

The complaint

Mr B complains about a claim he made to Creation Consumer Finance Ltd.

What happened

In October 2017 Mr B bought a television and added warranty protection using finance from Creation.

He says the picture started to get hazy and the retailer picked it up for repairs in September 2022 under the extended warranty. However, because it could not repair the TV (or provide a direct replacement due to the model being out of production) it provided him with a voucher to buy a similar television.

Mr B is unhappy that the value of the voucher is not for the full price he originally paid for the goods. So he raised a claim with Creation. It considered Section 75 of the Consumer Credit Act 1974 ('Section 75') but did not agree to refund Mr B.

Our investigator looked at the complaint about the way Creation had handled the claim. In summary, she didn't think the retailer had breached its contract with Mr B – so she didn't think Creation needed to fairly do anything more.

Mr B did not agree. In summary, he says the retailer has not adhered to the terms of the warranty – which don't allow it to make a deduction from a refund in the circumstances. He says the voucher needs to be for the full amount he paid for the original TV as the retailer cannot find a similar specification product with a curved screen.

The matter has come to me for a decision. Before writing this decision I emailed Mr B to clarify some matters and invite his comments. I will cover this in my findings below.

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 won't be commenting on everything raised by the parties - only the matters I consider to be relevant. This isn't intended as a discourtesy but reflects my role resolving disputes informally.

During recent correspondence with Mr B he asked me to refrain from commenting on law I consider to be relevant – such as the Consumer Rights Act 2015. With respect to Mr B, it is for me as ombudsman to decide what is relevant to this complaint and consider it accordingly. When a case (like this) concerns the quality of goods sold by a business to a consumer the CRA is a relevant consideration (along with the express terms of any contract – including the warranty here) when looking at what Creation should fairly have done in light of its specific liability under Section 75.

Creation as the provider of finance here can be liable for certain actions of the retailer in

respect of the financed goods and services via Section 75. So in considering how it dealt with Mr B's claim for a refund I have taken the requirements of Section 75 into account.

Section 75 has certain criteria in order for it to apply - this relates to matters such as the nature of the agreement with the parties, the way payment has been made, and the price of goods and services. After considering this I am satisfied that Section 75 applies here.

Section 75 can mean that Creation is liable for a breach of contract or misrepresentation in respect of the goods/services financed here. So I have gone on to consider this.

I don't think that misrepresentation is relevant to Mr B's claim as the focus is on what he is entitled to if the goods are faulty. I don't see any persuasive evidence of misrepresentation in any event. So I have moved on to consider breach of contract.

When considering breach of contract I look at the express terms of the contract and any implied terms. In this case I consider the key provisions in respect of the quality of the goods and potential redress are:

- the terms of the retailer's warranty that deals with situations where goods cannot be repaired; and
- the implied term by the CRA that goods must be of '*satisfactory quality*'.

Mr B has focused on the terms of the warranty. However, I don't think the terms I have seen enable him to get a full refund in this situation.

The terms state that if the retailer cannot repair the item the customer will be given a voucher to obtain a replacement based on an 'equivalent or similar specification product up to a maximum of the original purchase price'.

I can see the retailer in issuing the voucher identified what it considered to be a broadly equivalent television priced at around £1,200. I know that Mr B paid around £2,000 for his originally. However, when Mr B's product went wrong it was almost 5 years old so it stands to reason that the same or similar technology will not cost the same as it did in 2017. It is likely that the same or similar specifications could be purchased for much less and that a full refund would likely enable Mr B to purchase an overall higher specification model than he bought back in 2017 (which would not be fair or the intended purpose of the warranty).

I know Mr B says he can't now get a curved screen for the voucher the retailer provided. But the clause in the warranty says that the item will be 'similar' - not exactly the same. It also appears this type of screen isn't as readily produced as it was years ago and other products have come to market. I don't think this is the retailer's fault – or means that it hasn't broadly adhered to the terms of the contract.

Considering the terms of the warranty here – I don't think there is a clear breach of contract and I don't think Mr B is entitled to a full refund.

In deciding what is fair and reasonable I have also considered the term implied by the CRA that the goods will be of satisfactory quality to see if that leads me to a different outcome here. I don't consider the presence of express terms in the warranty mean that I should discount the CRA (as Mr B has suggested) – particularly as in some cases it can provide different protection than the express terms of a contract.

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

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

There appears to be no dispute that something went wrong with the television. I also note that it isn't an inexpensive product. However, because of the age of the television when it went wrong and the lack of other persuasive evidence to show there was an inherent manufacturing fault I am unable to fairly conclude the goods were of unsatisfactory quality at the point of sale. So I don't think the retailer has likely breached its contract with Mr B in this aspect either.

Furthermore, and in any event. Even if it was of unsatisfactory quality in law, if a repair or direct replacement isn't possible (or proportionate) then the CRA allows for deductions to be made for usage of goods from any refund due (arising from a final right to reject). In this case I think the deduction would likely be significant and possibly lead to Mr B receiving even less than the value of the voucher the retailer has provided to date.

Overall, because I don't think there is a breach of contract by the retailer here, in considering Creation's liability under Section 75 I don't think it fairly needs to do anything more in respect of the way it handled Mr B's claim.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 August 2023.

Mark Lancod
Ombudsman