

The complaint

Mrs C complains that Creation Financial Services Limited mishandled her claim under section 75 of the Consumer Credit Act 1974 ("section 75") for a faulty sofa.

What happened

In March 2020 Mrs C purchased a sofa and two armchairs from a retailer which cost £1,400. Mrs C also took out a five-year warranty to cover the furniture for any structural or accidental damage. She paid for the items using a credit card she held with Creation. Mrs C says that the furniture was to be delivered but due to covid and the store having to close Mrs C made her own arrangements to collect.

Mrs C says that the sofa required some assembling and when this had been done, she saw that the sofa's seat cushions, and its back weren't in alignment. She took some photos of the sofa.

As the store wasn't open again until July 2020 Mrs C didn't immediately raise the problem about the sofa with the retailer. She visited the store when it had re-opened and showed the staff the photos she'd taken of the issues with the sofa. The manager asked her to send the photos via email which she did, and the store arranged for the sofa to be inspected.

A technician attended Mrs C's home and inspected the sofa in September 2020. The technician said there wasn't an inherent fault with the sofa and that the issue with the seating not being in alignment was due to wear and tear and natural settlement. They said the middle seat hadn't been used as much as the other two and this had meant the central cushion now sat proud. The technician offered, as a gesture of good will, to add extra padding to the seat. Mrs C says this didn't rectify the fault.

Mrs C went back to the store, but they said as there was no fault with the sofa, they couldn't assist her further. Unhappy with the store's response Mrs C raised a claim under section 75 with Creation.

Creation declined Mrs C's claim as it said looking at the inspection report obtained by the store there was no evidence of a fault with the sofa. Creation informed Mrs C of her rights to make a complaint to this service.

Mrs C also decided to make a claim under the warranty for structural damage to the sofa. The warranty company arranged for the sofa to be inspected in February 2022 and, following this, it accepted Mrs C's claim. The warranty company arranged for repairs to be carried out to the sofa but unfortunately, the repairs weren't then possible. As an alternative solution, the warranty company offered Mrs C £200 as a discount off the cost of the sofa or a £1,399 credit note to be used in the store to order items over the next eight weeks.

Mrs C declined the alternative offers from the warranty company as she said she was informed by the store that it didn't have any stock she could order within this price range and they no longer stocked this particular range of sofas. She says she thought the £200 payment was insufficient.

Our investigator recommended that Mrs C complaint about Creation's handling of her section 75 claim should be upheld. He said there was limited information to consider because Creation hadn't provided its file for Mrs C's section 75 claim. This meant he hadn't seen the inspection report prepared by the store, however, on the evidence that was available, he thought it was more likely than not that the sofa hadn't been of satisfactory quality at its point of supply to Mrs C.

Our investigator said that Mrs C had been concerned about the padding in the sofa seats soon after she'd acquired it, and she had taken photos of its condition at the time. He said he noted the warranty company had also found there was a structural fault with the sofa which was linked to the padding and so it appeared likely this was the same issue as found by Mrs C in March 2020.

Although the two chairs that had been purchased by Mrs C at the same time as the sofa were fault free, they were bought as part of a set with the sofa. In light of that, our investigator said it would be fair here, as repairs to the sofa weren't possible, for Creation to reimburse Mrs C the full amount of £1,400. He said it should also arrange the collection of the furniture from Mrs C.

Mrs C agreed with our investigator's view, but Creation didn't respond. So, the complaint has been passed to me as the parties hadn't reached an agreement.

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.

My role here is to decide whether Creation has acted fairly and reasonably in its response to Mrs C's claim under section 75. However, Creation hasn't provided its file, so I've considered the evidence that has been sent in by Mrs C when reaching my decision. Where evidence has been missing then I have decided what I think it the most likely thing to have happened.

Mrs C no longer holds the credit card she used to purchase the sofa and armchairs and because the account is closed, she hasn't been able to access the statements. However, although I haven't seen corroborating proof Mrs C used her credit card to purchase the items, I've seen that Creation has accepted it was used because it considered her section 75 claim. Mrs C also says her practice was to clear the balance on the card each month and this was the same after she'd bought the furniture.

I've seen that Mrs C attempted to sort the issue out with the retailer first, and that this was delayed because the store was closed for some months due to the pandemic. However, Mrs C took photos of the sofa a short time after it had been collected and assembled. Looking at these, I think they clearly show that the seats of the sofa were uneven and misaligned.

I've also seen that Mrs C disagrees with the conclusion reached by the technician who inspected the sofa at the request of the store. Although I haven't seen this report, I am aware that the technician said that the issue with the sofa's seating being in misalignment was due to wear and tear and the seating settling. The store then said it was unable to assist Mrs C further with the issues with the sofa.

Mrs C then raised her section 75 claim with Creation and also made a claim under the sofa's warranty on the grounds that it had a structural fault.

Section 75 of the Consumer Credit Act 1974 may apply when the goods purchased via

a credit agreement cost over £100 and up to a limit of £30,000. The general effect of the section is that if a consumer has paid for goods or services with a credit agreement and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider, which here is Creation.

Creation said that in light of the conclusion of the inspection report there was no evidence the sofa had a fault and there hadn't been a breach of contract. I don't know if when reaching this decision, Creation had considered the photos that Mrs C had also taken shortly after collecting and assembling the sofa.

Although I haven't had the benefit of reading the inspection report, I'm not persuaded that the conclusion it reached is fair. This is because it doesn't appear likely that the technician provided an explanation as to why the sofa had the fault with the misaligned seating from its point of assembly in March 2020. There isn't a suggestion for instance that the sofa had been put together incorrectly by Mrs C or her husband. So, I'm unclear why the technician decided it was due to wear and tear and settling other than this was based on the time that had passed between Mrs C acquiring the sofa and their visit to inspect it.

I've also seen that Mrs C made a claim under the sofa's five-year warranty which led to a further inspection of the sofa. This claim was made many months after her complaint to the store and the second inspection took place in February 2022 which was nearly 18 months later. The warranty company accepted Mrs C's claim for a structural issue and this was in respect of the padding on the seats of the sofa. The warranty company's inspection found that there was a fault with the padding, and this appears to be the same issue raised by Mrs C with the store back in July 2020 and which she had found in March 2020. I think there is sufficient evidence to find that there's an inherent fault with the sofa and that it wasn't of satisfactory quality at the point of supply. I think there was a breach of contract.

So, I think in light of the evidence that I've seen, Creation didn't handle Mrs C's section 75 claim fairly. It appears to have relied only on the store's inspection report and hasn't considered the contradictory evidence provided by Mrs C which was supported by photos. I think it should have done more when looking at her claim and, if it had, that it's likely it would have considered there had been a breach of contract as to the condition of the sofa.

As the sofa wasn't of satisfactory quality at the point of supply then under the Consumer Rights Act 2015 there would have been a right of repair. However, as found by the warranty company, repair wasn't possible and so I think it would be fair for Mrs C to now be able to reject the sofa and be reimbursed its cost.

Although Mrs C's section 75 claim was in respect of the sofa only, I understand she had bought it as part of a set with matching armchairs. As the sofa can't be repaired and any replacement would be unlikely now to be an exact match to the armchairs due to the passage of time, then I think a settlement should take into account the furniture set and not just the sofa. The armchairs aren't what Mrs C would want if they don't match a new sofa. She had wanted and purchased a matching set.

For the reasons given, I'm upholding Mrs C's complaint and think it would be fair for Mrs C to now be reimbursed the full cost of the sofa and armchairs by Creation.

Putting things right

I'm asking Creation to reimburse Mrs C the total cost of the furniture which amounts to £1,400 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.

My final decision

For the reasons set out above, I'm upholding Mrs C's complaint and I'm asking Creation Financial Services Limited to reimburse Mrs C the total cost of the furniture which amounts to £1,400 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 01 August 2022.

Jocelyn Griffith
Ombudsman