

## **The complaint**

Mrs P complains that Creation Consumer Finance Ltd rejected her claim under section 75 of the Consumer Credit Act 1974.

## **What happened**

Mrs P purchased an integrated television bed from a retailer and entered into a finance agreement with Creation.

The bed was delivered to Mrs P's son's address. Soon after delivery, Mrs P's son experienced issues with the television not turning on automatically when it was raised. He reported the issue to the retailer who arranged for the bed to be inspected. Mrs P's son received conflicting information from the technicians as to whether the television was faulty or not.

Mrs P wasn't satisfied with the outcome of the inspection and contacted Creation to raise a section 75 claim.

In response, Creation said it had spoken to the retailer, who advised that the television was working as it should. Based on this, Creation rejected the section 75 claim.

Mrs P remained unhappy and complained to this service.

Our investigator upheld the complaint. He looked at the retailer's terms and conditions and said that the television supplied was of reduced functionality and therefore not of an equal standard. He recommended that Creation replaced the television with one that automatically turned on when raised.

Creation didn't agree. It said it didn't think it had an obligation to deal with the claim under section 75 because the credit agreement was in the name of Mrs P but the television bed had been supplied to her son.

## **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.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mrs P's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Creation's response to the section 75 claim wasn't fair or reasonable.

In order to satisfy the requirements to bring a section 75 claim, there has to be a debtor – creditor-supplier relationship. In this case, it was Mrs P who entered into the finance agreement and the goods were delivered to her son's address. Creation has said that because of this, there's been a break in the DCS relationship. I've thought about this. But Mrs P's son's name doesn't appear on any of the contractual documents, such as the

invoice. On the evidence, Mrs P entered into the contract and became the debtor under the finance agreement and had the goods delivered to a different address. Mrs P's son's name isn't on the invoice or the contract with the retailer, so I'm satisfied that the DCS requirement is met here.

I've gone on to consider whether there's been a breach of contract or a misrepresentation. The relevant law says that goods must be of satisfactory quality when supplied. Mrs P's son has said that when the television bed was demonstrated to him in store, the television automatically turned itself on when it raised from the bed. But the television supplied with his bed doesn't do this and he has to turn it on manually.

Creation has said that two types of television are supplied with the bed, one which turns on automatically and one which isn't. It said the type of television wasn't guaranteed at the point of supply.

I've looked at the terms and conditions of the contract. Under product specification, it says the retailer may supply goods with minor differences in specification and that where this is the case, any differences will result in the goods being of equal or improved standard.

Creation has said that these terms mean that the retailer is allowed to supply a different type of television. I disagree. The television supplied here is not of an equal or improved standard, because it has reduced functionality insofar as it doesn't turn on automatically. Because of this, I'm satisfied that there's been a breach of contract.

### **Putting things right**

To put things right, creation should arrange for the television to be replaced with a television which automatically turns on when it is raised from the bed.

### **My final decision**

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must arrange for the television to be replaced with a model which turns on automatically when raised.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 24 March 2022.

Emma Davy  
**Ombudsman**