

The complaint

Mrs C complains that Creation Consumer Finance Ltd failed to deal with her claim under section 75 of the Consumer Credit Act 1974 for a refund of her purchase of a defective glass table.

What happened

In 2019 Mrs C bought a glass table and six chairs and paid for them with an interest-free loan from Creation. They were delivered in September 2019. In June 2022 the glass table spontaneously shattered, and so Mrs C asked Creation for a refund, as the company she had bought it from was no longer trading. She obtained a report from an independent expert, who examined the table and concluded that the damage was the result of a manufacturing defect. The damage cannot be repaired. These conclusions are not in dispute.

Creation failed to issue a final response letter in time, citing “internal delays,” and told Mrs C that she had the right to refer the matter to our service, which she did in September 2022. She asked for a refund of the cost of the table, and some further compensation for some customer service failings. After that, in October, Creation upheld her claim and issued a final response. It offered to refund her the cost of the table, minus a deduction of about £291 for the fact that she had had nearly three years’ use of the table before it broke.

Since neither party told our investigator about that offer at the time, the investigator issued his opinion of the case in November. He upheld the complaint and recommended that Creation refund all of Mrs C’s loan repayments in respect of the table and the chairs too, less £500 to reflect her use of them. He also recommended that Creation pay interest on the refunds, end the loan agreement, collect the table or pay a further £22 (being the cost of the local authority’s waste collection service), and ensure that no negative information is reported on Mrs C’s credit file.

Creation did not accept that recommendation. It insisted that its offer was fair. The investigator did not agree, saying that the table and chairs were part of a matching set and so the whole suite should be replaced. The case was referred for an ombudsman’s decision.

I wrote a provisional decision which read as follows.

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 done so, I am currently of the view that the chairs were never a part of this complaint and that the way Creation calculated its offer is fair, although I propose to add £50 to the compensation for some customer service issues. I will explain why.

Firstly, Mrs C did not mention the chairs in her section 75 claim or in this complaint, or ask

for that part of her purchase to be refunded. The entire focus of her case has been the table, so it is not surprising that Creation confined its offer to the table alone. I have thought about whether this might have just been an oversight by Mrs C. But although the table and the chairs were bought at the same time, the way they are described on the receipt suggests that they were not actually manufactured as a set of matching furniture, as they have different names. And the table is just a plain white metal frame for legs, with a plain glass top, so I don't think it would be difficult to find another table of similar appearance which would go just as well with the chairs as the original table. So I am not persuaded that it is necessary to refund the price of the chairs as well as the table.

As for the refund of the table, nobody disputes that it is fair for Creation to deduct something from the refund to reflect the fact that Mrs C was able to use the table for 34 months before it broke. The only issue here is how much that should be. Creation calculated that in the following way (and showed its working in its offer letter).

First, Creation calculated that the time between the table being delivered (in September 2019) and when it broke (in June 2022) was 34 months. Next, it assumed a life expectancy for the table of ten years, which appears to be arbitrary but does not seem to me to be unreasonable. It then calculated 34 months as a percentage of 120 months, which it wrongly stated to be 27.5% but which is actually 28.333%. However, it appears to have still used the correct percentage when calculating that $\frac{34}{120}$ of the price of the table, £1,030.06, comes to £291.85. The latter figure is how much Creation proposed to keep for itself, and the difference between those two figures, £738.21, is the proposed refund, by way of a cost reduction.

That seems to me to be a fair way of calculating the amount to refund. I don't think it is necessary to award interest on that sum.

Mrs C's complaint about customer service does not appear to have been addressed yet. She says that Creation did not respond to her emails in a timely manner, and it was not possible to phone them. I also note that the final response letter was sent late, which meant that she brought this complaint to our service, which might not have been necessary if Creation had made its offer in September. That caused her some inconvenience. Taking all of these matters together, I think that £50 is fair compensation. That should be paid directly to Mrs C, rather than being treated as a cost reduction on the loan agreement.

Since Mrs C still has the chairs, I don't think it is necessary to remove the loan agreement from her credit file. After the cost reduction, I think there will be no more left to pay towards the loan agreement, and so this should be recorded as settled in full.

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties by the date below, I intend to order Creation Consumer Finance Ltd to put things right in the way I have set out above; that is:

- Reduce the cost of Mrs C's loan by £738.21,
- Report the loan to the relevant credit reference agencies as settled in full, and
- Pay another £50 directly to Mrs C for her inconvenience.

Responses to my provisional findings

Creation accepted my provisional decision. Mrs C did not, and made the following points:

- The table and chairs were bought and sold together as a matching set.
- The broken glass is a hazard, and recently caused an injury to Mrs C's mother when she visited.
- The table is taking up a lot of room in the house, while it can no longer be used.
- I had not considered how the table is to be disposed of.

- I had let Creation get away with mistreating her.

I put these points to Creation and asked for its comments, but it did not respond by the deadline.

My findings

I had meant to deal with the disposal of the table in the same way as the investigator had recommended, which was for Creation to either collect the table or pay a further £22 for it to be collected by Mrs C's local authority. I apologise for forgetting to include that in my provisional decision. I have already told Creation that this was an oversight and that it would be in my final decision.

Although Mrs C feels strongly about this case, I have to emphasize that my role is to award compensation, not to punish, so I can't fine a business to teach it a lesson, which I presume is what she meant with her last point.¹

I am not persuaded to award further compensation for the chairs, for the same reasons I set out in my provisional decision.

I have seen photos of the broken glass. It has crazed but is still holding together. I think the risk of injury could have been mitigated by putting tape over any sharp edges, but I don't think that should get Creation off the hook entirely, since the risk of injury from broken glass is still foreseeable. Although Mrs C's mother was not a party to the contract (and is not eligible to bring a complaint to our service), I think her injury would have caused Mrs C some distress and so I will award some compensation for that. I think £200 is fair.

(Just in case Creation thinks that Mrs C should have got rid of the table already – although it has never said that – I can understand why she didn't want to do that while her complaint was still ongoing, and so I do not think it would be right to reduce her compensation because of that.)

My final decision

My decision is that I uphold this complaint. I order Creation Consumer Finance Ltd to:

- Reduce the cost of Mrs C's loan by £738.21,
- Report the loan to the relevant credit reference agencies as settled in full,
- Pay another £250 directly to Mrs C for her distress and inconvenience, and
- Arrange to collect and dispose of the table at no cost to Mrs C, or alternatively pay Mrs C a further £22.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 27 March 2023.

Richard Wood
Ombudsman

¹ A court cannot award exemplary (punitive) damages for breach of contract; see *Chitty on Contracts* (34th edition) paragraph 29-067.