

The complaint

Miss B complains that Creation Consumer Finance Ltd (“Creation”) declined her claim for a refund of a defective sofa under section 75 of the Consumer Credit Act 1974.

What happened

In January 2018 Miss B bought a sofa for £2,141, and paid for it with a three year interest-free loan from Creation. In August 2020 she complained that the leather was cracking and peeling. This was repaired at the time, but the defect was not identified as a manufacturing fault.¹

In July 2022 Miss B again reported damage to the leather. This time, the repairman (who was sent by the retailer’s insurance company) said in a written report that the damage was the result of a manufacturing fault. He went on to say: “Fabric not bonded correctly at the manufacturing stages. No signs of pet damage at all no scratches.” That conclusion was not disputed until recently. At the time, it was accepted by the retailer and by Creation that both faults, in 2020 and in 2022, were manufacturing faults for which the retailer and, under section 75, Creation were liable.

The retailer offered Miss B a refund of 20% of the value of the sofa. Miss B rejected that offer, as she now wanted to reject the sofa. She asked Creation for a full refund under section 75. Creation contacted the retailer about her claim, and the retailer made a new offer of either 40% credit towards new goods, or a 40% refund and “uplifting” the sofa. (This was later described as 20% compensation topped up with another 20% as a gesture of good will.) Miss B did not accept that offer either, and so one of our investigators considered her case.

Our investigator decided that the manufacturing defect should have been discovered in August 2020, when the damage was first reported. He recommended that Creation allow Miss B to reject the sofa, pay her a refund of 90% of what she had paid for it, and pay interest on the refund at 8% a year from December 2018 to the date of settlement. He thought that a 90% refund was fair because Miss B had had some use of the sofa before the damage had appeared.

Creation did not accept that opinion. It obtained a further report (I have not seen the original, but Creation has copied the text into an email). This said that it was not possible to rule out that some of the damage had been caused by a pet, although there was also evidence that some of the damage was indeed a manufacturing fault, and the author of the report did not think that this had started as pet damage. Creation also provided an email from the retailer explaining how it had calculated that a 20% refund fairly reflected the use Miss B had had of the sofa prior to complaining about it. Creation asked for an ombudsman’s decision.

¹ Another repair had been carried out in March 2018, but this was not about the leather but a chair arm which was loose. That is not part of this complaint, and so I have not considered it.

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 think that there is clear evidence in both reports that there was a manufacturing fault. The only difference between the two reports is that the first one says there was no pet damage at all, and the more recent one says there is some damage which could be pet damage, but also some other damage which is definitely the result of a manufacturing fault. That suggests that if there is pet damage, then it was probably caused at some time between the reports, but I think the alleged pet damage is a red herring, as both reports say there is a manufacturing fault, and so I am satisfied that the sofa was defective at the point of sale, Creation is liable for that under section 75.

For that reason, I am satisfied that Miss B was entitled to reject the sofa under sections 20 and 24 of the Consumer Rights Act 2015, and to receive a refund of what she had paid for it. Under section 24(8), Creation is entitled to reduce the refund "to take account of the use the consumer has had of the goods in the period since they were delivered." This is called a "deduction for use." There is significant disagreement about how much that deduction should be, and the Act does not elaborate on how it should be calculated. So it now falls to me to determine what would be a fair and reasonable deduction.

As I've said, the sofa was delivered in January 2018. The retailer calculated a deduction for the period up to the second reported leather damage; that is, up to July 2022, or about 54 months. But I think that the manufacturing fault should have been identified in August 2020, when the leather damage was first reported. If that had happened, then Miss B would have been entitled to reject the sofa back then, and it's likely that she would have exercised that right. So I will award a deduction for the use of the sofa up until August 2020. That comes to 31 months.

The retailer has explained that it calculated the use period as a proportion of the limitation period for bringing a claim for breach of contract under the Limitation Act 1980, which is six years. It rounded down the 54 months of use to four years. Four years is two thirds of six years, so the deduction for use amount came to two thirds, which gives a refund of 33%. (This means that the retailer's original offer of a 20% refund was not enough by its own measure, but its revised offer of 40% was more than enough.)

I do not agree with that approach. The usual lifetime of a leather sofa should be about 15 to 20 years, so I don't think it is fair to work out the deduction for use based on a period of only six years.

I will only round the use period to the nearest month; as I've said, I'm using 31 months. 15 to 20 years is 180 to 240 months. 31 months is 17% to 13% of that; the average of those percentages is 15%. So I think it would be fair to reduce a full refund by 15%, making a refund of 85% of £2,141, which comes to £1,819.85. (That is about £107 less than the investigator recommended.) I will add simple interest to the refund at the rate of 8% a year, from 20 August 2020 (the date of the first leather damage) to the date of settlement.

I also think that Creation should pay Miss B £100 for her inconvenience.

(As the difference between the compensation I am awarding and the compensation the investigator recommended is only £7.05 (and some interest), I have not thought it necessary to write a provisional decision in this case.)

My final decision

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

- £1,819.85, plus simple interest on that sum at the rate of eight per cent a year from 20 August 2020 to the date of settlement, and
- £100 for her inconvenience.

(If Creation considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss B how much it's taken off. It should also give Miss B a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate. Miss B should refer back to Creation if she is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 21 March 2023.

Richard Wood
Ombudsman