

The complaint

Mr J has complained about the way Creation Consumer Finance Ltd “Creation” responded to his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr J bought a solar panel system for his home in 2022 – this also included a battery. The purchase was funded by a loan from Creation, and that business is therefore liable for the misrepresentations and/or breach of contract under the relevant legislation. In this case, Mr J alleges that the supplier misled Mr J into believing that the 5.2 kWh battery could be used to its full capacity – but he later discovered he could only utilise 80% of its capacity.

Mr J felt he had been mis-led about the battery, and that while the supplier had used firmware to increase the battery’s efficiency – to 100%, it hadn’t been transparent about the way this update was installed. He had agreed to the update but assumed it was a general update and he hadn’t known about the problem with the battery utilisation issues. He felt the supplier had mis-led him and hadn’t been transparent about the issues with the battery.

Creation didn’t uphold his complaint. It said that it had considered his section 75 claim but felt the supplier using firmware to ensure the battery can be used to its full 100% capacity was a fair solution. It also said the supplier had offered him £100 for the inconvenience he had suffered. Creation also pointed out that Mr J had taken the supplier to an alternative dispute resolution service directly, which also found that the supplier’s solution was a fair outcome. Finally, Creation said Mr J’s concerns about the lifespan and efficiency was not backed up by any evidence.

Mr J reiterated that he didn’t feel the solution was a fair resolution to his complaint so referred the matter to this service. He said that when the supplier asked him about the update, it hadn’t told him why the update was necessary so he agreed to it unaware that he’d been given a battery that couldn’t be used to its full capacity. He added that the battery and firmware wasn’t being sold in the general market – and the battery is now marketed at being able to only utilise 80% of its capacity. He added that he believed the firmware would affect the lifespan and effectiveness of the battery.

Mr J’s complaint was considered by one of our investigator’s. She didn’t agree with Mr J’s complaint. While she felt that the supplier had led him to believe that the battery could be used to its full capacity, at the time of sale, it had believed this was the case. The issues with the battery came to light a few months later. She also felt the firmware update was a fair response to the issue and she didn’t think Creation needed to do anything more. She also highlighted that the battery was under warranty and the manufacturer had agreed that the warranty would be unaffected by the update (and it seemed like the firmware had come from the manufacturer). She reiterated that the manufacturer had said the firmware would improve the performance of the battery.

Mr J disagreed. He reiterated that he was concerned about the lifespan and effectiveness of the battery so had the firmware removed (using a party other than the supplier). So, the battery was now again only able to utilise 80% of its capacity. He felt if the firmware had

been an appropriate fix, it would be sold in the general market alongside the battery so it could be used to maximise the battery's usage, rather than the battery being sold as only being able to use 80% of its capacity. He felt this supported his claim that the firmware would impact the efficiency and lifespan of the battery. Mr J asked for a period of 6 weeks to enable him to submit further evidence.

As the complaint couldn't be resolved by our investigator, I've been asked to make a decision having waited the 6 weeks. No further evidence has been submitted.

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.

It may be helpful to explain that I need to consider whether Creation – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr J's claim. But it's important to note Creation isn't the supplier. Section 75 is a statutory protection that enables Mr J to make a 'like claim' against Creation for breach of contract or misrepresentation by a supplier paid using a fixed sum loan in respect of an agreement it had with him for the provision of goods or services.

There are certain conditions that need to be met for section 75 to apply. From what I've seen, those conditions have been met and Creation has also appeared to agree that Section 75 applies.

I've considered if there is persuasive evidence of a breach of contract or misrepresentation by the supplier that means Creation should have offered something different when handling Mr J's claim. But I want to explain from the outset that I can only consider Mr J's complaint on that narrow basis – that is, whether it was fair and reasonable for Creation to respond to his claim in the way it did, of if anything further should have been offered.

Having carefully considered everything provided, for broadly the same reasons as those explained by the investigator, I do not uphold this complaint.

It's not in dispute that Mr J was sold a 5.2kWh battery and was told it could be utilised to 100% of its capacity. The sales quotation document does set this out. It's also not in dispute that upon installation – this is not what Mr J received. There was a false statement made. Mr J said this induced him, so it could be considered a misrepresentation, albeit an innocent one. It's also not in dispute the goods weren't as described which could be a breach of contract. Breach of contract and misrepresentation have different remedies that could be applied, so I've considered what's happened next and if anything else needs to be done.

So, as explained above, the matter left in dispute is whether this matter has been put right fairly and reasonably or whether Creation, as the finance provider, needs to do something differently. Like our investigator, I don't think Creation acted unfairly by making the decision not to offer Mr J anything different and I'll explain why.

The manufacturer (through the supplier) produced a firmware update that enabled Mr J's battery to work at 100% of its capacity which is what he was promised at the point of sale and what Mr J wanted. I think this resolves the issues above – as at this point Mr J had a battery without the capacity limitations he hadn't wanted.

Mr J also accepted the update when it was offered to him. I understand Mr J said the supplier hadn't broken down exactly what the update was for, and he has assumed it was a general update – he feels the supplier hadn't been fully transparent. But I've seen an

example of the email sent offering the update – and it did say that it would improve the performance of the battery and that there would be new upper and lower limits. I understand it doesn't appear to break down the capacity issues in the way Mr J would've liked – but I think with products such as this, the balance in providing technical information and not confusing customers is a difficult one. And Mr J could've asked for further information at the time if he had wanted more details – instead he went ahead and accepted the update.

I understand Mr J simply does not want this battery and wants one that is sold in the general market with 5.2kWh capacity or above that runs at 100%. He is worried, understandably, about the lifespan and durability of the battery following the firmware update. I understand to such an extent that he's now had the battery reverted back to running at its original 80% capacity.

I sympathise with Mr J's concerns about the lifespan of the battery with the firmware update. But generally, a machine running continually at 100% may not last as long as that same machine running at 80%. Manufacturers can cap different products at certain capacities to encourage them to last longer but this doesn't mean the products are inherently faulty or aren't of satisfactory quality. And I have to bear in mind that Mr J had wanted a battery that could and would run at 100% and had the durability of a battery that runs at 100% - this was what he was ultimately given.

I'm not a battery expert and am reliant on the evidence being produced by both parties to a complaint. I've seen no supporting evidence that this firmware update has impacted the durability or lifespan of the battery to such an extent that it's no longer of satisfactory quality. The firmware update appears to have been done by the manufacturer itself rather than some workaround created by a third party and Creation has confirmed the warranty has remained unaffected by the update. And the update was accepted by Mr J at the time it was offered. So, without sufficient supporting evidence, I don't think Creation was unfair to not uphold his complaint on the basis that any problems had not been effectively remedied.

Overall, I'm satisfied that Mr J was sold a battery that did not work as he was promised it would. But I'm also satisfied that, based on the available evidence, the supplier produced an effective update which was a fair and reasonable solution to the problem. So, I don't think Creation acted unfairly by refusing to offer Mr J any further remedies in response to his claim against it. I understand the supplier also offered Mr J £100 for the inconvenience he suffered, and, in this case, I can't fairly direct Creation to pay any more.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 April 2025.

Asma Begum
Ombudsman