

The complaint

Mrs Q complains about the quality of a bed she bought through a finance agreement with Creation Consumer Finance Ltd ("Creation").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

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 know it will disappoint Creation, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or whole, with a fixed sum loan, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

When considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint but I don't have to reach the same view as, for example, a court might reach if Mrs Q made a claim through them for breach of contract or misrepresentation.

There's clearly been a breach of contract here as the inspector sent by the supplier to look at the mattress confirmed it was faulty.

The relevant legislation gave Mrs Q a short term right to reject the goods within 30 days if there was anything wrong with them and as Mrs Q reported the fault in the first week she had that right. I've seen the product description on the fixed sum loan was a "*super king bed*" so I think when rejecting the goods Mrs Q could reasonably be expecting to reject the bed *and* the mattress, especially as one was not much use without the other and they were bought as a set.

If Mrs Q accepted a replacement instead of rejection the law may suggest she had waived her short term right of rejection. But I'm not persuaded there is sufficient evidence Mrs Q did accept a replacement. She says she didn't, and I think her actions in the first few weeks of ownership are consistent with wanting to reject the goods and understanding that rejection couldn't be achieved without allowing an inspection.

I'm also not persuaded that the fact the mattress was unwrapped by Mrs Q should impact on her right to reject the goods. Indeed, I can see that the supplier's terms say they don't.

So, I think Mrs Q should be allowed to reject the goods as they've not been of satisfactory quality.

Putting things right

Creation will need to cancel the agreement and they have a right to collect the goods should they wish. They have indicated that they are happy for Mrs Q to keep the faulty mattress or dispose of it and they've explained they'd be happy to reimburse the disposal cost if Mrs Q chooses to do so. They've not commented on whether they would want to collect the bed. Should they wish to do so they'll need to make arrangements with Mrs Q but if she has to dispose of the bed as well Creation should also refund reasonable costs to do that.

It's only fair that Mrs Q pays for the use she's had from the goods. I'd agree with the investigator's suggestion that Creation should therefore refund all finance instalments paid. But that they should be allowed to retain 50% of the instalments Mrs Q has paid in respect of that use from the date of purchase to the 1 March 2022, a date by which I think it's fair to suggest settlement could be reached and after which it wouldn't be fair for Mrs Q to still be paying for the goods.

Creation will need to add interest to any refunds.

My final decision

For the reasons I've given above I uphold this complaint and tell Creation Consumer Finance Ltd to:

- End the finance agreement with nothing left to pay and collect the goods, should they wish, in line with my comments above. Refund any reasonable disposal costs Mrs Q can evidence if the goods are not to be collected.
- Refund all finance instalments paid and add 8% simple interest per year to that refund. Creation can retain 50% of payments made from the date of purchase until 1 March 2022 in respect of the use Mrs Q has had from the goods.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Q to accept or reject my decision before 23 March 2022.

Phillip McMahon
Ombudsman