

## **The complaint**

Ms U complains about a claim she made to Creation Consumer Finance Ltd ('Creation') in respect of goods she financed with it.

## **What happened**

Ms U purchased a high specification PC from a retailer ('the supplier') using a loan from Creation.

Ms U says she sent the item back using the returns process but has not received a refund from the supplier.

Ms U raised a claim with Creation and it considered this in light of Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, it rejected the claim. In summary, it said that investigations into the matter show that the parcel Ms U returned was empty.

Ms U referred the matter to this service. Our investigator looked into the complaint about Creation's handling of the claim. In the circumstances (and with Section 75 in mind) she was unable to fairly conclude that Creation should have written off the finance/refunded Ms U.

Ms U disagrees. In summary, she says that:

- she was chasing the supplier for about 2 months for a refund and they promised in webchats that it would be processed;
- only after this time did the supplier give the outcome of its investigation – confirming that it had received an empty box; and
- the supplier took too long to carry out its investigation – it should have told her sooner that the box was empty and a picture of an empty box does not show that she actually sent out an empty box.

## **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 note Ms U is represented in bringing her complaint – so references to Ms U are taken to include her representative (who was also involved in the contact with the supplier about the return of the goods).

I have considered the evidence the parties have submitted but won't be commenting on everything - only what I consider to be central to this complaint. This is not intended as a discourtesy but simply reflects my role in resolving dispute informally.

It is important to underline here that Creation did not supply the goods which Ms U is in dispute about. Creation is not responsible for all general customer service issues which Ms U encountered with the supplier. When considering whether Creation has acted fairly and

reasonably here I look at its role as a provider of financial services. In that respect I consider Section 75 to be the key matter here – and one which will be the focus of my decision.

Section 75 allows Ms U in certain circumstances to hold Creation responsible for breach of contract or misrepresentation by a supplier of goods it financed.

There are certain criteria which are set out in law for Section 75 to apply – and after considering these I am broadly satisfied that Ms U has a claim against Creation for potential breach of contract or misrepresentation by the supplier of goods here.

The terms and conditions of the supplier in respect of refunds for unwanted goods say that the goods must be returned within a set time limit, complete, undamaged and with proof of purchase. The terms go on to say that if the customer fails to return the goods in this manner the supplier might charge for costs in recovering the goods or the value of the missing or damaged items. So if Ms U had not returned the goods to the supplier – then it would be within its rights contractually not to refund her.

The issue here is not straightforward as it involves high value goods effectively going missing with countered allegations on both sides. In coming to my findings I have to keep in mind that I am unable to compel witnesses or investigate in the manner a court or other authorities might.

Although I fully take into account what Ms U has said, there is photographic evidence and testimony from the supplier (including written corroboration from the courier company) that the PC did not arrive in the warehouse and that the weight on arrival was recorded as 1.5kg rather than the 17kg expected for an item of this type. There are also photos which the warehouse took that appear to show Ms U's labelled box arrived empty.

I note Ms U's point that the photo of an empty box alone is not conclusive and I acknowledge there are other possibilities here. But these circumstances are not straightforward as I have already said. The question I have to answer is whether in the circumstances it is fair and reasonable to say that Creation (in light of its specific liability in respect of Section 75) should have upheld the claim and issued a refund. And I think there are too many questions and insufficient evidence here to say the supplier has likely breached its contract with Ms U by not issuing a refund in the circumstances – so I don't think Creation acted unfairly when it considered the claim.

I have noted what Ms U says about the web chat – it appears some staff at the supplier were not aware of the investigations it was undertaking on the matter and mistakenly indicated a refund would be processed. But I don't think this is a breach of contract or persuasive proof of one – it is a customer service issue.

I have also considered what appears to be an automated confirmation that the box was received by the supplier. But this alone is not conclusive in showing the item was returned to the supplier. I know Ms U has said this is a misrepresentation – but for the purposes of Section 75 a misrepresentation is something that induces you to enter into a contract. So I don't think this is a misrepresentation which Creation is liable for here.

I note what Ms U has said about how long the supplier's investigation took – which wasn't ideal. But this in itself is not a breach of contract which Creation is liable for. Nor do I think the delay in itself serves as conclusive evidence of a breach of contract in respect of the receipt of goods.

I know this will come as a disappointment to Ms U. However, as I have said, my role is limited to informal dispute resolution looking at Creation's responsibilities here via Section

75. My decision does not prevent Ms U from taking the supplier to court or reporting the matter to other authorities if she wishes to do so.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms U to accept or reject my decision before 24 August 2023.

Mark Lancod  
**Ombudsman**