

complaint

Mrs D complains that Creation Financial Services Limited won't refund to her the money that she paid for an industrial embroidery machine. Her complaint is made against Creation Financial Services under section 75 of the Consumer Credit Act 1974 and she's being helped with it by her daughter.

background

Mrs D used her Creation Financial Services credit card in February 2016 to pay a £540 deposit towards the £5,400 cost of an industrial embroidery machine. She paid the balance in May 2016 and she received the machine. But she complained that the digitising software hadn't been supplied to her and that she hadn't received the legs for the machine. She complained to Creation Financial Services under section 75. It made a chargeback claim for the £540 deposit that she'd paid to the supplier – but it defended the claim. And it said that there hadn't been a breach of contract or misrepresentation by the supplier. Mrs D wasn't satisfied with Creation Financial Services' response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He didn't think that there'd been a breach of contract or a misrepresentation. He said that the embroidery machine was supplied to Mrs D and there was no evidence to show that it was faulty. He was satisfied that the digitising software had also been supplied to Mrs D and that the extra-large table with supports wasn't described as a table with legs. So he was unable to say that Creation was liable under section 75 to refund the cost of the embroidery machine to Mrs D.

Mrs D's daughter – on behalf of Mrs D - has asked for this complaint to be considered by an ombudsman. She has provided photos to support her claim and says, in summary, that she still isn't in possession of the supports and the correct extra large work table or the gold software – and that she hasn't been able to use the machine since it was supplied to her in May 2016. She says that the software isn't as described by the supplier – and it's single user software – so if the adjudicator has downloaded it she won't be able to do so. She says that the supplier has breached the Consumer Rights Act and that Creation Financial Services should refund £5,400 to her.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mrs D's section 75 complaint about Creation Financial Services, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the machine.

The supplier of the machine has sent Mrs D a link to the software for her to download it. It has resent the link to her and the link has also been sent to the adjudicator. The adjudicator was able to download the software. And the supplier says that the machine can be used without the software as it's not required for the functionality of the machine but as an additional tool to aid the user to design and save in the correct format. It's clear to me that Mrs D (and her daughter) haven't been able to download the software. But I consider that it's been supplied to them – even though they haven't been able to use it. So I find that there

hasn't been a breach of contract or misrepresentation by the supplier in relation to the software.

The invoice for the machine and the other sale documents refer to an "*extra-large work table with supports*". The supplier says that it has supplied that to Mrs D – and it has described how the supports attach the extra large table to the machine. But Mrs D's daughter says that she hasn't received the supports that she was expecting and which are shown in the advert for the machine. I'm not persuaded that the supplier agreed to supply the separate table "*legs*" that are shown in the advert. I consider that the supplier has provided enough evidence to show that it has supplied the supports required to attach the table to the machine – and that the machine can be used. So I'm not persuaded that there's enough evidence to show that there's been a breach of contract or misrepresentation by the supplier of the machine in relation to the supports.

Creation Financial Services made a chargeback claim for the deposit that Mrs D had paid – but the claim was defended by the supplier and it didn't agree to refund the deposit. And I'm not persuaded that there's been a breach of contract or misrepresentation by the supplier. So I find that it wouldn't be fair or reasonable in these circumstances for me to require Creation Financial Services to refund any money to Mrs D – or to take any other action in response to her complaint.

my final decision

For these reasons, my decision is that I don't uphold Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 21 August 2017.

Jarrold Hastings
ombudsman