

The complaint

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

What happened

In August 2019 Ms E purchased some new furniture from a supplier and entered into a fixed sum loan agreement with Creation.

Ms E discovered that one of the items had a defect. The supplier refunded £300 to Ms E and subsequently ceased trading. Ms E contacted Creation to raise a section 75 claim. Creation accepted that the item had a fault and advised Ms E that she would need to have the furniture repaired.

Ms E wasn't happy with the response and complained to this service. She wants to return the furniture and have the agreement cancelled.

Our investigator upheld the complaint. He said that Creation should have given Ms E the option of cancelling the agreement, receiving a refund and returning the goods, as well as the option to have the goods repaired or replaced. The investigator said that because the furniture was faulty at the point of supply, Creation should have cancelled the loan and refunded all payments made by Ms E, less the £300 already credited.

Creation didn't agree. It said that although there was a manufacturing fault with the furniture, Ms E hadn't told Creation about the fault until July 2020, almost 2 years after the point of supply. It said that it had contacted the supplier, who had advised that Ms E had been offered a replacement item but had then changed her mind and accepted a credit of £300 to keep the furniture. Creation said it had offered to pay for repairs to the item and refund the cost of the inspection report. It said it had then received an email from Ms E advising that she was progressing a claim with her credit card company. Creation said it was entitled to offer a repair because no previous repairs had been attempted. It said it wanted to see evidence that the claim hadn't been settled by the credit card company.

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 the right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Ms E'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 claim under section 75 wasn't fair or reasonable.

The relevant law says that goods must be of satisfactory quality and fit for purpose at the point of supply. If this isn't the case, then a breach of contract can be said to have occurred.

In this case, there's no dispute that there was a manufacturing fault with the recliner. Ms E obtained an inspection report which says that the recliner was faulty at the point of supply.

Based on what I've seen, I'm satisfied that the recliner had a fault which made it of unsatisfactory quality when supplied. So, I'm satisfied that for the purposes of section 75, a breach of contract has occurred.

The inspection report states that the recliner has a manufacturing fault. Because the recliner was faulty at the point of supply, I think Ms E should have been given the option to cancel the agreement and receive a full refund (as well as the option to have the item repaired or replaced). These options are consistent with Ms E's rights under the relevant legislation.

I appreciate that Creation weren't told about the fault until July 2020. Based on what I've seen, I'm satisfied that the fault was present at the point of supply and that Ms E raised her claim under section 75 with Creation as soon as she realised she was able to do so.

I've thought about whether the credit provided by the supplier impacts on Ms E's rights under the relevant legislation. I don't think it affects her right to bring a claim under section 75, but I think the credit of £300 should be taken account of.

I've read Creations comments regarding Ms E's claim against her credit card provider. I've seen information which shows that the credit card provider refunded the deposit paid on the credit card, so this doesn't affect any refund of sums paid under the loan agreement.

Putting things right

Based on everything I've seen, I'm satisfied that there's been a breach of contract and that Ms E is entitled to return the goods for a full refund. I don't think Creation acted fairly when it told Ms E it would arrange for a repair of the goods, because it didn't offer Ms E the option to cancel the agreement, which is one of the options available to her under the relevant legislation.

My final decision

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd

must: Cancel the agreement

Arrange for the furniture to be collected at no cost to Ms E

Refund all payments made by Ms E under the loan agreement less the £300 credit already paid, plus 8% simple interest from the date of payment to the date of settlement

Refund the cost of the inspection report (£48)

Pay £100 compensation for distress and

inconvenience Remove the agreement from Ms E's

credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or

reject my decision before 31 May 2022.

Emma Davy
Ombudsman