

## **The complaint**

Mrs M complains about how Creation Consumer Finance Ltd trading as Creation ("Creation") handled a claim she made in relation to a fixed sum loan agreement.

## **What happened**

Mrs M purchased a sofa, through a company I'll refer to as "S", through a fixed sum loan agreement with Creation in August 2021. The cost of the sofa was £4,055.99. The delivery of the sofa cost an additional £69 and Mrs M purchased a leather care kit for £50. Mrs M also purchased a premium leather warranty and a recliner care package totalling £340. Mrs M paid a deposit of £100. So under her agreement with Creation, she was required to make 48 monthly payments of £91.97. The sofa was delivered to Mrs M in November 2021.

In August 2022, Mrs M says she complained to S and told them she was unhappy with the quality of the sofa. She says this was after she noticed in around July 2022 the sofa was sagging in some places and she found bolts on the floor whilst cleaning it. In October 2022, S arranged for a technician to inspect the sofa. Mrs M says the technician fitted the bolts back to the sofa and puffed up the cushions. In December 2022, Mrs M referred her complaint to Creation.

Creation issued its response to Mrs M's complaint in January 2023. However, it confirmed that the technician said the sofa had no defects and was fit for purpose and so, it rejected Mrs M's claim.

Unhappy with this, Mrs M referred her complaint to this service. She reiterated her complaint and said the sofa wasn't used frequently as both her and her husband worked five days a week. She said the matter was affecting her mental health as she was paying a lot of money for a sofa that was of poor quality. She said to put things right, she wanted S to collect the sofa and allow her to choose another one.

Our investigator looked into the complaint but didn't think Creation had acted unfairly. She said the issue with the loose bolts had been rectified. She also said she hadn't seen any evidence to suggest there was a manufacturing defect with the sofa. And so, she concluded that the sofa was of satisfactory quality at the time of supply.

Mrs M disagreed. She said the sofa was a costly purchase and she was paying for something which was of poor quality. She said bolts were falling off and she was keeping it covered in throws to hide the cushions sagging.

As Mrs M remains in disagreement, the complaint has been passed to me to decide.

## **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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mrs M has raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

To make it clear, this complaint is about Creation, as it is Mrs M's finance provider. It's not about S, who is not the lender.

What I need to decide in this case is whether I think it was fair and reasonable for Creation to decline Mrs M's claim under section 75 of the Consumer Credit Act 1974 ("s75").

Under s75, Creation is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is S in this case.

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mrs M made the purchase through a fixed sum loan agreement which was provided by Creation and signed by Mrs M. I can see the invoice from S is in Mrs M's name. So, I'm satisfied a valid DCS agreement exists here.

I've then considered the financial limits that apply to a valid s75 claim. Mrs M needed to have purchased a single item with a cash price of over £100, but not more than £30,000. I can see from the invoice that the amount is within the financial limits. So, it follows that I'm satisfied the financial limits have been met for a valid claim.

Overall, I'm satisfied Mrs M has a like claim against Creation. What I now need to consider is whether there was a breach of contract or misrepresentation that took place.

When considering this, it's important to note that The Consumer Rights Act 2015 ("CRA") implies a term into the contract that the goods supplied will be of satisfactory quality. Satisfactory quality is what a reasonable person would expect. So the sofa's condition at the point of supply, should meet the standard a reasonable person would consider satisfactory considering factors such as the description and price of the goods.

The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Mrs M purchased a brand new sofa for which she agreed to pay a total of £4,055.99. Bearing this in mind, I don't think a reasonable person would expect the sofa to have any problems for a considerable amount of time and I think they would have high expectations for the quality of the sofa. If the quality of the sofa was unsatisfactory, I would consider this to be a breach of contract.

Mrs M complained about loose bolts and said the sofa was sagging.

I've seen a copy of the report by the technician which was carried out in October 2022. The report confirmed that two bolts had come loose from the mechanism frame as they had not been fitted correctly. The technician fitted the bolts back to the frame and said this resolved the issue. He also said the recliner mechanisms were secure and working correctly. The technician provided photographs to show the repair work being carried out and completed and provided general photographs of the sofa.

Both Mrs M and the technician agree that two bolts were loose from the sofa. However, the technician has shown these loose bolts were reattached to the sofa. I don't think the sofa should have been provided with two loose bolts, but I'm satisfied this issue was repaired by the technician and so, any potential breach of contract has been corrected. Mrs M has said since then bolts are falling off the sofa again, but she hasn't provided any supporting information to demonstrate this.

With regards to the sagging of the sofa, Mrs M has provided two photographs of the front lower sections of the sofa. Both photographs show some sagging to the front cushions which

appear to show recent use. The technician's photographs are of the whole sofa and don't show the sagging to the front cushions shown in Mrs M's photographs. Mrs M's testimony confirms that the technician puffed up the cushions during his visit. This may explain why the sofa doesn't show any sagging and looks like it has normal wear in the technician's photographs. On balance, I'm not satisfied the supporting information provided demonstrates that the sofa has an issue beyond normal wear and tear in regards to the sagging of the cushions.

In light of this, I think the sofa supplied to Mrs M by S is of satisfactory quality. And so, I don't think there has been a breach of contract. Nor have I seen anything to suggest the sofa was misrepresented. It follows all of this that I don't think Creation unfairly declined Mrs M's complaint under s75.

### **My final decision**

I don't uphold Mrs M's complaint.

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

Sonia Ahmed  
**Ombudsman**