

The complaint

Mrs S is unhappy with the way Creation Financial Services Limited handled her claim under Section 75 of the Consumer Credit Act 1974 in relation to a sofa.

What happened

In October 2019, Mrs S took out a fixed sum loan agreement to finance a sofa that she acquired from a supplier, who I'll refer to as H. The total invoice amount was £2,195 and this cost was inclusive of care and protection insurance for five years – which cost £310 and was designed to cover Mrs S against the cost of repairs if the structure of the sofa failed. Mrs S paid a deposit of £312, so this meant the remaining amount of £1,883 was financed through the fixed sum loan agreement. Mrs S' monthly repayments were £39.22 for a term of 48 months from April 2020.

The sofa was supplied to Mrs S on 24 December 2019 and in January 2020 Mrs S says she noticed that part of the sofa was dipping and wasn't as firm as the rest of the sofa. So, she contacted H and the sofa was then inspected on 1 February 2020. The inspector said there was a fault with part of the sofa and Mrs S says she was told the repair could take up to eight weeks as parts were needed for the repair to be carried out.

In March 2020, due to Covid-19, the UK went into a lockdown which resulted in a lot of businesses closing. So, Mrs S' sofa couldn't be repaired in good time due to this.

Mrs S says she then found out that H was going into administration and would stop trading from 1 July 2020. As a result, Mrs S contacted Creation on 13 July 2020 and made a Section 75 claim for the faulty sofa. Mrs S says she advised Creation that H had gone into administration and she was still waiting for her sofa to be repaired. Mrs S says she was advised by Creation that they'd temporarily stop her monthly repayments until this issue was resolved. Mrs S says she didn't hear from Creation again until 15 August 2020 where they said they'd been investigating her concerns. In the meantime, Mrs S says she continued to receive several communications from Creation telling her that repayments under the account were due.

Creation investigated Mrs S' Section 75 claim. They said on 11 November 2020, they requested a copy of the inspection report that was carried out on Mrs S' sofa and they could see the report confirmed there was a fault with the sofa – the foam was crushed and was causing creasing to the fabric. As a result, it had been determined that that part of the sofa would need a complete repair. In light of this, Creation offered Mrs S a chance to repair the sofa under Section 75.

However, Mrs S says she wants to reject the sofa and to return it so she can buy a new one of better quality. Mrs S also says she has no use for the care and protection insurance she took out with H as this is no longer valid as H have gone into administration. So, Mrs S would like a refund of this which was £310. Mrs S has also asked for Creation to refund her deposit which was £312, and the three-monthly instalments she made which she says was a total of £117.66. Mrs S also says on 3 October 2020, a £30 charge for a letter was added to the overall amount Creation say is owing under the agreement – but Mrs S says she's not

aware of what this charge is for. So, she wants a refund of this amount.

In addition to this, Mrs S says she made three repayments in April 2020, May 2020 and June 2020. But that she was advised by Creation in September 2020 that they'd temporarily stop requesting her monthly repayments until this issue had been resolved. Mrs S has provided us with evidence of her credit file which shows she has eight missed payments from January 2021 for her account with Creation. So, Mrs S wants this adverse information removed from her credit file.

Our Investigator looked into Mrs S' concerns. In summary, she concluded that it's clear there was a fault with the sofa and this happened soon after Mrs S acquired it. As Mrs S' sofa couldn't be repaired in good time, and because H had gone into administration which meant Mrs S couldn't arrange for the sofa to be repaired through them, our Investigator felt Mrs S' request to reject the sofa and return it wasn't unreasonable. Overall, our Investigator recommended that:

- Mrs S rejects the sofa, Creation take the goods back and cancel the agreement.
- Taking the life span of a sofa into account to generally be around 11 years, our Investigator did some calculations which determined that while Mrs S' should pay for use of the sofa, it should be capped at £428.30. The three-monthly payments Mrs S made towards the sofa, including the deposit, should be deducted from her liability cap, which would leave a credit balance owed to her plus 8% simple interest.
- Creation should remove the £30 Creation charged for a letter from Mrs S' overall liability amount.
- Creation should also remove adverse information from Mrs S credit file in relation to this agreement, recording it as being settled in full as of the date of the last repayment in June 2020.
- Creation should arrange to collect the sofa at no cost to Mrs S.

Creation didn't agree and felt their offer to repair the sofa for Mrs S was a fair one. So, the complaint has been passed to me to decide.

I issued a provisional decision setting out the below:

I have to decide what, if anything, Creation should do to resolve Mrs S' complaint. Section 75 allows Mrs S to make a claim against Creation in respect of the sofa which she bought using their credit. However, for Section 75 to apply, certain criteria needs to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods. I am satisfied this is met and Section 75 applies here.

Any Section 75 claim against Creation is limited to any breach of contract or misrepresentation by the supplier, in this case H, in relation to the agreement to supply the goods. That is the extent of Creation's liability. To determine whether the quality issues Mrs S has identified amount to a breach of said supply contract, I've had regard to The Consumer Rights Act 2015 (CRA) which is of particular relevance to this complaint.

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

So, with these points in mind, I've gone on to consider whether H breached their contract with Mrs S or misrepresented the goods to her.

I've first looked at the inspection report carried out in February 2020 – Mrs S had the sofa for around one month at this point. I can see that the report deems part of the sofa Mrs S complained about to be a manufacturing fault because of crushed foam. And to rectify this fault, a new interior for this one particular part of the sofa would need to be fitted. So, it's clear there was a fault. Given the goods were brand new and Mrs S had them for just over a month before a fault happened, I think it's fair to suggest the goods weren't of satisfactory quality as I don't think the sofa was durable. Therefore, I think there has been a breach of contract by H.

I can see it's noted in the report that Mrs S was happy to proceed with the repair at this point. But that she was waiting for further contact from H in relation to what action will be taken. However, the sofa hadn't been repaired and by March 2020, there were further delays in repairing the sofa due to the Covid-19 lockdown. In addition to this, H went into administration in July 2020 and were no longer trading. And Mrs S wasn't told by what point she can expect to have her sofa repaired. Additionally, Mrs S was losing out because she'd paid for care and protection insurance which she wasn't able to use in the event of any possible faults with the sofa. All in all, Mrs S said she wanted to reject the sofa and return it, so, I've gone on to consider whether I think this is fair for Mrs S to do.

It seems from what Mrs S has told us that the repairs on the sofa were due to start eight weeks from the date of the inspection in February 2020. However, due to the Covid-19 pandemic and the lockdown, this wasn't possible. Mrs S contacted the company who carried out the inspection to see if they could honour the repairs that they said were needed, however, they weren't able to do this due to H going into administration.

Instead, Mrs S says she was advised to pay for the repair herself and that she would be reimbursed at a later date which Mrs S wasn't happy to do – specifically because she'd taken out an insurance product to provide cover in these types of events. I couldn't see evidence of Mrs S being given this advice from the information I have available to me and I can see Creation's final response letter asks Mrs S to obtain a quote for the repair work and to send it to them once she receives this. But in any case, I don't think it was unreasonable for Mrs S to change her mind and want to reject the sofa instead. I say this because Creation acknowledged Mrs S' Section 75 claim in August 2020 but it wasn't until November 2020 that they requested a copy of the inspection report. Creation then wrote to Mrs S in December 2020 accepting her claim and offering to repair the sofa. But by this point, Mrs S had the faulty sofa for nearly a year and had made Creation aware of the issue in July 2020. But the repair wasn't done within a reasonable period.

With all this in mind, I don't find it unreasonable Mrs S wants to reject the sofa and return it as I don't think the sofa was of satisfactory quality when it was supplied, so I think Mrs S should be able to reject the sofa.

Summary of resolution

The CRA 2015 says that a finance company is allowed to make a deduction for fair use when goods are rejected. However, it doesn't set out what rate or method is to be used. And there's no exact science to working out a fair usage amount. Our approach at this service is to look at all the circumstances and decide what's fair and reasonable. I think broadly, what our Investigator suggested in terms of a remedy for Mrs S is in the right ballpark. But I don't think our Investigator took into account the impaired use Mrs S had of the sofa as a result of the fault.

When thinking about what's fair, I've considered the same thing as our Investigator in terms of the average life span of a sofa to be around 11 years. Mrs S has had the sofa for around two years in total, so I think it's fair for Creation to keep Mrs S' deposit of £312 to reflect the usage she's had of the sofa for the time she's had it. But given I think Mrs S' use of the sofa was likely to have been impaired due the fault, in addition to the fact that I don't think the sofa was of satisfactory quality, I think Mrs S should receive a refund of the three repayments of £39.22 she made.

Mrs S also paid £310 for care and protection insurance that she's had no use of and isn't able to use due to H going into administration. So, I think it's fair for Mrs S to receive a refund of this amount.

Creation also added a £30 fee to what Mrs S was owing under this agreement for what seemed to be a letter on 3 October 2020. But it's unclear exactly what this fee was for and what letter Mrs S was being charged for. In any case, even if Creation did send Mrs S a letter, this fee seems excessive. So, I'll be recommending Mrs S receives a refund of this fee.

As I've determined that there's been a breach of contract, I think Creation should end this agreement and stop pursuing Mrs S for the monthly repayments under the agreement. Creation should also remove all information, including any adverse information, about this agreement from Mrs S' credit file.

Putting things right

To summarise, I'm minded to direct Creation to:

- End the agreement with nothing further to pay and collect the sofa at no cost to Mrs S.*
- Refund Mrs S the three-monthly repayments of £39.22 she made in April 2020, May 2020 and June 2020.*
- Refund the £30 fee Creation charged Mrs S for a letter on 3 October 2020.*
- Refund Mrs S £310 she paid for care and protection insurance.*
- Pay 8% simple interest on the above amounts from the date of payment to the date of settlement.**
- Remove information about this agreement from Mrs S' credit file including any adverse information.*

**If Creation Financial Services Limited consider that they're required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mrs S how much they've taken off. They should also provide Mrs S with a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Mrs S accepted my provisional decision. Creation responded and explained Mrs S didn't pay the £30 fee herself, it was instead, added to the outstanding balance owed under the agreement. Creation also said they hadn't been provided with any evidence to show Mrs S took out a care and protection insurance for the sofa and that the finance agreement didn't show this product on it. In addition to this, Creation said they aren't able to arrange to collect the sofa but are happy for Mrs S to either keep it at no extra charge. Or if Mrs S wanted to dispose of it herself and it comes at a charge, they are happy to reimburse this charge on receipt of an invoice.

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 reviewed the information provided by Creation about the £30 charge and I agree with their point – I couldn't see this had been paid by Mrs S directly to Creation at the point it was charged. And I can see it was, instead, added to the outstanding balance owed under the agreement. I explained this to Mrs S and said as I'm directing Creation to end the agreement with nothing further for Mrs S to pay, it doesn't make a difference what the outstanding balance under the agreement is as Mrs S won't need to pay it. Mrs S understood this explanation and didn't provide me with any further points to consider on this point.

I also provided Creation with evidence to show Mrs S did take out the care and protection insurance at the time she acquired the sofa. However, having had another look at the invoice alongside the credit agreement, I can see the invoice amount of £1,883 included the cost of the care and protection insurance. And I can also see the credit agreement was for £1,883. Therefore, Mrs S didn't pay separately for the insurance and it was instead included in the overall finance amount. As I'm recommending Mrs S receives a refund of the three-monthly repayments she made, this includes what Mrs S paid for the care and protection insurance. So, I clarified with Mrs S and Creation that I won't be recommending Mrs S receive a refund of the £310 as I originally said in my provisional decision. Mrs S responded and confirmed she understood.

Lastly, Mrs S said she's happy to dispose of the sofa herself. So, Mrs S will just need to provide Creation with an invoice (if the disposal comes with a charge), once she's disposed of it.

Putting things right

To summarise, I direct Creation to:

- End the agreement with nothing further to pay.
- Refund Mrs S the three-monthly repayments made in April 2020, May 2020 and June 2020.
- Pay 8% simple interest on the above amounts from the date of payment to the date of settlement.*
- If there is a cost to dispose of the sofa, reimburse Mrs S this cost on receipt of an invoice.
- Remove information about this agreement from Mrs S' credit file including any adverse information.

*If Creation Financial Services Limited consider that they're required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mrs S how much they've taken off. They should also provide Mrs S with a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For reasons explained above, I uphold this complaint. I require Creation Financial Services Limited to carry out the actions as set out in the "putting things right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 3 November 2022.

Leanne McEvoy
Ombudsman