

The complaint

Miss J complains about the way in which Creation Consumer Finance Ltd dealt with her in response to a claim she made through the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

Miss J acquired a sofa from a retailer "D" using finance provided by Creation. On taking delivery she raised concerns that the sofa didn't conform to contract and wasn't of satisfactory quality. She says she sought to reject the sofa, but that D arranged for an inspection, which confirmed defects. Miss J says she felt coerced by D into accepting a repair rather than the replacement she wanted. She contacted Creation setting out her concerns in a series of emails.

Creation has said it accepted Miss J's claim of breach of contract, but declined her request for replacement or a full refund. It noted that D had already started the repair process and had offered Miss J £300. Creation said this was a fair outcome. Miss J didn't agree and referred matters to us.

Our investigator thought it appropriate to recommend that Creation pay Miss J £100 in recognition of the stress and inconvenience she experienced due to its handling of her claim. She didn't think Creation had communicated appropriately or consistently with Miss J, and felt that it should have done more to ensure D carried out what it had proposed to do. However, the investigator thought that agreement had been reached to remedy the breach of contract, so she didn't recommend Creation take any further action in this respect.

Creation accepted the investigator's recommendation. But Miss J did not. She felt she'd been put to a good deal of trouble in researching and corresponding in relation to her claim, and that she should be consulted as to what would represent fair compensation. Miss J said Creation had shut down her claim by issuing a final response to her complaint, which she considered unethical.

Miss J was also unhappy that the £300 proposed by D would only be refunded once the repair was carried out. She expressed concern that if she allowed the repair, there was a risk that this would be unsatisfactory, leaving her back in the original position. She asked for her complaint to be reviewed.

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.

It's accepted by all parties that Miss J had a claim in breach of contract, and that section 75 applied to the transaction such that she could make that claim against Creation.

It's also apparent that, in the course of her dealings with D, Miss J agreed – for whatever reason – to a repair. She might have done so because of the actions of D, or because D

offered a sum as a price reduction. I don't need to establish why Miss D agreed to this; her breach of contract claim against Creation arises from the quality of the sofa for which Creation provided the finance. That doesn't make it responsible for D's post-sale actions.

But under the Consumer Rights Act 2015 ("CRA"), the fact that Miss J agreed to a repair is relevant to how I'd expect Creation to have approached her claim. The CRA¹ says that "*a consumer who requires or agrees to the repair of goods cannot require the trader to replace them, or exercise the short-term right to reject, without giving the trader a reasonable time to repair them (unless giving the trader that time would cause significant inconvenience to the consumer).*"

Miss J contacted Creation with her concerns on 14 February 2023, having already agreed to D's proposal to repair the sofa. That agreement affected her right to reject the sofa or have it replaced, at least until a reasonable period of time had been provided for D to repair it. I don't think it was unreasonable for Creation to point this out in its email to Miss J a couple of days later, once it had been in contact with D.

I appreciate Miss J clearly had (and continues to have) strong feelings about the way in which she felt Creation was dealing with her claim. This comes across from her correspondence with the firm, particularly as set out in her letter to Creation dated 3 March. However, having considered all Miss J said in that letter, I'm not persuaded it means Creation dealt with her claim unfairly. It was entitled to take the approach it did to its investigation and the evidence it considered material to dealing with the claim.

When Miss J raised her claim, Creation told her it would look into matters and aim to provide her with its response within eight weeks. In practice, Creation dealt with the claim and issued its response well within that timescale. It set out its position on 8 March; a little more than three weeks after Miss J first contacted it. I can see that in the interim, Creation was providing Miss J with updates when she contacted it, as well as corresponding with D. I see no reason to criticise Creation in the approach it took to investigating Miss J's claim, or with the conclusions that it reached.

However, I take Miss J's point that the lines between her claim in breach of contract and her complaint about Creation's handling of that claim became blurred. That meant many of the complaint points in her 3 March letter weren't covered in Creation's response. While I wouldn't describe this as 'unethical', I accept Creation could have done a significantly better job in terms of maintaining separation of the issues, which might have alleviated at least some of Miss J's concerns. I don't find this was fundamental to the overall outcome, but it caused some degree of concern to Miss J such that it warrants compensation.

I'm satisfied the £100 our investigator proposed an appropriate sum in this respect. While I'm fully aware Miss J feels differently about this amount, it must be remembered that our role is to provide an objective view, including assessing any suitable level of compensation. A complainant's perspective is useful, but almost inevitably subjective. As such, I hope Miss J will understand why it's for us to form our own opinion as to appropriate compensation. Miss J can decide for herself whether she wishes to accept the proposed sum.

On a final note, I'm conscious our investigator's assessment suggested that Creation should exercise some sort of oversight to ensure D carry out the repair and pay Miss J the £300. Miss J has also alluded to concerns over what D proposed. As I've already noted, the way in which section 75 operates doesn't serve to make Creation responsible for D's post-sale actions. I don't find that concerns over whether D is doing what it said it would are something for either Creation or for our service to enforce.

¹ Section 23(6) of the Consumer Rights Act 2015

As I understand it, Miss J's consumer rights are preserved in the event the repair isn't effective or isn't carried out within a reasonable period of time – subject, of course, to D being permitted access to the sofa to do so. I appreciate she might have concerns over such a repair, but that is what the CRA provides. I see no basis on which it would be reasonable for me to require Creation to provide assurances other than those to which she's already entitled.

My final decision

My final decision is that to settle Miss J's complaint, Creation Consumer Finance Ltd should pay her £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 15 December 2023.

Niall Taylor
Ombudsman