

Layby sales

Background

In mid-2022 a customer agreed to buy an Xbox Series X Combo for \$2,499.00 from an online provider. It was going to be a present for her nephew.

The customer agreed to pay the purchase price in weekly instalments on the understanding that after 12 instalments, the Xbox would be delivered to her. She would pay the rest of the purchase price off while getting to use the Xbox. This means it was a layby sales agreement.

Unfortunately, although the customer paid all the instalments as agreed, the Xbox was not delivered on time. The provider asked her to wait for two more weeks as they did not have the right product in stock. It was not delivered within that timeframe, so she contacted the provider again.

When the product did eventually arrive, the customer found it was an Xbox One with two faulty controllers and some additional items with packaging that had already been opened. The provider said they had given her extra accessories as a gesture of goodwill.

However, the customer was not happy as she believed they were used items. When she queried the state of the product, the provider told her it was refurbished. According to the provider she had agreed to that. But the customer said 'no', why would she pay \$2,499.00 for used goods?

The customer lodged a complaint with FDRS seeking a refund of all instalments, less \$250 so she could keep the Xbox she received for her nephew.

The provider offered a full refund if everything was returned in their original packaging. If the customer wanted to keep them, she could do so for no refund and the provider offered to waive the balance she owed. By this stage she had paid over \$700.00.

Next steps

FDRS worked with the customer and the provider to find out more information and to clarify their perspectives. For example, FDRS identified what contract terms applied between the parties.

Before FDRS could consider the customer's complaint further, we needed to see if it came within the jurisdiction of our service. We can consider "financial services" which are given a specific meaning by the law. Unfortunately, that definition of "financial services" does not include "layby sale agreements" so we could not make a decision on this complaint.

However, we did make the following observations to the customer and the provider to help guide them towards agreeing on a solution:

- The contract between them included a promise from the provider that the product was new.
- There was nothing in the contract documentation showing that the customer agreed to the product being refurbished.
- The price of \$2,499 seemed unreasonably high for the products in the condition received by the customer.
- The Consumer Guarantees Act applied which meant the provider had to guarantee that the product was of an "acceptable quality". If it did not, the customer was entitled to certain refunds under that Act.
- The Fair Trading Act applies to layby sales, which prohibits misleading or unfair conduct.

Case study

It appeared to FDRS that the provider could have prevented this situation by advising the customer upfront that it did not have the particular product in stock and by keeping in regular contact with the customer about the true state of what stock it had available.

It also appeared that the provider was not familiar with what was in its standard terms and conditions, so it potentially breached them by supplying a product that was not new.

Outcome

FDRS was pleased to help by pointing the customer and the provider in the right direction so that they could work together to find a solution.

Know before you buy

It's easy for consumers to be confused by the various options out there. There is a difference between layby sales and purchases using a buy now, pay later service. Layby involves paying in instalments and getting the item once it's paid off. Buy now, pay later allow you to receive purchases right away then pay it off. These services are often advertised as no interest, however extra costs and fees can be incurred if you miss payments or can no longer keep up to date with payments.

Some retailers also provide hire purchase and options to buy on credit. These options allow you to receive the item immediately, and pay for it over time in instalments, however interest and fees can often apply.

We recommend reading through all the terms and conditions before signing up for a purchase, and having a chat with a budget adviser if you find yourself relying on these options for essentials.

