

The complaint

Mr S complains that Creation Consumer Finance Ltd, treated him unfairly regarding a dispute about a loan to purchase furniture.

What happened

Mr S says he spoke in store to a furniture company about some specific furniture. Mr S then entered into a Fixed Sum Loan Agreement in October 2022 to purchase that furniture online based on what he was told. He agreed to pay back £4798. When the furniture arrived he called the furniture company because the furniture wasn't as he was told in store and he wanted something different. There followed some back and forth with the furniture company and inspections and it made him an offer which Mr S thought was unfair. So he went to Creation.

Creation didn't uphold Mr S' claim or subsequent complaint, which was later referred to our service. Our Investigator considered the matter and felt that Mr S tried to cancel the contract within the fourteen day period granted by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the CCR's for short). So felt that Mr S should return the sofa to the furniture company at his cost; Creation should end the agreement and refund payments made less 10% for fair usage. Mr S accepted this assessment. Creation acknowledged receipt but didn't actually say whether it accepted the Investigator's determination or not. Accordingly this dispute came to me to decide.

I issued a provisional decision in March upholding Mr S' complaint. Creation has acknowledged receipt of it but hasn't responded within the deadline. Mr S has said the decision is fair and asked whether he can return the sofa himself.

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 order to bring clarity to this case I'm not going to address every single nuance of the multitude of arguments made by the parties in this case. Rather I'm going to deal with the key points in this dispute as I see them and deal with them sequentially for clarity's sake. I've considered everything that the parties have said and provided to this service. However in line with our aim of providing impartial, clear, informal, fair, and reasonable outcomes I'll only deal with the key issues in this decision.

Having considered everything I'm satisfied that Mr S is entitled to rely on what he was told by the staff of the furniture in store. His testimony is clear and detailed and names a member of staff. For example he says "*When choosing a sofa at (location of furniture company given) store we asked a sales assistant (full name given of furniture company representative) if the sofa design we liked was joined as the one in store wasn't. She confirmed the sofa would be attached but we would need to order of the (furniture store) Web Site which we did*". The furniture store records show on the day of the delivery it records that Mr S had said in

relation to Mr S that *“The customer was under the impression after looking online and being told by the (named) store that this would be bracketed together.”*

The website information for this sofa is silent on this point but clearly advertising the particular furniture Mr S wanted. So I think Mr S is entitled to rely on what he was told here and I think if he hadn't been told what he says he was told then on balance I don't think he buys the sofa or borrows the money to do so. So I'm satisfied that he's entered this purchase on the basis of misrepresentation to him by the furniture company in its store-I think the evidence is strong on this point. And under Section 75 of the Consumer Credit Act 1974 Creation can be held to a 'like claim' as to that which Mr S has against the Furniture Company. So on this basis I find this complaint should be upheld as Mr S wouldn't have bought this sofa save for the misrepresentation made to him.

In addition Mr S says he called the furniture company on the day of delivery to say he'd not got what he wanted to buy. This is supported by the records of the furniture company albeit they are particularly brief as to what was said. However Mr S makes clear he was told he would have to pay 20% of the price if he wanted to return the sofa. The furniture company records show there was a large amount of back and forth between it and Mr S over the following days within the fourteen days of the delivery. The furniture store records are very brief; however it is clear from the first record on the day of delivery that Mr S is looking to not have the sofa that had been delivered and have something different. I think it likely in the course of these multiple interactions he said he didn't want the sofa. So in essence I think it likely he tried to cancel the agreement here.

Regulation 29 of the CCR's says in essence that the consumer may cancel at any time in the cancellation period without giving any reason. From what I can see these rights weren't written into his specific sales contract with the furniture company, so it wasn't a breach of the sales contract here when the furniture company didn't allow him to cancel. However regulation 33 of the CCRs ("Effect of withdrawal or cancellation") says the following:

“(1) If a contract is cancelled under regulation 29(1)—

(a) the cancellation ends the obligations of the parties to perform the contract, and

(b) regulations 34 to 38 apply....”

Regulation 34 ("Reimbursement by trader in the event of withdrawal or cancellation") then goes on to say:

“(13) Where the provisions of this regulation apply to cancellation of a contract, the contract is to be treated as including those provisions as terms.”

Subsection 13 is especially relevant to Mr S' case because its effect is to make it a term of his contract with the Furniture company that if he validly exercises his cancellation rights, it must give him a refund (subject to deductions which can be made in specific circumstances). Therefore by refusing to refund Mr S when he cancelled the contract, the Furniture Company were in breach of contract. And under S75 Creation is thus liable to a 'like claim' as the furniture company. So in addition to the misrepresentation reason for upholding this complaint I don't think Mr S was allowed to cancel the agreement when he should have been. So I think this is another reason for this complaint to be upheld along with the misrepresentation reasoning.

This decision considers whether Creation fairly handled Mr S's 'like claim' to it. And it is my decision that, for the above reasons, it hasn't. I've also considered what happened here and clearly Mr S has had the furniture for some time. So a deduction for fair usage seems fair in the round.

Putting things right

Mr S should return the sofa at his cost (how he does this is up to him as long as it is returned in its current state); Creation should end the agreement and refund the payments made less 10% for fair usage.

My final decision

It is my decision that this complaint about Creation Consumer Finance Ltd is upheld. The matter should be remedied as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 May 2024.

Rod Glyn-Thomas
Ombudsman