

## **The complaint**

Mr A is unhappy that Creation Financial Services Limited (Creation) didn't refund a payment he made using his credit card.

## **What happened**

In November 2018 Mr A, using his Creation credit card, purchased an audio/visual equipment from a supplier/merchant – I will refer to the supplier/merchant as the Company. The total cost charged to Mr A's credit card was approximately £848.

Mr A said that the subwoofer, which is part of the audio/visual equipment, has been problematic since its purchase. And after about three years it has stopped working completely. As Mr A was unable to get a satisfactory resolution from the Company, he contacted Creation.

In March 2022, Creation wrote to Mr A and said that they couldn't help him as he didn't meet the eligibility criteria for Section 75 of the Consumer Credit Act 1974 (Section 75).

Mr A was not happy that Creation wouldn't refund him the money he paid to the Company, so he referred his complaint to our service.

Our investigator was of the opinion that the complaint shouldn't be upheld. He thought that too much time has passed for Creation to raise a chargeback, so he didn't think Creation acted unfairly by not raising one. He also didn't think there was a successful Section 75 claim to be made as he felt that further information would need to be supplied by Mr A to establish that the goods had not been of satisfactory quality at the point of supply.

Mr A disagreed with the investigator. So, the complaint has been passed to me to decide.

## **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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In this decision, I have to consider what is Creation's liability to Mr A in the context of this specific complaint when deciding if they should've done more to help him. Their liability is grounded in either the chargeback process, or in Section 75. In considering what is fair and reasonable, I need to take into account the relevant law and the related rules of these processes into account.

In addition, this decision is not about the supplier/merchant who isn't a financial service provider for the transaction in question and so doesn't fall within this service's remit. So, in this decision I'm only considering the question of whether Creation have treated Mr A fairly.

## Chargeback

In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. The chargeback is a voluntary scheme which looks to resolve payment disputes between cardholders and suppliers/merchants. These disputes are dealt with under the relevant card scheme rules. There is no obligation for a card issuer to raise a chargeback when a consumer asks for one, but I would consider it good practice for Creation to pursue a chargeback, as long as it is possible to do so (within the scheme rules and criteria) and provided there is a reasonable prospect of success.

A chargeback doesn't guarantee a refund as the supplier/merchant can put forward a defence to the chargeback claim. If the chargeback is defended, Creation could pursue the chargeback further and ultimately ask the card scheme provider to arbitrate on the outcome. My role in such cases is not to second-guess the card scheme's arbitration decision, or the scheme's rules, but to determine whether the card issuer (in this case Creation) acted fairly and reasonably when presenting, or choosing not to present, the chargeback to the supplier/merchant, and also when choosing whether to continue with the chargeback process on behalf of their cardholder (in this case, Mr A).

Creation didn't raise a chargeback, so I've taken this into consideration when looking at whether they acted fairly by not pursuing this option. I've also taken a note of what both parties have told us.

As I said, I would consider it good practice for Creation to pursue a chargeback, bearing in mind the rules and criteria of the scheme, and when there is a reasonable prospect of chargeback success. If Creation had raised the chargeback, I think most likely it would've been raised under the dispute category of 'Goods or Services Were Either Not as Described or Defective'. Under this category, there are time frames that apply. A chargeback needs to be raised:

- 120 days from when the services ceased with a maximum of 540 calendar days from the transaction settlement date for issues of interruption of ongoing services
- Between 15 and 120 calendar dates from the transaction settlement date
- Between 15 and 120 calendar dates from the delivery/cancellation date of the goods or services"

I can see that Mr A purchased the audio/visual equipment on 3 November 2018 and only contacted Creation in March 2022. So, by the time Mr A contacted Creation it would've been too late for them to raise the chargeback, as it was outside of the above listed time frame. So, I don't think they acted unfairly by not pursuing this option.

## Section 75 claim

Section 75 sets out that, in certain circumstances, Mr A can bring a claim against Creation for any breach of contract or misrepresentation by the Company, provided that certain conditions are met. It is important to note that this test is a very different test to whether Mr A thinks the Company could have done things better overall.

As mentioned above, the liability here, under the Consumer Credit Act 1974, has criteria that must be met for Creation to be liable under Section 75. For instance, there are criteria around the nature of the relationship between the parties. For a valid claim under Section 75 there must be a debtor-creditor-supplier agreement in place. Creation said that Mr A didn't meet Section 75 criteria because there wasn't a debtor-creditor-supplier agreement in place due to the way Mr A paid for the goods. However, I make no finding on this aspect because even if the debtor-creditor-supplier agreement was in place, I don't think there is evidence of

a breach or misrepresentation of the contract – I'll explain below. So, I don't need to make a finding on this point.

The Consumer Rights Act 2015 (CRA) implied a term into Mr A's agreement with the Company that the audio/visual equipment supplied must be of satisfactory quality.

Mr A says that the subwoofer is now not working at all, so I think, most likely, there is a fault with it, but the issue that needs consideration is whether the fault was present at the time of sale, and whether that fault made the audio/visual equipment of unsatisfactory quality when it was supplied. I've also considered whether a reasonable person would expect there to be problems, such as those experienced by Mr A, in an audio/visual equipment of this price – in short, is the audio/visual equipment sufficiently durable. In deciding whether the audio/visual equipment was of satisfactory quality, I've taken into account the relevant circumstances, such as the cash price and its age. In this case, Mr A paid approximately £848 for the audio/visual equipment, and it was new at the point of supply.

Mr A said that there was a problem with the subwoofer early into the two-year warranty period, and that he contacted the Company. He also told us that there was confusion as to whether the fault was due to an auto standby mode, but Mr A said the subwoofer didn't seem to work often when it should've. And, as it was going to cost him money to send it back to the Company for investigation if no faults were found, he chose to continue to just adjust settings and monitor the situation. He said it continued to be intermittent and it remained unclear whether this was due to poor design not allowing it to wake up correctly from sleep mode when it should, or due to a fault or due to an insufficient signal supply. But Mr A said that, when the audio/visual equipment was three years old, the subwoofer stopped working completely and that the fault with it is not even intermittent anymore. Mr A said this is proof that the subwoofer was faulty all along and that it had an inherent fault.

I've considered what Mr A has said, but I've also considered that it's Mr A's responsibility to demonstrate that the audio/visual equipment was of unsatisfactory quality at the point of supply. Mr A hasn't given anything to show what the actual fault with the audio/visual equipment was. And, I understand, that he doesn't think that an independent report would be beneficial either. But given the length of time that had passed – three years by the time it stopped working completely – I don't think it was unreasonable for him to be required to show what the actual fault was.

Also, it is not unreasonable for the audio/visual equipment to suffer from some wear and tear in that time frame. The fault could've been minor or major, or even due to user error. And without knowing what was causing the issue, I don't think there's enough to show that the audio/visual equipment was most likely of unsatisfactory quality at the point of supply. So, I don't think it was unreasonable for Creation to have initially declined Mr A's claim, although it did so for a different reason. Overall, I don't think Mr A has demonstrated that there was a breach or misrepresentation of the contract by the Company.

I sympathise with Mr A for the difficulties that he is experiencing but, taking all the circumstances of the complaint into account, I think Creation has acted fairly and reasonably when dealing with his chargeback and his Section 75 claim. So, it's not fair or reasonable for me to require Creation to take any action in response to Mr A's complaint.

### **My final decision**

For the reasons given above I don't 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 11 July 2023.

Mike Kozbial  
**Ombudsman**