

The complaint

Mr P complains about the quality of goods he bought with a fixed sum loan from Secure Trust Bank Plc trading as V12 Retail Finance Limited (V12) and he's unhappy with V12's response to a claim he raised under section 75 of the Consumer Credit Act 1974 (CCA).

What happened

In June 2022 Mr P bought a sofa from a third party supplier (that I'll call S) with a fixed sum loan from V12. The goods cost just over £1,500. Mr P paid a £10 deposit and he agreed to repay the loan over four years at about £32 a month. On delivery Mr P found a rip in the sofa base cloth and his home was damaged so he complained to S. When S hadn't resolved things within three weeks he contacted V12 (in mid-October 2022) to raise a claim under section 75.

V12 looked into what happened and contacted S. Near the end of October 2022 S offered to replace the sofa (in which case Mr P could retain the damaged sofa until the new one arrived) or collect it and refund the purchase price or repair the damage and reduce the price by 10%. S also asked Mr P to get quotes to rectify the damage to his home from VAT registered tradespeople. V12 thought this sounded like a reasonable resolution and closed the complaint but Mr P didn't think that was fair. Among other things, he said he'd be left without a sofa for a time if he opted for the refund, he found it difficult to get quotes from VAT registered tradespeople (as there were none nearby) and he didn't want to deal with S, as he found staff there were hostile and unhelpful.

Mr P referred the matter to our service and one of our investigators considered the evidence. She didn't recommend the complaint should be upheld. She thought the resolutions offered in terms of the damaged sofa were fair. She asked Mr P for quotes to rectify the property damage but he didn't supply any and she didn't think V12 should have to do anything else. V12 tried to negotiate a resolution and S wanted to send a third party (that I'll call H) to assess and repair the damage to Mr P's home. Mr P refused as he'd managed to get some repair quotes and he didn't think H was sufficiently independent. He wanted to source a new sofa elsewhere and have V12 transfer the existing loan to pay for this. Our investigator explained that V12 was unable to transfer the loan and she didn't change her mind about the outcome of the complaint.

Mr P disagreed and he asked for an ombudsman to review the matter. In summary, he says:-

- the investigator ignored the fact he'd accept a replacement, provided this was without the add-ons applied to the original purchase;
- the investigator said he had the right to a replacement or refund under section 75, and he didn't need to communicate with S, but he will be forced to do so to get a replacement;
- S didn't contact him about the damage until he raised the section 75 claim with V12 and he offered S the chance inspect early on but it declined and insisted he provide quotes;
- S has had one opportunity to rectify the damage, the request for H to visit was only made about five months after the issue was first reported and he's not willing to allow

- anyone associated with S access to his property, including H;
- he's provided two repair quotes and V12 should have authorised the repairs - S accepted liability for the property damage and he has the right to have this fixed.

Having considered the available evidence, I wasn't minded to uphold the complaint. My reasons weren't quite the same as the investigator's and I thought it was fair to let the parties see my provisional findings and respond (if they wanted to) before I made my final decision so I issued a provisional decision on 19 December 2023. I've set out below what I decided provisionally (and why) and this forms part of my final decision.

My provisional decision

Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I can see that Mr P feels strongly about what happened here. He's gone to some trouble to provide detailed submissions and I'm going to have to summarise things in my decision. The rules of our service allow me to do this - and it reflects the informal nature of the dispute resolution we provide, as a free (for consumers) alternative to the courts. But I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However I'm going to concentrate in this decision on what I consider is key to reaching a fair and reasonable outcome overall.

Mr P brings this complaint to the Financial Ombudsman Service because he purchased the sofa from S with credit provided by V12 and section 75 makes a lender equally liable with a supplier for breach of contract and misrepresentation, in certain circumstances.

I must take relevant law into account when I make my decision. I'm satisfied that section 75 is relevant here but I think it might be helpful to explain at the outset that I'm not determining the outcome of Mr P's section 75 claim - only a court can do that. I'm looking instead at whether V12 has provided a fair and reasonable response to his complaint (which is about V12's response to his section 75 claim) - taking into account any relevant obligations that arise out of the loan agreement, including those under section 75. And it's not within my remit to require third parties, such as S, to do anything.

I'm satisfied that this sofa was required to be of satisfactory quality when it was supplied under the Consumer Rights Act 2015 (CRA). There seems to be no dispute that some of the sofa fabric was torn when it was supplied - so there was a breach of contract - and Mr P's home was also damaged during the course of delivery. I've gone on to consider below what's reasonably required to put things right but I think it's useful to clarify at this stage that, where two parties are jointly and severally liable for a breach of contract, this doesn't normally mean a claimant can insist that one party (and not the other) must remedy the breach. Claimants are under a duty to mitigate their losses and, where one party has offered a reasonable resolution, the other party may be entitled to rely on that.

the damaged sofa

When goods are supplied with faults present, a consumer is usually entitled to repair or replacement under the CRA - provided this isn't disproportionate and it won't take too long or cause too much inconvenience.

I'm satisfied that S offered to repair or replace Mr P's sofa – or collect it and give him a full refund - five or six weeks after delivery. I realise it was frustrating for Mr P that S didn't contact him sooner, and I understand he found S unresponsive and difficult to deal with at

times, but I'm unable to hold V12 liable for S's poor customer service in this situation. Ultimately, in terms of the damaged sofa, I think the options S provided sound reasonable and I'm not persuaded it was unfair for V12 to rely on this when it responded to this complaint.

property damage

Delivery was included as part of the sale contract and I've given some thought as to what happened to Mr P's property when the sofa was delivered. I've seen photographs that show a number of scuffs on walls and woodwork but I can't tell from these alone what the extent of the damage is exactly. I can't say, for example, whether any of the marks might be removed successfully by cleaning. Mr P told our investigator it was likely to cost between £700 and £1,100 to put things right - which suggests the damage is fairly extensive and requires redecoration.

I don't think it's unusual for a retailer like S to ask a consumer to get quotes to rectify this sort of damage and I'm not persuaded it was unreasonable for S to ask Mr P to obtain such quotes here initially. More recently, Mr P has supplied two quotes for redecorating his hall, stairs and landing and his lounge at a cost of between approximately £1,500 and £1,800. That's a relatively substantial sum and I don't think it's unreasonable for S to obtain its own assessment of the damage and the likely cost to put this right, in the circumstances.

S wants to instruct H to attend the property, assess the damage and arrange to put things right but Mr P feels H is not sufficiently independent. He says H has a vested interest in taking the supplier's side because the two organisations have an existing commercial relationship. As far as I can see H is an independent company and I'm not persuaded it will take a biased view because it may receive regular instructions from S. I've dealt with other complaints before this service where when H was instructed by a supplier like S and H's report has supported the consumer's claim. I realise it's frustrating for Mr P, who went to some trouble to source quotes for the work, but I think it's likely to reduce his inconvenience overall if H does the job - as he won't need to directly instruct, provide access for and pay his own tradespeople and then claim a refund.

Taking everything I've seen into account, I'm minded to find the remedy offered by S seems reasonable overall and I'm not persuaded it's unfair for V12 to rely on that. I realise Mr P would rather V12, and not S, provided a resolution. I've seen a suggestion in the paperwork that he would like (ideally) to choose a new sofa elsewhere and have V12 transfer the existing loan to the new item. I'm afraid that's not possible however - as the investigator explained, V12 provided this loan for the purchase of the sofa supplied by S and the credit isn't transferable to other goods.

Mr P has indicated more recently that he'd accept a replacement sofa but he wants this without any of the "add-ons" in the original sale agreement and he wishes to communicate with V12 only. Failing that, he says he'd like a full refund - but he wants to keep the damaged sofa until he acquires a new one. I can't reasonably require V12 to action either of these offers - not least because (for the reasons I've explained) I think a fair resolution has been offered already. Even if that wasn't the case, the fact there was a breach of contract here doesn't mean either party is entitled to renegotiate the terms of the original sale contract in the way that Mr P would like. In addition, the alternative option suggests Mr P would receive a full refund without returning the goods so he'd (potentially) be able to retain the damaged sofa indefinitely, which doesn't seem reasonable.

I can see Mr P would also like to be compensated for any earnings lost if he has to stay off work so the sofa can be collected/replaced and/or when his property damage is assessed and repaired. As I explained above, claimants are expected to take reasonable steps to minimise their losses in this situation. It's a fact of life that things go wrong sometimes and it

can take time to sort things out. I'd reasonably expect Mr P to try and arrange for any visits necessary to take place at a time he can manage without incurring financial loss – or he could ask a friend or family member to be present, for example. If that's not possible, he might be entitled to be reimbursed for losses reasonably incurred but I can't fairly hold V12 liable for income that hasn't yet been (and may never be) lost.

For the reasons set out above, I consider S has offered Mr P a reasonable remedy for the breach of contract and I don't think it was unreasonable for V12 to rely on that when it responded to his section 75 claim. I'm satisfied that V12 investigated Mr P's complaint and I think it tried to resolve matters to his satisfaction but this wasn't possible. On the current evidence, I can't fairly find V12 should have to do anything further and I'll leave it to Mr P to decide if he wants to accept the resolution he's been offered.

Mr P has also raised a number of concerns around a furniture protection product sold with the sofa - after the investigator provided her view. He thinks this was mis-sold and S doesn't have relevant permissions from the Financial Conduct Authority (FCA). I can't see that Mr P has raised these issues previously with V12 and I'm unable to consider this in my decision. If Mr P remains concerned about the relevant issues it's open to him to contact V12 and/or S (which is registered with the FCA) and, if he's unhappy with the response, he may be able to bring a complaint about this to our service.

What I've decided – and why

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

I invited the parties to consider my provisional findings and let me have any new comments or evidence I hadn't seen before by 8 January 2024. I said I'd review all the evidence available after that and make my final decision.

The date set for responses has now passed and neither party has provided any new evidence or raised any objections to my provisional findings. I see no reasonable grounds to depart from my provisional conclusions in the circumstances. For the reasons I've given, I remain of the view I can't fairly require V12 to do anything further and I'm unable to uphold this complaint.

My final decision

My decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 February 2024.

Claire Jackson
Ombudsman