

complaint

Mr F complains that Creation Financial Services Limited won't refund to him the money that he paid for some concrete. His complaint is made against Creation Financial Services under section 75 of the Consumer Credit Act 1974.

background

Mr F used his Creation Financial Services credit card in August 2017 to pay £564 to a supplier for five cubic metres of concrete. But there was a calibration error and he received less concrete than he'd paid for. He received a refund of £88.56 from the supplier for 0.9 cubic metres of concrete but he said that he'd only received 3.5 cubic metres of concrete and there was a shortfall of £101. So he claimed £101 from Creation Financial Services under section 75. He wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld. She said that there was a haulage charge of £60 on the invoice that hadn't been taken into consideration by Mr F and she believed that he'd been refunded the correct amount by the supplier. But she said that Mr F wasn't previously aware of the haulage fee or how it affected the refund. She said that Creation Financial Services didn't contact the supplier to clarify the refund amount until after her initial assessment which had caused further inconvenience to Mr F. So she recommended that it should pay him £50 compensation in recognition of the inconvenience caused.

Creation Financial Services has asked for this complaint to be considered by an ombudsman. It says, in summary, that it had a copy of the invoice from when the claim was made and used that information in making a decision. It says that it requested further information from the supplier and it provided a clear breakdown of the refund that had been made to Mr F. And it says that that information could've been requested by others involved in Mr F's complaint. So it doesn't agree with the compensation recommended.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr F and to Creation Financial Services on 16 July 2018. In my provisional decision I said as follows:

"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 Mr F's complaint about Creation Financial Services, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier and that Creation Financial Services' response to his claim under section 75 wasn't fair or reasonable. I'm not determining the outcome of Mr F's claim under section 75 as only a court would be able to do that.

Mr F used his Creation Financial Services credit card to pay £564 for five cubic metres of concrete. But there doesn't seem to be any dispute that he received less than that. The supplier refunded £88.56 to his credit card because it said that he'd received 0.9 cubic metres less than he'd paid for. But Mr F says that he only received 3.5 cubic metres and was due a further £101. But he hasn't provided any other evidence to show that he only received 3.5 cubic metres.

The supplier's invoice shows that the charge of £564 included £492 for the concrete (at a rate of £98.40 for each cubic metre) and £72 for a haulage fee. So when it calculated the refund it multiplied the cost of a cubic metre by 0.9 to give a refund of £88.56. Mr F hasn't provided evidence to show how he has calculated that he's due a further £101 – but I'm not persuaded that there's enough evidence to show that Mr F is entitled to a larger refund than he's received from the supplier. And I consider it to be more likely than not that he was told about the haulage fee when he ordered the concrete. So I don't consider that there's been a breach of contract or misrepresentation by the supplier – and I find that it wouldn't be fair or reasonable for me to require Creation Financial Services to refund any money to Mr F under section 75.

Mr F complained to Creation Financial Services in September 2017 and said that he'd send it information supporting his claim. But he didn't do so. He contacted Creation Financial Services again in December 2017 and it sent him its final response letter in December 2017. It said that, without any evidence of the supplier's error or the costs involved, it was unable to review his claim under section 75. And it said that its records show that he received a refund of £88.56 from the supplier – and he should contact the supplier if the refund amount was still in dispute. I consider that Creation Financial Services' response to Mr F's section 75 claim was fair and reasonable in the circumstances - and I'm not persuaded that there's enough evidence to show that it acted incorrectly. So I find that it wouldn't be fair or reasonable for me to require it to pay any compensation to Mr F”.

Subject to any further representations by Mr F or Creation Financial Services, my provisional decision was that I wasn't minded to uphold this complaint. But Mr F hasn't responded to my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. My provisional decision was posted to Mr F last month and a copy was also e-mailed to him a week later. But he hasn't responded to my provisional decision. So I see no reason to change that decision.

my decision

For the reasons set out in my provisional decision, my decision is that I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 September 2018.

Jarrold Hastings
ombudsman