

The complaint

Mr O complains that Creation Financial Services Limited rejected his claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to a suite of furniture.

What happened

In September 2019 Mr O bought some faux leather furniture, financed with a four year loan from Creation. In March 2022 he told Creation that there was some damage to a small area on the surface of a sofa armrest, which was splitting and breaking up. In May of that year, he commissioned an independent report by an expert, which he submitted to Creation in support of his claim. In July, Creation rejected his claim, stating that the report said that the damage was not a manufacturing fault.

Being dissatisfied with that response, Mr O referred a complaint to our service. But our adjudicator did not uphold it. He said that the damage had been caused in a specific place, apparently by the body oils of someone sitting on it over a period of time, according to the report. He thought that the quality of the material was satisfactory and that the damage did not mean that the sofa was not durable. He was satisfied that Creation had been entitled to reject Mr O's claim.

Mr O did not accept that opinion. He said that it is obvious that the sofa must not have been made of a durable material, or else it would not have deteriorated so quickly. As it is foreseeable that a sofa will be exposed to a user's skin and natural body oils, it should be designed and built to last for longer than only two years or so. A sofa should not be expected to fall apart so soon.

Since no agreement could be reached, the case was referred for an ombudsman's 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.

Having done so, I do not uphold it. I will explain why.

Section 75 of the Consumer Credit Act makes Creation liable for any breach of contract made by the supplier of goods purchased with credit provided by Creation. The Consumer Rights Act 2015 states that it was an implied term of Mr O's contract to buy the sofa that the sofa would be of satisfactory quality, fit for purpose, free from minor defects, and durable. Taken together, these provisions mean that Creation is liable for any defect in the sofa which was present or developing at the point of sale.

The effect of section 19(14) and (15) of the Consumer Rights Act is that when a defect is discovered more than six months after the sale, the burden of proving that it was present or developing at the point of sale lies on the consumer. The damage to Mr O's sofa was reported about two years later, so Creation was entitled to assume that the sofa was free of defects when it was sold to him, unless he could prove otherwise.

The report commissioned by Mr O says about the damage:

“This looks consistent with external contamination over lengthy period body oils. Not consistent with manufacturer fault.”

It also says, under the heading “Conclusions”:

“This is an invalid claim because this is consistent with external contamination.”

Given this evidence, I think it is unsurprising that Creation rejected Mr O’s claim.

I have considered Mr O’s argument that a sofa should be capable of withstanding ordinary domestic use over a period of only two years, and the fact that this sofa is already showing signs of damage after such a short time means that it was not made to be durable. Essentially, he argues that the facts speak for themselves, regardless of what the report says.

While I can see his point, I think that Creation was entitled to adopt the findings in the report, to treat the damage as wear and tear, and to deal with Mr O’s claim accordingly. I don’t think it acted unreasonably in doing so.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr O to accept or reject my decision before 3 March 2023.

Richard Wood
Ombudsman