

## **The complaint**

Mrs B complains that a sofa acquired with finance from Creation Consumer Finance Ltd wasn't of satisfactory quality.

## **What happened**

Mrs B ordered a new sofa from a retailer in June 2022 and entered into a finance agreement with Creation.

When the sofa was delivered in September 2022 Mrs B noticed some issues with it including marks on the leather, a lack of filling and lopsided cushions. Mrs B contacted the retailer and asked to return the sofa.

The retailer sent a technician to look at the sofa. The technicians report stated that no manufacturing faults had been found and that the creasing and marks on the leather were natural.

Mrs B remained unhappy and arranged an independent inspection of the sofa. The report concluded that the sofa wasn't of satisfactory quality.

Mrs B was unable to resolve matters with the retailer. Ultimately, she hired a van and returned the sofa herself.

Mrs B raised a section 75 claim with Creation.

Creation rejected the claim. It said the report obtained by the retailer stated that there was no manufacturing fault and the report obtained by Mrs B didn't provide enough evidence to support her claim. Creation also said that the claim hadn't been upheld by the Furniture and Home Improvement Ombudsman (FHIO).

Mrs B remained unhappy and complained to this service.

Our investigator upheld the complaint. They said they were persuaded by the independent inspection report obtained by Mrs B which stated that the sofa wasn't of satisfactory quality. The investigator said that Creation should end the agreement, refund all payments made by Mrs B and refund the cost of the van hire and the inspection report.

Creation didn't agree. It said the retailer had told it that the FHIO had ruled in their favour. Creation also said that the upholstery company who carried out the inspection for Mrs B didn't state that it carried out inspections on its website.

## **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.

In certain circumstances, section 75 gives a consumer a right to claim against the supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In

order to uphold Mrs B's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Creations response to the claim wasn't fair or reasonable.

Mrs B hasn't said that there's been a misrepresentation, so I'll focus on whether there's been a breach of contract.

The Consumer Rights Act 2015 is relevant here. This says that goods must be of satisfactory quality when supplied. The legislation says that the quality of goods includes their general condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

If the goods aren't of satisfactory quality when supplied, then a breach of contract can be said to have occurred.

I've looked at the available evidence including the report arranged by the retailer and the report arranged by Mrs B. I haven't been able to look at the FHIO adjudication because neither party has provided this.

The evidence shows that Mrs B raised concerns about the sofa as soon as it was delivered to her. She complained about the marks and creases in the leather and a lack of filling in the cushions.

The report arranged by the retailer is relatively short. It states that there isn't a manufacturing fault and that the marks and creases are natural characteristics of the leather. The report doesn't mention the filling.

The report arranged by Mrs B is more detailed. It states that the marks on the leather are due to damage which occurred in the manufacturing process and that the leather is ruckled due to underfilling of the cushions or to the wrong size covers. The report also states that the headrests on the sofa don't align, and the seat covers are of different shapes. The report concludes that the sofa isn't of satisfactory quality.

Based on what I've seen, I find the independent report obtained by Mrs B the more persuasive of the two reports.

Creation has questioned the report. It says that the upholstery company who carried out the inspection don't advertise that they carry out inspections on their website. I haven't seen any evidence to suggest that the upholstery company isn't an appropriately qualified expert to carry out the inspection. I'm satisfied that the report is reliable.

Creation has said that the claim wasn't upheld by FHIO. This was one of the reasons it gave for rejecting the section 75 claim. However, Creation asked the investigator to provide the FHIO adjudication, which suggest to me that Creation hadn't seen it. The investigator couldn't provide it because neither party has provided it to this service. I don't think it was fair for Creation to reject the section 75 claim based on an adjudication which on balance it doesn't appear to have seen.

On balance, I'm persuade that the sofa wasn't of satisfactory quality at the point of supply. I think the weight of evidence shows this. This means there's been a breach of contract for the purposes of section 75. It follows that I don't think Creation's response to the section 75 claim was fair and reasonable.

### **Putting things right**

Mrs B has returned the sofa to the retailer already and it appears to have gone missing and it isn't clear where the sofa is now. So I don't think a repair is possible in the circumstances.

Therefore, I think the fairest way to resolve the complaint is for Creation to allow Mrs B to reject the sofa and end the agreement. It should refund all of the payments she's made and refund the costs of the report and the van that she hired to return the sofa to the retailer.

### **My final decision**

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must:

End the agreement with nothing further to pay

Refund all payments made by Mrs B under the agreement

Refund the costs of the inspection report (£60) and the van (£100)

Pay 8% simple interest per year on all amounts refunded calculated from the date of payment to the date of settlement

Remove any adverse information from Mrs B's credit file in relation to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 30 October 2023.

Emma Davy  
**Ombudsman**