

The complaint

Mr G is unhappy with how Creation Consumer Finance Ltd ('Creation') dealt with his claim made under Section 75 of the Consumer Credit Act 1974 ('Section 75').

What happened

In March 2020 Mr G bought a fridge freezer from a supplier using credit provided by Creation. Mr G says he wasn't happy with it and complained to the supplier shortly after taking delivery. He says he wanted to return it and get a different one.

Mr G says the supplier wasn't responsive, so he approached Creation for help via a Section 75 claim. However, Mr G was not happy with how Creation handled this. In summary, he says that Creation took too long to respond and didn't give him the outcome he wanted.

Creation referred Mr G to this service. Our investigator upheld the complaint. In summary, she said that in the circumstances the supplier should have let Mr G return the goods for an exchange or refund. By not doing so it was in breach of contract and therefore it was fair and reasonable for Creation to put things right by taking back the goods and refunding Mr G what he has paid to date. She also said that despite the situation surrounding the pandemic Creation could have handled Mr G's claim more promptly – so she recommended it pay him £100 compensation as well.

Creation did not respond to our investigator's view (except to send over information it had already provided) so the matter has been passed to me for a 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.

Section 75

Mr G used a credit account to pay for the goods which means that Section 75 is relevant to this case. Section 75 allows Mr G to hold Creation responsible for breach of contract or misrepresentation in respect of goods or services purchased using the credit afforded here.

There are certain technical criteria that have to be met for a Section 75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made.

In this case I am satisfied the criteria for a valid Section 75 claim against Creation are in place. And although I am not deciding the Section 75 claim, I am considering whether Creation acted fairly in the circumstances. In order to determine whether Creation acted fairly I have considered if the supplier breached its contract with regard to the written terms of sale and any relevant law.

I have reviewed and considered the supplier's general terms and conditions. While it isn't clear if these were the exact terms and conditions in place at the time Mr G purchased the goods in the absence of either party providing other terms and conditions I consider it fair to rely on these.

I have also considered the Consumer Rights Act 2015 ('CRA') which is relevant to this complaint. It implies a term into Mr G's contract with the supplier that the goods he purchased will be of '*satisfactory quality*'.

Mr G has provided email evidence that he contacted the supplier very shortly after purchase to say he was unhappy with the goods. He mentioned both the quality of the goods and the storage capacity inside did not meet his expectations. Mr G has later clarified that the quality issues were cosmetic issues – he says the fridge freezer had scratches all over it.

It is unlikely Mr G's discovery that the storage in the fridge did not meet his needs would be considered a breach of the CRA implied term I mention above. However, if the item was delivered scratched (even in a minor way) then this would not be what a reasonable person would expect of brand-new goods. It would in my view render the goods of unsatisfactory quality. And because Mr G rejected the goods within the first 30 days of having them he would fairly be able to reject these for a refund via the rights afforded in the CRA.

Mr G has been consistent and clear in his testimony but has not (as far as I can see) sent in photographic evidence of the condition of the goods when they arrived. This makes it more difficult for me to conclude the goods supplied were not of satisfactory quality. However, because of the supplier's general terms and conditions I don't consider it necessary to consider this issue further. I will explain.

Even if the goods were not considered of unsatisfactory quality the supplier's terms are very clear that a customer is able to change their mind and notify of an intention to return goods '*for whatever reason*' for 21 days after delivery (for unopened goods) and 14 days after delivery otherwise. I have looked at the communication Mr G has sent, and it is clear he rejected the goods within 14 days. So under the contract he has with the supplier he should have been allowed to do so.

I have not been provided with persuasive evidence that the supplier was willing to abide by its terms and remedy the situation by allowing Mr G to reject the goods. The supplier has claimed that Mr G agreed to a £30 partial refund to settle the matter – however Mr G said he did not agree to this and the supplier credited his account without his consent or knowledge. I have not been provided with persuasive evidence that Mr G did agree to this settlement and it seems unlikely he was aware of this as it appears to have been credited to his finance account in between multiple emails he sent to the supplier asking to reject the goods.

Overall, I am persuaded the supplier has breached its contract with Mr G and that it should have allowed him to reject the goods for a full refund. It follows that with Section 75 in mind Creation should put things right. It should arrange for collection of the goods and end any further liability in relation to the item on the credit account, refunding all his payments to said finance to date with out of pocket interest on the payments he made.

Customer service

Mr G is unhappy with how long Creation took to give him a response to his claim. I have noted the unprecedented situation surrounding the pandemic at the time. Which might reasonably explain why responses were not as timely or as tailored as Mr G might have expected. However, despite this I think Creation took an unreasonably long time to deal with his claim – not giving him an outcome for over eight months. I think that has caused him

unnecessary distress and inconvenience and warrants compensation. I think the £100 the investigator has recommended is appropriate to reflect this here – and Mr G appears to agree. Creation has not persuaded me that this wouldn't be a fair amount of compensation, so I am directing it to pay this.

Putting things right

For the reasons above I consider it fair and reasonable for Creation to refund Mr G all payments he made (including interest and charges) for the fridge freezer and arrange it to be collected. It should also ensure his credit file isn't adversely impacted by what has happened and that Mr G doesn't have any future liability under the credit account for this item.

My final decision

I uphold this complaint and direct Creation Consumer Finance Ltd to:

- arrange to collect the fridge freezer at no cost to Mr G
- end the credit agreed for the fridge freezer and refund all payments Mr G has made towards it
- pay interest on the refunds at the rate of 8% simple each year from the date each payment was made to the date of settlement
- pay Mr G £100 for the distress and inconvenience caused
- remove any adverse information from Mr G's credit file in respect of this matter

If Creation considers it is required to deduct tax from the interest element of my award it should provide Mr G with a certificate of tax deduction so he might claim a refund if appropriate. If Creation does not pay the £100 compensation element within 28 days of being notified that Mr G has accepted my final decision then it should pay interest on this at a rate of 8% simple each year calculated from the date of my decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 June 2022.

Mark Lancod
Ombudsman