

## The complaint

Mrs B has complained about the way Creation Consumer Finance Limited dealt with a claim for money back in relation to furniture she'd bought using a fixed sum loan agreement with it.

## What happened

The circumstances of the complaint are well known to the parties so I won't go over everything again in detail. But, to summarise, Mrs B bought a sofa and two chairs from a supplier I'll call "S" using a fixed sum loan agreement with Creation. The furniture cost around £2,700. She paid a £500 deposit and the agreement was due to be paid back over two years with monthly payments of around £90.

I understand S delivered the furniture on 3 December 2023. Mrs B said she immediately pointed out there were faults with it, but she was told it should settle down within a few weeks and that the faults were due to packaging. Mrs B said she complained to S on 24 December 2023.

Mrs B said it wasn't until late January 2024 that S was able to visit her and she said S found no faults, although sliders she'd paid for were missing, which it agreed to resolve. I understand it offered to arrange to have extra fibre fitted as a gesture of goodwill. Mrs B contacted Creation to complain, and she also contacted another alternative dispute resolution ("ADR") scheme.

Creation sent a final response in February 2024 to say it rejected the claim because S's response was fair. I understand the other ADR scheme also thought the same. Mrs B wasn't happy with the response and paid for an independent report. The report said:

*The main cause of excess material is that the material isn't getting the support it needs from the foam due to the density being of an inadequate quality to fulfil the full shape of the cushion covers.*

*I would suggest the materials that have been used are an inadequate quality or haven't had the correct amount of filling in them from the manufacturer, which explains why the suite has failed. To ascertain the exact reason for the failure of the bottoming out of the sofa the suite would need a workshop appraisal to be stripped down and assessed, however I do not feel this would be a worthwhile expense as previously stated.*

*There are two main reasons behind the seams being out of alignment, firstly it could be due to how the material has now stretched from the foam deteriorating or it has simply been mis-manufactured by a tension issue with the machine at the point of manufacturing or a templating issue. In my opinion I would suggest this isn't within manufacturers tolerance.*

*I feel the faults which are displayed are not within manufacturers tolerance and it has simply lost the essential quality control on this product.*

The technician thought the furniture was beyond economical repair because there were *far too many issues on all items to allow for remedial work*. The technician didn't think the furniture lived up to expectations; it had several defects; and wasn't of satisfactory quality.

Mrs B also referred her complaint to our service. Creation didn't change its assessment after seeing the report. Our investigator noted the other ADR outcome and also didn't think there was sufficient evidence of a breach of contract. He noted the independent report said the furniture would require a workshop appraisal to ascertain the issue and that S's terms and conditions state there was a 5cm tolerance level for dimensions, whereas the report referred to gaps or misalignments less than this.

Mrs B strongly disagreed. I issued a provisional decision that said:

*I also want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mrs B and Creation that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Mrs B paid for the furniture using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.*

*I take into account the relevant law. So, in this case, section 75 of the Consumer Credit Act 1974 makes Creation responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.*

*The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods contract are not met.*

*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.*

*The CRA also sets out certain rights to reject where the goods don't conform to the contract. This includes a short term right to reject. The time limit for exercising the short term right to reject is the end of 30 days beginning with the first day after delivery in this case. So if the goods weren't of satisfactory quality, Mrs B had until 30 days after the day of delivery to reject them. I think Mrs B contacted S within that time because she was unhappy. Unfortunately, I can't see the email she sent, and the copy of S's notes have gaps. But I can see that she had contacted S within the 30 days expressing her dissatisfaction. I can also see the notes refer to "cancel the whole sale or perhaps purchase another different one". Based on what Mrs B said, on balance, I think she probably did try to exercise her short term right to reject. So did she have a valid claim?*

*On the one hand, S said the furniture was fine. It offered to supply gliders that were missed. I can't see the gliders present on the contract. S offered to arrange for extra filling if Mrs B wanted. Its terms refer to a 5cm tolerance for dimensions, whereas the report referred to gaps of less than this. Another ADR entity appears to have accepted S's offer was fair. And*

*Creation didn't have the report when it first assessed the claim.*

*But on the other hand, it's not in dispute S didn't supply gliders originally, and it offered to supply them or reimburse Mrs B for them. So there was possibly some sort of minor breach of contract there. Mrs B also obtained an independent professional report that highlights several faults, and that the furniture wasn't economical to repair. I'm not a furniture expert and I have to base my findings on the evidence presented to me. The expert is VAT registered and a member of a furniture trade association. It looks like the company has a lot of experience with furniture inspections, and the report seems professional. It's the only expert independent evidence we've been provided. So I find the report quite persuasive. Creation has now had sight of it, so I think the most pragmatic thing to do is to consider it as part of this complaint. Moreover, while we've referred to the 5cm tolerance for dimensions, I think the report sets out more than simply faults with the dimensions. There are several issues highlighted. And I can understand Mrs B's point of why would S offer to arrange for extra filling if none was needed – particularly given she complained straight away, the furniture was brand new and should've been free from even minor defects at that point. Mrs B said she hasn't taken the tags off the furniture which I think goes some way to showing how unhappy she is.*

*On balance, I think I'm minded to conclude that there likely was a breach of contract and that Mrs B asked to reject the goods within 30 days. And even if she didn't validly exercise the right within 30 days, I'm mindful the independent report says repair is uneconomical. I think she has a fair claim to reject the goods. I'm going to propose that she's allowed to do that.*

*The CRA says no deduction from the refund can be made to take account of use if the right to reject is exercised within the first six months. I think, on balance, Mrs B had a valid right to reject the goods within the first 30 days (or at least the first six months). While I appreciate Mrs B may have had some sort of use while the furniture was in her home, I don't think they were the sort of goods she could have easily stored elsewhere. So I don't think she had the chance to mitigate. And I don't think a deduction should be made for use, which Mrs B would no doubt say was impaired in any event. I also think Mrs B should be reimbursed the cost of the report she arranged given that cost arose due to what I think was a breach of contract. Mrs B will need to provide evidence of the cost incurred.*

*Finally, while I acknowledge Mrs B wasn't happy with Creation's answer, I think it answered the claim promptly based on the evidence it had at the time. I'm not going to direct it to take any action in relation to the overall way it handled the claim.*

*Therefore, my provisional decision is that I'm intending to uphold this complaint and direct Creation to:*

- 1. End the agreement with nothing further to pay.*
- 2. Arrange to collect the goods from Mrs B, at no cost to her.*
- 3. Refund any payments made.*
- 4. Refund the cost of the independent report (upon receipt of evidence).*
- 5. Interest should be added to the above amounts at a rate of 8% per year simple from the date the payment was made to the date of settlement.*
- 6. Remove any adverse information about the agreement from the credit reference agencies.*

Mrs B responded to say that for health reasons she put her home up for sale in September 2024 and that she also thought her only option would be to register her claim through the courts. She said she had to pay £205 to do that. As part of the claim she'd requested a full refund; the return of goods; £300 for the report; £205 court costs; and £300 compensation for the distress and inconvenience. She said the matter took its toll on her health. She also

mentioned she'd incur storage costs of around £175.

Creation responded after speaking to S. S said it agreed the best option would be to collect the furniture and cancel the order. It said it would arrange the collection, cancellation and refund of the order. It said it would also refund the inspection cost and court fee.

### **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.

I'd like to thank the parties for their responses. It seems there's a broad agreement for ending the agreement; a refund of everything paid under it; the inspection costs; and S has also offered to refund the court fee. I think that's a fair way to resolve things, but Creation should take ownership of the offer so that Mrs B has the protection of a legally binding decision if she chooses to accept it.

Mrs B has asked for compensation. But it's important to note that compensation for distress and inconvenience caused by S is limited with this type of complaint. I appreciate Mrs B is very upset about what's happened and says she's been put to inconvenience. But I have to consider what Creation can be held liable for – which is the like claim Mrs B would have in court against S for breach of contract or misrepresentation. Courts do consider what's known as general damages. But damages in breach of contract cases like this aren't generally recoverable for distress or inconvenience. So I don't find I have the grounds to direct Creation to make an award for that.

Moreover, it's also important to set out that I'm unable to make an award for loss of amenity so if Mrs B was looking to pursue this aspect of the complaint, she may wish to seek independent legal advice because I can't cover it in a decision.

When considering consequential losses, I need to think about whether those losses were directly flowing from the breach of contract; whether they were reasonably foreseeable; and whether Mrs B could have taken steps to mitigate. I don't find the storage costs would meet all those requirements. At least I don't think they were directly flowing from the breach or reasonably foreseeable. It seems as though Mrs B's situation changed leading to her looking to sell her home. I'm sorry to hear she has health concerns, but I don't find I have the grounds to direct Creation to reimburse Mrs B the storage costs.

Overall, I think the outcome I reached in my provisional decision still seems fair. S has also offered to refund the court cost. I'm not going to direct Creation to do more. I hope it allows the parties to draw a line under things and move on. But Mrs B doesn't have to accept this decision. She is still free to pursue the claim through the court if she'd prefer.

## **Putting things right**

Creation should:

1. End the agreement with nothing further to pay.
2. Arrange to collect the goods from Mrs B, at no cost to her.
3. Refund any payments made (including the deposit).
4. Refund the cost of the independent report (upon receipt of evidence).
5. Refund the £205 court fee cost (upon receipt of evidence).
6. Interest should be added to the above amounts at a rate of 8% per year simple from the date the payment was made to the date of settlement.
7. Remove any adverse information about the agreement from the credit reference agencies.

If Creation considers it is required to deduct tax from my interest award it should provide Mrs B a certificate of tax deduction so she may claim a refund from HMRC, if appropriate.

## **My final decision**

My final decision is that I uphold this complaint and direct Creation Consumer Finance Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 7 July 2025.

Simon Wingfield  
**Ombudsman**