

## The complaint

Mrs M complains that Creation Consumer Finance Ltd rejected her claim under section 75 Consumer Credit Act 1974 in respect of faulty furniture.

## What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so instead I'll focus on giving 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 agree with the conclusions reached by the investigator for the following reasons:

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

The chain is in place so I have to address the issue of whether there was a breach of contract or misrepresentation.

The relevant law says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory*". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

The sofa and chair were ordered in October 2020 and were delivered in January 2021. Mrs M complained shortly after the furniture was delivered and the merchant sent a technician to inspect it in early April 2021. It was inspected a week or so later by an independent company paid for by Mrs M.

The merchant's technician didn't consider the sofa or chair to be faulty, but the inspector used by Mrs M came to a different conclusion. So I have to weigh up two opposing views

when reaching my decision.

I consider this to be a finely balanced decision, but one of the factors which I consider to be relevant is the short period of time between delivery and the issue arising. I can understand that over a period of time the leather covering could lose some tautness and begin to sag. However this has occurred within a few weeks or months and with little use by Mrs M. She has pointed out that due to the pandemic she few if any visitors. In that timespan it seems reasonable to expect the furniture to remain much as it did when delivered.

Mrs M's inspector considers the filling to be inadequate and so it doesn't provide sufficient support for the leather. In turn the merchant takes the view that this movement is natural and it needs to be dressed regularly. The report says it is due to normal foam relaxation.

I have noted the manufacturer's instructions state that: *"Leather is inclined to stretch and this will show as creasing to cushion tops. On deep-buttoned furniture this can lead to opening of pleats which is not a fault but is normal for this type of upholstery."* So it is reasonable to expect some movement. However such movement after a matter of a few weeks seems excessive.

I believe the report from Mrs M's inspector sums up the issue succinctly as follows:

*"The main cause of sagging is that the leather isn't getting the support it needs from the foam. Leather does stretch naturally, so it needs a firm foam base to support the weight of a person without sagging."*

*I would suggest the materials that have been used are an inadequate quality or haven't had the correct amount of filling in them from the manufacturer, which explains why the suite has failed."*

*The suite has inadequate poor-quality foam fillings. There are two main reasons behind the seams being out of alignment, firstly it could be due to how the leather has now stretched from the foam deteriorating or it has simply been mis-manufactured."*

*In my opinion I would suggest this isn't within manufacturers tolerance. To confirm the exact reason behind the jolt/creak within the mechanism of sofa and the pressure within the lever of the armchair, they would both need to be stripped down in a workshop to diagnose the exact fault. However, from my visual inspection I can confirm there is a fault with both items."*

While I appreciate the merchant does not trust the impartiality of the inspector it has not provided any evidence for that claim and I have no reason to doubt what he has said. It could be argued that the vendor's technician is not independent. However, I have weighed up both reports and I find the more detailed one from Mrs M's inspector to be more persuasive.

### **Putting things right**

Mrs M should be allowed to reject the furniture.

### **My final decision**

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

- End the agreement and collect the sofa at no cost to Mrs M.

- Refund Mrs M's total deposit of £1,000; pay interest on this sum at the rate of 8% simple each year from the date of payment to the date of settlement.
- Refund 20% of each monthly payment Mrs M has paid and pay interest on this sum at the rate of 8% simple each year from the date of payment to the date of settlement. This reflects the use Mrs M has had of the furniture.
- Pay Mrs M £150 to cover the costs of the independent inspection report.
- Pay Mrs M £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 29 August 2022.

Ivor Graham  
**Ombudsman**