

## **The complaint**

Mr K has complained that Creation Consumer Finance Ltd (“CCF”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

## **What happened**

In September 2022, Mr K entered into a fixed sum loan agreement with CCF to fund the provision of a sofa set from a third-party supplier that I’ll call “S”. The cash price was just over £4,200. Mr K was due to pay back the agreement with monthly payments of around £88 and the term of the loan was around 4 years.

The sofa set was delivered in November 2022, and after this CCF collected payments due under the loan. In August 2024, Mr K contacted S seeking to return the sofa set claiming it was defective as it has sunk in on one side, there is a stain and has scratches and damage from their pets. Mr K says the sofa set had been misrepresented to him by S’s sales agent who told him the leather sofa would be durable and hard wearing and better for animals than a fabric sofa (which is what he originally wanted). He said the sofa had been sold to him as animal proof. He now wanted to reject the sofa and cancel any further payments.

S sent out a service manager who examined the sofa and explained that there was no manufacturing fault, that he could see cat scratches and damage from their dog. He said there was head grease stain on one section and the sofas had suffered from natural softening after not being plumped and/or cared for correctly.

Mr K subsequently raised a section 75 claim against CCF under the Consumer Credit Act 1974 (s.75). CCF rejected the claim for the same reasons as those set out by S.

Mr K remained unhappy so referred the complaint to our service. Our investigator looked into things and didn’t think CCF had acted unfairly. He said that there was no evidence the sofa had been misrepresented to Mr K in the way he’d claimed and there wasn’t sufficient evidence that there had been a breach of contract because there was no evidence the sofa set was defective. Our investigator explained there was information available online explaining how this type of sofa required regular plumping and it wasn’t in dispute that the pet damage was caused by the pets, and therefore not present during the sale.

Mr K didn’t agree. He felt the sofa was sunken on one side, had a stain on it that couldn’t be explained by head grease, and that CCF should order an independent expert to assess it. He felt it wasn’t fair that consumers had to provide evidence and that this wasn’t good customer service. He added that he had also paid for a sofa protection plan and didn’t understand why the claim wasn’t covered.

Our investigator re-iterated that there was no evidence the sofa was of poor quality at the time of sale, that the problems Mr K is complaining about are about the characteristics of the sofa filling and information was available online on how to properly care for the sofa. He also re-iterated that there’s no evidence of the alleged misrepresentation. He added that if he wanted to claim under any other protection plans, he’d have to contact S to ascertain how to do that – but it’s not something CCF would be responsible for under a s.75 claim.

As things weren't resolved the complaint has been passed to me to decide.

### **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.

Firstly, I'd like to reassure Mr K, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality.

I would add that I'm sorry to hear that Mr K is unhappy with the sofa set. But it may be helpful to explain that I need to consider whether CCF – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr K's claim. But it's important to note CCF isn't the supplier. S.75 is a statutory protection that enables Mr K to make a 'like claim' against CCF for breach of contract or misrepresentation by a supplier paid using a fixed sum loan in respect of an agreement it had with him for the provision of goods or services. But I want to explain from the outset that I can only consider Mr K's complaint on that narrow basis – that is, whether it was fair and reasonable for CCF to respond to his claim in the way that it did.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met and CCF has also agreed that s.75 applies.

### *Misrepresentation*

To make a claim for misrepresentation, I'd have to consider if the sofa set has been misrepresented to Mr K in any way and that this caused him to suffer loss. For the purpose of this decision, I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Mr K bought the sofa set in person at one of S's stores so there is no record of the discussions that took place. Beyond his verbal testimony, I appreciate Mr K would be unable to provide any other evidence of the alleged verbal misrepresentations.

Cases involving verbal testimony alone as evidence are difficult. Usually, in order to uphold the complaint, I'd need the testimony to be detailed and persuasive to convince me that the alleged misrepresentation happened and were relied on. I'd also look at the wider circumstances to ascertain whether there were any other factors that supported a consumers claim.

The sofa set in question is still sold by S, and the general marketing literature doesn't mention anything that suggests that the sofas are specifically designed to withstand damage from pets. I think it's clear that he was sold a leather sofa set, but I haven't seen sufficient evidence that S implied that leather is animal proof. And I have to bear in mind, that Mr K had the sofas for almost two years before claiming it was misrepresented to him.

So, while I have considered his testimony carefully, I'm afraid I don't find his testimony persuasive enough to make a finding that it's likely the sofa set was misrepresented to him. So, overall, I cannot safely conclude that it was unfair for CCF to decide that there was insufficient evidence to uphold his claim on the grounds that the sofa set had been misrepresented to him.

### *Breach of contract – express terms*

In order for me to uphold Mr K's s.75 claim, I'd have to be satisfied that S breached a term of the contract – and that caused him to suffer loss. I've initially looked at whether there has been an express breach of the contract that S had with Mr K.

Mr K bought a leather sofa set with a foam and fibre filling and that is what he received and used for almost two years - so I don't think any express terms have been breached in this case.

### *Breach of contract- implied terms*

But the Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that the goods must be of satisfactory quality, aspects of which include goods being durable and free from minor defects. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

So, I've gone on to consider whether there has been a breach of an implied term in the contract. I understand Mr K said the sofas have suffered pet damage and has sunken in one side as well as there being some discolouration. I've seen the photographic evidence of the damage. But sofas suffering from wear and tear and being externally damaged by Mr K's pets doesn't mean that the sofas were not of satisfactory quality at the time of sale. CCF would only be liable to offer a remedy, if Mr K could establish with evidence that the sofas were either, defective to begin with or were of poor quality at the time of sale, or show that the sofa isn't durable as would be expected - rather than becoming damaged over the years due to usage.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract. As Mr K raised his concerns more than six months after the delivery of the sofa set, the onus is generally on him to prove the sofa set wasn't of satisfactory quality when it was sold to him.

S's service manager said the problems he's experienced is due to Mr K's pets as well as him not plumping the sofa regularly and so the sofas haven't been properly cared for. He's also said the discolouration was caused by a head grease stain. I haven't seen sufficient evidence to demonstrate that what S's service manager has said isn't true. I understand Mr K wanted CCF to arrange for an independent report to be carried out but, as explained above, Mr K is making the claim after a substantial amount of time has passed since the sale, so I don't think it's unreasonable for him to provide some form of evidence to support his claims. But in any event, Mr K hasn't disputed that the damage was done by his pets and that he's also said he doesn't think it's feasible to plump the back fixed cushions indicating he hasn't been plumping them as stated by the service manager.

As explained, I can only assess Mr K's complaint, on a narrow basis – whether there is a breach of contract or misrepresentation that S made that CCF would now be responsible for. And I don't think it was unreasonable for CCF to conclude that there is insufficient evidence here to support either claim.

I would add that if Mr K has purchased any protection plans – any claims would be against the business (possibly the insurer) that provided the cover and not against S, and not

something CCF would be responsible for. Mr K is free to look at his protection plan documents which should advise him how to make such claims.

Overall, I don't think there's sufficient evidence that there's been a breach of contract or misrepresentation. So, I don't think CCF acted unfairly for declining this claim. While I am sorry to hear Mr K is unhappy, with s.75 in mind, I don't find there are grounds to direct CCF to accept the rejection of the sofa set. I should, however, point out Mr K doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 May 2025.

Asma Begum  
**Ombudsman**