

The complaint

Mr B complains that Creation Consumer Finance Ltd is asking him to pay for a laptop he didn't receive. Mr B is represented by another party but for ease of reference I have referred to Mr B throughout this decision.

What happened

Mr B ordered a laptop on 9 November 2020 which was to be financed through a credit facility with Creation. The laptop was due to be delivered on 10 November 2020. Mr B says the laptop wasn't delivered and he made several attempts to contact the retailer about this but couldn't make contact. He says he used the online chat facility, and the advisers couldn't say why his delivery hadn't been made and said there wasn't a record of the order being placed. Mr B says that he gave up chasing the order and placed an order elsewhere for a different laptop and didn't think any more about this issue. But 11 months later he was contacted about payment for the laptop he hadn't received. He raised this with the retailer and then with Creation.

Creation issued a final response letter in September 2022. It said that it received a call from Mr B on 21 January 2022 on which it was explained that it required a notice from the retailer if there were changes required to an agreement. It said it contacted the retailer and it confirmed on 26 January that the agreement should not be cancelled, and that Mr B needed to refer to the retailer directly. It said that it had done nothing wrong by continuing with its collections process and that the account was eventually passed to a third party to collect on its behalf.

Mr B referred his complaint to this service. Our investigator upheld his complaint. He noted the limited information available given and the time that had passed but said that on balance he thought it likely Mr B had cancelled the laptop order and so shouldn't now be charged for this.

Creation didn't agree with our investigator's view. It contacted the delivery company to see if further evidence could be provided but unfortunately it no longer had the records available.

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 the evidence provided is incomplete, inconclusive, or contradictory I have made my decision based on the balance of probabilities, that is what I consider to most likely have happened based on the information provided and the wider circumstances of the complaint.

Mr B placed an order for a laptop that was to be financed through his credit facility with Creation. The credit facility included a 'Buy Now Pay Later' element which meant Mr B had a 12 month interest free period in which payments didn't need to be made for the laptop. This period was due to expire on 9 November 2021 after which Mr B would be required to make monthly repayments of around £33.

The specified delivery date for the laptop was 10 November 2020. Mr B says the laptop wasn't delivered on 10 November and when he chased this he struggled to get through to the retailer and when he made contact through the online chat, he was told it couldn't say why the delivery hadn't been made and there was no record of the order. The retailer has provided information saying that the laptop was purchased online through the Creation credit facility and the laptop was dispatched the same day. It said the laptop should have been delivered between 10 and 13 November 2020 but that due to the passage of time the tracking information is no longer available. Creation has also attempted to get information from the delivery company but given this wasn't requested until April 2023 the information was no longer available.

I have looked through the system logs provided by the retailer and can see Mr B's order was dispatched on 9 November 2020. But I have no evidence to confirm whether or not the laptop was delivered. The delivery would have been undertaken by a third party and it has confirmed tracking information is no longer available. Creation has also said the retailer doesn't have any way to check if the laptop has been used or sold. Without evidence that the laptop was delivered, I have considered what, based on the information I have and the wider circumstances of the complaint, is most likely to have happened. And, based on this whether it is reasonable that Mr B be pursued for payment for the laptop.

The retailer has said that Mr B contacted it on 2 October 2021 to say he never received the laptop. The retailer's back office team responded to the 'Lost in transit' request to say there was no evidence that Mr B contacted it in 2020 about the issue and due to the time that had passed this couldn't be investigated. It also said that the order wasn't accessed by it until 2 October 2021 and had contact been made in 2020 the order would have been accessed at that time. In contrast, Mr B says that he made contact through an online chat and was told there was no record of the order. He said he tried other means of contact but was unsuccessful. Based on the information provided, I cannot say for certain what contact was made in regard to this purchase in November 2020. I do however accept that this was an unusual time for businesses due to the pandemic and Mr B has said that when contact was made through the online chat, he was told the adviser was working from home and didn't have full access to the systems. So, it is possible that contact was made at that time but didn't get recorded.

Accepting that contact may have been made this still doesn't confirm that the laptop wasn't delivered. I have therefore considered the other information provided in this case. Mr B has provided a copy of a receipt for another laptop purchased on 11 November from another retailer (order details with the same address details as his). I think this supports his testimony that he thought his previous purchase had been cancelled as it is unlikely the second purchase would have been made a couple of days later if he had received (or was still expecting to receive) the initial laptop.

Creation has noted that Mr B didn't make contact about this issue until October 2021, around a year after the laptop was due to be delivered. I understand the comment made and have addressed the different information provided about contact in November 2020 above. Mr B says he made contact in October 2021 as he was being charged for the laptop. This makes sense as the Buy Now Pay Later period was coming to an end. I cannot say that Creation was wrong to make contact with Mr B about payment as it hadn't been informed by the retailer that the agreement needed to be cancelled.

While I note that Mr B made contact when the payments were about to start, I can also see that Creation provided monthly statements for the plan that was set up for the laptop purchase. Copies of statements have been provided and these include the laptop, purchase date and information about when payments would fall due. We have requested evidence of statements being provided from when the plan was activated in November 2020 until when

the payment became due. Creation has provided evidence of statements from September 2021. Creation has also provided evidence showing more recent statements haven't been accessed by Mr B and I cannot say whether he accessed any statements that may have been available between November 2020 and October 2021. So, while the information may have been available to Mr B that would have shown the agreement still in place for the laptop, I can accept that if he thought there wasn't an agreement in place (based on his comments about the call from November 2020) then he wouldn't have been checking these and it would only be when the payment request came through that he would have realised there was an issue.

Given the above, I cannot say for certain whether or not the laptop was delivered. The delivery company when contacted for further details said it only held details for around two years. Therefore, there is a chance that had Creation made contact at the point the complaint was first raised that further information might have been provided. But as this information isn't available, I have to make my decision based on the balance of probabilities and what I think is most likely to have happened.

In this case, I think the purchase of the second laptop supports Mr B's testimony that the original laptop hadn't been delivered. Mr B didn't access his statements online which further suggest he wasn't aware the agreement was still in place and supports why he only raised his complaint when he was contacted for payment. Therefore, while I accept there isn't clear evidence to confirm whether or not the laptop was delivered, on balance I find I accept Mr B's testimony and so I am upholding this complaint.

Putting things right

On the balance of probability in light of the limited evidence available to me and as explained above, I don't feel it's fair to hold Mr B liable for the payments.

To put things right, Creation should:

- end the agreement with nothing further to pay;
- if Mr B has made any payments towards this, then to refund these payments with 8% simple interest* from the date of payment till the date of settlement;
- remove any negative marker(s) that may have been added to Mr B's credit file in regard to this agreement.

* HM Revenue & Customs requires Creation to take off tax from this interest. Creation must give Mr B a certificate showing how much tax it's taken off, if asked for one.

My final decision

My final decision is that I uphold this complaint. Creation Consumer Finance Ltd should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 October 2023.

Jane Archer
Ombudsman