

## The complaint

Miss H complains about the way John Lewis Financial Services Limited (“JLFS”) handled her request for a refund in respect of an item she purchased using her John Lewis credit card.

## What happened

In May 2021 Miss H bought a television from a supplier I’ll call L. She paid £1,299 of which £1,008 was paid using her John Lewis credit card.

Miss H said that in April 2022 she noticed the paint on the surround of the television had started to chip away.

Miss H said she told the manufacturer of the television and L about the problem but didn’t get a satisfactory response. She asked JLFS to step in and consider her request for a refund in May 2022.

JLFS did not provide an answer to Miss H’s request, so Miss H referred the matter to this service.

I issued a provisional decision in July 2023 explaining why I planned to uphold Miss H’s complaint. I said:

*“I am looking here at the actions of JLFS and whether it has acted fairly and reasonably in the way it handled Miss H’s request for help in getting her money back. In doing so I am required to take into account relevant legislation, which I think in this case includes Section 75 Consumer Credit Act 1974 (“Section 75”) and the Consumer Rights Act 2015 (“CRA”).*

*Section 75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there’s either a breach of contract or misrepresentation by the supplier of goods or services.*

*As the investigator has explained, The CRA implied terms in Miss H’s contract with L that any goods supplied would be of satisfactory quality. So, given Miss H’s claim here, if the television wasn’t of satisfactory quality, this could be a breach of contract and JLFS might have to do something to put things right.*

*The CRA sets out that what is satisfactory depends on what a reasonable person would consider satisfactory taking account of the price and description and other relevant factors.*

*Durability and freedom from minor defects are relevant aspects of satisfactory quality.*

*The television Miss H bought was brand new and she paid a relatively high price for it. So, it’s fair to say a reasonable person would have expected it to be free from minor defects and would have expected that it would be durable.*

*I've seen the photographs of the television that Miss H has provided. It is clear from these that there is a long edge on the frame where the paint has corroded severely and is falling off completely in patches.*

*I recognise that Miss H had the television for 11 months before the issue manifested. But it still needed to be durable. Miss H has said she hasn't done anything within this time that would have caused the paint to fall off or corrode in the way it has. She said she has only ever cleaned the television with a damp cloth, in accordance with the manufacturer's instructions and stored it in her living room in normal conditions. The damage to the paint doesn't look to me to be the obvious result of Miss H having knocked or scratched the television. And JLFS has provided no evidence in support of it being the result of misuse.*

*JLFS has said the damage looks commensurate with the wear and tear one might expect after owning the television for a year. But I don't agree with this. The paint loss is extreme in this case and it's clear from the pictures Miss H has provided that it is falling off entirely in places. It looks beyond normal wear and tear.*

*I think therefore that a reasonable person having paid what Miss H paid for a brand new television would not have expected the finish to deteriorate so soon and so severely after purchase. It appears the television was either not sufficiently durable or was not free from minor defects.*

*In light of the evidence provided I find on balance that the television was not of satisfactory quality, in breach of the implied term that said it would be.*

*The CRA says that where goods do not conform to contract because they are not of satisfactory quality a consumer has the final right to reject if repair or replacement is (amongst other things) impossible, or where they have required the trader to repair or replace the goods, but the trader has not done so within a reasonable time and without significant inconvenience to them.*

*It's not clear whether repair or replacement is possible in this case. The Television model is over three years old now which could make these remedies difficult. But in any event, Miss H asked L, the manufacturer and JLFS to do something over a year ago now. So, I think there has been a breach of the requirement to repair or replace within reasonable time. It appears Miss H therefore had the final right to reject the television.*

*The CRA sets out that if a consumer exercises the final right to reject, any refund may be reduced by a deduction for use to take account of the use the consumer had of the goods in the period since they were delivered.*

*There is no suggestion here that Miss H hasn't been able to use, or didn't use the television since it was delivered to her and the picture and functionality of the television don't appear to have been affected. I think a reasonable conclusion to reach therefore is that a deduction for use might have been made in this case. There is of course no exact science to this and the CRA doesn't set out how this should be calculated. Research online suggests a television like Miss H's should last up to ten years. Miss H has had the television for around two years. So, I think a deduction for use of around 20% of the cost of the television seems about fair here.*

*Everything considered, I think the fair and reasonable thing for JLFS to do in this case would be to treat Miss H as if it had met her claim and pay her £1,040 plus interest from when it should reasonably have answered her claim. I think in this case*

*given the relatively straightforward nature of the issue this shouldn't have been any later than eight weeks after Miss H made JLFS aware of her dispute on 5 May 2022.*

*JLFS should also make appropriate arrangements with Miss H for the removal or disposal of the television. If it wishes instead to pay Miss H the cost of disposal subject to the production of evidence of the same, this is reasonable.*

*JLFS accepts it took too long to give Miss H an answer to her claim and I agree. I find the £150 it offered to pay her is fair compensation for the inconvenience she said this delay caused her.*

*I plan to uphold Miss H's complaint and tell John Lewis Financial Services Limited to do the following:*

- *Arrange with Miss H for the removal or disposal of the television at no cost to her.*
- *Pay Miss H £1,040 plus interest of 8% simple per annum on that sum from 30 June 2022 until the date of settlement.*
- *Pay miss H £150 for the distress and inconvenience it caused her.*

Both Miss H and JLFS agreed with my provisional decision so the complaint was passed back to me to finalise matters.

### **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.

As Miss H and JLFS agreed with my provisional decision, I see no reason to change any of the findings I made therein. So, for the reasons explained in the extract of my provisional above, I still find that JLFS should treat Miss H as if it had met her claim (to the extent I explained in my provisional decision) in June 2022.

JLFS asked how it might make 'arrangements' for the removal or disposal of the television. I explained within my provisional decision that such arrangements could reasonably include JLFS paying Miss H the cost of disposal subject to the production of evidence of the same.

### **My final decision**

My final decision is that I uphold Miss H's complaint. To put things right John Lewis Financial Services Limited must do the following:

- Make arrangements with Miss H for the removal or disposal of the television at no cost to her.
- Pay Miss H £1,040 plus interest of 8% simple per annum on that sum from 30 June 2022 until the date of settlement\*.
- Pay miss H £150 for the distress and inconvenience it caused her.

\*If John Lewis Financial Services Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss H how much it's taken off. It should also give Miss H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 18 August 2023.

Michael Ball  
**Ombudsman**