

The complaint

Mr C complains that Mitsubishi HC Capital UK Plc (trading as Hitachi Personal Finance) (HPF) unfairly rejected a claim he made under section 75 of the Consumer Credit Act 1974 (CCA) about goods he bought with a loan from HPF.

What happened

Mr C took out a fixed sum loan agreement with HPF in November 2019 to buy two sofas from a supplier that I'll call N. The sofas (one two seater and one three seater) cost nearly £2,000. Mr C paid a deposit of £500 and agreed to repay the loan over 24 months at around £65 a month. In May 2020 he contacted N because the sofas were creaky and he thought there was something wrong. N arranged for a specialist technician (from a company that I'll refer to as H) to inspect both sofas in August 2020 but he didn't find any faults. The technician thought the noise was the result of placing the sofas on a laminate floor and he suggested felt pads should be added to the feet to alleviate the sound.

Mr C remained unhappy. He felt the technician didn't inspect very thoroughly. He says the technician said he'd check the noise but nothing else and based his conclusions on what he'd seen in other cases - not the issues present with these particular sofas. Mr C tried adding foot pads but this didn't help - the sofas continued to creak and other issues appeared. Mr C emailed and chased N over several months but N didn't provide any further assistance.

Mr C complained to HPF in January 2021 and another technician from H inspected the sofas a few months later. The second technician found several manufacturing faults - he thought the internal framework had failed and there was a problem with upholstery, amongst other things. HPF sent a copy of his report to N but N said the second technician had worked on the basis the sofas were nearly new - when they were over a year old at that point - and the first inspection was more reliable. In light of the conflicting views, HPF asked H to consider the matter again. H provided a "desktop" review of both reports by a technical manager who found no manufacturing faults and HPF rejected Mr C's claim.

Mr C didn't think that was fair. He referred the matter to our service and one of our investigators considered the evidence. He was satisfied that the second inspection identified several manufacturing defects which seemed consistent with issues Mr C reported early on. He didn't think it was likely that these issues were caused by the sofas being placed on laminate flooring. He was satisfied, on balance, that the goods were probably faulty at the point of supply. And he recommended HPF should allow Mr C to reject the sofas and refund any payments made towards the finance, including the deposit, plus interest and pay Mr C £75 for any inconvenience caused.

HPF didn't agree. It says (in summary) these issues weren't raised until seven months after delivery and the first technician who inspected the sofas found no manufacturing defects at that time. It thinks the pressure of uneven flooring probably caused unbalanced pressure on the frame resulting in damage and creaking - and says N can't be expected to know that a customer has an uneven floor.

HPF suggested another expert should be appointed to provide a final opinion but Mr C didn't agree. He says the floor isn't uneven and, if laminate flooring is the issue, this should have been pointed out before sale. He feels he's waited long enough for this matter to be resolved - the sofas have been inspected twice already and manufacturing faults, which were present when the sofas were first used, have been identified. Mr C wants to reject the goods and receive a full refund and compensation. And HPF asked for an ombudsman to review the matter.

Having reviewed the available evidence, I was minded to uphold Mr C's complaint but my reasons weren't quite the same as the investigator's - and I was inclined to reach a slightly different outcome overall. I thought it was fair to give the parties the chance to consider my provisional findings and respond (if they wanted to) before I made my final decision.

I sent my provisional decision to the parties on 8 July 2022. I've set out what I decided provisionally and why below and this forms part of my final decision.

What I provisionally 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. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr C purchased these sofas with credit provided by HPF and he brings this complaint about HPF to the Financial Ombudsman Service in relation to a claim he made under section 75 of the CCA. Broadly speaking, this section makes a lender (HPF here) equally liable with a supplier (N) for breach of contract and misrepresentation, in certain circumstances. One of section 75's strict requirements is that a valid debtor-creditor-supplier (d-c-s) link must exist. It looks as if Mr C ordered the sofas from N that he paid for using the loan HPF provided. And HPF seems to accept that the necessary relationship was in place.

I'm required to take taking relevant law (among other things) into account when I make my decision (although it's not my role to apply the law - only a court can do that). I think section 75 is relevant here. So I've gone on to consider whether there's been a breach of contract or misrepresentation.

I'm satisfied that N was required (under the Consumer Rights Act 2015) (CRA) to ensure that these sofas were of satisfactory quality when they were supplied. What amounts to "satisfactory" quality will vary depending on individual circumstances. Essentially, it's what a reasonable person would consider to be satisfactory taking into account all the relevant circumstances, such as price and description. And it includes fitness for the purpose for which such goods are usually supplied - as well as appearance and finish, safety and durability. In this case, the goods were brand new and I think Mr C had a reasonable expectation that they'd be fault free on delivery.

I don't think there's any dispute that the goods were delivered in December 2019. Mr C says they weren't unwrapped or used until April 2020 however, due to some internal home renovations which were delayed as a result of the pandemic. Mr C has been consistent about this throughout (judging from his contact with HPF and this service) and I think what he says sounds plausible.

It looks as if Mr C raised a complaint with N in May 2020 – not long after the sofas were unpacked – because they were creaking and noisy. I don't think a reasonable person would expect new sofas to make the sort of sound that Mr C describes. And it's understandable he

thought there was something wrong and wanted N to investigate and put things right.

N arranged for the sofas to be inspected by an independent technician – which seems reasonable - in August 2020. I've seen his report and read it carefully. I accept the technician found no faults. In his view the creaking (which he seems to accept was present) was caused by the sofas being located on a laminate floor. He recommended felt pads should be applied to the feet to alleviate this, and it appears Mr C put these measures in place, but things didn't improve.

HPF organised a second inspection by a different technician who also worked for H in March 2021. Again I've read the relevant report carefully. In summary, the second technician found the sofa arms push in more than they should and the sofas make a creaking noise, despite the addition of pads, and some cushions were mis-shapen.

The technician put this down to a number of faults present in each sofa. Specifically, in the two seater, he found arm cards are flexing due to not being correctly stapled which causes noise and spring clips on the front rail are tearing through the platform cloth as clips have not been lined with adequate protection. And, in the three seater sofa, he found an arm card is flexing causing noise and there's an item protruding where two pieces of foam have been glued creating a hard lump on the corner of the interior which can be felt when seated. He considered all the defects in both sofas had a manufacturing cause.

I can see this inspection took 60 minutes - three times as long as the first. I'm satisfied the second report is fairly detailed and I think the second technician's conclusions seem reasonable. I find it difficult to see why this report was rejected. I'm not persuaded by the suggestion that the second technician's opinion *must* be wrong because it looks as if he thought the goods were a month old when they'd been delivered more than a year before. And, if there was any real doubt about that, I think the second technician could simply have been asked to comment - but I've seen nothing to suggest that he was.

I appreciate HPF did go back to H asking for clarification and H provided comments on both inspections from a manager (who I'll refer to as the reviewer). I have considered the queries put to the reviewer as well as his replies. I note the reviewer considers both technicians were experienced and well qualified but he goes on to prefer the findings of the first technician. I'm not persuaded by the reviewer's reasons for doing so. I find his comments to be somewhat vague and unclear. And I think HPF probably thought so as well - I note the case handler struggled to understand the outcome of the review at the time and had to ask H if the reviewer thought there was a manufacturing defect or not.

I think the reviewer fails (crucially) to deal (in any meaningful way) with the detailed findings of the second technician – who actually saw the sofas in situ and inspected for about an hour. The reviewer doesn't, for example, explain how placing the sofas on a laminate floor (as suggested by the first report) caused the *specific* problems identified by the second technician. The reviewer makes reference to issues resulting from "*conditions due to heat etc or flexing of the floor*" but I see nothing in either technician's report to suggest that heat was a material factor here. And it seems to me that springs, for example, were either lined properly or they weren't.

Like the investigator, I find it difficult to see how the types of defect identified at the second inspection could have occurred through placing the sofas on a hard floor. I accept the reviewer says he's seen other instances before where sofas placed on laminate floors are noisy but that doesn't explain the internal creaking and other faults identified at the second inspection.

I note the reviewer was asked to consider if problems may have been caused by the

pressure of “uneven” flooring. It’s unclear to me where this idea came from. I think it may have been raised by N (based on an email sent in March 2021) but I’ve seen no evidence to show that the floor is uneven. Mr C says there’s nothing wrong with it. And, as far as I can see from the inspection reports, neither technician says the floor wasn’t level or states that *uneven* flooring caused the problems. I think the reviewer has, in any event, confirmed that an uneven floor would *not* have caused these issues. When asked about this he said “*No, the uneven floor would more than likely have not affected the frame*”.

Like the investigator, I’m not persuaded that locating these sofas on laminate flooring is likely to have caused the faults found at the second inspection. But, even if I’m wrong about that, I don’t think it’s unusual to find laminate floors in lounges and living rooms. So, if these particular sofas were unsuitable for that sort of floor, I think it would have been reasonable to make this clear at the point of sale. And, even if I wasn’t satisfied that the goods were of unsatisfactory quality due to the presence of manufacturing defects (which, for the reasons set out, I am) I’d be minded to find they were unfit for purpose. I say this because I don’t think a reasonable person would expect sofas to be unsuitable for use on a laminate floor, in the usual course of events.

Having reviewed all of the evidence available, I find the report of the second technician to be more persuasive. Put simply, I think it seems to be thorough and fact based and the findings and explanation about what’s gone wrong (and why) seem to make sense. I’m satisfied that the faults found are probably manufacturing issues and I’m minded to conclude that both sofas had faults present when they were supplied.

I think the defects identified are relatively significant. I consider they’re likely to be annoying, to say the least - in items purchased specifically with comfort in mind especially. And, more likely than not, such faults will impact adversely on the use and durability of the goods in the longer term. I don’t think a reasonable person would expect these sorts of issues to be present. And I find the sofas were likely of unsatisfactory quality when they were supplied - meaning there’s been a breach of contract.

Putting things right

For the reasons set out above, I’m satisfied the sofas were of unsatisfactory quality when Mr C got them and he reported issues within six months of delivery. Under the CRA, a consumer is usually entitled to repair or replacement in this situation - provided this isn’t disproportionate and won’t take too long or cause too much inconvenience. And, if a consumer agrees to repairs but they don’t work, there’s a final right to reject.

I think N had had the opportunity to fix this furniture in August 2020 when it was first inspected. I’m satisfied that steps were taken then in an effort to rectify faults present (by placing felt pads on the feet). But, these didn’t work – the same issues were present when the second inspection took place some months later. I’m inclined to find Mr C has waited long enough for this matter to be resolved. I agree with the investigator it’s fair and reasonable for Mr C to be allowed to reject the goods. And I’m minded to find HPF should cancel the loan, arrange for the sofas to be collected and refund the deposit plus interest.

I’ve given some thought as to what, if any, further refunds should be made. The CRA says a full refund should be provided if the right to reject is exercised within the first six months (after delivery). I can’t see that Mr C asked to reject the goods within this time. But I think this was probably due to some fairly exceptional circumstances – in that there were a number of delays not only in using the furniture but also having the problems investigated properly. Working out what’s fair in this situation is not a scientific exercise. Weighing everything up, I’m minded to find it is fair overall for HPF to refund all of the payments made as the investigator recommended.

I can see it's probably been inconvenient for Mr C to have to contact various parties over many months to sort things out. I understand he bought the sofas for a relative, who has a disability, as a gift for his new home - but the faults present means the goods couldn't be used as reasonably expected. I can't consider the impact of this directly on Mr C's relation (as he's not party to the agreement). But, I think Mr C himself is likely to have found the situation quite distressing, in these particular circumstances. And I'm minded to find HPF should pay Mr C £150 compensation for the distress and inconvenience he experienced.

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.

I invited the parties to consider what I'd said and let me have any additional comments or new evidence by 22 July 2022 and I'd review all the evidence available after that and make my final decision. HPF accepted my provisional findings. Mr C replied summarising some of his earlier comments and evidence - and he confirmed how distressing he found the whole matter.

I accept the supply of these faulty sofas has put Mr C to some trouble and upset. I took this into account in my provisional decision. The parties haven't provided any new information and, having reviewed all the evidence available, I see no reasonable grounds to depart from my provisional conclusions.

My final decision

For the reasons I've given, my decision is I uphold this complaint and I require Mitsubishi HC Capital UK Plc to:-

1. End the loan agreement and arrange for the sofas to be collected at no additional cost to Mr C;
2. Refund the deposit and any payments made towards the finance;
3. Pay interest on the refunds at 8% simple a year from the date of each payment to the date of settlement;
4. Remove any information about the loan from Mr C's credit file; and
5. Pay Mr C £150 to compensate him for distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 August 2022.

Claire Jackson
Ombudsman