

The complaint

Mrs N complained about how Creation Consumer Finance Ltd (Creation) handled a refund claim she made to them.

What happened

Mrs N purchased a sofa from a retailer I shall call "G" in January 2024 using a fixed sum loan agreement with Creation at a total price of £2437.00. A deposit of £500 was paid and the sofa was then delivered a few months later.

Mrs N was unhappy with the colour of the sofa and said that the swatch provided in store to help her choose the colour wasn't the same as the sofa she received. She complained to G and sent images of the sofa to evidence what'd happened.

G discussed the matter with the sofa supplier and said that the sofa was the same colour as the swatch which Mrs N had reviewed. They felt that any difference noted by Mrs N may be due to a difference in lighting in her home.

A technician was also sent to Mrs N's home with a swatch from the store and they confirmed the sofa was the same colour. G offered a reduction of their restocking fee from 50% to 40% for the return of the sofa, which would've been applied to her credit agreement, however Mrs N didn't accept this to resolve the complaint. She also said that it had cost £230 to remove a window to move the sofa into her home and so she'd incur these costs again if the sofa was replaced or returned.

As the matter remained unresolved, Mrs N contacted Creation to raise a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against them.

Creation considered the claim but didn't think there was enough evidence the sofa was a different colour than ordered and so there was insufficient evidence of a breach of contract or misrepresentation by G.

As Mrs N didn't agree, she brought the complaint to our service to consider.

Our investigator considered the evidence available and reached the same conclusions as Creation that there was insufficient evidence that the sofa had been misrepresented to Mrs N or there had been a breach of contract. As Mrs N didn't agree she asked for an ombudsman to issue a final decision on the matter.

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.

It's important to note that Creation aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mrs N paid for this transaction using a finance agreement, a S75 claim could possibly help her. So in deciding what is fair and reasonable I've focussed on this.

S75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

To assess a valid claim, Creation would've needed to consider all relevant evidence for the alleged breach of contract or misrepresentation. But for there to be a valid claim under S75 there are certain technical requirements and I'm satisfied they've been met here.

The crux of Mrs N's complaint is that the sofa she purchased didn't match the swatch she'd used in store to choose the colour. I've therefore considered this under S75 in terms of whether there was a breach of contract or misrepresentation to Mrs N.

Breach of contract

Under S75, Creation is responsible for any breach of contract by G. This is with consideration of both explicit terms of the contract and also implied terms into contract by law.

The Consumer Rights Act 2015 (CRA) does imply a term into the contract that goods must match their description – so it requires 'goods to be as described'.

Creation has said this particular range of sofa is no longer available and the nearest style and colour range doesn't offer the shade called 'absolute white'. However they've provided a picture of a sofa whose colour matches the one Mrs N ordered. I've considered this against the swatch and I can't see any discernible difference here. I also note that the picture on G's website does look like a shade of white and I can't discern a yellow tinge there or on the swatch.

I've also considered G's terms and conditions and note that under 'Description of Products' it states they are for illustration purposes only. I take it from this that there may be variations in the perceptions of colours due to the fact the image is on a screen and that is why the use of swatches is generally most helpful in determining the correct colour.

I can't see anything further regarding the type of issue Mrs N has experienced in the explicit terms. Therefore I've considered the CRA in terms of whether the goods were as described to determine if there was a breach of contract by G.

Mrs N says the technician sent by G verbally agreed the sofa wasn't white, but then at the same time compared the swatch to the sofa and said they matched.

I also note I don't have any documented evidence showing the swatch being a different colour from the sofa Mrs N purchased. Because of this I can't say I've sufficient evidence of a breach of contract here due to the goods not being as described.

I've also reviewed G's terms and conditions for items returned when they are unsuitable and they do say there will be a restocking fee for this. I'm therefore satisfied they were entitled to apply this on a goods return, In this case G has offered a reduction in the restocking fee to 40% as a gesture although I appreciate Mrs N hasn't accepted this.

Misrepresentation

For a misrepresentation to have occurred, there must be sufficient evidence to show G likely made a false statement of fact that caused Mrs N to buy the sofa. In this case the false statement of fact seems to be that the sofa colour was called 'Absolute White' and in addition that she doesn't think the swatch actually matches the sofa she received.

With consideration of the available evidence, I can't agree there has been a false statement of fact here and I'll explain why.

Firstly the technician who visited her home agreed the swatch matched the sofa and this was the colour Mrs N had chosen, and which she also noted looked white both in store and outside. She would've then had the opportunity to consider the swatch in her home as well as in that particular environment.

With this in mind, while I appreciate that the sofa in its entirety now looks different to Mrs N, I can't say the swatch didn't represent the sofa and so there has been a false statement of fact by G here regarding the colour of the swatch which induced Mrs N to her purchase.

I must also address Mrs N's comments on the colour described as 'absolute white' which she doesn't consider to be an accurate representation. She also notes that the sofa no longer has a colour choice for 'absolute white' in store or online. While I appreciate Mrs N's position, I don't think the swatch colour name is a false description of fact either.

I say this because Mrs N herself said the swatch looked white both in store and outside, The suggestion would then be that with a description of absolute white, the sofa would need to remain white in all conditions. However I do think that a white sofa would look to be of different shades depending on the lighting conditions and it's clear that this must vary between the store, outside and in turn Mrs N's home for the sofa to look differently there.

As stated above, as this particular sofa range isn't available, I've reviewed a similar range, and this matches the colour of the swatch used. Likewise the swatch appears to match the pictures supplied of Mrs N's sofa so in summary while I've considered Mrs N's comments and evidence, I'm not persuaded that G misrepresented the sofa and the swatch was a different colour to the sofa delivered.

I appreciate Mrs N is unlikely to return the sofa now and in her correspondence to us has said that she would have to live with the sofa acknowledging it's well made and comfortable but not as she'd hoped.

I understand her disappointment but I've insufficient evidence of a misrepresentation or breach of contract here by G, so I don't think Creation acted unfairly in declining Mrs N's claim under S75 CCA.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 25 July 2025.

Viral Patel
Ombudsman