

The complaint

Mrs J complains about the outcome of her section 75 claim with Creation Consumer Finance Ltd ("Creation") regarding a laptop purchased under a running account credit agreement.

What happened

Mrs J purchased a laptop using her running account credit agreement with Creation on 27 July 2022.

On 16 May 2023 she raised issue with Creation regarding the quality of the laptop. She said that it was faulty and she'd been trying to resolve the issue with the supplier, directly, since February 2023. She asked to return the goods.

Creation responded to the issue on 13 July 2023. Creation said the supplier had told it that it asked to inspect the laptop for faults but Mrs J had refused. It rejected Mrs J's claim and gave referral rights to this service.

Mrs J subsequently referred her complaint to this service. In doing so she said that the laptop had developed a fault whereby it would become unresponsive and switch itself off around 17 February 2023. She mentioned that she'd tried to address the issue with both the supplier as well as the manufacturer, without success.

Our investigator accepted that Creation was answerable for Mrs J's complaint about the laptop's quality under section 75. However, they said that under relevant legislation the onus to demonstrate the laptop supplied to Mrs J wasn't of satisfactory quality was on her as the fault manifested more than six months from supply. They weren't persuaded that Mrs J had done that based on the evidence she'd been provided. They didn't uphold the complaint.

Mrs J disputed that the onus to demonstrate the laptop's quality ought to be on her and said that she considered the evidence she'd provided, particularly from the manufacturer, should've been sufficient. Mrs J subsequently said the problems with the laptop had actually started in January 2023 – within six months of the laptop being supplied – and she'd reported the issue to the supplier then.

Our investigator made enquiries with the supplier via Creation to see if that could be established, but ultimately wasn't able to find evidence to corroborate what Mrs J had said.

Mrs J has asked for an ombudsman's decision on the case, so it's been passed to me.

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.

Mrs J might find that I've presented events in less detail than in her submissions. That's simply because I don't find it necessary to mirror that level of detail in explaining what I think a fair and reasonable outcome is. So, if I don't mention something that Mrs J said, it's not because I've not considered it – I can assure Mrs J that I've carefully considered all of her

submissions in detail.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

Section 75 of the Consumer Credit Act 1974 is relevant here. It protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. In practice that means that if Mrs J has a claim against the supplier for misrepresentation or breach of contract, then she also has a 'like claim' against the finance provider.

The Consumer Rights Act 2015 (CRA) is also relevant here. It says, in summary, that any goods supplied must be of satisfactory quality – defined as whether 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. Satisfactory quality also refers to the durability of the goods.

So, in the context of Mrs J's complaint – and based on her claim – I need to decide whether there's been a breach of contract on the grounds that she was supplied goods which weren't of satisfactory quality.

Mrs J was supplied with a brand-new laptop, so I'd expect it to be free from faults for a considerable time and also to be sufficiently durable.

The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty within the first six months, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for Mrs J to show that the goods were not of satisfactory quality.

There's some dispute about exactly when Mrs J first reported faults with the laptop – she initially said it was 17 February 2023, then later said it was earlier in January 2023.

However, Creation has provided comments and evidence from the supplier which seems to show that Mrs J raised her dissatisfaction with the supplier in a letter dated 15 May 2023. I've seen that letter and it seems to me that Mrs J's dissatisfaction related to events recent to that date. There's no mention of having raised the issue in January or February 2023. Additionally, our investigator made enquiries about the possibility of this having happened and ultimately wasn't able to establish it did.

Overall, based on the evidence I've been provided, it seems likely to me that Mrs J first raised the issue regarding her laptop in May 2023, some ten months after it was supplied.

Whilst that's more than six months from the supply of the goods, I don't think that necessarily means that the onus to demonstrate issues with the laptop's quality lies solely with Mrs J. I say this because I don't think a reasonable person would expect a laptop to develop a serious fault within ten months of supply.

That being said, I don't think we've been given persuasive evidence as to whether there's a fault with Mrs J's laptop, nor what that fault is. That's problematic, because there's a number

of things that can go wrong with technology which isn't limited there being an inherent fault with the goods – software and hardware issues could arise as a result of a number of different causes.

I accept that Mrs J has provided some evidence of screenshots of texts she says she received from the manufacturer. It appears that it did some remote testing/ diagnoses and referred Mrs J back to the supplier, going as far as to suggest she presented those texts as evidence of a fault. But I don't think that's sufficient to say there's a fault with the laptop, nor what that fault is. Additionally, and significantly, even if you were to argue that's evidence of a fault, it's not enough to say that the fault was present or developing at the point of supply, nor that it happened as a result of a manufacturing defect, for example, to conclude that the laptop hasn't been sufficiently durable.

Creation has also provided comments from the supplier which suggest that it had offered to inspect the laptop for faults. I know that Mrs J disputes that's true, but I've seen evidence which suggest it happened, and I've no reason to believe that those records are inaccurate.

Mrs J has otherwise not presented any evidence – an independent inspection of the goods, for example – which persuades me that there's a fault with them, that was either present or developing when they were supplied, or that the goods haven't been sufficiently durable. In otherwise, I haven't been persuaded that Mrs J was supplied with goods which weren't of satisfactory quality. I also think that Mrs J has been given ample opportunity to provide evidence which might demonstrate whether there's a fault and what's caused it.

Overall, given the time which seems to have passed from supply to the fault developing, as well as what I consider to be a lack of evidence regarding the presence and/ or cause of a fault, I don't think I've been presented with sufficient evidence to conclude there's been a breach of contract. I therefore don't find that Creation ought to do anymore in the circumstances.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 15 January 2024.

Stephen Trapp
Ombudsman