

The complaint

Mr T complains that a purchase financed by Creation Consumer Finance Ltd (Creation) wasn't delivered.

What happened

On 17 June 2024, Mr T bought a tablet and pen from a retailer (which I will call 'firm A'). Mr T borrowed the money from Creation to finance his purchase. He signed a buy now pay later (BNPL) agreement - dated 17 June 2024. The limit was £3,400 - £2,228 was drawn down and there were to be 24 payments of £156.57 starting on 17 July 2025 for 24 months. The last payment was to be 17 June 2027.

The products were said to have been delivered on 18 June 2024 at 13.41. But Mr T says that the packaging was opened and only the pen remained. So the main item – the tablet - wasn't delivered. He contacted Creation soon after – on 1 July 2024. Creation looked into what had happened under their duties under section 75 of the Consumer Credit Act.

Mr T says the tablet wasn't delivered. He said he's provided photos of the packaging – it was just 'dumped' in an open doorway at his house when he was out. He says his partner was at home to sign for the package, but it was just left by the courier driver without getting a signature. He says he's now spent over £2,000 and has nothing to show for it. He lost his job shortly afterwards and is struggling financially.

Creation looked into Mr T's complaint under section 75 of the Consumer Credit Act. Creation said they'd liaised with firm A. They'd seen proof of delivery – which showed the package was left inside the property and not outside it. The package also appeared to be intact with no visible damage. So, Creation rejected Mr T's claim.

Mr T brought his complaint to us. Our investigator didn't uphold it. He said:

- The Consumer Credit Act 1974 (CCA) is relevant. Section 75 of the CCA states that, in certain circumstances, the borrower (Mr T) under a credit agreement has an equal right to claim against the credit provider (Creation) if there's either a breach of contract or misrepresentation by the supplier of the goods or services.
- The delivery company provided a photo confirming successful delivery and the package appeared undamaged.
- The supplier (firm A) provided evidence showing the goods were packaged and sealed before leaving the warehouse.
- So, he considered the package was delivered to Mr T's address undamaged and unopened.

Mr T didn't agree and asked that an ombudsman look at his complaint, and to it has come to me.

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.

I noted that the credit agreement signed by Mr T said that the section 75 of the Consumer Credit Act 1974 applied. It said: *"If you use the agreement to pay for an item of goods and services which costs more than £100 and no more than £30,000, and you have a claim against the supplier for breach of contract or misinterpretation in relation to that item, you may have the right, under section 75 of the Consumer Credit Act 1974, to sue us as well as or instead of the supplier."*

So, in this case, section 75 of the Consumer Credit Act 1974 makes Creation responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

It's important to note that I'm not considering a complaint against the supplier - firm A - nor am I considering a complaint against the delivery company.

I'm considering a complaint against Creation. So I have to consider its obligations as a provider of financial services – in this case its liability for breach of contract (or misrepresentation) under section 75. So, I considered what Creation did in dealing with Mr T's complaint.

Creation contacted the supplier (firm A) to see what had happened. Firm A also got evidence from the delivery company. And I can see Creation established:

- The package was prepared at firm A's warehouse and packed in a sealed package. Firm A provided photos of the packing taking place at the warehouse – which I've seen.
- The package was despatched and delivered by the delivery firm – on 18 June 2024 at 13.41. It was weighed when it left firm A's warehouse and it weighed the same when it was delivered.
- Photos (provided by firm A (after liaising with the courier company) show it was left inside the hallway of the property and at that stage, the package appeared to be unopened. I've seen those photos.

On the other hand, I can see that Mr T has provided photos which show that package was open and there wasn't a tablet in it – only the pen. He says his partner was at home to receive the package, but her signature wasn't asked for and the package was left in the open doorway/hallway.

So, there is conflicting evidence here. And where that's the case, it's my role to review the evidence provided by both sides of a complaint and reach a fair and reasonable outcome. I appreciate that Mr T feels strongly about his complaint and insists the package must have been opened.

This is a very difficult situation for us (and Creation) to investigate. There're some very serious allegations underpinning the complaint. Neither the Financial Ombudsman Service, nor Creation, can summon witnesses such as firm A, or the couriers, to take sworn evidence and so on. So it makes it very difficult to get to the bottom of what's likely happened.

Creation seemed to carry out an investigation and there wasn't anything obvious discovered that shows the goods weren't delivered. The evidence indicates they probably were.

So while we can't definitively say they weren't intercepted at some point, there's insufficient evidence to demonstrate Creation's answer was unfair.

And so regards Mr T's complaint against Creation, I am not asking the firm to do anything here.

I was sorry to hear that Mr T is in financial difficulty and has been out of work – he told us in November 2024 that he was behind with the payments to Creation. I hope things have got better for him. But if he is still in financial difficulty, we would ask Creation to get in touch with him to see if they can help – as all financial services firms must do. This might be agreeing to accept lower payments or deferring them for a period of time.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 May 2025.

Martin Lord
Ombudsman