

The complaint

Mrs E complains about the way Creation Financial Services Limited ('Creation') responded to her claim made under Section 75 of the Consumer Credit Act 1974 ('Section 75').

What happened

Mrs E took a fixed sum loan with Creation for a sofa. However, Mrs E is unhappy with the quality of the sofa and as the supplier went into liquidation she approached Creation for help via Section 75.

In summary, Creation will not offer a repair, refund, or replacement. It initially said that Mrs E needed to get an inspection report to show the goods were not of satisfactory quality. Later on it said that Mrs E didn't have a valid claim under Section 75 because she financed the sofa for her daughter's home.

The matter had been referred to our service. Our investigator found there wasn't the correct 'debtor-creditor-supplier' agreement for Mrs E to have a valid Section 75 claim against Creation. So she didn't uphold the complaint.

Mrs E does not agree with this outcome. In summary, she says:

- she has the benefit of the sofa as she uses it; and
- she jointly owns it with her daughter as she has committed to pay for it via the credit agreement (which also creates a verbal contract with the store).

As the parties could not agree the matter has been passed to me for a 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.

Mrs E is represented in her complaint. Please note where I refer to what Mrs E has said it should be taken to include submissions made on her behalf.

Mrs E used a fixed sum loan from Creation to pay for the sofa which means that Section 75 is relevant to this case. Section 75 allows Mrs E in certain circumstances to hold Creation responsible for breach of contract or misrepresentation in respect of goods or services purchased using the credit afforded here.

However, there are certain technical criteria that have to be met for a Section 75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made. One of those is for a 'debtor-creditor-supplier' (DCS) agreement between the parties to the transaction.

Mrs E took out the credit agreement, so she is the 'debtor', while the 'supplier' for the purposes of the transaction is the sofa retailer receiving the payment. In order for there to be

a valid 'debtor- creditor-supplier' agreement I would need to be satisfied that Mrs E contracted with the supplier of the sofa for the purchase.

From what I understand the sofa was purchased for Mrs E's adult daughter (Mrs M). Mrs E has explained that Mrs M applied for and was declined the credit in her own name, so she stepped in to finance the goods. This indicates Mrs E did not intend to contract with the retailer of the goods from the outset – and had simply agreed with Mrs M to provide a means where she could facilitate finance for those goods. This is further reinforced by the contractual paperwork for said goods which list Mrs M as the customer of the retailer and include her home address for delivery.

I know that Mrs E has said she makes use of the sofa, but this in itself isn't enough to satisfy me that she formed a contractual agreement with the retailer here. I also don't dispute that Mrs E agreed to pay Creation back for the finance she took out. But in light of the other evidence available I don't agree that in taking out finance for the goods Mrs E has also formed a contract with the retailer. The evidence in this case strongly points to Mrs M having a contractual agreement with the retailer for the goods with Mrs E providing a means to facilitate the purchase.

Overall, for the reasons given here I don't agree there is the requisite DCS agreement for Mrs E to have a valid Section 75 against Creation in respect of the quality of goods. I know this outcome will come as a disappointment to Mrs E. However, in this case Creation is only potentially responsible for the quality of the goods via Section 75, so it is important that I consider the specific Section 75 criteria when determining if it should fairly do anything here.

My final decision

I do not uphold this complaint for the reasons given above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 25 May 2022.

Mark Lancod
Ombudsman