

## The complaint

Mrs B complains that Creation Consumer Finance Ltd won't refund her for two sofas she bought.

## What happened

In 2023 Mrs B used finance provided by Creation to purchase two sofas having seen the same make and model of sofa in a show room. When the new sofas were delivered she said they were much firmer than the showroom versions and wanted to reject them. The Sofa supplier sent out inspectors to inspect the sofas and they said they were of satisfactory quality. But Mrs B remained unhappy so she complained to Creation.

Creation considered her dispute with the supplier and challenged it and considered it under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It concluded that it didn't have to do anything further for Mrs B. Feeling that Creation's position to be unfair Mrs B brought her complaint to this service.

Our investigator looked into the matter. Overall, he felt that Creation had fairly treated Mrs B. Mrs B didn't agree. So 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.

I should make very clear that this decision is not about the supplier who sold the sofas which isn't a financial services provider and doesn't fall within my remit regarding Section 75. Whatever the issues there maybe with the supplier here, and just because Mrs B says she has lost out, it doesn't necessarily follow that Creation has treated Mrs B unfairly or that it should refund her. And this decision is solely about how Creation treated Mrs B. I hope this point is clear.

I should also note that Mrs B has raised a large number of issues in this dispute. I've considered them all. However I've chosen to address those arguments which she's raised which I see as key to this dispute and key to reaching a fair outcome on this matter.

### *The CCA*

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier" here). S75 says:

*"If the debtor under a debtor-creditor-merchant agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the merchant in respect of a misrepresentation or breach of contract, she shall have a like claim against*

*the creditor, who, with the merchant, shall accordingly be jointly and severally liable to the debtor.”*

So the test is here, did Creation consider Mrs B's S75 claim to it fairly, or in other words are the pre-requisites of the CCA in place (financial limits and Debtor Creditor Supplier arrangement) and is there a breach of contract or material misrepresentation made out here against the Merchant that Creation should fairly be held responsible for. I'm satisfied the financial limits test and Debtor Creditor supplier arrangements are made out here. I now consider breach and misrepresentation as I see these as the key aspects of Mrs B's complaint.

Firstly and a substantial factor in my decision making is the fact that Mrs B accepts the sofas she got are the make and model she saw in the showroom and that she got what she ordered. Her main contention is that the sofas she got are significantly firmer than those in the showroom and that means that they are of unsatisfactory quality. The supplier has said this is likely to be the case because the one's in the showroom have had a lot more '*bums sit on them*' to use a comment made by the supplier's member of staff who visited Mrs B and whom Mrs B recorded.

The Consumer Rights Act 2015 ('CRA' for short) is the relevant law here and it sets out what unsatisfactory quality means. This says every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory and that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of; any description of the goods, the price or other consideration for the goods and all the other relevant circumstances. And the quality of goods should be considered through the appropriate lenses such as 'fitness for all the purposes for which goods of that kind are usually supplied,' 'appearance and finish,' 'freedom from minor defects,' safety, and durability.

So there is a clear distinction here between what Mrs B says is unsatisfactory quality and the test which Creation are liable here for-unsatisfactory quality that a reasonable person would consider unsatisfactory when considering all the relevant circumstances. It is of note that Mrs B doesn't say the sofas are broken or that they've got substantial defects, she just doesn't like the firmness of them and says their firmness is very different to the firmness of the showroom models.

It is clear the supplier have inspected the sofas and are clear that they are of satisfactory quality. The inspector who Mrs B recorded had also been to the showroom and accepted that the showroom models were less firm/softer but also noted that there was nothing wrong with the sofas it had delivered to Mrs B.

Mrs B hasn't provided any persuasive independent evidence supporting her claim that these sofas are unsatisfactory quality. When firms such as Creation consider S75 claims they have to consider claims fairly but there is also a need for claimants such as Mrs B to make out their claim and show that there is a breach of contract or misrepresentation. Having considered everything Mrs B has said I'm not persuaded Mrs B has shown that these sofas are of unsatisfactory quality. Accordingly I'm not persuaded Creation has treated her unfairly considering the supplier has inspected the sofas and made clear in its opinion the sofas are of satisfactory quality. Just because showroom sofas are softer than those that Mrs B received isn't persuasive evidence that the sofas Mrs B got were of unsatisfactory quality.

Mrs B has said she's convinced the showroom sofas are of a higher quality and the supplier supplies inferior models having duped consumers to purchase having shown them the higher quality showroom model. Mrs B accepts she's got no evidence to support this

contention. I've seen no persuasive evidence to support this argument made by Mrs B so I don't think Creation has treated her unfairly by not refunding her here.

Mrs B says the sofas are unfit for purpose. It is clear all consumers have different tastes in relation to softness/firmness of such furniture. Clearly these sofas can be sat on as that's what they're designed for. So just because Mrs B thinks they're too firm doesn't mean they meet the test of being unfit for purpose.

Mrs B says the sofas are not as described. She says in the showroom she was told they were UK made but when they arrived the boxing indicated that they were from abroad. For Mrs B to meet the test of the sofas not being as described she would have to show that they were significantly different to the description which would include all elements of the description. Bearing in mind she accepts she got the correct make, model, size, colour of sofa she'd seen at the showroom and accepts that there's nothing wrong with them save for the firmness I don't think Creation has been unfair in deciding they were as described.

Mrs B refers to the sofas being 'unbearable' to sit on and so she doesn't sit on them. The Inspectors and suppliers have pointed to sofas needing to be worn in. They also note that if Mrs B doesn't sit on them they'll never have the opportunity to soften up through normal usage. I appreciate Mrs B doesn't want to sit on them as she says she won't be comfortable but I don't think the supplier or indeed Creation have treated her unfairly by pointing to the need for them to be used. As the inspector suggested on Mrs B's recording that if they made sofas really soft you'd '*be sitting on the floor in a year's time.*' So I can see why sofas would be designed to be firmer at the point of delivery in order to ensure sufficient durability.

Mrs B has pointed to the CRA and the short term right to reject items. This is a reference to the right under this legislation that if items are of unsatisfactory quality then they can be returned shortly after delivery. However I'm not persuaded these sofas were of unsatisfactory quality at delivery and accordingly Mrs B didn't have a short term right to reject.

Mrs B has said "*I am satisfied that the content evidences my complaint without any doubt.*" I don't agree. To be successful here she has to demonstrate that the sofas are of unsatisfactory quality as the CRA sets out. She's made very clear she's unhappy with the firmness of these sofas. But that is not the same as demonstrating that they are of unsatisfactory quality.

I do appreciate that this isn't the decision Mrs B wants to read. And that it leaves her disappointed. But that doesn't make it fair for Creation to refund her when there's no persuasive evidence that the sofas are of unsatisfactory quality.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against Creation Consumer Finance Ltd. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 17 September 2024.

Rod Glyn-Thomas  
**Ombudsman**