

The complaint

Ms Y complains about the quality of two sofas she purchased under a fixed sum loan agreement (“agreement”) with Creation Financial Services Limited (“Creation”).

What happened

Ms Y purchased two sofas at a cost of £2,465 from a company that I will call “H”. Ms Y also purchased a warranty costing £335. The sofas were delivered in May 2017.

Ms Y funded her purchase by way of an agreement with Creation which she signed in January 2017. Under the terms of this agreement, everything else being equal, Ms Y undertook to pay a deposit of £100 followed by 48 monthly payments of £56.25 – making a total repayable of £2,800 at an APR of 0%.

A repair was undertaken on the sofas after Ms Y complained to H about the quality of them.

Ms Y wasn’t satisfied with the repair, and the continued deterioration of the sofas, so approached H to arrange for them to be collected and a refund issued to her.

H wasn’t prepared to take the sofas back without an independent report confirming there was a fault either present, or developing, with them when they were first supplied. H also advised Ms Y that if she remained unhappy she needed to raise her concerns with Creation.

Ms Y complained to Creation in July 2019.

In July 2020 Creation issued Ms Y with a final response letter (“FRL”). Under cover of this FRL Creation said it didn’t believe there was a fault with the sofas and for the issue to be investigated further it, like H, would need an independent inspection undertaken by an acceptable third party and a report confirming that there was a fault either present, or developing, with the sofas when they were first supplied.

In July 2020, and unhappy with the content of Creations FRL, Ms Y complained to our service.

Between July 2019 and July 2020 Ms Y says she disposed of the two sofas and purchased two second-hand ones.

Ms Y’s complaint was considered by one of our investigators who came to the view that it shouldn’t be upheld.

Ms Y didn’t agree with the investigator’s view, so her complaint has been passed to me for review and 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.

I know it will disappoint Ms Y, but I agree with the investigator's view of this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it's here I've to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a fixed sum loan, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

So, if Ms Y was supplied with sofas that weren't of satisfactory quality when supplied I'd think there was a breach of the implied terms of the contract and I'd ask Creation to take some further action.

Based on what Ms Y has said and submitted, she didn't raise a complaint about the quality of the sofas, for a second time and after what she says was an unsuccessful 'first' repair, until after they had been in her possession for six months.

The relevant legislation explains that if a fault occurs, or reoccurs, after the first six months of ownership the onus is on the consumer to demonstrate the fault was present when the goods were supplied.

Now I appreciate Ms Y has, or did have, photographs of the sofas. Unfortunately, these aren't sufficient to prove a fault and certainly aren't sufficient to prove a fault was present or developing at the time of supply. However, what is generally accepted as being sufficient is an independent inspection and report, which both H and Creation advised Ms Y she needed to obtain.

Now I appreciate Ms Y says she couldn't afford to get an inspection and a report undertaken. But even if I was to accept this was the case and it would have been more appropriate for Creation to pay for an inspection and a report (which for the avoidance of doubt I make no finding on) this is no longer an option because Ms Y has disposed of the sofas.

I can understand why Ms Y took the decision to dispose of the sofas. But, unfortunately, this means they can no longer be inspected. And this is the case regardless of who – for whatever reason – should have had to pay for such an inspection.

I also accept that had Creation not taken a year to issue its FRL, Ms Y might not have disposed of the sofas. But although this delay would have clearly been frustrating for Ms Y, she had the right – eight weeks after she first complained to Creation and possibly why she still had the sofas – to refer her complaint to our service. But she didn't do so until July 2020.

So, with all the above in mind, I can confirm that I can't fairly and reasonably hold Creation liable for the claim Ms Y has made (against it) under section 75.

I'm aware Ms Y has concerns about how Creation dealt with her complaint and she thinks this constitutes a breach of its regulatory obligations. Complaint handling, however, isn't a regulated activity (or ancillary to a regulated activity). And having not upheld this complaint it's not within my powers to consider such concerns or make an award in respect of them.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 12 January 2023.

Peter Cook
Ombudsman