DRN-5617275

The complaint

Mr E is unhappy with how Creation Consumer Finance Ltd (Creation) handled his Section 75 claim regarding faulty sofas.

What happened

The parties are familiar with the background of this complaint, so I will summarise it briefly here, which reflects my informal remit.

In April 2023 Mr E entered into a fixed sum loan agreement with Creation to purchase furniture, including two sofas costing £608.48 and £570.52.

The sofas were delivered later than expected, arriving in May 2023. Mr E said that after two to three months of use, he noticed the cushion foam in the sofas was becoming noticeably softer. He raised his concerns with the retailer, who initially didn't respond. Following a service visit, the retailer said the foam softening was normal and that up to 25% reduction in firmness could occur within the first few months. Mr E said that he was never informed of this at the point of sale.

Unable to resolve the issue with the retailer, Mr E contacted Creation in April 2024 requesting the sofas be replaced or returned.

On 18 April 2024 Creation acknowledged Mr E's complaint and contacted the retailer, who arranged for a service manager to visit. Mr E said the service manager confirmed that firmer cushion inserts were needed for better support and agreed to order the parts.

On 8 May 2024 Creation sent its final response letter to Mr E. It said the retailer had agreed to order new parts and had also arranged for a hamper to be sent to him.

On 11 June 2024, Mr E told Creation he was unhappy with the delays and wished to return the sofas. The replacement parts arrived on 13 June 2024, and a service visit was arranged for 21 June 2024. Creation was later informed that Mr E had cancelled this appointment, and it was rescheduled for 5 July 2024.

Following the visit, Mr E reported that the service manager found the new foam inserts were softer than the originals and said that no improvement could be made to one of the sofas. Creation informed Mr E that the retailer had arranged a further visit on 25 July 2024 to complete the repairs.

On 26 July 2024 Mr E stated that the retailer had brought the same type of sofa inserts as before and repeated his wish to return the sofas. The retailer, however, claimed that Mr E refused to have the foam inserts fitted, because he thought they were not firm enough.

Further correspondence took place between Creation and Mr E, and in August 2024, Creation stated that although Mr E had refused the repair, the replacement inserts were the standard specification for the sofas. Mr E argued that he only refused the repair because the replacement parts were of inferior quality, compared to the original cushions, which had been firmer but were deemed faulty.

When Creation maintained this was the only foam available for the repair, and nothing further could be done, Mr E referred his complaint to our service.

An investigator considered the case but didn't uphold the complaint. They concluded that they could only consider how Creation handled the claim and complaint up to the point of the final response letter. In doing so, they found no evidence that the sofas were not of satisfactory quality when they were delivered. However, they considered that by offering a repair, Creation had provided a suitable remedy under the Consumer Rights Act 2015 (CRA).

Mr E disagreed, arguing that the sofas were faulty - something he believed the retailer had effectively acknowledged by offering replacement foam inserts. He stated that the replacement parts were of poorer quality than the originals and that the failed repair constituted a breach of his consumer rights. As the issue remained unresolved after repeated delays and visits, he considered that a reasonable time for repair had now passed and, under the CRA, he should be entitled to reject the sofas.

As Mr E remained unhappy with the outcome, the case was referred to me for a final decision.

I issued a provisional decision which said the following:

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party - it reflects my role in resolving disputes with minimum formality.

The investigator has said they can only consider events up to the point of the final response. While I agree that this is our service's usual approach, in this case however, matters have progressed significantly since then. The issues now centre largely on the adequacy of the proposed repair, which Mr E has continued to discuss with both our service and Creation. Taking account of everything that has happened since the final response, I consider it reasonable to look at events beyond what's been covered in the final response. Creation has also confirmed that it agrees for me to do so.

In deciding what's fair and reasonable I'm required to take the law into account, which includes Section 75 (S75) of the Consumer Credit Act 1974 and the Consumer Rights Act 2015 (CRA). I've therefore had this in mind when thinking about whether Creation acted fairly in how it handled Mr E's request for the return of the sofas.

The general effect of S75 is that if Mr E has a claim for breach of contract or misrepresentation against the supplier of the sofas, he can bring a like claim against the credit provider (in this case Creation), for breach of contract or misrepresentation providing certain conditions are met first. For completeness, I'm satisfied those technical requirements are met here to raise the claim.

So, I move on to consider whether there has been misrepresentation or a breach of contract by the supplier.

Misrepresentation

In the context of Mr E's case, a misrepresentation would be a false statement of fact made by the retailer and which induced Mr E to enter into the contract to buy the sofas. Mr E says he wasn't told at the point of sale that the sofa cushions could soften by up to 25%.

In general, simply failing to tell someone something on its own does not usually amount to misrepresentation, as no false statement has been made. There is also no evidence that Mr E sought specific information about the sofas or cushion inserts and was then given false or misleading information.

The order details also included care advice stating that "cushions will soften with use". While the exact percentage was not mentioned, I don't consider this omission alone to amount to misrepresentation. I therefore don't consider there to be sufficient evidence that the sofas were misrepresented to Mr E.

Breach of Contract

The CRA implies terms into a contract that goods supplied must be of satisfactory quality. The CRA sets out that goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account things like price, description and durability. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

Mr E says the sofas were not durable because the cushions became very soft and reduced in size within a very short space of time after purchase.

To establish a breach of contract, as a starting point, there would need to be evidence of a fault. When Mr E initially raised his concerns with the retailer, he was told that the softening was normal. Although there were follow up visits by the retailer, and Mr E says the service manager agreed the cushions were faulty, I've seen no clear evidence to confirm this.

Mr E has provided photographs, but these don't show both sofas in full or clearly demonstrate the alleged fault. As a non-expert in furniture, I would need to see some independent evidence which comments on the quality or durability of the sofas. I'm not saying that Mr E needs to provide this now, as I'm only considering Creation's response to the claim, but based on the current evidence, I can't fairly conclude that a fault has been established to show there's been a breach of contract.

That said, I note that Creation agreed to a repair and referred to the CRA, which suggests it accepted that a fault which made the goods not of satisfactory quality might exist. Even if I were to accept that a fault had been established, because the issue was first raised with the retailer a few months after purchase - and Creation was contacted almost a year after - I believe the appropriate remedy under the CRA would be a repair, which Creation agreed to arrange for Mr E.

The Repair

I'm aware Mr E has raised concerns about the adequacy of the repair and the quality of the replacement parts. He also feels Creation has already had its one opportunity to repair the sofas, and as it hasn't done so in a reasonable time, he should be able to return the sofas.

Under Section 23 of the CRA, where goods don't conform to the contract, a trader has one opportunity to repair or replace the faulty goods, and any such repair must be carried out within a reasonable time and without causing significant inconvenience to the consumer.

In this case, although there have been two service visits following the receipt of parts, the evidence suggests that no actual repair has been completed on either sofa:

- *5 July visit: Mr E reported that no repair could be carried out on one sofa. For the other sofa, the replacement part was reportedly softer than the original, so further* *parts were ordered.*

- *25 July visit: Mr E said the replacement parts were the same foam inserts as those provided on 5 July. He refused the repair, stating that the replacement foams were inadequate.*

Although the first visit in July identified that further parts were required, it is unclear whether this visit can properly be regarded as Creation's "one opportunity" to repair under Section 23 of the CRA, as no repair work was undertaken and Mr E agreed to the ordering of additional parts. Even if I were to accept that this first visit constituted the first repair attempt, Mr E's agreement to have further parts ordered indicates that he accepted the continuation of the repair process. In those circumstances, I don't consider it would be fair to treat the repair as complete or to reject the goods before the agreed follow-up could take place.

In any event, the evidence shows that Creation has not yet been given the chance to carry out the repair, as Mr E ultimately refused to allow the sofas to be worked on during the second visit.

Creation has indicated that it remains willing to proceed with the repair and if Mr E is still dissatisfied afterwards, it can arrange an independent inspection. I consider this to be a reasonable approach. It will now be for Mr E to decide whether to proceed with the repair and, if necessary, take up Creation's offer of an independent inspection if he remains unhappy with the repair once its completed. But I am satisfied that the repair is still a fair remedy under the available remedies in the CRA.

Delays in how Creation handled the claim

I've considered Mr E's concerns about the time taken to progress the repair and how Creation dealt with his claim.

Although Mr E first contacted the retailer a few months after purchase, the earliest record of contact with Creation was from April 2024. Creation acknowledged the complaint promptly, contacted the retailer, and confirmed a service visit within the same month. Parts were ordered and received by 13 June, which was around seven weeks after the technician's visit. There was some delay after that, but this appears to have been due to Mr E rescheduling the appointment. When additional parts were later required, I consider they were arranged fairly quickly as well.

While I acknowledge that Mr E considers this period of time lengthy and inconvenient, I am satisfied that the time taken to order and arrange delivery of the parts was reasonable in the circumstances, particularly as the items in question were sofas, which I would expect to take some time.

As most of the earlier issues and delays appear to also have been with the retailer, I don't think Creation can be held responsible for them. From the point at which Creation became involved, I find that it acted fairly, within reasonable timeframes, and I do not consider the time taken to arrange the repair to be unreasonable.

Mr E doesn't need to accept my decision, if he thinks he can get a better outcome through the courts. But if he decides that he'll agree to a repair he'll need to contact Creation to arrange it.

My provisional decision

I am currently minded to say that I don't uphold this complaint against Creation Consumer

Finance Ltd.

Creation responded and accepted my provisional decision.

Mr E responded and, in summary, said:

- The retailer's lack of communication, absence of service reports, and failure to acknowledge his complaints suggested an attempt to avoid accountability.
- Creation had provided a written response confirming that the sofas were faulty, which he believed should be considered when determining whether a fault exists.
- The photos showed the cushion thickness reducing from 15cm to 3-4cm when sat on, which was neither disclosed nor normal.
- The sofas failed to provide proper support, making it difficult to stand after sitting, which he considered to be an indication of unsatisfactory quality.
- The delay in contacting Creation was due to a lack of knowledge, not intentional avoidance.
- Service staff had initially advised against the repair due to the inferior foam inserts, and later visits confirmed that no better foams were available. Mr E maintained that he never refused the repairs in bad faith.
- He had endured over two years of inconvenience, repeated failed repairs, and continued use of faulty goods, and considered the appropriate remedy to be the return of the sofas and a refund.

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 have considered everything Mr E has said in response to my provisional decision. Much of what he has raised has already been addressed in my provisional decision and forms part of this final decision, so I will not comment on every point. Instead, I'll focus on what I consider to be the key issues.

Mr E expressed concerns about the retailer's lack of communication, the absence of service reports, and its failure to acknowledge his complaints. While I understand why he feels frustrated, I cannot hold Creation responsible for this. From the point Creation became involved, I consider that it acted fairly and did not cause any unreasonable delays in handling Mr E's claim.

Mr E maintains that the sofas were faulty and says Creation confirmed this in writing. He provided photographs and explained that the sofa cushions reduced significantly when sat on and didn't provide proper support. However, I've seen no written confirmation from Creation explicitly stating that the sofas were faulty. The evidence provided - including the photographs and Mr E's description of the issues - is not sufficient on its own for me to determine that a fault existed under the CRA.

In any event, this point does not change the overall outcome. Creation ultimately agreed to a repair, and even if I accepted that a fault existed, I would still consider a repair to be an appropriate remedy under the CRA.

Regarding the repair, I acknowledge Mr E's explanation that he didn't refuse it in bad faith. He said he was initially advised by the service manager not to proceed and later learned that the replacement foam inserts were of inferior quality. While I accept that Mr E was unhappy with the replacement parts and that this may have contributed to his reluctance to proceed, I haven't seen any evidence to support these claims. From the available evidence, it appears that after the initial repair visit, Creation ordered further parts with Mr E's agreement, but the repair was ultimately not carried out because Mr E refused it on the basis that he believed the replacement parts were inadequate.

For the reasons I have already explained, I still consider a repair to be the most appropriate remedy under the CRA. In my view, it would not be fair to consider rejection of the goods, given that the agreed repair between Mr E and Creation has not yet been carried out. Creation remains willing to arrange a repair for the sofas and if Mr E wishes to accept this, he will need to contact Creation to arrange it. If, after the repair, he disputes its adequacy, he can also contact Creation to discuss its offer of an independent inspection.

Taking everything into account, and based on the evidence provided, I consider that Creation handled the claim appropriately.

My final decision

My final decision is that I don't uphold this complaint against Creation Consumer Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 26 September 2025.

Farhana Akhtar
Ombudsman