

The complaint

Mr C has complained about a conservatory installation he funded using a fixed sum loan with Mitsubishi HC Capital UK Plc (MHCC).

What happened

Mr C paid £11,300 for a conservatory from a company I'll call 'D' in July 2018 using a fixed sum loan from MHCC. D installed the conservatory and Mr C signed a satisfaction note in September 2018.

In March 2020 Mr C complained to MHCC there were problems with the conservatory. He said there were gaps and a draft coming from the door. He said the gaps were causing damp issues. Over the next few months MHCC liaised with D about the problem. D was hesitant to visit Mr C's property because the relationship had broken down. D also indicated Mr C may have caused the damage by drilling a screw through the wall. It said the rear wall was also full of algae which was outside the conservatory but at the same elevation. So D thought the damp was travelling through the hole drilled by Mr C. D also said Mr C had pulled part of the trim off near another area of damp. D said it had offered to use sealant to resolve the issues.

Things weren't getting resolved so MHCC and D decided to instruct an independent firm to carry out a report. This was carried out in September 2020. And the report said, in summary:

- Sealant down the right-hand side has a hole near the bottom and paint coming away near the top.
- Silicone coming away from the render.
- Lead only into render approximately 10mm and it should be deeper.
- Hollow soffit fitted upside down so water will tunnel along the groove.
- Sills not sealed to brickwork externally.

MHCC and D liaised with the firm that carried out the inspection and asked for a quote to put things right. The inspection firm said to replace the soffit boards and lead to fix the high-level leaks it would charge £720 for materials and £800 for labour. But there was still the issue with the leaks between the sills and brickwork which can't be accessed with the frames in-situ. So it said the only way to carry out a proper repair would be to remove the frames and roof and to refit from scratch ensuring the sills are sat properly into full beds of silicone. It said this would cost around £3,500 but it couldn't guarantee the product. It said there was no quick fix.

Mr C has also provided a letter from another tradesperson that says the full conservatory needs taking down for the necessary work to be carried out and there's no guarantee this will resolve everything.

MHCC highlighted D thought some of the damage was caused by Mr C but it accepted it was responsible for some of the issues. So to resolve the complaint, MHCC and D

ultimately offered Mr C £1,500. This was calculated as £630 for labour and materials plus compensation. Mr C wasn't happy with the offer. He said he accepted he'd exposed an area to see where the damp was coming from. He said he'd removed some of the plastic strip, plaster and two tiles. The drilled hole wasn't near the area of damp. He said it was coming from under the sill and from other areas.

Mr C brought the complaint to our service to consider. And one of our investigators thought MHCC should pay Mr C £3,500 in line with the independent firm's conclusions. She also thought MHCC should pay £300 compensation. Mr C wasn't happy with the offer. He was worried about what would happen to the guarantee. He also highlighted there was no mention of consequential losses such as the need to replaster and repaint. He also didn't think the compensation was sufficient. He said he wanted it repaired or replaced or taken away with a refund. He also highlighted he'd struggled to find a firm who'd carry out works on the conservatory. And he said the replastering would cost around £300.

MHCC also didn't agree. It said the hole Mr C drilled and the algae outside the conservatory contributed to the leak. And it thought the cash settlement was the fairest way to proceed.

I issued a provisional decision that said:

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr C and MHCC that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr C paid for the conservatory using a fixed sum loan agreement. This is a regulated consumer credit agreement and our service is able to consider complaints relating to these sorts of agreements.

I take into account the relevant law. So, in this case, section 75 of the Consumer Credit Act 1974 makes MHCC responsible for a breach of contract or misrepresentation by the supplier (D) under certain conditions.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. Mr C paid for goods and services using the fixed sum loan from MHCC. The goods being the conservatory, and the service being the installation.

The CRA implies terms into the contract that goods supplied will be of satisfactory quality, fit for their intended purpose and as described. It says traders must perform the service with reasonable care and skill. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

It looks like D has acknowledged it's responsible for some of the issues highlighted on the independent inspection. And based on what the inspection says I don't think it's in dispute there's been a breach of contract because I don't consider the installation was carried out with reasonable care and skill. What is in dispute is how much of the issue was caused by something not linked to that. And the evidence here is very limited. I simply don't have sufficient evidence to demonstrate that Mr C has significantly contributed to the issues, or that the problems were caused by something not linked to the installation.

It would've been helpful had the independent inspector been given some details about what faults MHCC or D thought they should not have been responsible for. Without that, and based on the findings in the report, I can't safely conclude the issues weren't primarily down to poor workmanship from D. I say this because the issues seem to be down to the conservatory not being sealed properly. The inspector noted silicone was coming away; the lead wasn't installed into the render deep enough; the soffit was upside down allowing water to tunnel along the groove; and the sills weren't sealed to the brickwork externally. And it seems reasonable to conclude that if the conservatory is not sealed properly there's a good chance of water ingress which could cause the damp Mr C has complained about.

Where there's a breach of contract under a services contract, consumers have certain rights. They may have the right to repeat performance as well as the right to a price reduction.

Consumers can also seek other remedies. Repeat performance should be carried out within a reasonable amount of time and without significant inconvenience caused to the consumer. Consumers can ask for an appropriate price reduction if that doesn't happen, or if the repeat performance is impossible.

In Mr C's case MHCC has offered him a cash sum so he can arrange a repair along with some compensation. But I'm mindful that, based on the evidence I have available, this would only resolve the high-level leaks. Given I've not been shown all the issues weren't down to the workmanship of D I don't consider that's a fair resolution.

So I've next thought about our investigator's recommendation. She recommended MHCC pay Mr C £3,500 in line with the independent inspection firm's estimate of what it would cost to resolve the issues. But it hasn't said if this is definitely the cost. It also said it wouldn't be able to guarantee the work. And this doesn't cover any repairs to the damage caused by the damp. I'm also mindful another firm has said this might not resolve things. So if I were to direct MHCC to do the same, I'm not sure I can safely conclude this will resolve the issues.

Taking everything I've said above into account, and given how long ago Mr C complained about the faults, I don't consider proper repeat performance has been offered or carried out within a reasonable amount of time. While I can understand MHCC's explanations for why D didn't want to return, it did ultimately have other options such as asking another trader (like the inspection firm) to carry out repairs. And Mr C was ultimately willing for D to return. I think the damp is causing significant inconvenience. I'm not persuaded that a payment of

£3,500 will fully resolve the issue. It looks like the majority of the conservatory will need to be dismantled before any repairs can be carried out. And it's not clear those repairs will be

successful. So I'm minded to say the fairest thing now will be for MHCC to arrange to have the conservatory removed.

Mr C was able to use the conservatory. But his use was impaired. It sounds like it was only in the warmer months where he could enjoy it to some extent, at least for the last couple of years after he complained. Compensation for distress and inconvenience is limited with this type of complaint. I need to think about what a court might award in a similar case. Courts do consider what's known as general damages. But awards in building cases where distress and inconvenience have been caused tend to be modest. MHCC can be held liable if the breach of contract caused Mr C physical inconvenience or discomfort as a result of living in a defective home. And, to some extent, I think that's what's happened here.

When deciding how to put things right, I've taken into account what I've said above. I've also considered there will be costs to put things right for Mr C once the conservatory is removed. And he's had the costs of decorating the conservatory, some of which he may incur again if he decides to purchase another. There's no exact calculation to use, but I'm minded to say the conservatory should be removed and Mr C should receive a full refund. I also think Mr C should be compensated for having to make good the damage. He's said he's been given a quote for replastering of around £300.

I think MHCC should reimburse him for any costs he incurs to make good on receipt of an invoice. I appreciate the costs might be different to what he's already had quoted given the removal of the conservatory. I'm minded to say these costs should be capped at £500. And I think compensation for distress and inconvenience is effectively offset against the use he's had of the conservatory seeing as though he's getting a refund. I think this offers a fair way to draw a line under things. If Mr C thinks the costs to make good will be drastically different to what I've said above, he should provide evidence in response to this provisional decision.

I've finally thought about how MHCC dealt with the claim. I think it was proactive in contacting D and the independent inspection firm. A lot of the delays here were down to D, and I don't doubt that MHCC's services were impacted as a result of Covid-19. But, on the whole, while I acknowledge Mr C didn't ultimately accept MHCC's proposal, I think its overall claim handling was fair. So I'm not going to direct it to do anything else.

Mr C responded to ask if certain works would be covered. And he also wanted to know whether the concrete base would be taken away. He told us that before the conservatory was built, he had a lean-to. So he questioned if the conservatory was taken away what would be in its place? Mr C said he spent around £500 getting the tiles laid, around £300 for plastering, £300 for electrics and around £200 for an extra radiator. But he's not been able to provide evidence of the costs.

Mr C highlighted he'd spent a lot of time trying to resolve things. And he thought he should receive a full refund along with something to replace the conservatory. Alternatively, he thought he should receive a full refund and the conservatory to be left in place, as it's better to have something there than nothing at all.

MHCC responded to say there was insufficient evidence the installation was structurally unsound. MHCC also said Mr C had acknowledged he'd damaged the conservatory by removing the plastic strip, plaster and 2 tiles to find out where the draft was coming from. It asked if there was any evidence from inspections that Mr C was unable to get a tradesperson to carry out repairs. It questioned whether the removal of the conservatory was proportionate. And it also said it works with a new company that could carry out an independent report.

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 thought about the responses. And while there's no perfect solution, I think my recommendations in the provisional decision offer a fair way to resolve things.

Mr C seems primarily unhappy he's going to be left without something in place of the conservatory. He tells us he had a lean-to there before. But he also tells us that when he decided to buy the new conservatory, he arranged to remove the lean-to prior to work commencing. So I think, by removing the conservatory, he will be broadly in the same

position he was in prior to it being built. And with a full refund he can decide if he wants to buy something else in its place.

It would not be practicable to direct MHCC to reinstall a like for like lean-to to what was there before. And I don't consider it would be fair to MHCC to say Mr C should receive a full refund and for him to also keep the current conservatory or be provided a new conservatory or lean-to.

We asked Mr C if he'd be willing to have another firm carry out an inspection. But he said he'd prefer not to considering how long things have been going on for. I've already been supplied with the results of an independent inspection, so I don't consider we need to get another one. And I can't force Mr C to accept another report where there's already one submitted – particularly given it was MHCC that arranged it in the first place.

MHCC mentioned again that Mr C may have contributed to the damage. But I've already explained in my provisional decision why I can't safely conclude the issues weren't primarily down to D's workmanship.

MHCC has said the outcome may not be proportionate. And that there's insufficient evidence the structure is unsound. However, it seems that, to resolve things, significant repairs would be required. And the evidence I've seen indicates the conservatory may have to be rebuilt to a large extent. MHCC had the opportunity to attempt this with D or the independent firm it found but it decided to offer to cover the cost to resolve the high-level leaks. In any event, it's not even clear a full repair or rebuild would resolve things. And I think the way the conservatory has been installed has led to further issues that will need resolving. So for the reasons given in my provisional decision, I think removing the conservatory and offering a refund seems like a fair way to resolve things.

Mr C has asked whether the base would be removed. I've not been told there's any issue with the base. So I think if he chooses to accept this decision and have the conservatory removed, I think it's fair he can choose to keep the base as it is if he wants. Unlike other parts of the conservatory, the base can't be used again, and it might be better for all parties to leave it as it is.

Finally, I've thought about Mr C's request for compensation in relation to the tiles; plastering; electrics and heating. But he's not given us evidence of what he's spent and when, and it's not clear what items he won't be able to use again if he decides to buy another conservatory or lean-to. I did acknowledge that there's likely costs he will incur again, but I also set out in my provisional decision why I thought, in the particular circumstances of this complaint, those could broadly be offset against the use Mr C had of the conservatory. I gave Mr C an opportunity to evidence the costs to make good would come to over £500. But he's not provided anything to support that. So without sufficient evidence of losses or prospective losses I'm not minded to change what I've recommended in my provisional decision.

All things considered, Mr C wants MHCC to do more, but I think my provisional decision puts him in a fair position to decide whether he wants to, to a large extent, start again. I also appreciate MHCC thinks taking down the conservatory might be disproportionate, and that it wants another opportunity to arrange an inspection. It's been a long time since Mr C complained. It ultimately had the opportunity to arrange another inspection after it received the first. It had an opportunity to arrange repeat performance. It's not clear that repeat performance will likely resolve things properly. I need to base my decision on the evidence that's presented to me. And taking everything into account, I think what I set out in my provisional decision is a fair and reasonable way to draw a line under things for all parties. So I'm not going to change my recommendations.

My final decision

My final decision is that I uphold this complaint and direct Mitsubishi HC Capital UK to:

1. End the finance agreement with nothing further owing and, in the event there's any adverse information relating to the agreement on Mr C's credit file this should be removed.
2. Arrange for the conservatory to be removed at no cost to Mr C.
3. Refund all payments made by Mr C together with 8% simple interest from the date each payment was made to the date of settlement*.
4. Reimburse Mr C the cost (up to £500) to make good the property after the conservatory is removed, upon receipt of an invoice.

*If MHCC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate 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 C to accept or reject my decision before 19 August 2022.

Simon Wingfield
Ombudsman