

The complaint

Mr R complains that Glow Financial Services Limited hasn't upheld his claim under section 75 of the Consumer Credit Act 1974 ("section 75") for a purchase he made funded by a fixed sum loan agreement.

What happened

In September 2022, Mr R purchased a 'smart' fridge freezer from a retailer online. The cash price (after a discount for trading in an old appliance) was £1,829 with an additional £20 for delivery. Mr R paid £500 to the retailer and the retailer introduced Mr R to Glow to finance the remainder of the purchase price through a fixed sum loan agreement. The loan agreement was interest free, and Mr R was required to pay 35 monthly repayments of £37.47 followed by one repayment of £37.55.

When he received the fridge freezer, Mr R raised a complaint within days to the retailer to say that several of the promised 'smart' functions were not available or not working as advertised. These were:

- The ability to digitally view the inside of the fridge was limited to less than two shelves and the camera regularly misted over making what was visible even more limited.
- The ability for the fridge to automatically record and display expiration dates was not available, this required manual input.
- It was advertised as being able to stream television as well as access to live television, but this facility was not available.
- It did not have full compatibility with a particular virtual assistant technology that Mr R already had in his home, he says it was advertised that it would have full compatibility.

The retailer made some attempts to try to update the firmware on the fridge freezer to rectify the issues, but the updates weren't successful. Mr R contacted Glow in March 2023 to ask it to provide him a refund as it was jointly liable under section 75. Glow initially responded to say the retailer needed to resolve the dispute and then told Mr R to refer his concerns to our service.

I sent Mr R and Glow my provisional decision on 2 August 2024. I explained why I thought the complaint should be upheld. I said:

In deciding what is fair and reasonable I'm required to take into account relevant law (among other things). In this case I consider that to include section 75 as well as the Consumer Rights Act 2015 ("CRA").

The general effect of section 75 is that if Mr R has a claim for breach of contract or misrepresentation against the retailer, he can bring a like claim against Glow as the credit provider for that purchase. There are certain requirements that need to be met for a section 75 claim to be made. For completeness, I'm satisfied they are met here.

Before I go onto consider the substantive matter of whether there was likely a breach of contract or misrepresentation and therefore whether it would be fair and reasonable for Glow to do anything to put things right, I'm going to address Glow's general handling of the section 75 claim first.

It seems that Mr R first notified Glow in March 2023 that he wished for it to consider a claim under section 75. Glow's initial response stated: "I'm afraid we can't help with the device (we are a loan provider), but we will raise your case directly with [the retailer]". Mr R then correctly pointed out that under section 75 Glow was potentially liable and needed to investigate and respond to his claim. However, Glow responded once again to say that it is the retailer that would need to investigate these issues and said it had referred it to them.

Mr R continued to try to resolve his dispute with the retailer with no success and in July 2023 he had a phone call with a senior member of staff at Glow. I've listened to this phone call. The senior member of staff told Mr R that under section 75 he can log a complaint with the Financial Ombudsman Service. Mr R says that his understanding was that he would need a 'deadlock' letter from Glow on the section 75 complaint to do that. The senior person tells him that isn't necessary and he can just come straight to the ombudsman and they will investigate and let both parties know what should happen. He says this would be the best way to force some kind of outcome to his dispute.

This call and Glow's actions prior to it demonstrate a worrying lack of awareness of its own responsibilities to deal with complaints and section 75 claims. The Financial Ombudsman Service is not designed to replace Glow's own section 75 claims handling process or its complaints function. Further, Glow's insistence throughout this claim that it could do nothing to assist Mr R and that only the retailer could resolve things was neither constructive nor correct.

Mr R had asked Glow to consider a claim under section 75, so it was responsible for responding to that claim. While I accept that in order to do that it would inevitably need to liaise with the retailer, that isn't the same as simply passing responsibility for dealing with it to the retailer. Glow needed to gather its own evidence and information and decide for itself whether it believed it was liable and communicate that outcome to Mr R. It did not do this, it initially just referred him to the retailer and then later to our service without making any reasonable effort to provide the response it was required to give. This was despite Mr R repeatedly pointing out to Glow what its regulatory responsibilities were.

I think the overall way Glow dealt with Mr R's section 75 claim was poor. It caused further unnecessary upset, inconvenience and frustration for him and I consider it should pay compensation to him for the impact its poor handling had on him. Instead of constructively assisting him in the way I would have expected it passed its own responsibilities onto the retailer and to our service. In deciding what fair compensation would be, I'm mindful that I am not the regulator and any award I make is to compensate the impact Glow's actions has had on Mr R, it should not be punitive on Glow. In the circumstances, I consider £200 compensation to be fair and reasonable for the impact on Mr R.

I'll now address whether I think Glow has acted fairly and reasonably in not providing a refund to Mr R for the purchase he made.

Mr R's claim is essentially that the 'smart' functions on the fridge freezer were misrepresented and/or there was a breach of contract as the promised functions

were not available.

It's clear that the information Mr R relied on in terms of the compatibility with the virtual assistant and the ability to stream live television was taken from information only contained on the American version of the retailer's website. Mr R has shown screenshots of his internet searches to demonstrate that only the American version of the website is presented to him when he tries to search for information about this retailer's specific 'smart' functionality. However, I'm not persuaded that these two elements were misrepresented to him or that there was any breach of contract due to them not being made available to him.

Mr R purchased the fridge freezer from the UK website of the retailer. Therefore, I need to consider what was advertised and promised to him on that site. While I can understand the point Mr R is making about his internet searches only returning results for the American site when he has tried to conduct further research, this isn't something I can reasonably attribute to the actions of the retailer when entering into the contract with Mr R.

This is because that research was conducted by Mr R of his own volition. He was not directed to the American version of the website by the retailer. He was directed to it by his chosen internet search engine. That had nothing to do with the retailer.

Mr R says that the retailer didn't highlight on either the UK or American site that features might vary between regions. While I can understand why Mr R feels that lack of clarity is tantamount to a misrepresentation, I don't agree. The American website is intended to serve the American market and the UK website intended to serve the UK market. I'm not persuaded that the American website was required to state to American customers that if they were to purchase the same appliance outside of America that it wouldn't have the same features, especially when this doesn't appear to have been an option available to American customers through the American site. Similarly, the same would apply to the UK website.

Overall, I'm not persuaded there was any misrepresentation or breach of contract in relation to the features concerning the virtual assistant compatibility and the ability to view live television. This is because I'm satisfied that these features did not form part of any representations the retailer made about the product at the time when Mr R entered into the contract to buy the goods.

The UK site and indeed the page Mr R would have seen prior to purchasing the fridge freezer does refer to the other features Mr R has complained about: the ability to digitally view the inside of the fridge, the automatic tagging and the ability to stream television.

What is clear is that these features are available on Mr R's fridge freezer, however, what is in dispute is whether they work as advertised.

The CRA implies terms into all contracts for the purchase of goods that the goods should be as described. It is debatable as to whether the goods Mr R received were as described. On the one hand the features it said that it had are available (you can stream television to it, you can digitally view inside the fridge, and it will provide some automatic expiration dates). But I consider the description of those features to have been, at best, misleading.

The webpage that was displayed to Mr R before he purchased from the retailer stated the following in relation to the view inside and auto tagging features:

“Now you can see exactly what you have from your phone, anytime, anywhere. The view inside internal cameras** show what food you have and automatically tag food expiration dates so nothing goes to waste.”*

Within the image below this statement there is a diagram that says “multi-finger swipe down” suggesting the ability to move the viewing angle.

The asterisks within the text are qualified a little further down the page:

“[retailer] app required...Internet connection & [retailer] account required.”*

*“**Camera lens specification by model:[Mr R’s model]**, [another model]** with one ultra wide-angle lens.”*

I think the statement on the website implies you would be able to see everything within the fridge and that the cameras inside it had the ability to automatically collate expiration dates without any manual input. There are no qualifiers to suggest otherwise. I’ve even reviewed the user manual, a link to which can be located at the bottom of the same page. There is only one reference to the internal camera function which is on the troubleshooting page (page 67 of 76). This simply says that the edges of the image may look slightly bulged due to the design of the camera and that there are two blind spots on the left and right corners. It also suggests that food should be placed in the front and centre of the fridge for best performance.

The retailer’s UK website also has another dedicated page where it gives information about the ‘smart features’. This page doesn’t mention the auto tagging but does show an example image of the ‘inside view’. This shows it displaying three shelves inside the fridge.

There appears to be no dispute that the camera inside Mr R’s fridge is static and can realistically only view one complete shelf and part of a second (out of 4 shelves). In addition to the four shelves there are also two drawers at the bottom. Unless Mr R chose to only ever utilise about a quarter of the available internal fridge space, I fail to see how he could ever hope to “see exactly what you have” inside. Further, the demonstration images appear to provide a misleading impression of how much would be viewable.

In relation to the ‘auto tagging’, I’ve seen comments from the retailer’s technical experts who have confirmed this feature is not available. While they appear to state this isn’t mentioned on the UK website, I’m satisfied the UK website does state that.

In relation to the television feature, this is advertised under the heading of ‘entertainment’ as:

“Bring your kitchen to life with your favourite tunes or catch up on the latest TV series while you cook.”

There is no further information on this page, nor are there any qualifiers about how this TV feature might be limited. The user manual, like with the other features mentioned above, only refers to the TV feature once. Again within the troubleshooting section on page 67 of 76. It says:

“This refrigerator can connect only with [retailer’s model of TV’s] released since 2015.”

The additional information page on the retailer's website – which isn't linked to within the page Mr R would have viewed – does state:

“You can mirror whatever is playing on your [retailer's model of TV] and continue watching without interruption.”

The statement on the main product page appears to imply that the inbuilt screen on the fridge freezer is capable of playing TV through catch up services. I appreciate the user manual and the additional webpage say that mirroring from a TV is only available from a TV manufactured by the retailer, but that doesn't make it clear that catch up TV isn't available.

The retailer's technician's comments state that streaming companies don't generally support the type of web browser that is installed on the fridge freezer and therefore in order to watch any catch up television it would have to be done through mirroring. I'm not persuaded this was made sufficiently clear in any of the available advertising material prior to Mr R purchasing the goods. I accept information was available that mirroring was only available through one of the retailer's branded televisions (although it is debatable how prominent this information was), but I don't think it was clear that this would be the only way to catch up on TV.

Taking all of this into account I'm satisfied the auto tagging feature was not as described as it is clearly implied to be fully automated when that is not the case. I'm also satisfied the view inside feature was not as described as it suggested all of the contents would be viewable when in ordinary use this would never truly be the case. Lastly, I don't think the TV catch up function was as described because it was severely limited as it required specific hardware to work as intended and this additional requirement was not made sufficiently clear.

In reaching this conclusion, I've had in mind that this was a top of the range appliance with a cash price listed at around £2,000 (although Mr R paid slightly less due to trading in his old appliance). Further, the 'smart' features it advertised appear to have been one of the key reasons for the high price point.

As I'm satisfied there was likely a breach of contract by the retailer, I think Glow ought to put things right.

I've considered what the CRA says about remedies for a breach of contract where the goods are not as described. In these circumstances Mr R would be entitled, in the first instance, to seek a repair or replacement of the goods. I understand the retailer has already tried to explore various software and firmware fixes that might enable the functionality Mr R was seeking but has been unsuccessful. Further, it seems a replacement is not possible as it doesn't appear that a fridge freezer exists within the UK market that will do all of the things and in the manner in which the retailer had implied it would.

Where a repair or replacement has either already been attempted or isn't possible, then the CRA sets out that Mr R has a right to either reject the goods or seek an appropriate price reduction. In deciding what would be fair and reasonable here, I've taken into consideration the nature of the non-conformity to the contract and what Mr R might likely otherwise have done had the true nature of the goods been made sufficiently clear to him at the outset (in other words, what loss has the breach of contract resulted in). I've also thought about what would be proportionate in these given circumstances.

I think it would be helpful to firstly set out that the main purpose of the appliance is a fridge freezer and there appears to be no dispute that it does perform that task as intended. Secondly, the addition of the various 'smart' functionalities are clearly what makes it a more premium and therefore expensive appliance to a 'standard' fridge freezer. And lastly, while I've highlighted some features that I think were misleading and ultimately likely not as described, it appears that the fridge freezer still has numerous other 'smart' functions that work fine, are as described and are features not present in 'standard' fridge freezers.

I'm also mindful that it appears the main reason Mr R purchased this particular model was because he believed it would have the full compatibility features with his existing virtual assistant technology. However, this is not an element I consider was misrepresented to him or agreed as part of the purchase contract for the goods. In Mr R's original complaint he said before purchasing this fridge freezer he researched the product to ensure it would do what he needed it to. He said he was "happy to pay the several hundred on extra money to get the Smart version as this would link very well with my [virtual assistant] enabled home".

I note Mr R has said that if it didn't have these features then he may as well have purchased a standard fridge freezer without any 'smart' features. However, I'm not persuaded that is what he would likely have done. I say this because in the phone call he had with the senior member of staff at Glow he said that prior to purchasing this fridge freezer he had been trying to decide between the model he purchased, and another provided by a different manufacturer.

It seems likely to me that had Mr R known the true position on the features available he would still likely have purchased a 'smart' fridge freezer and its possible he may still have even opted for the one he has ended up with. The other manufacturer Mr R says he was considering does not offer any television options or auto tagging of items on its fridge freezers from what I've seen.

Overall, I'm satisfied that some of the features were not as described and it isn't possible to provide Mr R with those features. Given the fridge freezer operates correctly as a household appliance, other 'smart' features do work and Mr R has now had use of it for almost two years, I don't consider rejection of the goods to be a proportionate or reasonable remedy. Particularly as it doesn't appear Mr R would ever have been able to get some of the features that were advertised in any other appliance. I therefore think a price reduction to reflect what Mr R hasn't received to be a fairer way to put things right.

There isn't an exact formula for working out what an appropriate reduction should be. I've considered that in the current market the nearest comparable product by the other manufacturer is currently on sale at around 20% cheaper than what Mr R's appliance would be if he were to buy it today. The two appliances are also not an exact like for like and Mr R's appliance does appear to have a number of additional 'smart' features the other doesn't. I'm also mindful that the features I considered to have been not as described don't appear to be the main reason Mr R opted for this particular appliance. Taking everything into consideration, I consider a price reduction of 10% of what Mr R paid (after any trade in) to be a fair way for Glow to put things right.

Glow responded to say it accepted my provisional decision, but Mr R didn't respond.

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.

As Glow has accepted my provisional decision and Mr R hasn't provided any further comments or evidence, I've seen no reason to reach a different outcome to the one I reached in my provisional decision. I'm satisfied that Glow didn't act fairly and reasonably in dealing with Mr R's section 75 claim and complaint for the reasons I've set out in my provisional decision. I therefore think it needs to put things right in the way I've described.

My final decision

For the reasons given above, I uphold this complaint and direct Glow Financial Services Limited:

- Refund £182.90 representing a 10% price reduction on the purchase price of the goods.
- Pay £200 compensation for the upset and inconvenience caused by its poor handling of Mr R's claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 October 2024.

Tero Hiltunen
Ombudsman