

## **Defect not proved**

**Watch strap broke on last day of warrantee period: Supplier not liable to replace or refund.**

**Complaint ref : 201311136**  
**Adjudicator : Bonita Hughes**  
**Date : 22 January 2014**

### **1. Summary of complaint**

On 21 February 2012 you purchased a watch from the supplier. The strap of the watch broke on 20 August 2012. On 21 August 2012 you contacted the company and requested a new watch. After not receiving any feedback you requested a refund.

Up to date you have not yet received a refund for the watch.

You want the store to refund you for the watch.

### **2. Summary of the supplier's response**

The supplier advised that they contacted you after receiving your complaint and you explained to them that the strap got caught onto something and broke, after which the watch fell.

They confirmed that this is not covered by the warranty.

They also advised that the watch was not defective and cannot give you a refund in terms of the Consumer Protection Act.

### **3. Assessment**

We have considered all the evidence presented by both you and the supplier and advise as follows:

According to the supplier's response the watch broke as it got caught onto something which broke the strap which caused the watch to fall. According to your response the watch merely fell from your arm and did not get caught onto anything.

In light of the above, it appears that there is a *dispute of fact* between your version of events and that of the supplier.

On the one hand you claim that the watch broke due to no fault of yours. On the other hand the supplier claims that the watch broke as it got caught onto something and fell.

In trying to reach a decision in cases where there is clearly a dispute of fact we need to look at all the evidence in support of each version and weigh this up against each other to establish which is correct, alternatively which is more probable.

If we cannot reach a decision on the evidence or on a balance of probabilities, we must dismiss the matter in accordance with our terms of reference.

*“Decline to deal with or discontinue dealing with those matters:  
In which there does not appear to be a reasonable prospect of the matter settling or of the CGSO eventually making a recommendation in favour of the complainant for whatever reason;”*

Applying the above approach to your complaint, it must be noted that apart from both your and the suppliers allegations there is no further evidence to substantiate either one of the versions.

We however noticed that the watch broke on the very last day of the 6 months return period provided for in the Consumer Protection Act. The fact that you were able to use the watch for 6 months without a problem does however strengthen the inference that the quality of the pin was at least reasonably good.

#### **4. Conclusion**

We are thus unable to make a finding in terms of Section 56 of the Consumer Protection Act which allows a person to return goods and request a refund, repair or replacement and cannot instruct the supplier to refund you for the watch.

Based on the above we can only suggest that you consider the offer by the supplier to send the watch for repairs at your cost.

