

complaint

Miss S says there have been faults with a sofa she financed through Creation Consumer Finance Ltd ("Creation") since she got it.

background

On 24 October 2017 Miss S signed a point of sale loan with Creation to finance her purchase of a reclining corner sofa and armchair.

She soon complained about a couple of faults with the reclining sofa. One was repaired at her home by a technician from the retailer but Miss S says he couldn't repair the other fault, despite a couple of visits. He told Miss S it was a common issue with this make of furniture and brackets could be retrofitted but he said that would invalidate her warranty.

So in April 2018 Miss S complained to Creation. She said the cushion was coming off its retaining hooks when she moved in the chair i.e. when she leant over to adjust the reclining mechanism.

Creation disputed whether there was a problem at all. They said that the faults had been successfully repaired and they suggested that any problems still present were caused by the way Miss S was using the furniture. They said that all motion furniture would tippie if used in this manner. They said that the user should follow safety instructions and it was only necessary to move the arm to activate the recliner: not the whole body, as this would shift the centre of gravity. They pointed to the safety guidelines that advised the user to "*sit right back when operating the recliner*" and "*never sit on or lean over the arm as this can twist the frame*".

So Miss S referred her complaint to this service and our investigator took a look at the evidence. She thought there was clear evidence that the product was not working properly and that the repairs had been unsuccessful. In particular she noted that the technician's report said "*lhs brackets not holding*". She also noted that Miss S had explained that one side of the sofa was working fine, so she wasn't persuaded that the other side's performance was normal as had been suggested.

She therefore thought Creation should do something to put this right. She suggested that they take the furniture back and cancel the credit agreement. She noted that Miss S hadn't had the goods for too long, so she thought it wasn't necessary for Creation to retain any of the instalments she'd paid towards the agreement as she hadn't had much benefit from the furniture. And she also thought Miss S's deposit should be returned to her.

But Creation disagreed and they asked for a final decision by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with the investigator's view and for similar reasons. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss S acquired her furniture under a fixed sum loan agreement. The relevant law says that the furniture should have been of satisfactory quality when supplied. If it wasn't then Creation is responsible. I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the furniture was faulty when supplied, I'd think it fair and reasonable to ask Creation to put this right.

We'd usually allow the business one chance to repair the goods but if that repair failed we would usually expect the consumer to be allowed to reject them.

Here I am persuaded that there was a fault with the reclining sofa when it was supplied. Miss S reported the fault soon after she took receipt of the furniture and when the technician visited he said that the "*left section (is) lifting*" and the "*brackets (are) not holding*". I've reviewed the photographs I've been provided and can see that, whilst they're not well labelled, it appears that one of them shows a detached bracket on what is evidently a reclining mechanism.

And I'm also persuaded that the fault that was diagnosed has not been fixed. I say that because Miss S is still complaining about it and because I can't see any action was taken on the technician's concerns.

I've noted what Creation has said about the issue being operator error but I'm not persuaded by this argument as Miss S has explained the other identical recliner doesn't suffer the same problem and regardless, the technician's report highlights there was an issue with the retaining brackets.

I've considered whether it would be worthwhile arranging a third party inspection of the goods but I don't think that's necessary here as the retailer's technician has already highlighted the problem and it's evidently not been fixed.

So under these circumstances I think Creation's attempt at a repair has been unsuccessful and they should now allow Miss S to reject the goods. Those goods should include all of the goods provided under the credit agreement as they are a matching set and rejecting one without the other would seem unfair.

They should also return the deposit that Miss S paid and I agree with the investigator that, as Miss S has had very limited and imperfect use of the furniture, Creation should refund all instalments that have been made towards the credit agreement.

my final decision

For the reasons I've given above I uphold this complaint and tell Creation Consumer Finance Ltd to:

- arrange the collection of the furniture at no cost to Miss S
- cancel the loan agreement with nothing further to pay
- return all of the instalments Miss S has made towards her loan agreement and add 8% simple interest from the point of payment to the point of settlement
- refund the deposit
- remove any adverse credit markers from Miss S's credit file that have been made in relation to this issue

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 December 2018.

Phil McMahon
ombudsman