

The complaint

Mrs F is unhappy with how Creation Financial Services Limited has dealt with her request for a refund of payments she made for a sofa using her Creation credit card.

Mrs F's complaint is being dealt with by her representative, Mr F. For simplicity, I will refer to Mrs F throughout.

What happened

At the end of 2019, Mrs F ordered a sofa from a supplier I'll call J. She paid the deposit and the balance using her Creation credit card. The sofa was delivered in March 2020. A few weeks later, Mrs F told us part of the sofa's mechanism had stopped working. She told J about this and it arranged a visit from a technician from a company I'll call H. By the time of the visit, Mrs F was also unhappy with the sofa's material as it had started to sag.

Mrs F told us that, when the technician was there, he tried to fix the mechanism but couldn't and he needed to order replacement parts. She also told us the technician thought there was no problem with the sofa's material. Soon after, Mrs F asked J for her money back. But its position was that it should be given the chance to repair the sofa. Mrs F wasn't happy with this and asked Creation for a full refund. It treated this as a claim under S75 of the Consumer Credit Act 1974.

In short, Creation also thought that the supplier should be given the chance to repair the fault. But Mrs F said that J had tried – and failed – to fix the problem. She told Creation this meant she met the criteria for a full refund as set out by the Consumer Rights Act 2015 (CRA 2015). Creation didn't agree. Briefly, it said it couldn't see that a full attempt to repair the sofa had been completed.

One of our investigators looked into this for Mrs F. He also thought no repair had been carried out and Creation should be given the chance to rectify the fault. He said Creation should pay £75 compensation to Mrs F for the delays in dealing with this matter. Mrs F didn't agree with our investigator. She repeated that the repair hadn't worked, and she wanted a full refund.

As the matter remains unresolved, it's been passed to me for a decision.

I issued a provisional decision on 15 February 2022. In it I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached a different outcome to our investigator. I'll explain why. But first, I'm aware that I've summarised this complaint very briefly, in far less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the key issue here: should Creation have given Mrs F a full refund?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail or argument, only those that I'm satisfied are central to me reaching what I think is a fair outcome. Our rules allow me to do this. This reflects the informal nature of the Financial Ombudsman Service as a free alternative to the courts.

Section 75 of the Consumer Credit Act 1974 (S75) sets out that, in certain circumstances, as the provider of the finance used to pay for the sofa, Mrs F has a like claim against Creation for any breach of contract or misrepresentation by the supplier, J. I'm satisfied those circumstances apply here.

It's not disputed that there's been a breach of contract here as the sofa doesn't work as it should. All the parties accept there's a problem with the sofa's mechanism. What is disputed is what should be done to put things right. Mrs F is asking for a full refund of the cost of the sofa. She says the provisions of the CRA 2015 allow this.

In very general terms, the CRA 2015 sets out that, where there's a problem with the goods outside of an initial 30-day period, Mrs F has a right to require the supplier to fix the problem so that it conforms to the contract. If that repair isn't successful, or takes an unreasonable amount of time, she then has a final right to reject the goods. Creation says a repair hasn't been attempted. But Mrs F insists H's technician tried – and failed – to repair the sofa when he visited her property. So, I need to decide if a repair has been attempted and, if it has, do the goods now conform to the contract.

I'm satisfied that the key event here is when H's technician first visited Mrs F after she'd reported the problem to J. Mrs F's testimony is that the technician attempted a repair but made matters worse. She's been consistent on this point throughout. J, in an email to Mrs F, said it understood the first technician did attempt to rectify the problem, but generally he would have just been trying to identify the cause of the problem. I've looked at Creation's correspondence with Mrs F. It states that when the technician looked at the sofa, he found a missing or dislodged pin. He replaced this, but the mechanism still didn't work correctly.

Creation has said it doesn't consider this to be a repair. I don't agree. Mrs F asked J to fix the sofa and it arranged for a technician from H to come out. It's not disputed that the technician replaced the missing or dislodged pin. Mrs F says the technician tried to fix the problem. J says the technician tried to fix the problem. If replacing the missing or dislodged pin had fixed the problem, I'm satisfied that it's reasonable to think everyone would have accepted a satisfactory repair had been carried out. But the attempt didn't fix the problem.

So, I'm satisfied Mrs F gave the supplier one opportunity to repair the goods so they conformed to contract, and this hasn't worked. It follows that I'm also satisfied this means it would be fair and reasonable for Mrs F to be able reject the goods and for Creation to give her a refund.

I've also thought about if Creation should compensate Mrs F for the distress and inconvenience she's experienced due to its handling of her S75 claim. Our investigator thought Creation should pay Mrs F £75 for this. I agree.

I'm satisfied Creation could, and should, have settled this matter much earlier. I think by mid-September 2020, Mrs F had supplied detailed information to Creation about the reasons for her claim. Based on this, I think Creation had enough to settle her claim at that point. But it didn't. So, Mrs F has had to continue to pursue this matter. Taking all this into account, I think £75 is a fair and reasonable amount of compensation in the individual circumstances of this case.

In summary, for the reasons outlined above, I'm minded to direct Creation to:

- *refund the £2,900 cost of the sofa to Miss F's credit card account, backdating this to 21 September 2020 - being the date I think it should have settled her S75 claim. It should reconstruct her credit card account to reflect that the refund was given on this date. If, after doing so, this shows Mrs F would have been in credit at any point, it should pay 8% simple interest on this amount from the date she would have been in credit until the date Creation refunds this.*
- *arrange for the sofa to be collected from Mrs F at no cost to her.*
- *if any adverse information is showing on Mrs F's credit file due to this dispute – and I've not been made aware if it has – Creation should arrange for this to be removed.*
- *pay Mrs F £75 for the distress and inconvenience she's experienced.*

Creation didn't accept my provisional decision. Briefly, it said Mrs F received the goods in March 2020 but didn't report the fault until June 2020. It says this shows there was no fault found with 30 days which would have entitled Mrs F to a refund. Creation also repeated that no repair has been attempted and the retailer should be given an opportunity to rectify the issue.

Creation went on to say that if, in the future, the goods do need to be collected, it can't arrange this – instead, Creation would ask Mrs F to arrange for her council to collect the goods and it would cover the costs. Creation did agree that some form of compensation is due to Mrs F for the delays in dealing with this issue.

Mrs F accepted my provisional decision. She also pointed out that she'd paid off her Creation credit card in full.

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.

Creation has said that, as Mrs F didn't report the fault till a few months after the sofa was delivered, this shows no fault was found within the 30 days that would entitle Mrs F to a refund. But this is a moot point given that Mrs F isn't asking for a refund under her short-term right to reject under the CRA 2015 - which seems to be what Creation is implying.

The CRA 2015 sets out that if the goods don't conform to contract – for example there's a fault as there is here – Mrs F has a short-term right to reject the goods and get her money back. Generally, in Mrs F's situation, there's a 30-day time limit from when the goods were delivered for her to exercise this right. But as above, that's not what Mrs F is asking for.

If a problem arises after the short-term right to reject time limit has passed, other rights are available to Mrs F. As I set out in my provisional decision detailed above, the CRA 2015 sets out that, where there's a problem with the goods outside of the short-term right to reject, Mrs F has a right to require the supplier to fix the problem so that it conforms to the contract. If that repair isn't successful, or takes an unreasonable amount of time, she then has a final right to reject the goods. That's the right Mrs F wants to exercise. So, Creation's point about no fault being found within 30 days has no bearing on the outcome of this complaint. I'm satisfied the crux of this complaint remains the same: has a repair been attempted and, if it has, do the goods now conform to contract? I'm sorry to disappoint Creation here, but nothing it's said in its response to my provisional decision has changed my mind.

Creation says at no point was a repair undertaken. For the same reasons I gave in my provisional decision, I don't agree. H's technician identified a missing or dislodged pin. He

replaced this. If this fixed the problem, it would be fair and reasonable to say a repair had been carried out. So, I don't think it's fair and reasonable to say a repair wasn't carried out because replacing the missing or dislodged pin didn't fix the problem. I remain satisfied a repair was attempted and the goods didn't conform to contract afterwards. I'm also satisfied it follows that it would be fair and reasonable for Creation to now allow Mrs F to reject the goods and get her money back.

I'll now turn to Creation not being able to arrange to have the sofa collected. It's said it isn't able to do this. Instead, it's said it would ask Mrs F to arrange for the council to collect the goods and Creation would cover the cost. I think this is a sensible way forward, up to a point. But in order to minimise the inconvenience to Mrs F I think it would be fair and reasonable for Creation to pay her the council's likely costs up front. I've looked at the council's website. It shows a price range for the collection of similar items to be between £63 and £95. So, I think Creation should pay her £79 – the midpoint of this range - to cover this.

Finally, I'm pleased to see Creation accepts Mrs F should be compensated for the distress and inconvenience she's experienced due to the delays in dealing with this matter. It hasn't challenged the £75 outlined in my provisional decision. So, I see no reason to change this award.

For completeness, I know Mrs F has told us she no longer has a credit card account with Creation. I would point out that the redress outlined in my provisional decision does allow for this situation. Specifically, if after reconstructing her account, it shows Mrs F would have been in credit at any point, Creation should pay 8% simple interest on this amount from the date she would have been in credit until the date of settlement. This means that if the reconstruction shows there would have been a credit balance once the account was closed, Creation needs to refund this together with the 8% simple interest.

Putting things right

For the reasons outlined above, Creation should:

- refund the £2,900 cost of the sofa to Miss F's credit card account, backdating this to 21 September 2020 - being the date I think it should have settled her £75 claim. It should reconstruct her credit card account to reflect that the refund was given on this date. If, after doing so, this shows Mrs F would have been in credit at any point, it should pay 8% annual simple interest on this amount from the date she would have been in credit until the date Creation refunds this. *
- pay £79 to Mrs F to cover the likely cost to her of arranging for the sofa to be collected by her council.
- remove any adverse information showing on Mrs F's credit file due to this dispute.
- pay Mrs F £75 for the distress and inconvenience she's experienced.

* If Creation thinks it's required by HM Revenue & Customs to deduct income tax from the simple interest outlined above, it should tell Mrs F how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax if appropriate.

My final decision

My final decision is that Creation Financial Services Limited must take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 5 April 2022.

John Miles
Ombudsman