

complaint

Mrs T is unhappy that Vanquis Bank Limited rejected her claim under section 75 of the Consumer Credit Act 1974 (section 75) when she disputed the amount paid for a carpet.

background

In September 2017 Mrs T purchased a carpet using her Vanquis credit card.

In the weeks following purchase Mrs T noticed that the carpet had lost its fluffiness and was showing signs of wear. She complained to the carpet shop and obtained an independent inspection.

The inspection report concluded that there were no manufacturing faults with the carpet but that it was showing some flattening which the report said was to be expected with this type of carpet.

Mrs T wasn't able to resolve her complaint with the carpet shop so she raised a section 75 dispute with Vanquis. Vanquis rejected the claim and said there had been no breach of contract or misrepresentation of the goods.

Mrs T wasn't happy with the response she received from Vanquis so she complained to this service. Our investigator didn't uphold the complaint. The investigator said that a section 75 claim couldn't succeed because there was no evidence that there had been a misrepresentation or a breach of contract.

Mrs T didn't agree. She felt that there had been a misrepresentation because she had asked the carpet shop for a carpet which kept its fluffiness. She said she hadn't been made aware by the salesperson that the carpet would show signs of wear within a short time. Mrs T also said that the carpet which was delivered to her was different to the carpet she had selected in the carpet shop.

my findings

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

Because Mrs T's transaction with the carpet shop was financed by credit supplied to her by Vanquis, section 75 gives Mrs T an equal right to claim against Vanquis or the carpet shop for misrepresentation or breach of contract.

Misrepresentation

A misrepresentation is an untrue statement of fact which induces the customer to go ahead with the contract.

Mrs T says that her decision to purchase the carpet was influenced by the fact that the salesperson recommended the carpet having been made aware of her specific requirements for a carpet which would retain its fluffiness and which matched her existing carpet. Mrs T

says that she showed the salesperson some photos of her existing carpet and that the salesperson recommended the carpet to her as being “the closest match”.

I’ve considered whether the salesperson made an untrue statement of fact when he told Mrs T that the carpet was “the closet match”. But I don’t think the salesperson was making a representation here – instead, he was expressing his opinion that this was the carpet from the selection available in the shop which most closely met Mrs T’s requirements.

There’s no evidence that the salesperson made any particular representations as to the type of material or the carpets’ fluffiness. Nor is there any evidence that the salesperson told Mrs T that the carpet would match her existing carpet.

Based on the available information about Mrs T’s requirements and what the salesperson said, I’m unable to say that the salesperson said something which wasn’t true. So I can’t conclude that there has been a misrepresentation.

Breach of contract

A breach of contract is where the supplier fails to do what the contract says it must.

Mrs T has said that the carpet which was delivered to her was not the same as the carpet which she selected in the carpet shop. She hasn’t explained specifically how the carpet which was delivered to her differed from the carpet which she selected in store. I haven’t been provided with any evidence to show that the carpet which was delivered to Mrs T was different in any way to the carpet which she selected in store. Because of this, I’m unable to conclude that Mrs T didn’t receive the carpet which she selected in store.

Taking all of the available information into account, I’m unable to conclude that there has been a misrepresentation or a breach of contract. Therefore I don’t think Vanquis has done anything wrong in rejecting the section 75 claim.

my final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs T to accept or reject my decision before 8 March 2019.

Emma Davy
ombudsman