provided evidence of the damage caused and the cost of either repair or replacement and I am content that this is reasonable.

my final decision

My final decision is that I uphold this complaint and I direct Creation Financial Services Limited to:

- Pay Miss S £356.93 in respect of the damage to the furniture and cost of obtaining a report.
- Pay Miss S £96 for the cost of cleaning the mattress.
- Pay Miss S £100 for the inconvenience caused whilst investigating the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 29 March 2016.

Ivor Graham
ombudsman