

complaint

Mr F complains that Creation Financial Services Limited (Creation) will not accept his request for a refund for faulty goods he bought using a fixed-sum loan agreement. Mr F brings his claim under section 75 of the Consumer Credit Act 1974 (section 75).

background

In January 2012 Mr F bought an item from a supplier. The cost of the item was £739.01 and he financed this with a loan from Creation. He settled the loan in January 2013 before the 'buy now pay later' period ended.

Mr F says the item became faulty – and was repaired by the supplier – in October 2012. It then developed a different fault in January 2013 and was repaired again. Mr F says this second repair was only partially successful and the item continued to display faults. He has provided two invoices as evidence of the repairs.

Mr F says he contacted the supplier after the second repair and asked to reject the item as he had lost confidence in it – and in the supplier's ability to repair it. He says he was passed around various different departments and the supplier refused to accept his rejection of the goods, or give him an address to return the item to.

Mr F says he therefore felt he had no choice but to send the item by recorded delivery to the supplier's head office. He also included a covering letter with the package, which he says the supplier responded to. However, it seems the supplier is now unable to trace the item.

Creation has not accepted Mr F's claim under section 75. It says the supplier has told it the item was repaired and Mr F did not have its authority to return the goods.

Our adjudicator upheld the complaint. He noted that the item had developed two different faults in less than a year and he concluded that it was therefore not of satisfactory quality. He considered it reasonable, in the circumstances, that Mr F had believed the only course of action open to him was to return the item to the supplier. The adjudicator recommended Creation refund the full cost of the item to Mr F.

Creation disagreed with the adjudicator's findings. It said the supplier should have been given a reasonable opportunity to repair the item if Mr F remained unhappy with the remedial work undertaken. It did not think it was fair or reasonable for either it, or the supplier, to be held liable for Mr F's decision to return the item without authority. It said Mr F should liaise with the supplier to trace the item and arrange to have it inspected and repaired.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold this complaint.

Given the price paid for the item I think Mr F was entitled to expect it to be of satisfactory quality, reliable and to last a reasonable period of time. As it developed two different faults within a year I find, on balance, that it was not of satisfactory quality.

Creation says the supplier has told it the item was fully repaired. However, Mr F has provided the repair invoices.

On the January 2013 invoice the following questions have been recorded:

“Has the repair been finished to your full satisfaction?” ‘Yes’ has been ticked (presumably by the engineer) but then crossed out and ‘no’ ticked instead (presumably by Mr F).

And

“Additional Onsite visit necessary?” ‘No’ has been ticked but then crossed out and ‘yes’ ticked instead. In the ‘comments’ section Mr F also wrote *“Screen Okay – rest of system useless!!”*. The engineer signed immediately below this comment.

I am satisfied, from this, that Mr F was not happy with the repairs done. I also think it likely the supplier was – or should have been – aware of his continuing dissatisfaction.

I understand Creation’s concerns that Mr F posted the item back to the supplier (at a cost of £25.50) without agreement to do so. Although Mr F has provided this service with a tracking number it seems the item can’t be located by the supplier, which makes it impossible to now assess the on-going nature of any faults.

However, I also have to give consideration to Mr F’s submissions that he felt he had no other option than to take this action after getting nowhere in his contact with the supplier. The adjudicator has described a similar scenario of being passed around several different departments when he telephoned the supplier to investigate the whereabouts of the item. So Mr F’s description of the difficulties he encountered is plausible. In these particular circumstances I find it reasonable that Mr F took the action he did.

I don’t think it is fair or reasonable for Mr F to lose out if the supplier failed to take care of the item after it was returned. And I am satisfied that he has provided enough evidence to show that more than one fault developed with the item, which was not fully repaired. I think he did give the supplier reasonable opportunity to repair the item and it failed to do so. So I find that he was entitled to reject the item. In the circumstances I find that Mr F has a valid section 75 claim.

I now have to consider what is appropriate redress. I have taken into consideration that Mr F did have use of the item for around a year – although that use was not trouble-free. Set against this is the fact that he no longer has the item at all.

In addition to the cost of the item itself Mr F has paid other costs; including a £25 warranty, a £49 document fee at the start of the loan and a £25 settlement fee at the end. He also paid to post the item back to the supplier. The adjudicator recommended the full cost of the item itself (£739.01) be refunded to Mr F. I find that is fair redress in the circumstances. The rest of the costs Mr F has paid seem, to me, to be a fair reflection of the use he had of the item. So I do not think Creation should also have to refund those costs to him.

my final decision

My final decision is that I uphold this complaint and I direct Creation Financial Services Limited to refund £739.01 to Mr F. I make no other order or award.

Dawn Griffiths
ombudsman