

The complaint

Miss G complains that Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance (“HPF”) has mishandled her claim under section 75 of the Consumer Credit Act 1974 for breach of contract and misrepresentation by a retailer.

Miss G has been assisted in bringing her complaint by a relative but for ease of reference I will refer only to Miss G as the credit agreement is in her name.

What happened

In or around September 2016 Miss G ordered some carpets and blinds from a retailer which were to be supplied and fitted. There were three orders made by Miss G in total. Unfortunately, there were some issues with the goods and/or their fitting leading to Miss G complaining to the retailer. A discount was provided to Miss G by the retailer.

In March 2017 Miss G signed a customer satisfaction note regarding the items that had been supplied and fitted. She also entered into a fixed sum loan agreement with HPF for a total credit amount of £1,400. This agreement set out that goods to the value of £1,692.35 had been received and that Miss G had paid a deposit of £292.35. The loan was for a total period of 45 months and payments were deferred until December 2017. Miss G signed the agreement.

Miss G says that in March 2019 she requested copies of the final invoices for her orders from the retailer and it took some time for her to receive them. Miss G says when she did eventually get the paperwork, they didn’t appear to be accurate. Miss G says the invoices included a charge for underlay that she had been told was provided free, that the carpet description was for the wrong colour and the amounts didn’t tally with the total shown on the credit agreement.

Miss G raised her concerns with the retailer who replied providing an explanation as to how the amount of £1,400 had been reached as being the outstanding amount due. Miss G didn’t agree that the amount was correct and complained to HPF that the amount of the fixed sum loan agreement was wrong.

There followed a number of letters between Miss G and HPF including a data subject access request (“DSAR”) by her. Miss G raised a concern when she received copies of the data held by HPF that there had been no final invoice provided by the retailer to HPF. HPF told Miss G that it hadn’t required a final invoice to raise the credit agreement as the retailer had provided sufficient information to initiate the finance.

In November 2019 Miss G made a claim under section 75 of the Consumer Credit Act 1974 to HPF on the grounds that there had been both a breach of contract and misrepresentation on the part of the retailer in the supply and fitting of the carpets and blinds. She said the figures on the invoices she’d received and the figures on the credit agreement didn’t tally. She requested that the credit agreement was cancelled and that all her payments be reimbursed.

HPF said that Miss G had signed the satisfaction note confirming the work had all been completed. It said it didn't require a final invoice to be provided by the retailer.

In February 2020 HPF sent Miss G its final response letter in respect of her complaint that the DSAR had been incomplete. It explained it hadn't sought any input from the retailer as it hadn't needed to. It said it had used the required minimum of personal data to process the credit application and that it was not upholding her complaint.

Miss G complained to this service. She said HPF had failed to properly investigate her complaint that the figures the credit agreement was based on were incorrect and she had been placed at a financial disadvantage.

Our investigator recommended that Miss G's complaint should be partially upheld. He said he didn't think Miss G had provided HPF with sufficient evidence that there had been a breach of contract or misrepresentation on behalf of the retailer. Prior to signing the fixed sum loan, our investigator said that Miss G would have had time to check its contents and the total costs of the goods was clearly shown. He said that HPF didn't require a copy of the final invoice when drawing up this agreement.

While our investigator acknowledged that on the face of it there appeared to be a £100 mismatch between the amount of credit taken out in the fixed sum loan and the amount outstanding for the goods, he said he thought this was due to the incorrect recording of a refund as a discount.

Our investigator said that although HPF had responded to a number of Miss G's questions he thought there were material points that had gone unanswered and there had been delays in answering others. He said he thought Miss G had suffered distress and inconvenience and that it would be fair for HPF to pay her £100 compensation for that.

Miss G disagreed with the view of our investigator. She said HPF had never investigated her complaint and she had provided it with copies of the invoices which were incorrect. Miss G says she was pressured by the retailer into signing the finance agreement.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

My role here was to decide whether HPF had acted fairly and reasonably in its response to Miss G's claim under section 75. And where evidence is contradictory or missing then I have to decide what I think is the most likely thing to have happened.

Miss G's had requested that due to both a breach of contract and misrepresentation by the retailer that the finance agreement for the goods should be cancelled and all payments made by her should be reimbursed

Section 75 of the Consumer Credit Act 1974 may apply when the goods purchased via a credit agreement cost over £100 and up to a limit of £30,000. The general effect of the section is that if a consumer has paid for goods or services with a credit agreement 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 was HPF.

However, when making a claim it is for the consumer to provide evidence of the breach and/or misrepresentation. Miss G had provided HPF with a number of invoices she said were incorrect. HPF said it had been provided with the amount of the outstanding balance by the retailer when it had created the finance agreement for

Miss G. It hadn't requested or received any final invoices.

Looking at the correspondence between Miss G and HPF, I didn't think HPF had been clear with Miss G about its position regarding her section 75 claim or that it wasn't opening a claim due to the lack of evidence that had been provided. I think this led to frustration and confusion for Miss G in respect of why her claim hadn't been investigated as she had wished by HPF.

HPF had made only minimal contact with the retailer and that was in respect of the drawing up of the fixed sum loan amount. The retailer had confirmed to HPF that Miss G had made three orders totalling £2,194 and that she had paid a deposit of £292.35. A discount and refund were then made leaving £1,400 to be paid via the finance agreement. I disagreed with Miss G that HPF had needed a final invoice in order to draw up the credit agreement. I thought it had been entitled to use the figures provided by the retailer as she had then signed and agreed to this amount when taking out the fixed sum loan. It had also reasonably relied on the satisfaction form Miss G had signed to say the goods had been provided to her.

While I thought HPF could have done more in its correspondence with Miss G regarding its view as to her section 75 claim, I didn't think that it was likely that the outcome of that claim would have been for the agreement to have been cancelled and a full reimbursement made. I said this because I didn't think there was sufficient evidence of either a breach of contract or of a misrepresentation on behalf of the retailer.

Looking at the evidence provided by Miss G I could see there had been correspondence and phone calls between herself and the retailer where both the cost and quality of the goods had been discussed. I'd also seen that there were two invoices provided for each of the three orders. However, the first set of invoices had wrongly tallied to £3,156.41. The retailer had accepted this was wrong and had provided a second set that added up to £2,194. Miss G said these invoices were incorrect because they included a fee for underlay and the carpet colour was wrong.

However, I hadn't seen any copies of any orders so I couldn't say what had been agreed at the point of ordering goods. But from correspondence provided by Miss G, I had seen that the retailer had explained why there was a figure shown for the underlay and that the price for the carpet had been adjusted so that there was in fact no real cost for that item though Miss G didn't appear to have accepted this explanation. I'd also seen that Miss G had received a discount of £500 from the retailer which I thought was more likely than not due to the issues that had arisen with the fitting of the carpets and blinds. Finally, I'd seen that Miss G had received three separate refunds totalling £100.

I thought there was consistency between the second set of invoices, the amount set out in correspondence to Miss G by the retailer and the amount the retailer informed HPF was due for the goods that had been supplied. The letter Miss G provided from the retailer stated this discount had been £500 and I hadn't seen that she had disagreed with that figure when responding to the retailer, meaning that the cost of the goods was £1,692.35 as set out in the credit agreement. I thought that although there may have been some discrepancies in how the goods were described on these invoices, that it was more likely than not that they had shown the correct cost of the goods.

Looking at the figures, it appeared that it was the £100 which had been received by way of three refunds had caused confusion because it had later been included in the

total amount the retailer had recorded as having been discounted from the goods. I could appreciate why Miss G had said if she had a discount of £600 then the credit agreement should only have been required for £1,300 and not £1,400. But as set out above, the refunds had been separate to the discount.

I also appreciated there were some issues with the quality of the goods/fittings and that this had resulted in a discount on the cost for Miss G, but I hadn't seen any evidence that the discount and the refunds that had been made weren't fair and appropriate.

So, I thought it was reasonable to say that there hadn't been sufficient evidence that the total charged for the carpets and blinds as shown on the fixed sum loan had been incorrect. I couldn't reasonably say there was evidence of a breach of contract.

I also didn't think there was sufficient evidence to find that there had been a misrepresentation by the retailer to Miss G that had induced her into entering the credit agreement. She had an opportunity of checking the figures and had signed a customer satisfaction form. I thought it was reasonable to say Miss G had been content with the credit agreement for £1,400 when she had signed it. I'd seen no evidence that the retailer had pressurised Miss G to sign that agreement.

Although, as set out above I was satisfied there wasn't enough evidence to support a successful section 75 claim, I didn't think HPF had handled this matter fairly for Miss G. It hadn't addressed her section 75 claim in its correspondence with her and this had caused her frustration, distress and inconvenience.

I'd seen that there was detailed correspondence between Miss G and HPF over her section 75 claim and that this had also included various other matters such as the DSAR. It appeared that Miss G's section 75 claim had got rather lost in the various other matters that had been raised but it was this claim which was important to Miss G as she was requesting that the credit agreement be cancelled. I'd seen that our investigator hadn't felt that HPF had properly addressed the issues raised and recommended compensation of £100 but I didn't think that was sufficient when looking at the impact the lack of information as to her section 75 claim had on Miss G. I thought in these circumstances it would be fair for HPF to pay Miss G compensation of £250 for the way it had handled her claim under section 75.

For the reasons set out, and although I appreciated this would be of disappointment to Miss G, I intended to partially uphold her complaint. I asked HPF to pay Miss G a total amount of compensation of £250.

Both Miss G and HPF has 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 neither party has asked me to look again at my decision, I have reviewed the evidence and the conclusions that I reached. I haven't changed my mind.

I am still satisfied that there was insufficient evidence to say that there had been a breach of contract or misrepresentation on the part of the retailer. I also think the evidence supported that the credit agreement had been provided in the correct amount and accurately covered the cost of the goods that had been supplied to and fitted for Miss G.

However, notwithstanding the lack of evidence to support a successful section 75 claim, I don't think HPF acted fairly when dealing with Miss G's section 75 claim. And that this caused her distress and inconvenience. Total compensation of £250 would be fair and reasonable to reflect the impact this had on her.

So, for the reasons set out above I'm partially upholding Miss G's complaint.

Putting things right

I'm asking Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance to pay Miss G a total amount of compensation of £250 for the distress and inconvenience caused to her by its handling of her section 75 claim.

My final decision

For the reasons set out above I'm partially upholding Miss G's complaint. I'm asking Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance to pay Miss G a total amount of compensation of £250 for the distress and inconvenience caused to her by its handling of her section 75 claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 19 July 2022.

Jocelyn Griffith
Ombudsman