

The complaint

Mrs G is unhappy with Mitsubishi HC Capital UK Plc¹ trading as Hitachi Personal Finance's (Hitachi) handling of her complaint under Section 75 (S75) Consumer Credit Act 1974.

At times during this complaint, Mr G has been involved too. But as the agreement is solely in Mrs G's name, I'll refer to her throughout this decision.

What happened

In May 2018 Mrs G purchased a kitchen from a retailer, who I'll refer to as B. The total amount for the kitchen was £20,000. Mrs G paid a deposit of £2,000 and entered into a fixed sum loan agreement for the remaining £18,000. She was required to make 36 monthly repayments of £500.

The kitchen was for Mrs G's parents and began to be installed at their property by B in October 2018. There were numerous delays during the installation and the kitchen wasn't completed by B. The installer that B subcontracted also went out of business. So, in December 2018 Mrs G arranged for her own contractor to complete the rest of the kitchen installation and paid £2,772.55 for this.

Unhappy with the situation, Mrs G complained to B. B agreed to reimburse Mrs G for some of the additional installation costs incurred, but not the total amount. Mrs G referred the matter to an alternative dispute resolution organisation, who I'll refer to as F, in February 2019.

F concluded that B hadn't completed its contract with Mrs G. F awarded Mrs G the full amount of the additional installation costs she'd paid to her own contractor totalling £2,772.55, as well as a compensation award of £264 for what it labelled as four months of delay, disruption and inconvenience caused by B. Mrs G didn't accept this amount – she felt she was entitled to more and that more work was still required to finish the kitchen entirely.

As Mrs G remained unhappy, she contacted Hitachi and made a S75 claim. Hitachi accepted there had been a breach of contract and Mrs G's S75 claim was a valid one. However, they said that F's decision to award Mrs G the total amount she'd paid her contractor, and their compensation offer, was still available for Mrs G to accept. Hitachi felt it was a reasonable offer. They asked Mrs G to contact F or B if she wanted to accept it. They did recognise some delays in their process too and offered Mrs G £310 compensation.

Mrs G didn't accept and brought her complaint to our service. Our investigator looked into things and confirmed there were five points being complained about to Hitachi as part of the S75 claim. They were:

- The collection of waste from the property.
- The supply of the gas and electrical certificates.

¹ Referred to on Mrs G's credit agreement as the formerly named 'Hitachi Capital (UK) PLC trading as Hitachi Personal Finance'.

- The gas leak that occurred during the initial installation by B.
- The qualifications of B's installers and;
- The floor tiling.

He confirmed that the waste had been collected and the gas and electrical certificates had been supplied. He didn't comment on the qualifications of B's installers as he said he was satisfied there had been a breach of contract and this included any work completed by B's installers as part of the service being provided. He didn't think Hitachi had acted unfairly in relation to the gas leak that occurred. He also didn't think there had been a breach of contract with the floor tiling. Hitachi had previously asked for an independent inspection to take place, as there were concerns the tiles were cracking due to unstable floor joists, as opposed to anything B's installers had done. No independent report had been sought so our investigator felt Hitachi couldn't be held responsible for that aspect. Our investigator said that F's decision was still available for Mrs G to accept, either through them or direct with B and he felt the outcome was a fair one. Because of that, he didn't think Hitachi had acted unfairly in how they'd dealt with Mrs G's S75 claim.

Mrs G didn't accept our investigator's opinion. She feels she should receive back £14,000, which she calculated to be the cost of the installation.

As Mrs G didn't accept, it was passed to me to decide. I issued a provisional decision on 19 April 2022. I said:

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

In this case the relevant law includes S75 Consumer Credit Act 1974. S75 says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. This is subject to certain criteria that need to be satisfied such as the claim has to be within specific financial limits and the existence of debtor-creditor-supplier (DCS) relationship between the parties.

I find these criteria have been met here. Although the kitchen was installed in Mrs G's parents' house, I think Mrs G was at least a joint contracting party. Her name is on most of the available paperwork with B. For example, the sales invoice is specifically addressed to Mrs G and from what I have seen of the pre-contract negotiations, these were carried out by Mrs G also. So, I think it was most likely both Mrs G's and B's intention to contract with each other for the supply and installation of the kitchen in Mrs G's parents' home.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. It says that, under a contract to supply services, there is an implied term that any service being provided (such as the installation of the kitchen in this case) must be 'carried out with reasonable care and skill.'

In considering whether the installation of the kitchen was carried out with reasonable care and skill, it is relevant that F, an expert in this area, has already looked at Mrs G's complaints about B. They concluded that B didn't complete their contract with Mrs G and recommended that B pay Mrs G the cost of the necessary rectification work plus some compensation. Hitachi have also agreed that there has been a breach of contract here – which I agree with based on the evidence I've seen and the conclusions of F. So, all I need to decide is the best way to resolve this now.

Generally the purpose of an award of damages in a claim for breach of contract is to put the party back in the position they would have been in if the contract had been performed properly and there are similar provisions within the CRA. With a complaint like Mrs G's this would generally involve requiring the supplier to carry out the work again to the appropriate standard, or in some cases a price reduction to reflect the incomplete or substandard work.

In this case, Mrs G appointed her own contractor to complete the installation as B's subcontracted installer went out of business before it could finish the job or rectify any substandard work. And from what Mrs G has told us her contractor rectified what needed doing to her satisfaction. It's not fair for Mrs G to have to pay her contractor for this as well as pay the cost of the installation to B. Indeed, F decided that B should pay Mrs G the full cost of the rectification work she had done. I'm satisfied that a refund of the cost of this additional work is fair compensation because it puts Mrs G in the position she would have been in had the installation been performed with reasonable care and skill to begin with.

I know Mrs G wants a refund of £14,000. But this wouldn't be appropriate here because it would place her in a better position than she would have been in if the work had been carried out with reasonable care and skill. A price reduction – although not as much as this – might have been an appropriate solution if Mrs G hadn't already carried out rectification work seeing as B didn't appear able to put things right within reasonable time. But seeing as she has, and that looks to have remedied B's breach of contract, the fair thing here is that she is reimbursed for the cost of this. It wouldn't be fair if Mrs G received the cost of the rectification work and a price reduction as, again, this would put her in a better position than she would have been in had the work been completed to the appropriate standard by B.

From what I've seen the offer from B is still available to refund Mrs G the total amount she paid her own contractor to complete the work, plus compensation for the delays seen.

Mrs G should therefore contact B (or F) to arrange for the payment to be made to her. If, however, B is unwilling to make this payment now then, taking account of Hitachi's liability to Mrs G for breach of contract under S75, they should pay the £2,772.55 to Mrs G. I consider it fair if Hitachi requires Mrs G to show them that B will not pay before doing this.

While F determined that B should pay Mrs G compensation of £264 for delay, disruption and inconvenience I can't reasonably ask Hitachi to pay this to Mrs G. I say this because I'm considering Hitachi's liability to Mrs G under S75. So, I need to consider here what a court would likely award for breach of contract. And courts will generally only make awards for non-financial losses such as distress or inconvenience in limited circumstances. While discomfort and distress caused by a breach of contract for the provision of building works is generally one of those circumstances, the discomfort and distress was not suffered by Mrs G because the work did not take place in her home. So, thinking about Hitachi's liability to Mrs G under S75, it wouldn't be fair to ask them to pay her compensation for distress and inconvenience caused by B in this case. If the offer to pay this is still available from B however then Mrs G is of course free to contact them to accept it.

Mrs G has also raised concerns about the gas leak that occurred during the kitchen installation, and her upset that she wasn't notified about it until the following day. She has said her parents were at the property the whole time, and her children had been there for some of the time too. She feels that should be acknowledged. I don't underestimate her strength of feeling about this but for the same reasons I've explained in the paragraph above, I can't fairly ask Hitachi to pay Mrs G compensation for this.

The last issue to decide on is the floor tiles, and why they are cracking after the completion of the kitchen. During the discussions with B and Mrs G's appointed contractor, it was said

that the floor joists may be unstable, which was causing the tiles to crack, and an independent report was recommended. Mrs G hasn't had this report done and there isn't any evidence to suggest the cracking of the tiles was caused during the installation of the kitchen or whether it was caused by any other reason. Because of that I can't hold Hitachi responsible for it.

In their final response to Mrs G, Hitachi have offered her £310 compensation and apologised for the distress and inconvenience she's experienced. The complaint was logged with Hitachi in February 2019 and the final response wasn't issued to Mrs G until September 2019. I'm aware that during this time, Hitachi were in contact with B to try and arrange for the waste to be collected and the gas and electrical certificates to be provided to Mrs G, but I do think seven months was a long time for her to wait for an answer. That said, I'm satisfied that Hitachi's offer is a generous one and reflects their genuine concern that things had taken too long.'

Neither party has responded to my provisional 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.

I outlined the relevant rules and guidelines in my provisional decision, so I won't repeat them here.

As neither party has responded to the provisional decision with any additional information for me to consider, I see no reason to depart from it.

My final decision

For the reasons above, I uphold this complaint. Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance must:

- Reimburse Mrs G £2,772.55 for the completion of the work carried out by her contractor (provided Mrs G evidences that B is now not willing to make this payment).
- Pay Mrs G 8% simple interest on this amount from the date Hitachi declined the S75 claim (22 September 2019) until the date it is settled (if applicable).*
- Pay Mrs G £310 compensation for the delays in dealing with her claim.

*If Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance considers that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs G how much they've taken off. They should also give Mrs G a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 1 June 2022.

Kevin Parmenter
Ombudsman