

The complaint

Mrs F complains about the quality of a sofa she purchased under a fixed sum loan agreement ("agreement") with Creation Consumer Finance Ltd ("Creation").

What happened

On, or around, 9 October 2022 Mrs F entered into an agreement with Creation for a sofa purchased from a retailer that I will call "D". The cost of the sofa was £3,725 and everything else being equal Mrs F undertook to pay D a deposit of £400 and Creation 48 monthly payments of £69.27, making a total repayable of £3,724.96 (£400 to D and £3,324.96 to Creation) at an APR of 0%.

On or around 17 December 2022 Mrs F took delivery of her sofa from D.

On 19 December 2022 Mrs F complained to Creation about the quality of the sofa D had delivered to her. Creation advised Mrs F to contact D

On 20 December 2022 Mrs F complained to D about the quality of the sofa it had delivered to her.

On 6 January 2023 the sofa was inspected by an agent of D who concluded it could be repaired.

Following receipt of the above advice Mrs F wrote to D to say she wasn't prepared to accept a repair.

On 20 February 2023 Mrs F complained to Creation about the quality of the sofa D had delivered to her.

On 20 March 2023 the sofa was inspected again by an agent of D who concluded again it could be repaired.

On 13 April 2023 Mrs F complained to Creation about the quality of the sofa D had delivered to her.

On 3 May 2023 Creation issued Mrs F with a final response letter ("FRL"). Under cover of this FRL Creation said it wasn't upholding Mrs F's complaint and her agreement was £69.27 in arrears.

On 4 May 2023, and unhappy with Creation's FRL, Mrs F complained to our service. Mrs F's complaint was considered by one of our investigators who came to the view that it should be upheld.

Mrs F accepted the investigator's view but Creation didn't respond to it. And because of the latter Mrs F's complaint has been passed to me for review and 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 can confirm that I've come to the same overall conclusion as the investigator and for broadly the same reasons. There is also very little I can usefully add to what has already been said.

Section 75 of the Consumer Credit Act 1974 ("section 75") sets out that in certain circumstances, the finance provider (Creation) can be held jointly liable if there has been a breach of contract or misrepresentation of the goods by the supplier (D).

Mrs F contacted Creation and D about the quality of the sofa within a matter of days of taking delivery of it. Therefore I've considered whether there was a breach of contract. In doing so, I've taken into account the relevant legislation which is the Consumer Rights Act 2015 ("CRA"). It says that under a contract to supply goods, there's an implied term that the goods are of satisfactory quality and are of a standard that a reasonable person would regard as acceptable, taking into account things like the description of the goods, the price and other relevant circumstances. Other considerations include its fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Based on photographs provided by Mrs F and the two inspections undertaken on behalf of D I'm satisfied that the sofa was of unsatisfactory quality when it was supplied meaning there was a breach of contract for which Creation, under section 75, is liable for.

It appears D has offered Mrs F a repair, but she doesn't want a repair. So I must decide what is fair to put things right.

The CRA provides consumers the short term right to reject the goods (30 days) if they aren't of satisfactory quality. Based on everything that has been said and submitted I'm satisfied that Mrs F complained about the quality of the sofa and her desire to reject it within a matter of a few days, and certainly within 30.

But even if I'm wrong about Mrs F exercising her short term right to reject, given how her claim and complaint have been handled by D and Creation, and how long this matter has been going on for, I consider it fair and reasonable for Creation to allow her to reject the goods now rather than have them repaired.

Given how quickly Mrs F complained about the quality of the sofa I also think it's only fair that Creation refund to Mrs F all the payments she has made under the agreement (including her deposit) together with interest and with no deduction for use.

I see that the investigator felt that Creation should compensate Mrs F £300 for the distress and inconvenience this whole matter has caused her. And taking everything into account including, but not restricted to, Creation's handling of matters and its decision in May 2023 to not uphold Mrs F's complaint on the basis of a submission from D that is obviously in respect of a completely different consumer, I'm satisfied that this is indeed what Creation should have to do,

My final decision

My final decision is that Creation Consumer finance Ltd must:

- arrange collection of the sofa from Mrs F at no cost to her

- refund to Mrs F all the monthly payments she has made to it under the agreement
- refund to Mrs F the £400 deposit she paid D
- pay Mrs F 8% simple interest a year on the above refunds from the date of payment to the date of settlement*
- remove any adverse information from Mrs F's credit file in respect of the agreement
- pay Mrs F £300 for the distress and inconvenience this whole matter has caused her

** HMRC requires Creation Consumer Finance Ltd to take off tax from this interest. If Mrs F asks for a certificate showing how much tax has been taken off this should be provided.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 1 December 2023.

Peter Cook
Ombudsman