

The complaint

Mr C complains that Creation Financial Services Limited ('Creation') will not refund the cost of a sofa suite which he paid and bought for his mother using his credit card.

What happened

Following the passing of Mr C's father, Mr C decided to purchase a new sofa suite for his mother. The primary reason for purchasing the new suite was so that Mr C's mother would be able to comfortably place her feet on the floor when sitting on the sofa or either of the two armchairs.

After visiting various showrooms and trying different suites in store, Mr C's mother settled on purchasing a sofa suite from Company F.

Mr C paid a deposit of £884.47 on 10 June 2023, and the balance of £2,650 on 7 September 2023. The new suite was delivered to Mr C's mother on 5 October 2023.

It became apparent that while Mr C's mother had been able to place her feet on the floor while sitting on the display sofa suite in store, she was unable to touch the floor with her feet when sitting on the new suite that was delivered to her.

Mr C raised his concerns with Company F a few days after delivery. On 23 October 2023 Company F sent someone to clean some stains on the suite and to assess the issue with the seating height. The suite was successfully cleaned, but Company F found there was no issue with the height of the sofa or armchairs. Company F said the new suite needed time to settle as the showroom suite would have undergone much usage in store.

On 3 January 2024 – as the matter had not resolved – Company F instructed a third party to inspect the sofa suite. The conclusions of the third party were that, due to the absence of the height measurements, they could not conclude if there was a fault with the sofa or armchairs. They measured all the seat cushions and said Company F would need to check the measurements with the manufacturer. The third party did agree with Company F that the seating height would reduce due to normal settlement.

Around 10 or 11 January 2024 Mr C raised a chargeback dispute online with Creation. Creation said the dispute had been raised too late and that as Mr C had bought the suite for his mother he had no recourse to make a claim under Section 75 of the Consumer Credit Act 1974 (CCA74).

Mr C disagreed that he had raised his concerns too late for the purposes of a chargeback and brought his complaint to our service.

Our Investigator reviewed the matter but did not uphold Mr C's complaint. They concluded that while Mr C had raised his dispute in time for a chargeback to be submitted, they did not think a chargeback would have been successful due to insufficient evidence to support there was any problem with the new sofa suite. The Investigator also concluded that the

circumstances in question did not meet the criteria under Section 75 of the CCA74 for a claim to be considered.

Mr C disagreed as Company F said '*...the height difference is due to the new firmer interiors*' and he said Company F should have let him and his mother know that the new suite would be different.

As our Investigator was unable to resolve the matter, it 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 someone has used a credit card to make a purchase and something has gone wrong, it is possible the cardholder may have some recourse to resolve the problem through a dispute resolution mechanism administered by the card scheme provider (known as a 'chargeback') or by making a claim under Section 75 of the CCA74.

I have considered each of these options in relation to Mr C's circumstances.

Chargeback

Chargeback is a mechanism where disputes about purchases which have been made using credit or debit cards can be settled by the relevant card scheme provider. There is no obligation on the card issuer to pursue a chargeback on a consumer's behalf – chargeback is not a legal right. However, where a reasonable prospect of success is apparent within the rules of the relevant card scheme, I would expect the card issuer to attempt a chargeback as a matter of good practice.

Chargeback is governed by the card scheme provider's set of rules and offers no guarantees that the card provider will recover monies being sought through chargeback. There are also strict time limits for submitting a chargeback.

The card schemes are not within the jurisdiction of this Service and we are therefore unable to require the scheme to behave in a particular way, but we can consider if the rules have been followed and the chargeback process managed fairly.

I've first considered whether under the relevant card scheme rules Mr C raised his dispute in time.

Under the relevant card scheme rules Mr C had 120 days from the date of delivery (5 October 2023) to raise his concerns. From the evidence available, it is apparent Mr C had raised his dispute with Creation on or around 10 or 11 January 2024 (as supported by his call to Creation on 12 January 2024) so he raised his dispute in time under the scheme rules.

However, Creation didn't raise the chargeback for Mr C as they had considered it too late to do so. In the circumstances, if Creation had properly considered the relevant time limits, I think it would have been good practice for Creation to have raised the chargeback for Mr C. But having reviewed the available evidence I don't think it likely that a chargeback would have been successful.

Chargeback disputes are raised using chargeback codes relevant to the card scheme provider's rules. The chargeback code relevant to Mr C's concerns about the sofa suite would have been put to the merchant (Company F) that the goods were not as described.

At the time Mr C raised the dispute Company F had already carried out their own review of the sofa suite and instructed a third party to review and report to them as well. The findings concluded there was nothing wrong with the suite and it was in line with manufacturer's specifications. Company F (and the third party) had also both said that the suite would 'settle' over time.

Had Creation instigated a chargeback, and while I've considered what Mr C has said about Company F's reference to 'firmer interiors' (as mentioned above), I find it likely Company F would have shared the reports with Creation as evidence that the goods had been presented as described and that there was scope for the new suite to settle still. In the absence of any other evidence to suggest the suite was not the same model as the one Mr C and his mother saw in the showroom, I think – given the scheme rules – it would be reasonable for Creation to not have pursued the chargeback any further in these circumstances. So, I find it unlikely a chargeback would have been successful if Creation had attempted one on Mr C's behalf.

Section 75

Section 75 is a different mechanism by which consumers may be able to seek financial protection for purchases they have made using specified types of credit as set out in the legislation.

Section 75 of the CCA74 makes the provider of credit (in this case Creation) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, there are certain criteria that must be met before considering whether there has been a misrepresentation or breach of contract. This includes ensuring there has been a valid 'debtor-creditor-supplier' relationship between the parties involved in the transaction, and that the claim relates to any single item to which the supplier has attached a cash price of more than £100 but less than £30,000.

Section 75 (1) of the CCA74 says:

'If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor who, with the supplier, shall accordingly be jointly and severally liable to the debtor'.

While the sums involved in this case fall within the limits of the CCA74, I'm not satisfied a valid 'debtor-creditor-supplier' relationship exists here as there are no arrangements (no contract) between Mr C and the supplier. In the circumstances, I think it was reasonable for Creation to say they could not consider a Section 75 claim, as I'll explain.

Having reviewed the available paperwork relating to the purchase of the suite, it is apparent that only Mr C's mother appears on this paperwork – the invoice is made out to Mr C's mother and the suite is to be delivered to Mr C's mother's address. So it seems clear Company F understood they were entering into a contract with Mr C's mother only. There is nothing to suggest Mr C was party to this arrangement with Company F. Because of this, even though Mr C funded the purchase of the suite, as he was not a party to the contract with the supplier (Company F) Mr C is prevented from being able to submit a like claim against the creditor under Section 75 of the CCA74 due to there being no 'debtor-creditor-supplier' agreement.

I realise my findings will come as a disappointment to Mr C as I recognise he was attempting to purchase something to help better his mother's situation at home, and the sum involved here is not insignificant. However, I cannot find that within the limitations of a chargeback dispute that Mr C would have likely been successful if Creation had submitted one for him, or that Mr C has any recourse to pursue a Section 75 claim as, for the reasons I've set out above, I think Creation were reasonable in saying they were unable to consider a Section 75 claim in these circumstances.

My final decision

For the reasons above, my final decision is that I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 March 2025.

Kristina Mathews
Ombudsman