

complaint

Mrs E is dissatisfied with Creation Financial Services Limited's response to her claim under section 75 of the Consumer Credit Act 1974.

Mrs E bought a sofa which she says she only purchased because the sales person told her it was 100% leather.

Mrs T represents Mrs E in her complaint.

Our initial conclusions

Our adjudicator did not recommend that the complaint should be upheld.

Creation accepted this recommendation. Mrs T, on behalf of Mrs E, did not. She asked that an ombudsman review the complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

the sofa was not misrepresented

If Mrs E has a claim against the supplier for misrepresentation or breach of contract she also has a claim against Creation under section 75. So to find against Creation I have to be satisfied that the sofa was misrepresented or the contract was breached.

This complaint turns on what Mrs E was told when she bought the sofa. The parties have put forward two totally different versions of events. Where there is a disagreement like this I make my decision on the balance of probabilities – that is on the basis of what I consider is most likely to have happened based on the information I have.

Mrs E tells us she had had her previous 100% leather sofa for a very long time. She says she considered that this sofa had lasted so long only because it was 100% leather. She tells when she came to buy a replacement for it she only wanted another 100% leather sofa. On this basis she explains she questioned the sales person very carefully about the sofa she bought from it and she was told categorically that the sofa was 100% leather.

Equally the supplier says that its staff members need to have a detailed knowledge of its stock. It says it provided specific training about the sofa that Mrs E bought. It tells us that the person who sold the sofa to Mrs E had had the training a few weeks beforehand.

It has provided us with copies of the training material. It clearly says that the sofa is made up of 70% leather and 30% other materials. Further it says this is a key selling point as in its opinion this means it is "*better than leather*". Moreover the training material repeats these messages again and again. It's fair to say that anyone who had gone through this training would be hard pressed not to know that the sofa was only 70% leather.

On balance, whilst I do not doubt that Mrs E did ask what the sofa was made of, I consider it unlikely that the sales person said the sofa was 100% leather. Rather I consider it is more likely that the sales person would have repeated the information that was in the training

material. In the circumstances, it follows that I do not consider that on balance I can safely conclude that the sofa was misrepresented to Mrs E.

there was no breach of contract

To cover all bases I also looked at whether the sofa was of satisfactory quality. Because if it was not then this would be a breach of contract and Mrs E would be entitled to her money back.

Creation commissioned an independent experts' report. I am sorry Mrs E considered the expert was not interested in what she was saying when he came to do his inspection.

But the report's conclusions are clear. It says the damage was caused by Mrs E's pets and was not due to any manufacturing fault. Mrs E says this is by the by, because the real issue here was the misrepresentation. She says if the sofa was 100% leather it would have been suitable for a home with pets. That may well be so but I am satisfied that there was no breach of contract.

I listened to what Mrs E said about the poor customer service she received from the supplier. In particular, I can well understand how galling she may have found it to get no written response from it despite her best efforts. She was certainly entitled to better customer service from the supplier. But I cannot fairly hold Creation responsible for this.

I am sorry to disappoint Mrs E. I realise she spent a lot of money on her sofa and this is not the outcome she wanted. However, I am unable, having carefully considered all of the available evidence, to find in her favour.

my final decision

My final decision is that I do not uphold the complaint.

Joyce Gordon
ombudsman