

## **The complaint**

Mr W complains that the furniture he acquired through a fixed sum loan agreement with Creation Consumer Finance Ltd wasn't of satisfactory quality.

## **What happened**

Mr W entered a fixed sum loan agreement with Creation on 2 May 2021 to acquire a sofa and armchair. He took delivery and says he immediately noticed issues with shading of the sofa cushions and was concerned the furniture wasn't new. Mr W raised his concerns with the retailer and a technician carried out an inspection. Mr W says the technician took photographs and told him the sofa wasn't fit for purpose and would get worse. However, when the report was sent to Creation it said there was nothing wrong with the sofa. Mr W then raised concerns about the sofa sagging and after a second inspection took place he was told there was nothing wrong and the issue was wear and tear. Mr W didn't accept this and had a further independent inspection carried out.

Creation considered Mr W's claim under section 75 of the Consumer Credit Act 1974. It said that two separate inspections had taken place, and these didn't find the sofa was faulty.

Our investigator upheld this complaint. He thought Mr W had a valid claim under Section 75 due to the sofa not being of satisfactory quality.

Creation didn't agree. It said the comments in the independent inspection were unsubstantiated and noted that Mr W had had the sofa for 10 months at the time of the inspection. It also said the inspection report said the claim was invalid in terms of fault liability.

As a resolution to this complaint hasn't been reached, it has been passed to me, an ombudsman, to issue a 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.

Mr W acquired new furniture through a fixed sum loan agreement. This complaint has been considered under Section 75 of the Consumer Credit Act 1974 and I accept the requirements for this are in place. Section 75 sets out that in certain circumstances, the finance provider (Creation) can be held liable if there has been a breach of contract or misrepresentation of the goods by the supplier. In this case I do not find that the goods were misrepresented and have focussed on whether there was been a breach of contract due to the sofa not being of satisfactory quality at the point of supply.

Mr W acquired new furniture and so it is reasonable that he would expect it to be free from faults, including minor defects, and be sufficiently durable. Mr W took delivery of the furniture on 12 May 2021 and raised concerns shortly after. An inspection report took place on 3 June 2021 to investigate the shading in the fabric. The photographs contained in the report clearly

show the issue complained of and the report states that steam could be added to the area, but the issue will return. While no fault was identified, the photographs clearly show the issue. Given it was thought steam was needed to correct the issue and this was only three weeks after delivery (and Mr W had raised the issue immediately after delivery), I think this raises concerns about the quality and durability of the fabric. Also noting the comment that the issue is likely to return I think this also raises concerns that the sofa wasn't of satisfactory quality.

The second report took place on 15 July 2021 and considered Mr W's comments about the sofa sagging. The report said that the reported faults were due to natural settlement of the product. The report also commented on the fabric saying it had some stretching but that it was within normal tolerance.

Mr W has said that the original technician had said the sofa wasn't fit for purpose, but this wasn't included in the report. He then had an independent inspection carried out on 21 March 2022. This report said that there was excessive wear and on the arm rests, seating and head rest areas. While the report notes this is normal wear and tear, Mr W explained the issue was present from the outset and the technician said a new sofa should not be look like Mr W's.

On balance, the photographs in the reports confirm the issue Mr W raised and given the timing of when this issue was raised, I find it reasonable to accept the sofa wasn't of satisfactory quality at the point of supply. I note Creation's comment about the independent inspection taking place ten months after delivery but the photographs in this show the same issue present in the photographs taken in the first report, three weeks after delivery. Therefore, I accept the issue was present from the outset and note the independent inspector's comment that this shouldn't be the condition of a new sofa. Therefore, I find that Mr W has a valid claim under Section 75.

Mr W made it clear he wished to return the furniture within the first 30 days, and I think this would have been a reasonable remedy. As this didn't happen, I find it reasonable that Mr W is now allowed to reject the furniture (all furniture subject to the agreement as it was bought as a set). Given Mr W raised the issues immediately after delivery, I find it reasonable that he is refunded all repayments made towards the agreement.

### **Putting things right**

Because I do not find that the goods are of a satisfactory quality, Creation should:

- arrange for the goods subject to the fixed sum loan agreement to be collected from Mr W at no cost and at a time convenience to Mr W;
- refund all payments made by Mr W towards the agreement, including the £355 deposit;
- terminate the agreement and record it as settled;
- refund Mr W £60 for the payment for an independent report;
- pay 8% simple interest\* on all refunded amounts from the date they were paid to the date they are refunded; and
- remove any adverse information that may have been recorded on Mr W's credit file in regard to this agreement.

\*HMRC requires Creation to deduct tax from this interest. Creation must provide Mr W with a breakdown of how much tax it has deducted if he asks for one.

**My final decision**

My final decision is that I uphold this complaint. Creation Consumer Finance Ltd should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 October 2022.

Jane Archer  
**Ombudsman**