

The complaint

Mr T complains that Creation Consumer Finance Ltd rejected his claim under section 75 of the Consumer Credit Act 1974.

What happened

In May 2021 Mr T purchased a mattress, bed frame and headboard from a supplier and entered into a fixed sum loan agreement with Creation.

The bed was delivered in June 2021. Mr T experienced an issue with the mattress being uneven and uncomfortable and complained to the supplier but was unable to resolve matters, so he raised a section 75 claim with Creation.

Creation rejected the claim. It said there was no evidence to show that there was a fault with the mattress.

Mr T complained to this service. He also obtained an independent inspection report. The report said that the topper on the mattress had deteriorated due to the poor quality of the filling and the coil springs. The report concluded that the fault was a manufacturing defect.

Our investigator upheld the complaint and said the mattress wasn't of satisfactory quality and that Mr T should be allowed to reject it. Creation didn't agree. It said that Mr T had refused to allow the supplier to arrange an inspection and that at the time of the section 75 claim being raised there was no evidence of a fault. Creation said it had suggested some names of inspection companies to Mr T. It also said its terms and conditions limited refunds of inspection costs to £60.

I issued a provisional decision in which I said I was persuaded by the inspection report that the mattress wasn't of satisfactory quality. I also said that although Mr T had complained about delay, I thought that Mr T should accept some responsibility for the delay because he hadn't accepted the suppliers offer to arrange an inspection. In relation to the costs of inspection, I said that I didn't think it was fair for Creation to restrict a consumers ability to chose an inspector of their choice, and I didn't think the fee charged by the inspector chosen by Mr T was unreasonable.

I said that Creation should end the agreement, refund the deposit of £1000, refund the payments made under the agreement and refund the cost of the inspection report.

I invited both parties to let me have any further information or arguments they wished to make.

Mr T responded and said he agreed with my provisional decision, but he wanted £150 compensation for the distress and inconvenience caused to him. Mr T said he agreed to an extent that there had been delay in arranging an inspection but said it had taken 4 weeks to book the appointment.

Creation responded and made comments on the limit on refunds of an inspection. It said its

terms and conditions in relation to inspections were fair. It said it didn't think I had given sufficient weight to Mr T's conduct generally, and to his refusal to allow the supplier to arrange an inspection. Creation also made various points in relation to the relevant legislation. I've taken all of these comments into account.

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 considered carefully what both parties have said, my decision hasn't changed.

I remain of the view that the mattress wasn't of satisfactory quality. The inspection report supports this finding.

I've already said – and I remain of the view - that Mr T must accept responsibility for the delay in obtaining evidence to show that the mattress was faulty. This is why I haven't made an award for distress and inconvenience, because responsibility for the delay (and any distress and inconvenience caused as a result of the length of time it's taken to resolve this) rests with Mr T.

In relation to the refund of the cost of the inspection report, my view remains as set out in my provisional decision.

In relation to the appropriate remedy here, the inspection report is clear that the fault can't be repaired. There's no evidence that an identical replacement mattress is available, and this option has never been offered to Mr T. In the circumstances, I remain of the view that rejection is the fairest way to resolve the complaint.

Putting things right

To put things right, Creation Consumer Finance Ltd must:

End the agreement with nothing further to pay

Arrange for the bed to be collected at no cost to Mr T

Refund the deposit of £1000 refund all payments made by Mr T under the agreement

Refund the cost of the inspection report

Pay 8% simple interest on all amounts refunded from the date of payment to the date of settlement

Remove any adverse information in relation to the agreement from Mr T's credit file

My final decision

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 October 2022.

Emma Davy

Ombudsman