

complaint

Mr A complains that NewDay Ltd, trading as Aqua, won't refund the cost of goods he bought, using his Aqua credit card. He brings his complaint under section 75 of the Consumer Credit Act 1975.

background

Mr A purchased an amplifier, costing £1,600, using his credit card. He says the Bluetooth function doesn't work and that two repairs by the supplier have been unsuccessful. Aqua rejected his claim because it said the supplier had attempted repairs and had offered to continue to assist Mr A because the amplifier was still within its two year warranty.

Our adjudicator recommended that the complaint should be upheld. He concluded that the attempted repairs had failed and that Aqua should refund Mr A's money, plus interest.

Aqua didn't agree. It said, in summary, that Mr A is still covered by the manufacturer's warranty so he should allow the supplier to try to resolve the problem; and that the amplifier is in good working order so a full refund isn't appropriate.

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 Mr A's complaint about Aqua under section 75, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier.

The Bluetooth functionality does not seem to work on the amplifier. The supplier has tried to repair this on two occasions. The amplifier is still not working as it should so I understand why Mr A has lost faith in it. I don't think it's reasonable to expect Mr A to allow the supplier to attempt a third repair and I think he should receive a refund. I have taken into account that the manufacturer's warranty is still valid, but this does not change my conclusion.

Under section 75, Aqua is equally liable to Mr A for this breach of contract. In the circumstances, I think it is fair and reasonable that if Mr A makes the amplifier available for collection by Aqua, it should reimburse the cost - £1,600 – to Mr A.

my final decision

For these reasons, my decision is that I uphold Mr A's complaint. In full and final settlement of it, I order NewDay Ltd, trading as Aqua, to:

1. Pay Mr A £1,600, representing the cost of the amplifier.
2. Pay interest on this amount at 8% simple a year. †
3. Arrange collection of the amplifier at no cost to Mr A.

† HM Revenue & Customs requires Aqua to take off tax from this interest. Aqua must give Mr A a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 March 2017.

Elizabeth Dawes
ombudsman