

## **complaint**

Mr H's complaint is that Creation Financial Services Limited ("Creation") won't refund him for a purchase he made on his Asda credit card (a Creation product).

## **background**

In August 2015, Mr H bought a Zotac graphics card, using his Asda card. He now says the card's faulty, with the main problem being that it crashes intermittently.

He tried to resolve matters with the supplier, but it had stopped trading. So he approached Creation for a refund under section 75 of the Consumer Credit Act 1974 ("section 75").

Creation looked into matters, but didn't think it was responsible as Mr H didn't have evidence that his card, specifically, was faulty, nor that he'd tried other alternatives for repair or replacement. It suggested that Mr H contact Zotac, the manufacturer of the card, who might be able to repair it under warranty.

Mr H didn't think this was right. He wanted to reject the graphics card, and receive a full refund under section 75. So he brought his complaint here, via a representative.

Our adjudicator looked at all the evidence, and didn't think Creation had done anything wrong. He agreed that in the absence of a proven breach of contract, or misrepresentation, it wasn't obliged to give a refund under section 75.

He told Mr H this, and also explained that he'd been in contact with Zotac, who'd confirmed that they'd honour his warranty and investigate the fault on his graphics card.

Mr H wasn't happy with this. He didn't think our investigator had understood the law, and that he hadn't been impartial when considering the evidence.

So he asked for an ombudsman's review.

## **my findings**

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

Having done so, I think our adjudicator was right to conclude as he did.

I know that this decision will come as a disappointment to Mr H, but I'd like to explain why I've reached it.

Section 75 applies in cases where breach of contract, or misrepresentation, can be shown. In that event, then Mr H is quite correct to say that the provider of credit is equally liable with the supplier of the goods to provide a refund.

However, in this case I don't agree that it's been shown yet that there's been a contractual breach, or misrepresentation. And on that basis I can't say Creation's wrong not to accept Mr H's section 75 claim.

Our adjudicator did the right thing speaking to Zotac, and was able to point Mr H in its direction to give it the opportunity, as the manufacturer, to repair or replace the faulty card. And as far as I understand, this is what's currently happening.

If, as we've explained to Mr H, the card is found to be faulty, then Zotac will repair or replace it, and if no fault is found then there's no breach of contract, and Mr H wouldn't have a section 75 claim.

For these reasons, I can't say Creation was wrong to decline Mr H's claim.

**my final decision**

My final decision is that I won't be asking Creation Financial Services Limited to take any further steps to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 August 2017.

Ashley L B More  
**ombudsman**