

The complaint

Miss W complains about the way Creation Consumer Finance Ltd ('Creation') responded to a claim she made under Section 75 of the Consumer Credit Act 1974 ('Section 75').

What happened

In January 2020 Miss W bought a sofa with a fixed sum loan from Creation. She says that delivery was delayed due to the Covid-19 pandemic and she finally received it around June 2020. She says the delivery process was unsatisfactory. However, she is also unhappy with the quality of the item. She says that she noticed several faults and wants to reject it for a refund. In summary she says the sofa:

- has foam padding missing
- has poorly finished coverings including a visible patch of glue
- has a stitching fault

Miss W wasn't able to get the matter resolved by the retailer as it went into liquidation shortly after she received the sofa. So she approached Creation in July 2020 to make a Section 75 claim as it provided the finance for the sofa.

In November 2020 Creation responded to Miss W and offered to inspect the sofa with a view to repair but Miss W didn't think this was acceptable. She says that she paid for a brand-new item which was faulty on delivery and to her this would feel like getting a refurbished item.

Creation would not offer Miss W anything more – so she complained about the way it handled her Section 75 claim. The matter ended up at this service and our investigator upheld the complaint. In summary, she concluded the sofa was of unsatisfactory quality and considered it fair and reasonable in the circumstances (and with Section 75 in mind) that Miss W be able to reject it for a refund. She also awarded compensation because of the way Creation handled the claim.

Miss W agreed with our investigator, but Creation did not respond so the matter has come to me for a final 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.

Miss W paid for the sofa using credit provided by Creation. In this case I am considering whether Creation has acted fairly and reasonably in the way it handled her request for help.

Section 75 can allow Miss W to hold Creation responsible for breach of contract or misrepresentation by a supplier in respect of goods or services purchased using the credit afforded here. However, there are certain criteria that have to be met for Section 75 to apply to a particular transaction. These criteria relate to the cost of the goods or services, the

parties to the transaction, or the way the payment was made. I am satisfied that these criteria are met here.

In order to decide if Creation has acted fairly in the way it handled the claim I have gone on to consider whether the supplier of the sofa has breached its contract or misrepresented things to Miss W.

the quality of the furniture

The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances.

The quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can also be aspects of the quality of goods.

Creation wants to get an expert report to assess the condition of the sofa. However, in the circumstances I don't think that is necessary. I say this because:

- Miss W has provided credible and consistent testimony as to the issues she had with the goods immediately on delivery; and
- she has provided photos which appear to be taken from when the sofa was first delivered and clearly show:
 - indentation of the padding (appears to be foam missing or damaged)
 - puckering of the material/poor stitching
 - what appears to be glue residue on the upholstery

What I have seen in the pictures is not what I would expect to see of a brand-new sofa. I also don't think what has happened is likely to be explainable by something which is Miss W's fault particularly as the photos look to have been taken when the sofa had just arrived.

All things considered I think that a reasonable person would not consider the goods that Miss W received to be of satisfactory quality. Because of this breach of the implied term in her contract with the supplier I think she is entitled to a remedy.

Creation have proposed repair should the sofa be found to be in need of this. But Miss W has provided credible testimony that on discovery of the faults she requested a refund from the supplier within a couple of days of delivery. The CRA allows Miss W to reject goods which are not of satisfactory quality within the first 30 days following the day of delivery. So in this case, I consider it fair and reasonable she is able to get a refund rather than having to accept a repair or replacement. Therefore, Creation need to collect the sofa at no cost to Miss W, end the finance agreement and refund her all payments she has made to date (including interest and charges) plus out of pocket interest. It should also ensure her credit file is not adversely affected by this matter.

Miss W has mentioned that the way the goods were delivered was very poor and that the item was left outside and not brought in and fully assembled. However, I do not consider it necessary to focus on these things in light of my findings about the quality of the sofa – which alone provides her with the remedy she seeks.

the handling of the claim

The unprecedented circumstances of the Covid-19 pandemic meant that a financial business such as Creation might not reasonably be expected to respond in as timely or tailored way as it would do usually. However, even keeping this in mind I note that it took too long (around four months) to provide a response to the Section 75 claim. This has caused Miss W avoidable distress and inconvenience so I think that Creation should also fairly pay the £50 compensation our investigator has already recommended.

Putting things right

Allow Miss W to reject the sofa and pay her the compensation as directed below.

My final decision

I uphold this complaint and direct Creation Consumer Finance Ltd to:

- arrange to collect the sofa at no cost to Miss W
- end the finance agreement and refund all payments Miss W has made to date (ensuring her credit file is not adversely affected by this matter)
- pay interest on the refunded payments at the rate of 8% simple per year from the date of each payment to the date of settlement
- pay Miss W £50 for distress and inconvenience

If Creation is required to deduct tax from my interest award it should provide Miss W with a certificate of tax deduction so she may claim a refund from HMRC if appropriate.

If Miss W accepts my decision and Creation does not pay the £50 compensation within 28 days of being notified of said acceptance then it should also pay 8% simple yearly interest on this amount calculated from the date of my decision to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 22 July 2022.

Mark Lancod
Ombudsman