

The complaint

Mr W complains that Creation Financial Services Limited refused to uphold his claim under Section 75 Consumer Credit Act 1974 in respect of a promotion which wasn't honoured.

What happened

In December 2019 Mr W bought a TV from a retailer I will call C at a cost of £4,499. It was funded by a conditional sale agreement. He says that he was approached by a representative of the manufacturer working at the store that day and told if he bought a larger model, he would qualify for a free mobile phone worth some £1,000. He was also offered a second promotion of £400 cashback if he bought a sound system as well. C's sales people were party to this discussion.

He says he was told that since he could return the TV within 30 days not to claim the free phone until that period had elapsed. He was given no paperwork, but says he was told this would be in the box when the TV was delivered. When the TV was delivered and installed by an engineer he enquired about the phone. The engineer called C and was told that the details of the free phone were on the same page as for the £400 cashback, but not to claim until 30 days had elapsed.

Mr W tried to claim his free phone but was told that the claim should have been made within 30 days. He was also told that he was only allowed one of either the free phone or the £400 cashback.

He spoke to both the manufacturer and C, but was unable to resolve matters so he contacted Creation in pursuit of his claim. It took the view that as the offer came from a representative of the manufacturer then the required debtor-creditor-supplier chain was broken and so no claim could be made under Section 75.

Mr W brought his complaint where it was considered by one of our investigators who didn't recommend it be upheld. He asked Creation for clarification of the sales process and details of the offers. It said it had no doubt there was an offer, but it didn't have the details and there was no record of what had been said in the store.

Our investigator was satisfied that the sale was made by employees of C and they had been party to the discussion about the phone so he didn't consider the debtor-creditor-supplier chain to have been broken.

However, he had been able to see details of the promotion on the manufacturer's website before it was removed and this said that "*the promotion is not redeemable with any other offer from the Promoter*". He concluded that Mr W would not have been able to benefit from both offers.

He explained that Creation had been unable to let him have a witness statement from the store assistants or a copy of the call recording between the engineer and C. However, he thought that once the engineer had made Mr W aware of the link with the promotional details he would have been able to see what was required to obtain the phone.

Mr W didn't agree and said he had been advised the TV he bought was the best one since it came with a free phone. It was advertised as such, but despite asking for some paperwork about the offer none was provided. He said the engineer had referred him to the cashback leaflet and it was unreasonable to expect him to monitor every webpage of either C or the manufacturer. He had relied on the advice he had been given. He referred to the delivery note on which he had added a manuscript note which read: "No detail of cashback or free phone offer." He said that the offers were confusing in that one had to be claimed within 30 days and the other after 30 days so it wasn't surprising that the sales people had got it wrong. I issued a provisional decision as follows:

I explained I had given a great deal of thought to this complaint and I considered it should be upheld for the following reasons.

I said this complaint had been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

Creation initially argued that the chain was broken, but I was in agreement with the investigator that C's sales people were party to the sale and any advice given by a third party working in C's store could be regarded as made by C.

I believed it was clear that Mr W was told he was entitled to a free phone worth some £1,000 if he bought a more expensive TV. Creation didn't dispute there was an offer of a free phone and the manufacturer only rejected the claim because it was made outside 30 days. It didn't dispute the offer, just the timing of the claim.

Our investigator concluded that the two offers were mutually exclusive, but I wasn't convinced this was the case. I hadn't seen the offer or the terms and conditions since they were no longer available on the web site, but the phone was a promotion linked to the sale of the TV and the cashback promotion was linked to the purchase of a sound system along with the TV. I suspected the terms and conditions may not have precluded both promotions being claimed given they were for separate items. However, I couldn't say for certain as I had not seen the details.

That led me to a second point, the lack of written material provided to Mr W, whose testimony I found both consistent and credible. He said the only written material was attached to the advertising material in the store. I found it odd that since this was a significant offer that some written material wasn't provided to ensure he was clear as to what he was acquiring. He had to rely on the verbal advice given by people in the store. I believed the onus was on C to ensure there was clarity about the price and the promotion.

Mr W was quite clear as to what he was told and this is borne out by his conversation with the engineer and the manuscript note on the delivery note. In addition, he called the manufacturer just after the 30 days had elapsed to make his claim for the phone. This all adds up to Mr W believing he was entitled to the free phone.

I was satisfied that the sale was misrepresented in that a false statement of fact was made

and that induced him to buy the TV. He has received the £400 cashback, but I considered he was also entitled to the free phone.

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.

Mr W responded to my provisional decision, but Creation has not done so. Mr W accepts it, but has pointed out that since he acquired the television he has replaced his old phone and the one he had been offered is now outdated. In short, the circumstances have changed and I consider the outcome needs to reflect that. Therefore, I agree that it would seem unreasonable to expect Creation to supply him with an older phone and the better solution for both parties would be for Creation to recompense him financially.

Mr W says the retail price of the old phone was £1,099. I note in his original complaint he said the phone was valued at circa £1,000 and I have checked historical prices for it and see that it could have been bought for £900. I believe that is the value Mr W lost by not receiving the phone as he expected. In the circumstances I consider an award of £900 to be fair.

Putting things right

Creation should compensate Mr W

My final decision

My final decision is that I uphold this complaint and I direct Creation Financial Services Limited to pay Mr W £900.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 June 2021.

Ivor Graham
Ombudsman