

The complaint

Mr W complains that Creation Consumer Finance Ltd declined to uphold his claim under section 75 of the Consumer Credit Act 1974 that there had been a misrepresentation as to the cost of carpets which he'd financed via a fixed sum loan.

What happened

In July 2020 Mr W visited a retailer and selected some carpets and items of furniture he wished to purchase. There was a promotion available for the carpets to be fitted free.

Mr W says he was quoted a price of £3,299 for the carpets and £249 for the furniture. The carpet cost was subject to a surveyor visiting his home to take measurements. Mr W says he was told that he may have to pay the carpet fitters on the day they attended to fit the carpet but the cost of this (around £390) would then be deducted from the price of the carpets.

Mr W was happy at the cost quoted for the carpets and arranged for the surveyor to visit. Around two weeks later the surveyor attended and measured up. Mr W says that following the measurements being taken the cost of the carpet increased by £89.11. Mr W says that when the surveyor attended, they had a hand-held electronic device with them, and he was asked to sign this device to say that the measurements taken were accurate. Mr W says that he wasn't provided with any paperwork by the surveyor and there was no discussion about any carpet fitting fee.

The following day Mr W returned to the shop to place the order. He says there was some confusion about the cost with the salesperson he spoke with who wasn't the same person he'd originally dealt with. Mr W says that after some time the salesperson confirmed the cost of the carpets and the furniture was now £3,638.88.

Mr W says that the order that was then produced wasn't correct, so he wrote amendments on it including that the carpet cost was £3,389.01 and the furniture cost was £249.87. He took a photo of this order form with his amendments and told the salesperson he would send it to them via email so there was a copy of what had been agreed. Mr W also signed a fixed sum loan agreement with Creation for the amount of £3,638.88. Mr W says he confirmed with the salesperson that this would be the total cost with nothing additional to pay and that the carpet fitting was free.

Mr W sent the salesperson the photo together with an email saying, *"thanks for sorting the price error regarding the fitting showing"*. He also set out the cost of the carpet as £3,389.01 and the furniture as £249.87. The salesperson responded that the contents of the email was *"correct"*.

When the carpet fitters arrived in August 2020, they informed Mr W that he was required to pay them £390 for their service. Mr W paid that amount and then contacted the retailer asking for that amount to be deducted from finance agreement. The retailer didn't reduce the amount of credit and so Mr W complained to Creation.

Creation didn't uphold Mr W's claim that he should be reimbursed £390 for the carpet fitting. It said that on the estimate document it sent out it showed there was a fitting fee of £389.98 to pay directly to the fitters and that this amount had been deducted from the original cost of the carpet making the fitting free. It said the carpet price after the fitting fee had been deducted was £3,389.01. It also said that the surveyor who visited Mr W's home would have explained about the fitting fee being paid directly to the carpet fitters and that Mr W had signed to say he understood this.

Creation said that it had spoken with the sales manager who had confirmed they had informed Mr W about the need to pay the fitters directly when he ordered the carpet. It said the retailer had provided Mr W with a copy of the internal costing document which it said also showed that the cost of the fitting had been deducted from the cost of the carpet.

Mr W disagreed with Creation, he disputed that the surveyor had said anything about the fitting cost being deducted or that payments would need to be made directly to the fitters. He said he had been assured that there wouldn't be any additional cost to the £3,638.88 he'd taken out via the fixed sum loan. Mr W complained to this service.

Our investigator recommended Mr W's complaint should be upheld. She said she was satisfied that the cost of the carpet had been misrepresented to Mr W and that this misrepresentation had induced Mr W to enter the contract since it had been cheaper than another quote he'd obtained.

Our investigator said that there had been a discussion between the retailer and Mr W about discrepancies on the invoice and the retailer had agreed about the cost of the carpets and furniture. There had been no mention, she said, about the fitting of the carpet having been discounted from the price of the carpets and that would have been the time to clarify there was an additional cost for Mr W to pay directly to the fitters. Our investigator said no new invoice was provided to Mr W, but if it had it would have only shown the cost of the carpets and furniture.

To put things right, our investigator said it would be fair for Creation to reimburse Mr W the £390 carpet fitting fee he'd paid together with interest. She also said it would be fair for Creation to pay Mr W compensation of £75 to reflect the length of time it had taken to deal with his claim under section 75 and its lack of communication.

Mr W had agreed with our investigator's view, but Creation disagreed. It said that when Mr W returned to the store after the surveyor had visited his home, an order was built and then cancelled meaning the order had to be rebuilt as it hadn't included the free fitting discount. It was the original order that Mr W was basing his argument that the discount hadn't been applied but Creation said the order form Mr W had written the corrections on had been void due to the second order having then been created.

Creation said that the second order was then built but because the first order had been cancelled and this second one was a "*re-build*" there was no new order form generated. The amount of £3,638.98 as set out in the second order and as reflected in the finance agreement had included a £390 price deduction for the carpet fitting cost that Mr W would need to pay separately. Creation said Mr W would have been aware of this deduction.

Creation provided a copy of the Masterpiece Survey image which it said showed that the carpet fitter would need to be paid for the fitting and that Mr W had signed this document. It has also provided a copy of the contract's terms and conditions which set out at 13.2 that there was a separate agreement with the carpet fitter. Creation said there hadn't been a misrepresentation and there should be no reimbursement of the carpet fitters' costs

because this had already been factored into the costings. It said Mr W's claim under section 75 had correctly been declined.

As the parties were unable to reach an agreement the complaint was passed to me. Due to the additional evidence that was provided by Creation I issued a provisional decision along the following lines.

The general effect of section 75 of the Consumer Credit Act 1974 is that if a consumer has paid for goods or services with a credit agreement, such as a fixed sum loan, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider which here is Creation.

My role was to decide whether Creation had acted fairly and reasonably in its response to Mr W's claim under section 75. Creation said it had received evidence from the retailer and that it was satisfied there was no breach of contract and that no misrepresentation had occurred.

Creation said that Mr W should have been aware that the cost of the carpet fitting had already been deducted from the costs of the carpet when reaching the total to pay of £3,638.98.

It was agreed that the retailer was offering a promotion of free carpet fitting when carpeting was purchased from it. And because the carpet fitters were sub-contractors and therefore subject to a separate agreement then as they would be paid directly by the consumer the cost of the fitting would be deducted from the cost of supplying the carpet by the retailer. However, Mr W said this arrangement wasn't made clear to him. He said that he was only told he "*might/would*" have to pay the fitters directly but if he did then there would be a reimbursement made to him for that amount. Mr W was adamant he had been told the total price he had to pay for the carpets and furniture (including the items being delivered and installed) was £3,638.98.

As Mr W had ordered goods and these had been supplied, I couldn't reasonably say there had been a breach of contract, Mr W appeared to have been happy with the goods and he hadn't raised any breaches of the terms and conditions of the agreement to supply them.

For me to be satisfied a misrepresentation has occurred I would need evidence that there had been a false statement of fact made by the retailer which had induced Mr W to enter into the agreement. Mr W said that he'd already received one quote for similar carpets from somewhere else but had accepted this one because it had worked out cheaper. I think price was therefore an important factor for Mr W and I'd seen that there had been discussion between him and retailer about the costs of the carpets.

Creation had produced a number of documents that it was relying on to show this amount had been deducted before reaching the overall price for the carpets and furniture of £3,638.98.

However, I wasn't clear which of these documents Mr W had actually seen.

At Mr W's first visit to the retailer, where he had chosen the carpets, it appeared he had been told by the salesperson that he may have to pay the fitters separately, but this figure would then be deducted from the costs. I accepted Mr W's account which had been consistent that this was what he had been told. At this visit Mr W had applied for the fixed sum loan from Creation though the exact sum to be borrowed needed to be verified by having the floor space accurately measured.

The surveyor had then attended Mr W's property to measure up. I hadn't seen any evidence that Mr W had been left with any paperwork after that visit. Mr W said the surveyor hadn't discussed the carpet fitters or any fee that they may charge. It was agreed Mr W had signed a tablet device the surveyor had, though Mr W said this was just to confirm the measurements had been accurate.

Looking at the photo of this device that had been supplied by Creation I saw Mr W's signature and that above that it set out the estimate of £4,031.50 and of that figure it said £3,541.52 was owed to the stores and £489.98 was "*payable to the fitter on the day of fitting*". This paragraph was silent as to whether the fitters' fee had already been deducted from the cost of the flooring. I didn't know if these figures had been discussed with Mr W or whether he had been given time to properly look at the estimate. I understood the figure of just over £4,000 had been reached because Mr W had also been quoted for laminate flooring, which meant the fitter's fee had been higher. As Mr W wasn't left with anything to read over and check and had needed to return to the shop to make his order, I didn't think I could reasonably say that Mr W's signature on this device showed he was aware that any fitter's fee had already been deducted from the carpet costs.

Mr W had returned to the store and made his order, he had by then decided not to have the laminate fitted and so the figures had needed to be adjusted. Mr W said it had taken time for the salesperson at this visit to match the estimate he'd been given. He was aware there was an increase to the cost following the measurements being taken. Creation has supplied copies of the order though I understood because the first order had been cancelled no new order had been generated when this order was then rebuilt.

I appreciated that the orders on the retailer's system showed that there was a deduction for the carpet fitters' fee, but I still hadn't seen any evidence this information had been provided to Mr W in any invoice or order form. I'd seen an order form created at Mr W's second visit to the store which sets out that the cost of the carpets amounted to £3,769.36 and this said that the carpet fitters fee of £389.97 hadn't been added. But again, I hadn't seen any evidence this document had been provided to Mr W or that he had seen it. Mr W appeared to only have been provided with the one order form which he had amended and sent to the salesperson who confirmed it was correct.

Mr W said although it was suggested he may have to pay the fitters' fee directly this wasn't entirely clear although he was assured if he made any payment then this amount would be deducted from the credit agreement. Creation pointed out that in the terms and conditions of the contract to supply the carpet it clearly set out that any agreement with a carpet fitter was separate. I didn't know if these terms and conditions were supplied to Mr W, he hadn't mentioned being provided with them. Looking at term 13 which covered carpet fitting, I could see it set out that if a fitter was used via the store then there would be a separate contract with them. It also stated that there was a standard tariff applied by the fitters which consumers would pay directly to the fitter. However, the carpets chosen by Mr W had been advertised as having free fitting so I didn't think this term was clear as to what would be expected to have happened in regard to the fitting fee. I didn't think this term meant I could reasonably say Mr W had been aware he had to make a direct payment to the fitter.

I'd seen a copy of the documentation Mr W said he had been provided with. This was the order form that he had hand-amended because the costings shown on it had been wrong. Mr W had photographed this document and sent it to the salesperson asking whether his calculations as to the cost of the carpets were now correct. The salesperson had confirmed that they were. There was no mention either on this form or in the email correspondence that Mr W would still be required to pay an additional £390 to the carpet fitters. I thought Mr W's enquiry had been clear that he was asking about the total amount

he would be paying for the carpets which included the fitting.

I was satisfied there had been a misrepresentation made to Mr W as to the cost of the carpets by the retailer. I thought Mr W had been consistent in what he said had happened and that he had been assured there would be nothing more to pay on top of the £3,638.98. I'd seen he'd raised his complaint quickly after paying the fee to the carpet fitters. I thought the salesperson appeared to have been confused over the calculation of the costs of the carpet and the inclusion/deduction of any carpet fitting fee and that they had misled Mr W as to the final overall costs of having the carpet supplied and fitted. I hadn't seen any evidence that Mr W had been shown a copy of an order form that clearly set out the fitters' cost had been deducted from the cost of the carpet. He had relied on what he'd been told by the salesperson.

So, I intended to uphold Mr W's complaint and I'm asked Creation to do the following:

- Reimburse Mr W £390 fitting fee, plus interest at the yearly rate of 8% simple from the date of payment until the date of settlement.

I also thought that Creation hadn't dealt with Mr W's section 75 claim in a timely manner and had lacked communication with him. For that I thought it was fair that Creation pay Mr W £75 compensation for the unnecessary distress and inconvenience this would have caused him.

Both Mr W and Creation have accepted 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.

Although I have been asked to review my provisional decision I have still looked again at the evidence and my conclusions and I haven't changed my view. I'm still satisfied that the costs of the carpet and fitting were misled to Mr W and this information had induced him into entering the contract for their supply. So, I'm upholding Mr W's complaint.

Putting things right

I'm asking Creation to do the following:

- Reimburse Mr W £390 fitting fee, plus interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr W £75 compensation for the delays and lack of communication in the handling of his section 75 claim.

My final decision

For the reasons set out above I'm upholding Mr W's complaint. I'm asking Creation Consumer Finance Ltd to do the following:

- Reimburse Mr W £390 fitting fee, plus interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr W £75 compensation for the delays and lack of communication

in the handling of his section 75 claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 June 2022.

Jocelyn Griffith
Ombudsman