

## The complaint

Mr S complains about the quality of three items of furniture he acquired under a fixed sum loan agreement (“agreement”) with Creation Consumer Finance Ltd (“Creation”).

## What happened

In August 2019 Mr S decided to buy, from a company that I will call “H”, three items of furniture, a matching 3-seater sofa, 2-seater sofa and chair.

Based on the order form supplied by Mr S (from H), he was charged the following:

• 3-seater sofa	£1,874.00 less 15% (£282.00)	£1,592.00
• 2-seater sofa	£1,599.00 less 15% (£240.00)	£1,359.00
• chair	£1,249.00 less 15% (£188.00)	£1,061.00
• sub total		£4,012.00
• further 7.5% discount		(£302.40)
• sub total		£3,709.60
• delivery		£69.00
• total		£3,778.60

Based on the agreement Mr S entered into with Creation he was charged the following:

• sofas	£3,318.60
• insurance	£460.00
• total	£3,778.60

And Mr S undertook (everything else being equal) to pay a deposit of £380.00 to H and £3,398.40 (48 monthly payments of £70.80) to Creation – making a total repayable of £3,778.40.

Mr S says two of the three items (3-seater sofa and chair) were delivered faulty and because H didn’t repair or replace them (despite saying that it would do so) he decided, in October 2020, to bring a claim against Creation under Section 75 of the Consumer Credit Act 1974 (“section 75”).

In April 2021, some six months after Mr S first claimed against Creation under section 75, Creation offered to reduce Mr S’ agreement liability by £2,653.00 (£1,592.00 for the 3-seater sofa plus £1,061.00 for the chair) and to refund him the £48 he had incurred in getting (in February 2021) a third party inspection report on the three items.

Unhappy with Creations offer, Mr S complained to our service where matters were considered by two investigators, with the second investigator concluding that Mr S' complaint should be upheld and that Creation, to fairly and reasonably compensate Mr S, should:

Refund him:

- the deposit he paid of £380
- all payments he had made under the agreement
- the £48 he incurred in getting a third party inspection report on the three items in February 2021
- the £460 he paid for insurance

Pay him:

- interest on the £48 he incurred in getting a third party inspection report on the three items in February 2021
- £2,200.90 for new carpet, his current carpet having been damaged beyond repair by the three items
- £200 for the distress and inconvenience this whole matter had caused him

Creation didn't agree with the investigator's findings, so matters were referred to me for review and decision.

I issued a provisional decision on this case in May 2022. In summary I said:

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

It's clear that both parties have very strong feelings about this complaint. Both parties have provided detailed submissions in support of their respective views which I can confirm I've read and considered in their entirety. However, I trust that the parties will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. In this case the relevant law includes section 75. However, I would like to make clear that although I'm obliged to take into account the relevant law (in this case section 75) when I think about what's a fair and reasonable way to resolve this complaint, I don't have to reach the same view as, for example, a court might reach if Mr S made a claim via this 'route' for breach of contract or misrepresentation.

Section 75, in certain circumstances, provides protection to consumers purchasing goods or services with credit. Creation accepts that section 75 applies in this case and I agree. This means that Mr S (as he has done so) can claim against Creation for any misrepresentation or breach of contract by H in the supply of the three items. So, I've taken section 75 into account when deciding what is fair and reasonable in the particular circumstances of this case.

*was Mr S supplied with damaged and/or unsatisfactory quality items by H?*

Given that Creation, under cover of its FRL dated April 2021, offered Mr S a £2,653.00 credit against his agreement liability, I don't think it's in dispute that Mr S was supplied (by H) with at least a 3-seater sofa and a chair that was damaged and/or of unsatisfactory quality. So other than saying – at least at this stage – that I agree that Mr S was supplied (by H) with items that were damaged and/or of unsatisfactory quality, I make no further comment or finding on this particular point.

*should Creation have to repair or replace the damaged items supplied to Mr S by H, or should it have to make a refund to Mr S?*

Taking everything into account I'm satisfied that in the particular circumstances of this case a refund, rather than a repair or replacement, is the most appropriate remedy here. I've come to this conclusion for the following reasons:

- Based on what has been said and submitted it's my understanding that H, right from the outset, offered Mr S a refund. So, in my view, Mr S should be allowed this option now.
- It's not clear that the damaged items can be repaired, or at least repaired to a satisfactory standard.
- Mr S has allowed ample time for repairs to be undertaken. And given that approximately two and half years have passed since Mr S took delivery of the items I don't think it would be either fair or reasonable to find that he should have to accept a repair now.
- It's my understanding that the items that Mr S purchased are no longer in production or available to purchase meaning replacement of the two damaged items – with 'like for like' new items (so as to maintain a match with the undamaged third item) – isn't an option.
- Given that Mr S has been with the three items now for two and half years – with two of the items being damaged and/or of unsatisfactory quality – I'm not persuaded (although never an option/remedy offered by Creation) that he should have to accept a replacement of all three items as a remedy. In my view the fair and reasonable thing in this case would be for Mr S to be able to purchase items of his own choosing and in his own time.

*how much should Creation have to refund Mr S?*

I note Creation says it should only have to refund the cost of the two damaged items, not all three. But I disagree.

Based on what has been said and submitted I'm satisfied that Mr S purchased three items of matching furniture and the 'set of three items' as a whole was damaged and/or of unsatisfactory quality. And because of this, Mr S should reasonably be refunded the cost of all three items, not just two.

To achieve this, I find that Creation should:

- Collect, at no cost to Mr S, the three items. Alternatively, pay Mr S £200 to cover the cost and inconvenience of having to dispose of the three items himself.
- Cancel the agreement with nothing further to pay.
- Refund the £380 deposit paid by Mr S together with interest to reflect the time he has been without this money.
- Refund all payments made by Mr S under the agreement together with interest to reflect the time he has been without these monies.

By doing the above Mr S will not be left out of pocket as a result of what H charged him for the three items, including any incidental costs such as delivery and insurance.

*what else should Creation have to do to fairly and reasonably compensate Mr S?*

I also think that Mr S has incurred additional costs and been caused both distress and inconvenience by Creations' delay in deciding his claim for which he should be fairly compensated for. And in this respect I find that Creation should:

- Refund Mr S the £48 he incurred in getting a third party inspection report on the three items in February 2021 together with interest to reflect the time he has been without this money.
- £200 for the distress and inconvenience it has caused him.
- Ensure any adverse information it may have recorded with third party credit reference agencies in respect of Mr S' agreement is removed.

I would now like to address what Mr S says is damage to his carpet caused by the three items and for which the second investigator made an award of £2,200.90.

Based on what has been said and submitted I'm satisfied that the three items supplied to Mr S, by H, have made marks in, or caused damage to, his carpet. But I'm not persuaded it would be fair or reasonable for me to direct Creation to pay Mr S £2,200.90 for this.

Now had Mr S been happy with the quality of the three items supplied to him by H, I don't think he would be making a claim for damage to his carpet, nor would I expect him to have done. This is because I would have expected Mr S to accept that the supplied three items would leave marks in, or cause damage to, his carpet.

But had Mr S been happy with the three items supplied to him by H he would have had the choice never to move them and therefore the choice to never have 'on show' the resulting marks in, or damage to, his carpet.

Now it could be said that Mr S could buy three replacement items of exactly the same dimensions as those supplied to him by H and place these items in the same position as those he was replacing. And this would mean that the marks in, or damage to, his carpet wouldn't be on show. However, I'm not persuaded that this would be easy for Mr S to do, or indeed even possible for him to do.

But I'm satisfied that Mr S can buy three replacement items with similar dimensions to those supplied to him by H meaning some, or even most, of the marks in, or damage to, his carpet can be hidden from show.

I'm also mindful that Mr S' current carpet is seven years old and cost less than £2,200.90 and that with the passage of time the marks in, or damage to, the carpet might lessen. So, with all this in mind – and I will consider anything Mr S or Creation might want to say or submit on this particular point – I find the fairest outcome in this respect is for Creation to pay Mr S £400 by way of a contribution towards a new carpet, not the whole cost of a new one.

So, in summary, I'm currently minded to uphold Mr S' complaint but minded to direct Creation to compensate him in a different manner to that recommended by the second investigator.

Creation responded to my provisional decision to say it accepted it.

Mr S responded to my provisional decision to say that to be fairly compensated Creation should have to pay him closer to £1,500.00 by way of a contribution towards a new carpet.

### **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.

Mr S says that a sum closer to £1,500.00 would be a fairer sum for Creation to have to pay him by way of a contribution towards a new carpet.

In support of his view in this respect, Mr S has provided a calculation which I can confirm I've considered very carefully.

Now had Mr S' carpet sustained damage, such as a large red wine spill right in the middle of it that wouldn't come out (and assuming Creation could be held responsible for such damage) then I might have found that it should have to pay Mr S more than a £400 contribution towards a new carpet, and possibly a sum closer to the £1,500.00 Mr S is now looking for.

But what has been sustained here is marks in, or damage to, Mr S' carpet that would have occurred in any event, in other words occurred regardless of the quality of the three items supplied. Furthermore, these marks in, or damage to, Mr S' carpet can – following the purchase by Mr S of three replacement items – be hidden from show, at least to some degree and it's quite possible these marks or damage might lessen over time or even disappear altogether.

So, I'm simply not persuaded it would be fair or reasonable to direct Creation to pay anything more than £400.00 by way of a contribution to a new carpet, although as noted in my provisional decision a court might come to a different finding to me in this respect. Given what I say above and given that Creation has confirmed its acceptance of my provisional decision, I see no reason to depart from my provisional findings and I now confirm them as final.

### **My final decision**

My final decision is that I uphold this complaint and Creation Consumer Finance Ltd must:

- *Collect, at no cost to Mr S, the three items. Alternatively, pay Mr S £200 to cover the cost and inconvenience of having to dispose of the three items himself.*
- *Cancel the agreement with nothing further to pay.*

- *Ensure any adverse information recorded with third party credit reference agencies in respect of the agreement is removed.*
- *Refund the £380 deposit paid by Mr S together with 8% simple interest per annum from the date of payment to the date of settlement\*.*
- *Refund all payments made by Mr S under the agreement together with 8% simple interest per annum from the date of each payment to the date of settlement\*.*
- *Pay Mr S £400 for the damage caused to his carpet by the three items.*
- *Refund Mr S the £48 he incurred in getting a third party inspection report on the three items in February 2021 together with 8% simple interest per annum from the date of payment to the date of settlement\*.*
- *Pay Mr S £200 for the distress and inconvenience this whole matter has caused him.*

*\* HMRC requires Creation Consumer Finance Ltd to take off tax from this interest. If Mr S asks for a certificate showing how much tax has been taken off this should be provided.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 June 2022.

Peter Cook  
**Ombudsman**