

The complaint

Ms M complains that JaJa Finance Ltd (“JFL”) has treated her unfairly in relation to a purchase she made using finance it provided.

What happened

Ms M used her JFL credit card to purchase several items from a supplier I’ll call “B”. Included in that order was a bathroom unit. Ms M’s position is that B sent the wrong bathroom unit. Ms M considers this to be a breach of contract on the part of B.

B agreed to replace the bathroom unit with the bathroom unit Ms M says she originally ordered. However, when B came to collect the item it appears that it had been installed (in the sense that it had been set against a wall and a sink had been placed on top of it) and was not in its original packaging. As a result, B would not collect the bathroom unit nor handover the replacement.

In response, Ms M bought a replacement bathroom unit from another separate third party supplier. This item cost £190 plus there was a delivery charge of £20.99 making a total of £210.99. Ms M considers she is entitled to be refunded the £210.99 she paid for the replacement item. Ms M had found B rude to deal with, once things had gone wrong, therefore she decided to deal with it no further. Instead Ms M turned to JFL for help.

Ms M claimed the £210.99 from JFL. In making this claim Ms M was relying on rights she believed she had against it because of the type of credit she used to purchase the goods from B. Specifically, Ms M relied on Section 75 of the Consumer Credit Act 1974 (“Section 75”), which she believes entitles her, to ask JFL to put things right.

JFL rejected Ms M’s claim and her subsequent complaint about this rejection. Ms M complains that JFL did not deal with her claim and her complaint correctly.

In summary, JFL’s position is that Ms M has not demonstrated there has been a breach of contract on the part of B. It said this because Ms M had not shown, in its opinion, that B sent the wrong item. Further, it also pointed out there is nothing to show that B accepted that it had sent the wrong bathroom unit in any event. Rather it appeared to have agreed to replace the original unit as a goodwill gesture only.

In addition, JFL relied on the fact that by the time Ms M contacted B she was outside of the deadline in JFL’s returns policy. In any event, Ms M also did not comply with B’s requirements for how the goods had to be packaged for B to accept the return.

For all of these reasons JFL declined to uphold Ms M’s complaint.

Dissatisfied, Ms M complained to our service.

One of our investigators looked at what had happened. Our investigator did not recommend that Ms M’s complaint should be upheld.

JFL accepted our investigator’s recommendation, Ms M did not. In brief, in rejecting our investigator’s recommendation Ms M repeated her earlier stance. Ms M also mentioned she’d never seen a copy of B’s terms and conditions (in response we sent these to her). Moreover, she told us these terms and conditions had never been incorporated into her contract with B and she gave us her reasons for saying this. She also told us therefore she was not bound by the terms and conditions.

Also, Ms M asked us to send her the information that B had sent to JFL to support its stance that there had been no breach of contract. We told her we did not have this information, so we could not send it. But we did have what JFL told us B had said. Miss M indicated that we ought to have insisted on seeing this information first-hand. Ms M also indicated she is entitled to see this information.

Ms M asked that an ombudsman review her complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Before I look at the merits of this complaint I need to clear up a few preliminary points.

I recognise, that amongst other things, Ms M has suggested this service ought to have asked JFL for the information that B sent it. However, this service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses or allow either party to direct the course of our investigations; were we to do so, it would compromise our impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. This service did not think it needed to see the information Ms M wanted to see therefore we did not ask for it. It follows too that when Ms M asked us for this information, we could not provide it as we did not have it. Neither were we obliged to tell JFL to provide this information to Ms M just because she wanted to see it.

Some of Ms M's complaint relates to her dissatisfaction about the way JFL has dealt with her complaint, for example, how long it took to tell her what its final response was. However, I must explain that this isn't something I'm able to consider. Our rules only allow us to consider complaints about regulated activities. Complaint-handling isn't a regulated activity in its own right, nor is it one of the specified non-regulated activities that I'm able to deal with under our compulsory jurisdiction. It's also not an activity that's ancillary to a regulated activity, such as account administration or advice. Therefore, a complaint about the way JFL dealt with a complaint doesn't fall within the scope of our rules, and so I don't have any legal power to consider Ms M's dissatisfaction about this aspect of her complaint.

Ms M and JFL disagree about several of the points that are fundamental to this complaint. Where the 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.

Amongst other things, Ms M is relying on the rights she believes she has under Section 75. I'm required to decide what, if anything, JFL should do to resolve this complaint. In doing that, I must decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. Relevant law includes Section 75 and also the Consumer Rights Act 2015 ("the CRA").

The general effect of Section 75 is that if Ms M has a claim for misrepresentation or breach of contract against the supplier she can also bring a like claim against JFL provided certain conditions are met.

Further the CRA covers contracts between businesses and consumers as here. That Act implies a term into these contracts that goods must be of satisfactory quality. Where goods are supplied by description, the goods must meet that description. If goods do not comply with the description given by the supplier they'll not be of satisfactory quality. And this in turn gives the consumer the right to reject the goods, which involves returning them. A breach of contract of this nature also gives a consumer the right to seek a remedy for the breach. The remedy must be one of the remedies set out in the CRA.

It follows from what I've said above provided the conditions of Section 75 are met, and if I find that there has been a breach of contract and Ms M attempted to return the goods then I will find that it is fair and reasonable that JFL has to take responsibility to put things right. Therefore I will look at each of these points in turn.

Why I don't find that Ms M's claim met one of the relevant conditions

One of the conditions for a successful claim under Section 75 is that there must be a very particular type of agreement in place known as a debtor-creditor-supplier agreement. Specifically, what is required is that Ms M is the debtor, JFL is the creditor and B is the supplier. Debtor in this context means a party who receives credit and would be liable to repay the debt if the credit had not been contractually extended to her. I'm not satisfied that this debtor-creditor-supplier agreement is in place here. I say this because I've seen the sales order acknowledgement document provided by B, which I consider to be a contractual document. There is a box in that document that says, "*deliver to*". In that box is the name of Ms M's father. When trying to work out who is a contracting party, I think it is appropriate to see what the contractual documents indicate. On the face of it, the sales order acknowledgement, suggests to me Ms M's father not Ms M was the contracting party with B.

Ms M says she lives with her parents. Therefore there would be no need to put her father's name of the invoice if he was not a party to the contract with B rather than Ms M. In other words, if Ms M contracted with B why did the sales order acknowledgement not say deliver to Ms M?

JFL has not raised this point but that's not relevant here. Because I think it is appropriate that I establish whether the conditions for Section 75 have been met before I go on to look at the rest of the merits.

Why I am not satisfied there has been a breach of contract

That said, even if I was satisfied, which I am not, that there was a debtor-creditor-supplier agreement in place that would allow Ms M to make a claim under Section 75, I'd still need to be satisfied that there had been a breach of contract on the part of B.

Ms M tells us that all we have to do is use the product reference for the bathroom unit she ordered, and this will show that what she ordered and what she got were not the same. But I've not been able to verify that, and I'd need to here because JFL's stance is that there has been no breach of contract. In other words, the question is not what product an internet search shows when I type in the product code, rather it is what product, JFL offered to sell, and Ms M agreed to buy.

Moreover, even if I was satisfied that there was a breach of contract, which I'm not, there is a further hurdle for Ms M. In order for Ms M to exercise her right to a remedy she'd need to reject the bathroom furniture and return it to B in the same condition it was sent to her.

I realise that Ms M indicates she did reject and return the bathroom furniture by arranging for B to come and pick up the bathroom furniture and replace it. But I disagree, I say this because she also indicates that when B turned up the bathroom furniture was seemingly in situ in the bathroom, with a sink on top of it. I don't find it fair or reasonable that a consumer can be apparently using an item, and/or have it installed which I find this was, and at the same time say they are seeking to reject the goods, returning them and claiming a remedy. Therefore I think it is fair and reasonable to find that JFL did not act unreasonably in failing to offer Ms M a remedy for breach of contract given the goods were neither rejected nor returned.

Why I find the question of whether Ms M was bound to follow B's returns policy is irrelevant

I think the whole incorporation of the terms and conditions point is a red herring. I say this because, JFL says that the terms and conditions set out the returns policy. Ms M was bound by that policy as those terms and conditions form part of the contract of sale. She did not follow that policy, so she was not entitled to return the item. Ms M counters that she's not bound by the returns policy as she never contracted on the basis of B's terms and conditions.

But Ms M is not relying on the returns policy. Rather she is relying on the rights she has under relevant law to reject an item that is not of satisfactory quality. In other words, the returns policy and the exercise of Ms M's contractual rights to reject goods that are not of satisfactory quality are two separate issues. Therefore, I don't need to look any further at this point and I make no findings about it either as I don't have to.

The remedy Ms M wants is not the remedy she would be entitled to if I upheld her complaint, (which I don't)

For completeness I'll add, even if I found Ms M was entitled to make a claim under Section 75 and the contract of sale was breached and Ms M did reject and return the goods, the remedy she'd be entitled to would be the cost of the original item. But she is not claiming for that, instead she is asking for the cost of the replacement item plus delivery fee. And as that is not the remedy she is entitled to I'd have no proper basis to say JFL had to give her that in this decision, in any event.

chargeback

As Ms M paid for the goods and services using her credit card and wanted a refund, I've thought about whether JFL dealt with her request fairly. The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules.

In certain circumstances the process provides a way for JFL to ask for a payment Ms M made to be refunded. Those circumstances include where goods aren't as described by the company Ms M paid. A chargeback doesn't guarantee a refund. B's bank could have put forward a defence to any chargeback claim.

The chargeback system does not give consumers legal rights. But we consider it good practice for a financial business to raise a chargeback where there is a reasonable prospect of it succeeding

Incidentally, I need to point out that when I take account of the chargeback rules, all I could order JFL to do here is to refund all or part of the cost of the original bathroom unit. I could not ask it to refund Ms M for the £210.99.

If I am to order JFL to refund all or part of the cost of the bathroom unit, I must be satisfied that it acted incorrectly in relation to how it applied the chargeback rules to Ms M's complaint. As far as I can see JFL did not consider chargeback. That said a chargeback attempt will not always be an appropriate option, as is the case here. I say this because in the circumstances, where the supplier denied supplying the wrong item and it offered to replace the item nonetheless, there was no realistic prospect of any chargeback attempt being successful.

Therefore based on what I've said above JFL did not act incorrectly in relation to any potential chargeback it could have raised.

For all of these reasons, it follows I don't uphold Ms M's complaint.

My final decision

My final decision is that I don't uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 30 August 2023.

Joyce Gordon
Ombudsman