

The complaint

Mr A is unhappy with the way in which Secure Trust Bank Plc trading as V12 Retail Finance responded to a breach of contract claim he made under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

In November 2022 Mr A bought a watch from W, a third party retailer. He paid a deposit of £650 for the watch, with the remaining balance of £4,800 being covered by a loan from V12. The loan was to be repaid on an interest-free basis over a 48-month term.

Unfortunately, soon after purchase Mr A found the watch didn't operate as expected. He identified problems with charging and winding, which were significantly outside the indicated tolerance for the timepiece. Mr A says he returned the watch to W several times, who in conjunction with the manufacturer C made unsuccessful attempts to rectify the problem.

He describes that between March and May 2023 he was given false information by W that hampered his efforts to deal directly with C and caused him to think W was seeking to defraud him. He has detailed numerous emails and visits to both W and C in efforts to obtain a satisfactorily working watch or replacement. Mr A says the matter has cost him time and trouble, as well as causing him significant distress which required medication.

Due to his dissatisfaction with the watch, in March 2023 Mr A contacted V12 who said it would look into his claim. V12 says that between March and May 2023 it suspended Mr A's payments while it investigated. It adds that, in the course of its investigation, W told it that the watch had been deemed faulty and that W would arrange a replacement once C returned the watch.

V12 issued a final response to Mr A on 22 May 2023. It acknowledged it was potentially liable for any breach of contract or misrepresentation by W, and that the watch had been deemed faulty. V12 noted that W had agreed to replace the watch, so it didn't propose to take any further action, or pay Mr A any compensation as it didn't think it was responsible for any of the delays he'd experienced.

On 22 June 2023 Mr A referred matters to us, saying he continued to have similar problems with the watch he received, which he suspects might have been the original watch. He has identified further issues with replacements he received, providing photographs of the replacement watch showing the back is scratched.

In his additional complaint submissions Mr A set out his ongoing discussion with W about exchanging the watch in his possession for one of lesser value. He's referenced an issue he had with W about the watch strap, pin and buckle that wasn't honoured for several months.

He's also told us about contact he had from V12 in July 2023 regarding late payment on the loan and the impact of this on his credit file. Mr A considers this was unreasonable in light of the ongoing dispute over the watch, and says that V12 prevented him from deferring further payments. He's also upset with what he describes as poor work on V12's part, together with

a lack of engagement. Mr A remains unhappy with the actions of all of the parties involved in the transaction. He's seeking £2,800 compensation for the problems he had.

Our investigator took the view that while section 75 of the CCA applied to the transaction, V12's response was not unreasonable in light of the steps Mr A had agreed with W to obtain a replacement. The investigator also noted that, in response to the further exchanges Mr A had with W, V12 wasn't responsible for W's actions or delay. She observed that Mr A's account statements supported that it had suspended payments for three months.

These aspects were subsequent to the point at which Mr A had made his complaint to V12, and so couldn't be expected to have been covered by its final response. However, V12 told us it was willing to accept the return of the faulty timepiece, end Mr A's finance agreement with nothing more to pay, and refund all monies paid towards the purchase. Our investigator thought this was fair. She didn't think there was a basis on which she could recommend additional compensation.

Mr A didn't accept the investigator's conclusions. He's asked for this review, as he's entitled to do under our rules.

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.

Mr A's claim against V12 is founded in section 75 of the CCA. One effect of section 75 is that, where an individual buys goods from a supplier using credit provided under pre-existing arrangements between the lender and the supplier, that individual can bring a claim for breach of contract or misrepresentation against the lender in the same way he could against the supplier. The supplier here was W; V12 was the lender.

The Consumer Rights Act 2015 ("CRA") causes the inclusion of certain terms into contracts for the supply of goods or services. One of those terms is that goods supplied must be of satisfactory quality. Mr A's claim is that W failed to meet this requirement and that this amounted to a breach of the term incorporated into the contract by the CRA. That he can bring that claim against V12 isn't in dispute between the parties.

Nor does there appear to be any question of whether the goods supplied to Mr A failed to meet the satisfactory quality standard. W's actions in taking back the timepiece and offering a replacement, and V12's later proposal to enable Mr A to return the goods with a full refund and nothing further to pay support this position.

The proposal V12 has put forward is in line with the statutory remedy available to Mr A under the CRA. On that basis, it would be wrong for me to say what V12 has proposed is unfair. Nor do I find V12's original stance unreasonable. At the time, Mr A was seeking a replacement timepiece from W and in the circumstances and timeline applicable to Mr A's claim, he would not have been entitled to reject the watch without first allowing the trader an attempt at repair or replacement.

I appreciate Mr A's dissatisfaction with the time W took to accept that the timepiece was defective and source a replacement. But that was action in response to Mr A asserting his consumer rights to W, rather than something V12 would be liable to him for under a claim in breach of contract due to unsatisfactory goods. Although section 23(2)(a) of the CRA provides that a repair or replacement must be provided within a reasonable time and without significant inconvenience to the consumer, a failure in this respect is a breach of this right rather than a breach of contract.

As section 75 applies only to breaches of contract and misrepresentation, those matters – or the dissatisfaction Mr A has expressed with the interaction between W and C – aren't something that I can fairly hold V12 liable for. In acting as credit provider, V12 doesn't adopt responsibility for every further action by the retailer.

Having considered the arguments put forward by both parties, I don't find V12 to be acting unfairly in taking the position it has. V12 received and considered Mr A's claim, taking into account its potential liability under section 75 of the CCA. It considered the evidence Mr A provided, along with evidence it obtained from W. It acknowledged the original watch was faulty and that Mr A was entitled to have it replaced, which was the action W was undertaking when V12 issued its response. Subsequent to that, V12 has said he can return the faulty goods and receive a full refund, with nothing further to pay. And V12 provided Mr A with a three-month suspension of payments while he was trying to sort out a satisfactory replacement. That isn't something V12 was obliged to do; nor did it need to extend the suspension at the end of that period.

I appreciate that the transaction as a whole has been the source of much difficulty for Mr A. He should understand that it is not my intention to understate the nature of the problems he's had, and I'm in little doubt that he has been much distressed by the entire experience. That said, I don't consider V12 to be the source of the problems or distress, or that there is a proper basis for me to say that it should compensate him for consequences of actions over which it had little to no control.

In my view, V12 has made a reasonable proposal to resolve Mr A's claim in breach of contract. I leave it to him to decide whether, on reflection, he now wishes to accept it. For the avoidance of any doubt, nothing I've said here is intended to affect any right he might have in law to pursue his breach of contract claim (or any other claim he might have) against W and/or V12.

My final decision

For the reasons I've set out here, my final decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 April 2024.

Niall Taylor
Ombudsman