

The complaint

Mr C complains about the way Creation Financial Services Limited handled his chargeback claim, and his claim under section 75.

What happened

Mr C hired a car from a retailer and paid using his Creation credit card. An issue arose over sums charged to Mr C in respect of additional hire and damage charges.

Mr C disputed the charges but was unable to resolve matters with the retailer, so he raised a disputed transaction with Creation.

Creation investigated Mr C's concerns about the charges. In its final response it advised Mr C that it couldn't perform a chargeback and that, based on the information provided, it couldn't agree that the situation qualified for a refund under section 75.

Mr C wasn't happy with Creation's response, so he brought his complaint to this service.

Our investigator didn't uphold the complaint. He said he didn't think Creation had acted unfairly by not processing a chargeback because it was likely to be successfully defended. The investigator also said he didn't think Creation had acted unreasonably by not raising a section 75 claim because there wasn't enough evidence to show that there had been a breach of contract or a misrepresentation.

Mr C didn't agree. He said he'd returned the car to the retailer on 20 December 2021 and that the damage for which he was being charged must've been caused after that date because he returned the car with no damage.

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'm not upholding Mr C's complaint. I'll explain my reasons below.

How Creation handled the chargeback

When dealing with chargebacks, banks and providers of credit need to do so within the remit of the rules set by the relevant card scheme.

Chargebacks are a voluntary scheme. How it works is that the card issuer checks the complaint against possible chargeback reasons, to see what sort of evidence is required and under what timescales. This is so it can decide whether or not it can make a successful claim for the customer. Card issuers don't have to submit claims, and they will only do so if they believe they have evidence which will back up a chargeback claim so it will be successful. This service expects card issuers to help if they can, but we don't expect them to raise a chargeback if there is little prospect of success.

I've looked at Mr C's request to Creation to raise a chargeback to see whether or not Creation acted reasonably when it refused to raise a chargeback.

Mr C has said he returned the car to the retailer on 20 December 2021. He's said that he was abroad from 20 – 25 December 2021 and that he asked the retailer to collect the car from his driveway. Mr C told this service that he handed the keys to the retailer on 20 December and the car was driven away.

The retailer has said that it collected the car from Mr C on 13 January 2022, and that the damage was identified when the car was collected.

It's important to say that I'm only looking at whether Creation has acted fairly here. I'm not looking at what the retailer has done, or whether the damage identified exceeded fair wear and tear. In order to raise these issues, Mr C would need to raise a complaint with the BVLRA.

Based on the information that was available to Creation at the time, I don't think it acted unfairly by not processing the chargeback claim. The information provided by Mr C was conflicting, and the photos he provided of the car before it was collected were of poor quality. The evidence provided by Mr C made it unlikely, in my view, that the chargeback would be successful. I don't think Creation did anything wrong when it refused to raise a chargeback.

This service would expect a card issuer to consider whether there was a claim under section 75 if it declines to process a chargeback. I can see that Creation considered the claim under section 75, so I've looked at whether Creation acted reasonably when it declined to raise a section 75 claim.

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 Mr C's company, 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.

Mr C hasn't said there's been a misrepresentation, so I've focussed on whether the evidence supports a breach of contract.

I've looked at the photos of the car provided by Mr C. I've also considered the emails which passed between Mr C and the retailer.

The relevant law says there's been a breach of contract if the goods supplied aren't of satisfactory quality or fit for purpose. There can also be a breach of contract if a party to the contract fails to do something it should've done or doesn't provide the services it contracted to provide with reasonable care and skill.

I've taken account of all of the available information. Based on what I've seen, I'm not persuaded that there's enough evidence to show that there's been a breach of contract. The real dispute here is about the charges for the damage. If Mr C had evidence to show that the damage wasn't present when he returned the car, then the charges might be unfair. But in this case, and aside from the differences between Mr C and the retailers as to the date when the car was collected, there isn't enough evidence for me to say that the damage wasn't present when the car was collected.

Taking everything into account, I don't think Creation acted unfairly or unreasonably in declining the chargeback or the section 75 claim.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 November 2022.

Emma Davy
Ombudsman