

complaint

Mr A complains that Creation Financial Services Limited (Creation) won't refund, under Section 75 of the Consumer Credit Act 1974 (CCA), payments he made to another business.

background

Over the course of a number of months in 2016, Mr A made several payments to a business (company A) using his Creation credit account. The payments were for varying amounts, but added up to just over £5300 in total.

Mr A believes that company A misrepresented the goods or services provided. So, he asked Creation to refund his money under Section 75 of the CCA.

Creation declined to refund the payments. They told Mr A that the CCA didn't apply because Mr A actually made the payments to another company (company B), who then passed on the money to company A.

Mr A was unhappy with this and made a complaint to us. Our investigator looked into it and decided that the complaint shouldn't be upheld. He thought Creation had acted fairly and reasonably in their dealings with Mr A.

Mr A didn't accept that view. He's asked that an ombudsman make a final decision on his complaint.

my findings

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

Section 75 of the CCA, says that in certain circumstances, the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Section 75 only applies where there is a three-party agreement between a debtor, a creditor and a supplier. The courts have ruled that if there is an extra person or entity involved in the transaction, the debtor-creditor-supplier chain will be broken – and Section 75 will not apply.

There are some limited exceptions to this, but these apply only where the fourth party involvement is very limited - for example, where they simply provide the technology to facilitate the payment.

In Mr A's case, the payments were clearly made to a separate fourth party (company B). I believe Mr A was aware that he was making payments to company B rather than company A. So, the debtor-creditor-supplier chain was broken and Section 75 doesn't apply.

I have to consider not only whether Creation have met their legal obligations, but also whether they have treated Mr A fairly and reasonably. I think it's likely a court would conclude they have no legal obligation to provide a refund in this case. And, in the absence of any such obligation, I can't conclude that they have acted unfairly. Mr A believes he has been a victim of misrepresentation by company A, but that is not something for which Creation could reasonably be held responsible.

I am sorry that Mr A finds himself in this position but I can't uphold his complaint. It's not for me to say whether company A have acted unfairly or even illegally. We can't deal with complaints against them. All we can do is consider whether Creation have acted fairly and reasonably. In my view, they have.

my final decision

For the reasons given above, I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 January 2018

Neil Marshall
ombudsman