

## **The complaint**

Mrs P is complaining Hitachi Capital (UK) Plc hasn't reduced the amount she owes on a fixed sum loan agreement she took out to purchase some patio doors and windows. She brings the claim under S75 of the Consumer Credit Act 1974 (S75).

## **What happened**

In June 2019 Mrs P arranged for a window supplying company – who I shall refer to as A – to visit her house to discuss installing some new glass patio doors. She was unsure whether to have French doors or patio doors, so A quoted for both. Following this, she agreed to the work at a contracted price of £3,727.64.

Around a week later, one of A's surveyors visited the house to measure up the space. During this visit, Mrs P says she decided she wanted the doors to match the design at the front of the house and asked for different doors with Georgian bars. However, she says the surveyor told her a salesman would have to come out to discuss the change in price with her. She signed the surveyor's report.

Mrs P received a text message from A a further week later saying it had started to build the doors. The next day she received a voicemail from A's salesman saying he'd been round to discuss the new price, but there had been no answer. Mrs P says she had been in bed unwell that day due to pregnancy so hadn't heard him. The salesman came round again a few days later and explained the change to the design would cost a further £1,315. Mrs P didn't want to pay that and says she explained she wanted to revert to the original design. But she says the salesman told her this wasn't possible as the manufacture of the doors had already started. Mrs P says the salesman told her that her only option was to sign the contract and make a complaint after the doors were installed. She said she had no choice but to sign the contract as she needed the work done.

The doors were later installed and Mrs P signed to say she was happy with the installation. But a few days later she complained to A about what had happened and she said she wanted the contract price to revert to the originally agreed price. She thinks A used underhand tactics misleading her into entering the contract at the inflated price. She also complained about the way A priced contracts in general.

Mrs P says one of A's complaint handlers later called her in response to the complaint and he said, as she'd signed the contract, she was bound by it. She says this person was rude and threatening.

Mrs P later complained to Hitachi about what had happened, but Hitachi referred her back to A.

Our investigator partially upheld this complaint as he didn't think was fair for A to start manufacturing the goods before Mrs P was aware of the cost and he thought it had misled her into agreeing to this increased price. However, he didn't think it would be fair to require Hitachi to match the original quoted price because she'd still benefited from doors that were

fitted and she'd them installed for a number of years. Instead, he thought Hitachi should pay Mrs P £300 in compensation.

Mrs P didn't accept the investigator's opinion as she didn't think £300 was a sufficient reduction. She said, this only reduced the increase to around £1,000 which she wouldn't have agreed to. She maintained that she expected a small price increase, but she would never have agreed to the changes had she known how much extra it would have cost.

Hitachi accepted the investigator's opinion.

### **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.

I've come to the same conclusion as the investigator and I'll now explain why.

Firstly, I note Mrs P has raised a number of concerns about A's sales practices in general. A is not a party to this complaint so I'm unable to consider any complaint about the way A acted in general – including her complaint about A's general sales practices and the way it handled her complaint. In this decision, I'm only considering Hitachi's actions in its handling of Mrs P's S75 claim.

Mrs P paid for these doors through a fixed sum loan agreement. S75 sets out that in certain circumstances, as the finance provider, Hitachi is jointly liable for any breach of contract or misrepresentation by the supplier. I'm satisfied those circumstances apply here.

Further to this, section 56 of the Consumer Credit Act 1974 (S56) has the effect of making A the agent of Hitachi during the "antecedent negotiations" leading up to Mrs P entering into the loan agreement, starting from when she was first approached by A. Essentially, this means Hitachi is responsible for the acts or omissions of A in relation to the sale of the loan to Mrs P. In other words, Hitachi has to stand behind the things A said, did, didn't say, or didn't do during the sales process.

In this decision I've thought about whether Hitachi has any liability to Mrs P for both breach of contract and misrepresentation.

#### ***Breach of contract***

There's no dispute about the quality of the work A did in fitting the patio doors and Mrs P has told us she's happy with them. But the issue is regarding how much she paid for them. Mrs P has paid the contracted price for the doors, so there's no breach of any express terms of the contract in respect to this. The issue for me to decide is whether she should have had to pay the amount she has paid, given she didn't know the cost of the extra work when she signed up for it.

I've reviewed the confirmation of survey that Mrs P signed and she signed to agree to the following:

*"The Surveyor has discussed the Survey in full and I agree to the designs and all other details finalised during his visit. I confirm all special requirements and information relevant to the order, including everything that was discussed with the salesperson, has been disclosed. I therefore authorise [A] to proceed with the manufacture in accordance with my preferred delivery requirement and the terms and conditions of the contract."*

So Mrs P signed the contract to authorise A to start manufacturing the doors. So I can't say it acted unreasonably in doing so.

Under the terms of the contract, Mrs P had the right to cancel it. But they further set out that Mrs P was liable for 80% of the purchase price in the event the manufacture had already started. So, as A had already started to manufacture the doors Mrs P was contractually required to either pay the full contracted price and have the doors installed, or pay 80% of the price, but wouldn't receive the doors. So, while I recognise Mrs P was unhappy with what the salesperson told her when she said she wanted to revert to the originally agreed price, I can't say this equated to a breach of contract.

However, I'm also conscious Mrs P wasn't aware of the full contract price when she signed to agree to the additional works. The Consumer Rights Act 2015 is relevant here. And this sets out that where the contract didn't fix a price before it commenced "*the contract is to be treated as including a term that the consumer must pay a reasonable price for the service, and no more*". So A can't charge more than a reasonable price for the additional works agreed. However, while I appreciate Mrs P says the additional cost is more than she expected to pay, I'm also conscious it wasn't a minor change to the contract. And I haven't seen anything to show that the price she was charged was unreasonable.

Ultimately, taking everything into consideration, I can't say that it was unreasonable for Hitachi to say A hadn't breached any terms of the contract – either express or implied terms.

### *Misrepresentation*

As I said above, S56 sets out that Hitachi is responsible for the acts or omissions of A in relation to the sale of the loan to Mrs P. During the survey report, Mrs P decided she wanted to have a different design so that the patio doors matched the front of her house. The surveyor processed the change but said a salesperson would need to come round to discuss the price.

I acknowledge Mrs P signed the document to start the manufacture process. But I don't think she would have knowingly agreed to the work without knowing the contracted price. And I think A needed to make it clear to her that in signing the survey report, she couldn't subsequently change her mind – especially given she didn't know the contractual price. I think Mrs P has been consistent in what she's said in this respect and I'm satisfied she wasn't told she couldn't change her mind, even if the price increase was too much. I'm also persuaded that she wouldn't have paid the amount charged and would most likely have stayed with the original design had she known the true cost and been given a choice. So I think she's lost out as a result of what's happened.

So I now need to think about what Hitachi needs to do to put things right. Usually, where goods or services are misrepresented, businesses need to put the consumer back in the position they'd be in had the misrepresentation not taken place. However, in this case that would require Hitachi arranging for the patio doors installed to be removed and new ones made. But I'm conscious the doors have already been in place for nearly three years so I don't think it's practical to start all over again.

I note Mrs P wants a full refund of the additional cost she's paid – i.e. to pay the originally agreed contract price. But she has received and benefited from an enhanced product and it's fair she has to pay for it. And, as I said above, I've not seen anything to show that she paid an unreasonable price for this.

Taking everything into consideration, I think the fairest way to resolve this complaint is that Hitachi pays compensation for the distress and inconvenience Mrs P has suffered for not

being told she couldn't withdraw the contract. The investigator thought £300 was fair and that's in line with what I would have awarded.

I recognise Mrs P doesn't think this sufficiently compensates her for her losses and I do understand her position here. I accept she didn't want to pay the amount she paid. But, as I said she has received the benefit of the patio doors and has paid a reasonable price for them. So I don't think I can say it's unfair for Hitachi to require her to pay the contractual price. And I'm satisfied £300 is fair compensation for what's gone wrong.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint. I require Hitachi Capital (UK) Plc to pay Mrs P £300 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 April 2022.

Guy Mitchell

**Ombudsman**