

The complaint

Mr C complains that Creation Consumer Finance Ltd rejected his claim under section 75 of the Consumer Credit Act 1974.

What happened

In December 2019 Mr C ordered furniture from a supplier and entered into a fixed sum loan agreement with Creation.

The furniture was delivered in June 2020. During delivery, one of the recliners was dropped by the delivery team.

Mr C says that the frame of the recliner was bent during the fall and that it made a clicking noise when used. He says there were other issues with the furniture, including a loose armrest on the sofa and loose upholstery on the recliner.

In June 2020 the supplier's technician attended to carry out repairs. The sofa armrest was repaired but not the recliner.

Mr C chased the supplier about the issues with the recliner. The supplier's technician attended again to look at the issue. A new recliner frame was ordered.

When the new frame arrived, the supplier technician attended to carry out repairs. Mr C asked the technician to repair the loose upholstery as well, but the technician said Mr C would need to speak to the supplier about this.

When Mr C used the recliner following the repairs, he noticed that the mechanism wasn't working correctly. The clicking noise was still present and the footrest didn't rise properly. Mr C reported this to the supplier.

The supplier carried out an inspection in August 2021 and concluded that the recliner wasn't faulty.

Unable to resolve matters with the supplier, Mr C raised a section 75 complaint with Creation.

Creation rejected the claim. It said the inspection had confirmed that there were no manufacturing faults.

Mr C remained unhappy and complained to this service. He says the recliner is still faulty.

Our investigator upheld the complaint. He said, having considered all of the evidence including the photos and videos supplied by Mr C, that he was persuaded that the recliner was faulty and that it wasn't of satisfactory quality at the point of supply. The investigator said that Mr C should be allowed to reject the furniture.

Creation didn't agree. It said it didn't think the photos and videos determined that there were manufacturing faults and said it wanted to see an independent inspection report from a

recognised body.

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 a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr C's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Creations response to the claim under section 75 wasn't fair or reasonable.

The relevant law says that goods must be of satisfactory quality when supplied. The quality of goods includes their general state and condition, as well as things like fitness for purpose, freedom from minor defects, safety and durability.

If the goods aren't of satisfactory quality, then a breach of contract can be said to have occurred and I'd expect the provider of credit to put things right, either by offering a repair or a refund depending on the circumstances of the case.

I've looked at the available evidence. I can see that when the furniture was delivered, the delivery driver reported that the sofa arm was coming away. This is consistent with Mr C's testimony that the furniture was dropped during delivery and that the armrest on the sofa was loose.

The sofa was inspected the week after delivery. The report dated 18 June 2020 focussed on the loose armrest. It doesn't mention the recliner.

The sofa was inspected again in August 2021. The report states "recliner chair back is loose, brackets loose, tightened but still some movement within tolerance". The report doesn't comment on the recliner mechanism. However, the statement that the recliner chair back is loose, and needed to be tightened, suggest that there was an issue with the recliner.

Creation relies on the report dated August 2021 as evidence that the recliner wasn't faulty. However, I don't think the report on its own is enough to persuade me that there wasn't a fault. To give the report some context, it's necessary to take into account the communication between Mr C and the supplier which followed shortly after the report had been completed. In this, Mr C states that since the new frame was fitted to the recliner, the seat doesn't properly extend at the front and the mechanism makes a clicking sound during operation.

Based on what I've seen, I think it's fair to conclude that as at August 2021, there had been issues with the recliner since the point of supply which necessitated a new frame to be fitted and that following this repair, some issues remained, including a loose back. Based on Mr C's testimony, which has been consistent throughout, I'm persuaded that there were issues with the recliner as he has described in his email to the supplier, including the seat not extending properly and the mechanism clicking.

However, the inspection report dated August 2021 states that the recliner isn't faulty, so this service asked Mr C to provide more evidence of the faults he's described.

I've reviewed the photos and videos provided by Mr C. One of the photos shows the two identical recliners side by side. I can see that the seat of one of the recliners doesn't extend out as far as the other recliner. In the video, I can hear the recliner clicking as the mechanism operates.

I've also looked at photos of the frame of the recliner. Mr C says that the frame is bent. I can't say for certain whether this is the case, however, I can see that there is a space between the cushion and the arm, and that the seat isn't straight.

Based on what I've seen in the photos and videos, I'm persuaded that there is a fault with the recliner. It doesn't operate in the same way as the identical recliner. I don't think a reasonable person would expect two identical recliners, purchased at the same time, to operate differently. Further, I don't think a reasonable person would expect a recliner to have an obvious gap between the cushion and the arm, or to click when the mechanism is operating.

The relevant law says that goods must be of satisfactory quality. I've taken into account that the recliner was brand new when supplied. The issues reported by Mr C occurred within the first 14 months of the recliner being delivered. The recliner hasn't remained free from minor defects for a reasonable period of time from the point of supply.

Based on what I've seen, I don't think the recliner is of satisfactory quality. This means that there's been a breach of contract and that Creation is liable under section 75.

Creation has said that it doesn't agree that the photos and videos show that the recliner has a manufacturing fault. I've thought about this. However, I'm satisfied that the photos and videos clearly demonstrate that the recliner has a fault. I don't think it's necessary to obtain further evidence. Further, and given that there is a history of issues with the furniture which necessitated four separate visits to Mr C's property by the supplier's technician, if Creation wanted to see an independent inspection then I think it should have arranged for this to take place following the final repair in August 2021, as it was clear then that there were issues with the furniture which had been ongoing since the point of supply.

Putting things right

As I've said above, the supplier has had more than one opportunity to repair the furniture. I don't think it's reasonable to expect Mr C to accept further repairs. Mr C should be allowed to reject the furniture.

I've thought about whether Mr C should receive a refund of all payments he's made under the agreement. I'm satisfied that the recliner is faulty. However, Mr C has been able to use it, albeit that his use was impaired by the fact that the seat doesn't extend fully. So, I don't think it's fair to ask Creation to refund all of Mr C's payment. Creation should be allowed to deduct 10% for the use Mr C has had of the recliner. So, it should refund 90% of Mr C's payments.

My final decision

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

End the agreement with nothing further to pay

Arrange for the furniture to be collected at no cost to Mr C

Refund the deposit of £100

Refund 90% of all payments made by Mr C

Pay 8% simple interest on all sums refunded from the date of payment to the date of settlement

Remove any adverse information relating to the agreement from Mr C's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 31 July 2022.

Emma Davy
Ombudsman