

complaint

Mr Q complains that Capital One (Europe) plc will not refund to him the money that he paid for a television. His complaint is made against Capital One under section 75 of the Consumer Credit Act 1974.

background

Mr Q used his Capital One credit card in July 2014 to pay £1,089 for a television. He experienced problems with the television so he complained to Capital One under section 75. He was not satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. He concluded that the video evidence supplied by Mr Q shows that the television was faulty. So he recommended that Capital One should arrange to collect the television at no cost to Mr Q and that it should rework his credit card account as though the transaction didn't take place.

Capital One has asked for this complaint to be considered by an ombudsman. It says, in summary, that the television has been tested by the manufacturer and a third party and no faults were found. It also says that no fault code is recorded on the television's internal fault log. So it says that there is not sufficient evidence to prove any liability against the supplier and Capital One under section 75.

Mr Q has asked for compensation for his distress and inconvenience.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

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 has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr Q's complaint about Capital One under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the supplier of the television.

Mr Q has provided video evidence to show the problems that he is experiencing with his television. He has also described the steps that he has taken to isolate the cause of the problems.

The television has been inspected but no faults have been found. And the television's internal fault log has not recorded any faults. But Mr Q says that the problems are intermittent and I am persuaded that the video shows problems with the television.

Given the age of the television and the amount that Mr Q paid for it, I consider that Mr Q should not be experiencing these problems with his television. So I find that the television is not of a satisfactory quality and that there has been a breach of contract by the supplier. Capital One is jointly liable for that breach of contract under section 75. So I find that it would be fair and reasonable for Capital One to arrange for the television to be collected from Mr Q

at no cost to him. And it should rework his credit card account as if the payment of £1,089 had not been made in July 2014.

I am not persuaded that it would be fair or reasonable in these circumstances for me to require Capital One to pay any other compensation to Mr Q.

my final decision

For these reasons, my decision is that I uphold Mr Q's complaint. In full and final settlement of it, I order Capital One (Europe) plc to:

1. Arrange for the television to be collected from Mr Q at no cost to him.
2. Rework Mr Q's credit card account as if the payment of £1,089 had not been made in July 2014, and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit. It should also refund the credit balance to Mr Q.
3. If Mr Q has repaid the £1,089 (or any part of it) to Capital One but does not have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

If Capital One deducts tax from the interest element of my award, it should send Mr Q a tax deduction certificate when making payment. He can then use that certificate to reclaim the tax if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr Q to accept or reject my decision before 12 February 2016.

Jarrold Hastings
ombudsman