

The complaint

Mrs W complains Creation Consumer Finance Ltd (Creation) rejected her claim under section 75 of The Consumer Credit Act 1974 in respect of sofas that she believes wasn't of satisfactory quality. She's also unhappy they've recorded adverse information on her credit file.

What happened

The details of this complaint are well known by both parties, so I won't repeat them here. Instead, I will focus on the reasons for my 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.

Having done so I've decided to uphold Mrs W's complaint. I'll explain why.

In March 2020, Mrs W acquired sofas through a fixed sum loan agreement with Creation. They were supplied by a third party who I will refer to as M. The goods were originally delivered in June 2020 but Mrs W reported they were faulty and parts were missing. M agreed to send a replacement within eight weeks. In October 2020, Mrs W received the missing scatter cushions but the replacements for the sofas weren't received. As she had difficulty contacting M as they had since gone into administration, she contacted Creation to complain.

This complaint was considered under Section 75 of the Consumer Credit Act 1974. This sets out that in certain circumstances, the finance provider (Creation) can be held jointly liable if there has been a breach of contract or misrepresentation of the goods by the supplier (M).

Shortly after taking delivery of the sofas in October 2020, Mrs W complained again that they weren't of satisfactory quality. She reported there was damage to one of the arms and the seat cushions weren't the correct size. Therefore I've considered whether there was a breach of contract. In doing so, I've taken into account the relevant legislation which is the Consumer Rights Act 2015 (CRA). It says that under a contract to supply goods, there's an implied term that the goods are of satisfactory quality and are of a standard that a reasonable person would regard as acceptable, taking into account things like the description of the goods, the price and other relevant circumstances. Other considerations include its fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Since the complaint has been at our service, Creation had arranged for an independent inspection to be carried out in February 2022. Having read the report, it's clear there are faults with the sofas. It reports there is damage to the arm of the three seater sofa and there are manufacturing faults with the seat cushions and interiors as they are the wrong size. On that basis, I'm not satisfied the sofas were of satisfactory quality when it was supplied to Mrs W, meaning there was a breach of contract. Creation don't appear to dispute this as they've

offered to pay for the repairs, so it's fair to say they accept they are liable. However Mrs W doesn't want a repair so I must decide what is fair to put things right.

The CRA also provides consumers the short term right to reject the goods (30 days) if it's not of satisfactory quality. Creation considers the date of delivery to be October 2020 which is when the last parts of the sofa were delivered. Based on the evidence I've seen, within 30 days of the delivery, Mrs W complained about the faulty sofas. Moreover, she had already asked for a replacement in June 2020 which she had expected to be delivered in October 2020 but this wasn't received. I don't find a replacement was provided within a reasonable period of time so I can understand why this caused inconvenience for Mrs W. She said she's not willing to accept a repair as offered by Creation and given what has happened thus far, I consider it fair and reasonable for Creation to allow her to reject the goods.

To put things right, Creation should end this agreement with nothing further for Mrs W to pay. They should collect the sofas at no cost to her and remove any adverse information about this agreement from Mrs W's credit file.

I must take into account, Mrs W has been in possession of the sofas for quite some time, since October 2020. So it's fair to say she has had use of them, although impaired. In light of the same, I consider it reasonable she pays for the time she's had use of the sofas. The CRA allows for this to happen however it doesn't provide an exact method to calculate the same. In such situations, our service's approach is to consider all the circumstances and decide what's fair and reasonable. Having carefully considered the investigator's thoughts on this, I find his approach was fair. I won't repeat his calculation here as this has been explained already in this opinion. But in summary, as Mrs W hasn't made any repayments towards the agreement, Creation would be entitled to deduct £324.28 from her advanced payment of £350 for use of the sofas. This would leave a total of £25.72 to be returned to Mrs W.

I've also considered Mrs W's comments about the negative information recorded on her credit file and the impact this has had on her existing limits on her credit cards. For the reasons already explained above, Creation should remove any adverse information about this agreement from her credit file. I must take into account a financial business' decision to lower an individual's credit score can be due to a number of factors, including but not limited to information recorded by financial businesses. In this case, there is insufficient evidence for me to reasonably say Mrs W's credit limit was reduced as a direct result of the adverse information recorded by Creation. So in regard to that aspect, I won't be asking them to do anything to put things right.

My final decision

For the reasons set out above, I've decided to uphold Mrs W's complaint.

To put things right, Creation Consumer Finance Ltd must:

- End the agreement with nothing further for Mrs W to pay;
- Collect the goods at no cost to her;
- Refund £25.72 to Mrs W;
- Remove any adverse information about this agreement from her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 6 February 2023.

Simona Charles
Ombudsman