

The complaint

Miss C complains that Creation Consumer Finance Ltd (“Creation”) haven’t supported a claim she made to them under section 75 of the Consumer Credit Act (1974). The complaint is about the quality of sofas she bought using finance provided by Creation.

What happened

I issued my provisional decision on this complaint in November 2022. An extract from that provisional decision is set out below.

What I've provisionally 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 agree with the investigator's view of this complaint but the redress needs clarifying so I'm issuing a provisional decision.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have 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 make 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.

The Consumer Rights Act (2015) is the relevant legislation. It says that the goods should have been of satisfactory quality when supplied and explains that when we consider satisfactory quality we should consider whether the goods have proven durable. If the goods weren't of satisfactory quality when supplied I would think there had been a breach of contract.

Miss C says the sofa wasn't durable and the technician who inspected the goods in

September 2020 agreed. He said there was flaking of the leather on both sofas and they'd both need to be recovered because the top coating had not been secured in the tannery process. It was his expert view that the supplier were responsible for rectifying the issue.

The relevant legislation allows the supplier the opportunity to repair goods in those circumstances but here that's not been possible as covers are no longer available.

Where a repair can't be completed in a reasonable period of time we'd expect a business to allow the consumer to reject and return the goods and to refund the money paid. The relevant legislation allows the business to retain some of that refund in respect of fair use.

The retailer has suggested that in calculating what is fair use we should consider the period of the warranty, but I don't think that's a fair way to identify fair usage here.

I think a reasonable person would expect a sofa to last longer than four years but perhaps not too much longer. As a resolution the retailer offered 20% off a new sofa. I think it's for Miss C to decide where she sources a new sofa from, and I don't therefore think the retailer's offer was a fair one. Miss C had the sofa for about four years when she reported issues with it. I think that she therefore had considerable use of it before reporting problems and that it's only fair she should pay for that use. In respect of the amount that should be deducted by Creation for fair wear and tear I think 80% is therefore reasonable.

Creation will also need to refund the £75 that Miss C paid for the inspection report and they'll need to add interest to any refunds as Miss C has been deprived of the money.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Creation Consumer Finance Limited to:

- *Refund the finance instalments Miss C has paid for the sofas, retaining 80% in respect of the fair usage she's had from them. Add 8% simple interest to any refund from the date of payment to the date of settlement.*
- *Refund the £75 Miss C paid for the inspection report and add 8% simple interest per year from the date of payment to the date of settlement.*

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.

Creation didn't provide any additional evidence or comments and Miss C accepted my provisional decision.

I've not therefore been provided with any additional comments or evidence that has led me to change my provisional decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Creation Consumer Finance Limited to:

- Refund the finance instalments Miss C has paid for the sofas, retaining 80% in respect of the fair usage she's had from them. Add 8% simple interest to any refund from the date of payment to the date of settlement.
- Refund the £75 Miss C paid for the inspection report and add 8% simple interest per year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 16 January 2023.

Phillip McMahon
Ombudsman