

complaint

Mrs W complains that Creation Financial Services Limited will not meet the claim she has made for goods bought with her credit card.

background

Mrs W used her credit card, issued by Creation, to put a deposit on a sofa. Mrs W says that the sofa has now broken in one corner, and that this happened about eighteen months after she bought it.

She also says that the sofa she was given differed from the one she saw in the showroom, but that she decided to accept it when it was delivered as she was worried that she might lose her money if she did not.

Mrs W raised a claim against Creation under section 75 of the Consumer Credit Act 1974. This section can give the consumer the same claim against the provider of credit as they have against the merchant, where there has been a breach of contract.

The merchant has gone into administration and Mrs W would like Creation to pay for the sofa to be repaired or give her a refund. Creation did not accept that it was liable to meet Mrs W's claim, and so things were not settled. Mrs W brought her complaint to this service, where an adjudicator investigated it.

Mrs W paid for an independent report to be made of the condition of the sofa. The technician who carried out the report found that the method used in the manufacture of the sofa had caused the problem, allowing the corner to work loose with normal wear. The report confirmed that the sofa had not been of merchantable quality when sold.

The technician also specified how the sofa joints should be secured, and what would need to be done to achieve that. The adjudicator concluded that the fair outcome was for Creation to repair the sofa as specified and to refund the cost of the independent report (plus interest).

Creation didn't agree with the adjudicator and said, in summary:

- When Mrs W first raised her claim, Creation asked her to provide evidence of the condition of the sofa but she would not do so.
- The card scheme time limit for a charge back has now expired. Creation suggests that Mrs W contacts the retailer to sort things out directly.

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 am satisfied, from the independent report produced by a competent technician, that the problem with Mrs W's sofa stems from substandard manufacture. That amounts to a breach of contract by the merchant that Mrs W bought the sofa from.

The provisions of section 75 mean that Mrs W may claim for that against either the merchant or the provider of credit – Creation, in this case. The merchant has gone into administration (as the adjudicator had previously made clear to Creation) and so there are no steps she can take to get things put right by the merchant.

Mrs W's rights under section 75 do not depend on Creation being able to raise a charge back request. She commissioned the independent report when she came to this service and I am not persuaded that the fact she did not produce it sooner means that Creation can avoid liability under section 75.

Mrs W has explained that she bought the sofa by paying a deposit with her credit card and then paying the balance by cash, but cannot now provide any evidence of the cost of the sofa as she did not keep her paperwork. The merchant is no longer trading, and so it is not possible to get copies.

Although Mrs W says the sofa was different in some respects from the one she had seen in the showroom, she chose to accept it and use it rather than to insist on having the exact model she had seen. And, in any event, there does not seem to be any evidence now available to support this point.

In all the circumstances, I find that the settlement proposed by the adjudicator represents a fair and reasonable resolution of this dispute.

my final decision

My decision is that I uphold this complaint and direct Creation Financial Services Limited to:

- arrange to repair the sofa, in accordance with the specifications given in the independent report, at no cost to Mrs W and at a time that is convenient for her; and
- pay Mrs W £125 (the cost of the report) together with simple interest on that amount calculated at 8% a year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 7 January 2016.

Jane Hingston
ombudsman