

The complaint

Mr W complains that Creation Consumer Finance Ltd rejected his claim under section 75 Consumer Credit Act 1974 in respect of a damaged fridge freezer.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so instead I'll focus on giving the reasons for my 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

This complaint has 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.

The required chain is in place and that leaves me to consider whether there has been a breach of contract or misrepresentation.

I have reviewed the photos and the videos of the fridge and I can see that it has a series of dents on the side panel. Like our investigator I am satisfied that these are dents and not some trick of the light as Creation and the supplier seem to have suggested. This is reinforced by the fact that Mr W and his partner notified the merchant immediately they unwrapped the fridge that it was damaged and they asked for a refund at that time. Consumer law entitled Mr W be allowed to reject the fridge and it is not clear why this didn't happen.

I believe the matter is fairly straightforward. The goods Mr W ordered were damaged and he was entitled to reject them. This was not offered by either the merchant or by Creation. I have noted Mr W was offered a 10% reduction as a goodwill gesture, but I do not consider that to be adequate. It seems that Mr W's secondary complaint about the noise coming from the fridge took precedence and the manufacturer, the merchant and Creation addressed this without properly dealing with the fact the fridge was noticeably dented.

Our investigator put a proposed solution to Mr W and Creation, but it has not responded and so I am issuing this formal decision in order that the matter be brought to a close and matters not further delayed. I believe Mr W has accepted this proposal and so I am happy agree.

Putting things right

Mr W should be allowed to reject the fridge freezer.

My final decision

My final decision is that I uphold this complaint and I direct Creation Consumer Finance Ltd to:

- arrange for the fridge freezer to be collected from Mr W and replaced with a new fridge freezer (if the product in question is no longer available, then a suitable alternative should be agreed with Mr W),
- remove any adverse information relating to the agreement from Mr W's credit file
- calculate what Mr W has paid to date in total and deduct that amount from the capital amount. If this means that Mr W has paid Creation more than he borrowed, Creation should refund this amount to him, along with 8% simple annual interest a year from the date of the payments to the date of the refund*.
- If this means that Mr W still owes Creation any money, then he should repay this. Interest can start being accrued once the fridge freezer is replaced.

*HMRC requires Creation to take off tax from this interest. Creation must give Mr W a certificate showing how much tax has been taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 April 2022.

Ivor Graham
Ombudsman