

The complaint

Mr K complains that Capital One (Europe) plc trading as Capital One hasn't refunded a payment he made.

What happened

In November 2022, Mr K purchased a smart watch for £170 using his Capital One credit card. In May 2023, Mr K said the watch stopped working and he contacted the retailer he purchased it from to enquire about returning it. Mr K says he didn't receive a response after sending two emails and a letter so he contacted Capital One to ask for a refund under Section 75 of the Consumer Credit Act 1974 ("Section 75").

Capital One asked Mr K to provide an independent report from a professional who specialises in watches to confirm the nature of the fault and its likely cause. Mr K said he didn't want to provide this information as it would be inconvenient and costly. He said that the legislation didn't require him to provide any evidence.

Capital One declined Mr K's claim and complaint concerning his request for a refund. It said that Mr K had provided insufficient evidence to demonstrate there had been a breach of contract.

Our investigator didn't recommend the complaint be upheld. He didn't think Mr K had done enough to show that the watch was of unsatisfactory quality when it was supplied to him. He therefore wasn't satisfied there had been a breach of contract for which Capital One were jointly liable under Section 75.

Mr K didn't agree. In summary, he said:

- The watch became faulty within six months of purchase. The Consumer Rights Act 2015 ("CRA") sets out that if there is a fault within the first six months it is taken to have been faulty when it was supplied.
- There is no requirement within the CRA or Section 75 for him to provide proof that the goods are faulty or to be inconvenienced in getting proof. The burden of proof is with the retailer not with him.

The complaint has been passed to me for a decision.

What I've decided – and why

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

The general effect of Section 75 is that if Mr K has a claim for breach of contract or misrepresentation against the supplier of goods or services that he paid for using credit, he can bring a like claim against the creditor. That is provided that certain conditions are met. I'm satisfied those conditions are satisfied here. So, I've thought about whether Mr K has

done enough to show he has a claim for a breach of contract and whether Capital One dealt with his claim and complaint fairly.

In deciding what is fair and reasonable in the circumstances of this complaint I've taken into account relevant law, including Section 75 and the CRA.

Mr K says there was a breach of contract by the retailer that sold him the watch. The CRA implies terms into every sales contract that goods supplied will be of satisfactory quality. He says the watch he was supplied with wasn't satisfactory as it developed a fault within the first six months and for this reason he should be entitled to a refund.

Mr K argues that the legislation doesn't require him to provide proof that the watch is faulty. But I wouldn't expect it to explicitly set this out. Section 75 simply gives Mr K a statutory right to bring a like claim against the provider of credit, it doesn't guarantee his claim will be successful just because he makes a claim. As in any dispute or claim, both parties are expected to make representations of why they believe they should be successful. If Mr K chooses to supply limited or no information to back up his claim, his prospects of success will likely be low.

Mr K says he shouldn't need to provide any proof because the onus is on Capital One to prove the watch was of satisfactory quality. He has referred to Section 19 (14) CRA which says:

"goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day."

However, this needs to be read in the context of the entire legislation and specifically in the context of the rest of Section 19. Subsection (15) says:

"Subsection (14) does not apply if—

(a) it is established that the goods did conform to the contract on that day"

This means that the presumption that the goods did not conform to the contract is rebuttable. Further, subsection 14 only applies if the goods do not conform to the contract. The watch being faulty does not in and of itself make it not conform to the contract. This is because it may have been of satisfactory quality, but was later damaged in some other way, such as being misused or accidentally damaged by the user.

As Mr K has not provided any supporting evidence of the nature of the fault or its likely cause, he has effectively prevented Capital One from being able adequately assess whether the watch did conform to the contract. If it isn't able to determine this, it can't fairly decide whether it has any liability for a breach of contract under Section 75. As Capital One was neither the original supplier nor had any professional expertise in watches, I don't think it was unfair or unreasonable for it to request some independent evidence of the fault to satisfy itself that there was a breach of contract.

As it stands, other than Mr K's assurances that the watch is faulty, Capital One has no evidence to demonstrate that is the case. Mr K needs to be able to show the watch is actually faulty, so the likely cause of that fault can be determined. Once the likely cause of the fault has been determined it can then be decided if the watch was of satisfactory quality at the time it was supplied. However, I'm not persuaded that what Mr K has provided to Capital One and our service sufficiently demonstrates the watch was faulty or the likely cause of the fault.

I note Capital One asked Mr K to provide an independent report from a watch specialist. Mr K doesn't believe he should have to do this. I agree that isn't necessarily required, but I do think he needs to provide more than what he has to show that the watch is faulty and that it wasn't likely caused by misuse. Without something to demonstrate this, I can't fairly say that Capital One has acted unreasonably in not accepting Mr K's claim for breach of contract under Section 75.

Having considered all the circumstances here, I'm satisfied that Capital One's request for evidence of the nature of the fault and its likely cause wasn't unfair or unreasonable. Nor was its decision to decline Mr K's claim and complaint when he didn't provide what was asked of him.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 March 2024.

Tero Hiltunen
Ombudsman