

The complaint

Ms G complains that Creation Consumer Finance Ltd unfairly requires her to repay lending it provided for goods which she says were returned.

What happened

Ms G purchased a mobile device from a retailer using finance provided by Creation. She then asked the retailer if she could return the device and arrangements were made for it to be collected.

Ms G says that she left the device in her porch along with another package to be collected by a different courier. It subsequently came to light that the courier sent by the retailer had collected the wrong package. I understand that it was delivered to the retailer, and subsequently returned to Ms G sometime later.

Ms G enquired about the whereabouts of her mobile device, but it seems the retailer denied having received it. Ms G raised a complaint with Creation on the basis that it wasn't fair to ask her to repay sums for goods which had been returned.

Creation said that the retailer had told it the device had not been returned. It declined to cancel the finance agreement unless the retailer confirmed receipt of the goods. It also suggested that Ms G take the matter up with the retailer and the courier.

Ms G didn't agree with Creation, so she referred the matter to this service. She said that she believed the courier had picked up both packages but only one had been returned to her. She provided tracking information for a package which the retailer's courier had collected.

Our investigator accepted that Ms G was allowed to return the device she purchased. But significantly, they didn't think that Ms G had followed the correct returns process based on information found on the retailer's website as well as relevant regulations. They noted that under those regulations Ms G was required to return the goods or hand them to someone authorised to receive them. They suggested that by leaving the goods in her porch Ms G hadn't met those requirements.

They also noted that Creation ought to have considered whether or not Ms G had a valid claim under Section 75 of the Consumer Credit Act 1974. Whilst they didn't think Ms G had a valid claim, they said that Creation had provided poor service and ought to pay Ms G £150 compensation for upset and worry caused.

Creation agreed with our investigator's recommendation. Ms G disagreed and asked for an ombudsman's decision on the case. She provided a screenshot of a text message from a retailer which she believed showed the device had been collected.

The case has been passed to me to decide what should happen.

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've reached the same conclusion as our investigator for broadly the same reasons. I'll explain why.

Ms G's complaint relates to a running account credit facility provided by Creation. It's a regulated agreement and one which this service has the power to consider a complaint about.

Ms G might find that I've presented the events which led to this complaint in less detail than she presented them. I've done this simply because I don't find it necessary to mirror that level of detail in explaining what a fair and reasonable outcome is. I can assure Ms G, however, that I've carefully considered everything I've been presented.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

Section 75 of the Consumer Credit Act 1974 is relevant here. It protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

The Consumer Contract Regulations 2013 (CCR) are also relevant in this case. They say, in summary and with relevance to this case, that in order to cancel a contract the consumer would need to return the goods or hand them to the trader or someone authorised by the trader to receive them.

Like our investigator, I accept it seems that Ms G's agreement with the retailer allowed her to return the goods. So, if it could be reasonably established that the goods were returned and Ms G's account with Creation hadn't been credited with the associated value of the purchase, then there's grounds to say there's been a breach of contract.

I've carefully considered all of the evidence that's been provided in determining whether the goods were likely returned. I acknowledge that Ms G has provided evidence to show that something was collected from her porch – for which she's provided tracking details. And, I accept that a package made its way to the retailer.

However, I also think it's clear from Creation's correspondence with the retailer, that the package it received didn't contain the goods Ms G intended to return. And I think Creation made reasonable attempts to find out what could've happened. On balance, I think it's most likely that the tracking details we've been provided relate to the package which was incorrectly collected and delivered to the retailer.

I can't say for sure what happened to the package which contained Ms G's mobile device, but based on what I've seen, I'm not persuaded that package was returned to the retailer. Additionally, I think that by leaving the goods in her porch, Ms G hasn't met the requirements set out under the CCR to entitle her to cancel her contract. So, I don't think there's been a breach of contract that Creation ought to be responsible for.

Given all of the above, I'm not persuaded that Creation has been responsible for a breach of its contract with Ms G, nor that it's acted unfairly by asking her to repay the lending it

provided. So, I don't require anything of Creation in that respect. That being said, I accept that Ms G was caused some upset and worry by Creation's handling of the matters, but I think the £150 compensation it's agreed to pay is sufficient in the circumstances.

My final decision

For the reasons explained above, my final decision is that I require Creation Consumer Finance Ltd to pay Ms G £150 compensation to the extent that it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 20 December 2022.

Stephen Trapp
Ombudsman