

The complaint

Ms C has complained Secure Trust Bank plc, trading as V12 Retail Finance, is holding her liable for a credit agreement when the item she originally ordered was never delivered.

What happened

Ms C ordered an expensive watch, which she intended to pay for over a three-year period. She took out a fixed-sum loan agreement with V12 Retail Finance for £6,750.

The watch was delivered in October 2022, after an initial unsuccessful attempt at delivery. By this time Ms C knew this wasn't the watch she wanted so never opened the inner branded box containing the watch. Her son had opened the outer packaging as he'd been expecting a delivery of his own but quickly realised this wasn't it.

The following day Ms C had packaged up the item, got the courier company to pick this up and sent it back. She didn't immediately hear from the supplier (who I'll call G). Ms C then discovered G had received the package back but they told Ms C that the inner box was empty and the watch was missing.

V12 Retail Finance continued to hold Ms C liable for the outstanding finance as the watch had not been returned. Desperately anxious, Ms C brought her complaint to the ombudsman service.

Our investigator considered the evidence supplied by both V12 Retail Finance and Ms C. She told Ms C that the evidence clearly showed the inner packaging being empty on the return to G. It was Ms C's responsibility to return the goods which she'd not done.

Ms C continued to believe that if the watch had not been there when the package was returned, then it couldn't have been there when she received the initial package. She's asked an ombudsman to consider her complaint.

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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

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

I also take account of law and regulations, regulators' rules, guidance and standards, and codes of practice and good industry practice, when I make my decision.

Section 75 of the Consumer Credit Act 1974 means that, in certain circumstances, if Ms C paid for goods or services using certain types of credit (even in part), and there was a

breach of contract or misrepresentation by G of those goods or services, V12 Retail Finance can also be held responsible. There are other conditions which need to be met but nothing specific which applies in Ms C's case.

The key aspect of Ms C's complaint is that she didn't receive the watch she ordered. This would be a breach of contract under section 75 if this were the case. However, by her own admission, she never opened the inner package so can't provide evidence this was the case.

I appreciate she'd told us she didn't need to open the watch box as she already knew she'd ordered the wrong item. However I'm surprised that she didn't want to check the item was as supplied since she knew this would be her responsibility when she returned it. And this was an extremely high-value item.

On the other hand, I can see evidence has been supplied by G of the item being dispatched and weighed. Then of the item being opened on its return – with two staff members present in accordance with their security procedures for items of this nature. There's no dispute that the inner box does not contain the watch.

I have also seen there is a weight discrepancy between the item being dispatched to Ms C and being received back from Ms C. The item is lighter by half a kilogram. This would certainly account for the missing watch.

I know Ms C would never have weighed the item on receipt, nor could I reasonably have expected her to. But she also says the inner box hadn't been tampered with, so I do think it's more than likely the watch was present on her receipt.

I obviously can't say for sure what happened to the watch but I think it's more than likely this was in the package when it was received by Ms C. But then wasn't in the package when Ms C returned it.

I don't believe there was a breach of contract under section 75 and therefore Ms C remains liable for the credit she took out.

My final decision

For the reasons given, my final decision is not to uphold Ms C's complaint against Secure Trust Bank plc, trading as V12 Retail Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 11 September 2023.

Sandra Quinn
Ombudsman