

The complaint

Mrs M complains that Creation Consumer Finance Ltd rejected her claim under Section 75 of the Consumer Credit Act 1974.

What happened

Mrs M purchased a fridge freezer from a retailer and entered into a finance agreement with Creation.

Mrs M experienced problems with the freezer not freezing properly. She reported this to the retailer, who arranged for an inspection and agreed that it was faulty. The retailer said it would arrange for the fridge freezer to be collected and issue a refund.

In the meantime, Mrs M purchased a new fridge from the retailer. She didn't have room for two fridges and asked the retailer to arrange collection of the old fridge. The retailer told Mrs M to ask the driver who was delivering her new fridge to collect the old one. In November 2020, Mrs M's new fridge was delivered, and the old fridge was collected.

Mrs M didn't receive a refund, so she contacted the retailer. The retailer said it had no record of the old fridge being collected and said it couldn't issue a refund.

Mrs M was unhappy about this and raised a section 75 claim with Creation. In response, Creation said that because there was no evidence that the fridge had been collected, it was rejecting the claim.

Miss M brought her complaint to this service.

Our investigator upheld the complaint on the grounds that the retailer had supplied Mrs M with an item which wasn't of satisfactory quality. The investigator said it was likely that Mrs M had returned the faulty item and recommended that Creation issue a full refund.

Creation didn't respond to the investigators view so I've been asked to make a final decision.

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.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mrs M's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Creation's response to the claim under section 75 wasn't fair or reasonable.

Mrs M has said that the fridge freezer was faulty. The relevant law says that goods must be of satisfactory quality and fit for purpose at the point of supply. If this isn't the case, then a breach of contract can be said to have occurred and I'd expect the business to put things right.

I've looked at the available evidence. The retailer accepted that the fridge freezer was faulty. This establishes that there was a breach of contract, because the goods weren't of satisfactory quality.

The real issue in this case is whether the faulty item has been returned. Mrs M has said that it was collected by the retailer's delivery driver when her new fridge was delivered. However, the retailer has said that there's no record of the fridge being returned.

Mrs M has provided evidence that she was advised by the retailer to return the fridge via the delivery driver. Her testimony about this has been clear and consistent. On the balance of probability, I think it's likely that Mrs M did return the fridge via the delivery driver. I'm persuaded that it wouldn't have been possible for Mrs M to store two fridge freezers in her home because these are large items. I don't think Mrs M had any reason not to do what the retailer had advised her to do i.e. return the fridge via the delivery driver when he delivered her new fridge. It would not have benefitted Mrs M to retain a faulty fridge. In the circumstances, I think it's more likely that the fridge was returned and that the retailer can't locate the relevant paperwork.

Putting things right

I'm satisfied that there's been a breach of contract and I don't think Creations response to the section 75 claim was fair or reasonable. Creation must refund the total cost of the fridge freezer plus interest.

My final decision

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must refund Mrs M the sum of £399 together with 8% simple interest from the date of payment to the date of settlement. It must also remove any adverse information from Mrs M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 24 March 2022.

Emma Davy
Ombudsman