

The complaint

Mr A complains that Creation Financial Services Limited declined his claim under section 75 of the Consumer Credit Act 1974 for a refund of his purchase of a faulty computer monitor.

What happened

In March 2022 Mr A bought a computer monitor for £1,214. The purchase was financed by a loan from Creation. In May he reported that the monitor was no longer working, and tried to return it to the retailer for a full refund. The retailer accepted that the monitor was defective, but instead of refunding him it offered to replace the monitor with another one. But Mr A did not accept that offer, as he had already bought a replacement from a third party, and had paid roughly the same price again.

Mr A asked Creation to refund him, under section 75. There was no dispute that the monitor was defective. But Creation did not agree that Mr A was entitled to a refund, since under the Consumer Rights Act 2015 the retailer had been entitled to offer him a free replacement instead of a refund. Being dissatisfied with that response, Mr A brought this complaint to our service.

One of our investigators considered this complaint, but she did not uphold it. She said the retailer didn't have to give a refund, and was entitled to offer a replacement monitor. As Creation's liability under section 75 was the same as the retailer's, it had been entitled to reject Mr A's claim. Mr A asked for an ombudsman to review his case.

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 makes Creation jointly and equally liable with the retailer for any breach of contract by the retailer in relation to a purchase funded by Creation. It is an implied contractual term that any goods sold to a consumer must be of satisfactory quality. It is not in dispute that the monitor was defective, so I only need to consider what the proper remedy is.

Under the Consumer Rights Act, the retailer is entitled to replace the defective monitor with another one, and is not obliged to give Mr A a refund unless the replacement fails too. Since Creation's liability under section 75 is the same as the retailer's, Creation reasonably took the view that it did not have to refund Mr A either. So I cannot say that Creation mishandled Mr A's section 75 claim.

I have thought about the fact that Mr A had already purchased a replacement monitor from somewhere else, and he didn't need two monitors. But that does not affect the retailer's rights, or Creation's liability. It is still open to him to accept a replacement from the retailer and then to sell it as new. But I can't fairly require Creation to do anything else.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 March 2023.

Richard Wood
Ombudsman