

The complaint

Mr P complains about a conditional sale agreement he has with Happy Customers Group Ltd trading as Pay As You Go Carpets ("HCGL").

What happened

In September 2020 Mr P entered into a conditional sale agreement with HCGL. Under this agreement HCGL was meant to supply and fit flooring for Mr P's home, it also supplied the finance for these goods and services. Mr P paid a deposit. There was a gap of several months between entering into the contract and when the work was scheduled to begin. In November 2020 in preparation for the work to begin HCGL contacted Mr P. He tells us it was at this point he was told, for the first time by HCGL, that he would have to arrange to pull up the pre-existing carpets so that the work could begin.

Mr P tells us he lives with his wife and they both have physical disabilities. He indicates that he had no idea that he would need to arrange for the preparatory work to be done. Rather he was under the impression that HCGL would do all this as part of the fitting. Moreover, there was no possibility of him or his wife being physically able to do the preparatory work. All in all, he suggests if he had known that he would have to take responsibility for this aspect of the work he would never have gone ahead. Further, he suggests the reason he did not know about this is because this was never mentioned until after he had entered into the contract. Mr P complained to HCGL and asked that it end the contract with nothing further owed by him and he wanted the return of his deposit.

HCGL did not agree it had done anything wrong. Rather it pointed to the terms and conditions of the conditional sale agreement which it said made it clear that all deposits were non-refundable.

Dissatisfied, Mr P came to our service.

When Mr P's complaint was with us, HCGL provided further information. Specifically, it told us about a call it had with Mr P on 30 October 2020 when it rang him to book in the fitting. In this call it indicated Mr P *"was made aware the rooms had to be clear before the fitters were able to fit the product"*. It could not provide a copy of the call, but it said its employee would have followed a call script which mentions this fact. It also suggested the employee who made the sale would have followed this script too. It also mentioned that it was not until mid-November in any event, when Mr P's fitting date was changed that Mr P *"brought up the issue again."*

Mr P responded to let us know that there had been no such conversation about this point on 30 October. Further, his position remains that the salesperson did not mention the preparatory work in the meeting when the contract was made.

Our investigator recommended that Mr P's complaint should be upheld.

Mr P accepted our investigator's recommendation, HCGL did not. It repeated its previous stance and asked that an ombudsman review Mr P's complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr P suggests the conditional sale agreement was misrepresented to him. Specifically, he suggests he was told nothing about the need for him to arrange for the preparatory work to be done before he made the contract. HCGL's position is that it told Mr P all about this requirement prior to them entering into the contract. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

If the contract was misrepresented to Mr P by HCGL then I think it would be both fair and reasonable that HCGL should have to cancel the contract with nothing owed by Mr P and refund his deposit with interest.

In this context misrepresentation means a false statement of fact which can include a material omission that induced Mr P to enter into the contract. I think the key interaction was the sales meeting at Mr P's home when the contract was entered into. That is when the terms of the agreement were most likely discussed, and that was the point at which Mr P was induced to enter into the contract. HCGL relies on the sales script it tells us that would have been followed by its employee during the sales meeting. I think as a starting point where there is a sales script, I would expect that an employee would follow it, in the normal course of events. However, we also have Mr P's first-hand account of what was said, and we have no such information from the employee although I don't see why HCGL could not have supplied this. I find Mr P's account of the day more persuasive than HCGL's submission.

In addition, I have not seen anything in the contract that indicates Mr P would have to do the preparatory work because that was not included in the fitting costs which are part of the contract.

Moreover, I find it unlikely that Mr P given his own disabilities and those of his wife would have entered into a contract that could have meant that he and his wife had to do reasonably heavy manual labour. Nor do I find it likely that in the circumstances, he would have agreed to pay extra to get someone else to do the work given he wanted an all-in-one service.

Moreover, Mr P tells us he did not discuss the preparatory work in the call of 30 October. I think it is likely he would remember the contents of that call with accuracy. He has demonstrated he took a meticulous approach throughout. By contrast, we have no copy of the call of 30 October where HCGL tells us its employee would have followed the script and mentioned the preparatory work and who would have to do it. It is not clear why that call recording was not retained by HCGL given that it knew less than a month later that Mr P was disputing this aspect of the contract. This call was made after the contract was agreed so anything that was said then cannot be said to have induced the contract. But I take HCGL's point if the preparatory work was mentioned in this call and Mr P did not query it, that would go towards showing he knew already he had to do this work. But, on balance, for the reasons I have given, I am not satisfied that this point was discussed then.

It seems to me that it was only in November which is when both parties agree that Mr P was told about the need for him to arrange the preparatory work that Mr P was most likely made aware of his obligation under the contract. I find it significant that as soon as Mr P was told

this in November he complained. This is consistent with what he suggests – i.e. that this was the first time he heard about this.

For all of these individual reasons I am satisfied that the contract was misrepresented to Mr P. It follows I find the contract should be cancelled and his deposit refunded with interest.

Further, I find it likely that Mr P was caused distress and inconvenience due to this misrepresentation. I find that £100 is a fair and reasonable amount to compensate Mr P for this.

My final decision

My final decision is that Happy Customers Group Ltd trading as Pay As You Go Carpets must.

- Cancel the contract with nothing owed by Mr P and it must stop trying to pursue him under the contract.
- Refund Mr P's deposit. It must add interest to the refund at the rate of 8% simple per year. The interest to run from the date the deposit was paid until the date of settlement.
- Contact the credit reference agencies and ask them to remove any information it or its agents have asked them to register on Mr P's credit file about the contract.
- Pay Mr P £100 for distress and inconvenience.

It must pay the compensation within 28 days of the date on which we tell it Mr P accepts my final decision. If it pays later than this it must also pay interest on the £100 from the date of my final decision to the date of payment at the rate of 8% simple per year.

If it considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 September 2022.

Joyce Gordon
Ombudsman