

complaint

Mrs J complains a sofa she bought using her NewDay Ltd credit card isn't of satisfactory quality. She wants NewDay to refund her under section 75 of the Consumer Credit Act 1974.

background

In January 2016, Mrs J bought a new sofa suite from "A" using her NewDay credit card. She says one of the main reasons she bought it was for the back support. But, she says her sofa has an excessive gap between the cushions so there's no support when sitting. Mrs J says the people that delivered her suite, and inspected it after she complained, were from another company – "B". She says B doesn't sell good quality furniture and if she'd known B was involved with A, she wouldn't have bought the suite. She feels A misrepresented the suite. She's also unhappy that NewDay hasn't properly responded to her complaint.

NewDay says it received Mrs J's complaint in March 2016. But, in June 2016, it acknowledged it hadn't yet reviewed it or responded. It offered her £60 as a gesture of goodwill in light of the customer service given.

The adjudicator says there were three parts to Mrs J's complaint. In relation to the misrepresentation, she's satisfied B was involved with A as a "concession partner". But, she thinks it's most likely Mrs J chose the sofa due to its features, rather than who the seller was. Regarding the quality, she says she's considered the retailer's report and the independent report Mrs J provided. But, she doesn't agree the suite wasn't of satisfactory quality. She felt £60 wasn't enough compensation for NewDay's poor service and told it to pay £100.

NewDay agrees with the adjudicator's view and agrees to pay Mrs J £100 compensation.

Mrs J doesn't think this goes far enough. She doesn't agree with the adjudicator's view that the suite isn't faulty. She wants to reject the suite and she wants NewDay to refund her.

my findings

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

Under section 75, NewDay as the credit card provider can be held responsible for a breach of contract or misrepresentation by the supplier in certain circumstances. As the adjudicator said, Mrs J has raised three separate points of complaint. I'll deal with each of these in turn.

For me to say there's been a misrepresentation, I have to consider if A made a false statement of fact which Mrs J relied on to her disadvantage. I've seen nothing to show A suggested the suite was manufactured by it – or that it exclusively sold this brand. I've seen a label and brochure that show the suite was made by an independent manufacturer. And, I've also seen that this brand is sold by many retailers – not just A and B. Taking the matter as a whole, I'm not satisfied there was a misrepresentation and I'm also not persuaded Mrs J's suite was of any lesser quality due to B's involvement with A.

I've seen the retailer's report hasn't identified any fault with the suite. It suggests the cushions should be adjusted in a certain way to aid comfort. Mrs J's independent report suggests there are problems with the rail connecting the springs – and suggests padding should also have been fitted to the stretcher rail. I've carefully considered both reports as well as the pictures provided. The sofa has a particularly individual design. And, from what I've seen, I think Mrs J's report explains why it's not as supportive as she'd like. But, I'm not persuaded the sofa is faulty. I think it's been designed in a particular way – I appreciate it's not as Mrs J had hoped. But, I can only tell NewDay to refund her if I'm satisfied the retailer sold her a sofa that wasn't of satisfactory quality. And, I'm not persuaded that's the case.

I'm sorry to disappoint Mrs J but I don't find there's been any misrepresentation or breach of contract by the supplier here. So, I don't require NewDay to refund her under section 75.

NewDay's acknowledged it fell below the standard of service it should have provided. I agree with the adjudicator that if it hasn't already done so, it should reasonably pay Mrs J £100 compensation for the inconvenience caused.

my final decision

My final decision is NewDay Ltd shall pay Mrs J £100 compensation if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 14 October 2016.

Loucia Kyprianou
ombudsman