

## **The complaint**

Mrs S complains about a decision by Creation Consumer Finance Ltd (“Creation”) not to uphold a claim she made to them about goods not being delivered.

## **What happened**

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my 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.

I know it will disappoint Creation, but I agree with the investigator’s opinion. Please let me explain why.

Where the information I’ve got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with this type of running credit, it might be possible to make a claim under section 75 of the Consumer Credit Act. This section says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there’s either a breach of contract or misrepresentation by the supplier.

I’m not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what’s a fair way to resolve the complaint, but I don’t have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Creation haven’t provided much evidence here. I’ve seen a copy of their final response to Mrs S in which they accept that the goods were ordered and that Mrs S disputed delivery with the supplier. They say in that response that the supplier was satisfied there was enough evidence the delivery was made but Creation haven’t provided that evidence.

Mrs S has demonstrated she completed a denial of receipt form and she’s been prepared to escalate her complaint to this service. On balance, I’m persuaded there is sufficient evidence that Mrs S didn’t receive the S7 tablet she paid for.

### **Putting things right**

Creation should refund any money and interest Mrs S has paid towards the purchase and they should add 8% interest to any refund as Mrs S has been deprived of that money.

They'll need to remove that item from her running account credit agreement and ensure any reports they have made to her credit file in relation to that purchase are removed.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Creation Consumer Finance Ltd to:

- Refund any money Mrs S has paid towards the purchase and add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Refund any interest accrued on that purchase and add 8% simple interest from the date of payment to the date of settlement. Remove any interest accrued but not paid.
- Remove the item from Mrs S's running account credit agreement and ensure any reports made to her credit file in relation to that purchase are removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 6 July 2022.

Phillip McMahon  
**Ombudsman**