

The complaint

Mr S complains that Omni Capital Finance Limited unfairly declined his claim under section 75 of the Consumer Credit Act 1974 for a shed he'd acquired under a fixed sum loan which he says wasn't of satisfactory quality.

What happened

In January 2022 Mr S entered into a two-year fixed sum loan which was only to be used for the purchase of certain goods or services, which in Mr S's case was for a shed he'd selected from a retailer. The total cost of the shed was £1,470 and Mr S paid £147.20 as deposit.

The shed was delivered to Mr S in April 2022. He says that in line with the assembly instructions that were provided with the shed, he'd treated the shed parts prior to building it. Mr S also says that due to where the shed was to be positioned, it wouldn't have been possible to treat the wood once it had been installed.

Mr S says that he and his son are both experienced in working with wood and they arranged to assemble the shed together. He says that before building it, they had found that the shed panels weren't in line leaving large gaps. Mr S says that due to the quality of the shed parts he then decided not to assemble it. Mr S complained to the retailer about two weeks after the shed had been delivered.

Mr S told the retailer he thought the shed wasn't of satisfactory quality and that he wished to have it collected and the agreement cancelled. He also provided photos of the various shed parts to support his complaint. The retailer declined Mr S's request as it said he had treated the wood before assembly which wasn't in accordance with the agreement's terms and conditions as it had been modified.

Mr S made a claim under section 75 of the Consumer Credit Act 1974 to Omni. Omni investigated and declined Mr S's claim as it said the retailer hadn't breached their contract with Mr S. Mr S complained to Omni about its decision, but it didn't uphold his complaint.

Omni said that the retailer was unable to take back items that had been started to be assembled. It also said that as set out in the retailer's terms and conditions "*Wood is a natural material and carries unique characteristics. This results in no two pieces being the same in appearance. Whilst we endeavour to make sure all sections are as equal to one another as possible, it's inevitable there may be misalignment from time to time. This is normally caused by thermal expansion/contraction and with the panels made in different batches, this cannot be remedied. In action to this, we supply cover strips which take the eye*

away from cladding that doesn't match perfectly". It said that the issues raised by Mr S were covered by the terms and conditions.

Mr S was unhappy at Omni's response and complained to this service. He said he was following the instructions in treating the wood before assembling the shed and that it had never actually been assembled because of the gaps that had been discovered when lining up the sides.

Our investigator recommended Mr S's complaint should be upheld. He said that the assembly instructions had said both that the shed should be treated before assembly and also afterwards. Our investigator thought that the retailer had considered the treating of the wood as modifying the structure, but he thought that was unfair as the terms and conditions didn't set out that treating the wood would be considered as making modifications.

Our investigator said he'd seen that the retailer had accepted that Mr S's photos showed that the shed was "*under par compared to our usual standards*" and that given Mr S's experience working with wood, that his assertion the panels didn't line up was reasonable. He said Mr S had sought to exercise his short-term right to reject under the Consumer Rights Act 2015 which the retailer had unfairly rejected.

Our investigator said he thought it would be fair for the shed to be collected, the finance agreement to be cancelled and Mr S to refund his deposit and any monthly payments he'd made under the agreement. Our investigator also said it would be fair for Omni to pay Mr S £150 compensation for the distress and inconvenience caused by dealing with the faulty shed.

Mr S agreed with the view of our investigator, but Omni disagreed. It said that the photos provided by Mr S showed acceptable shed sections that were within the tolerances for wood. It also said that as per the terms and conditions the retailer couldn't accept return of goods that weren't in their original condition.

As the parties were unable to reach an agreement the complaint has been passed to me.

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.

My role here is to decide whether Omni has acted fairly and reasonably in its response to Mr S'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.

Mr S requested that due to a breach of contract due to the quality of the shed that the finance agreement for the goods should be cancelled and all payments made by him be reimbursed. Omni declined the claim as it said there hadn't been a breach because the issues raised by Mr S weren't faults but within usual tolerances from wooden materials.

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 is Omni.

In reaching my decision as to whether Omni has acted fairly, I've looked at the photos

provided by Mr S and also considered the contractual terms and conditions that applied when Mr S purchased the shed. Omni says the photos don't show there were any faults with the shed but rather minor defects that should be expected due to the material and which don't impact on the use and purpose of the shed.

I've seen that the terms and conditions set out that "*it's inevitable there may be misalignment from time to time*" and that the retailer supplied "*cover strips which take the eye away from cladding that doesn't match perfectly*". These terms also set out that the shed came with a guarantee which states that "*Due to the nature of the timber used in the manufacture of the building, there are characteristics that are not covered by the guarantee as minor defects will occur naturally in the material and are also due to changes in the external environment and won't affect the integrity of the building. These are:*

- *Splits in the timber that may occur naturally or due to damage from the assembly.*
- *Warping of the timber, as this will occur naturally over time.*
- *Chips in the timber from knot holes, as these can be repaired easily using non-toxic wood glue.*
- *Sap residue from timber as this occurs naturally.*
- *Colouration of the timber, where pressure treated timber will slightly change in colour over time.*
- *Gaps caused by the expansion and contraction of the timber throughout the seasons*".

So, I accept that it's clear from these terms and conditions that it wouldn't be reasonable to expect the shed not to have some minor defects. However, I've seen Mr S is experienced in handling and working with wood so I think it's fair to say he would have a good understanding of the nature of the material.

Mr S has provided a number of photos of the various parts of the shed. I'm aware the shed wasn't actually assembled as Mr S said the quality of the parts meant it couldn't have been built to suitable standard.

Looking at these photos I can see that the shed panels' cladding would have been misaligned and I accept that this, although impacting on how it looked, wouldn't have necessarily affected its function. There are also some splits in the wood around screw holes which again I accept may not have affected the shed's function. However, it is also clear from some of the photos that the panels weren't straight by a large margin which would have meant sizeable gaps in the walls when assembled.

I've also seen in an email sent by the retailer to Omni that on viewing Mr S's photos it accepted the shed was "*definitely under par*". I think it is reasonable to think that the retailer considered the shed wasn't as would be expected. And although the retailer says that due to the goods being wooden, they would "*change, move and shape over time*", Mr S had only had the shed for around two weeks. So, although wood may change over time, I think it's reasonable for Mr S to have expected he'd be able to build the shed without gaps and crooked walls. The shed should have been of satisfactory quality and fit for purpose when supplied to Mr S.

Mr S described the following in respect of how he'd found the shed, "*the floor would not join together square. Trying to join the panels, not one panel was aligned with another side by side, all out of square. If the top met, the bottom didn't and if the bottom met the top didn't and so full of gaps it would leak like a sieve when it rains*". I think the photos that have been provided support Mr S's description of the shed.

I'm satisfied on the evidence that I have seen that the shed wasn't of a satisfactory quality at its point of supply to Mr S. However, Omni says that because Mr S had treated the shed parts this was in breach of the contract terms and conditions and the retailer was justified in

declining to accept it back. However, I disagree with that view. Looking at the assembly instructions provided to Mr S, these set out that the wood could be treated both before and after assembly. The terms and conditions state that the wood should be treated "*at the time of the first build*" which I think is open to be interpreted as shortly before or after erecting the building.

I also think it was reasonable for Mr S to have treated the wood before the shed was constructed as that would have been far easier than when erected when looking at where Mr S planned to position the shed. So, looking at the instructions and the terms and conditions, I don't think it was made clear that if the wood was treated before the shed was assembled then Mr S wouldn't be entitled to return it. I don't agree that treating the wood is modifying it since that is not set out in any of the information provided to Mr S. And in any event, I think this reason for declining to take the shed back is unfair on Mr S when the shed itself had been inherently fault at the point of supply to him.

I've seen that the retailer was unhappy not to have been given an opportunity of repairing the shed. But I'm satisfied on the evidence that I have seen, that Mr S attempted to use his short-term right to reject the goods as set out in the Consumer Rights Act 2015 and which is also set out in the terms and conditions of the contract. The terms and conditions say that if the goods were found to be defective then Mr S would be entitled to the following: "*a) Up to 30 days: if your goods are faulty, then you can get an immediate refund. b) Up to six months: if your goods can't be repaired or replaced, then you're entitled to a full refund, in most cases*". Mr S had complained to the retailer about the quality of the shed within 14 days and requested to return the goods and cancel the agreement.

I think the retailer acted unfairly in declining to allow Mr S to reject the shed as the evidence he'd provided in the form of photos corroborated his complaint that the goods weren't of satisfactory quality and that there had been a breach of the contract.

So, looking at the evidence I don't think Omni has acted fairly in declining Mr S's section 75 claim in respect of the shed. I think Mr S provided the necessary evidence to show the shed was of unsatisfactory quality and that there had been a breach of contract. He also showed he'd sought to reject the goods within the first 30 days of receiving them and so would have been entitled to a full refund. I'm therefore upholding his complaint.

Putting things right

I'm asking Omni to do the following:

- Arrange for the collection of the goods from Mr S at a time suitable to him.
- Cancel the finance agreement and mark it as settled.
- Remove any adverse information about this account from Mr S's credit file.
- Refund Mr S his deposit of £147.20.
- Refund Mr S all the payments he has made towards this agreement.
- Add 8% simple interest to all refunded amounts from the date of payment until the date of settlement.

I further think that it would be fair for Omni to pay Mr S compensation for the distress and inconvenience caused by his having to deal with the faulty shed and for denying his claim, which included Mr S receiving some subsequent correspondence to Mr S from the retailer. I think £150 would be fair and reasonable in the circumstances.

My final decision

For the reasons set out above, I'm upholding Mr S's complaint. I'm asking Omni Capital Retail Finance Limited to do the following:

- Arrange for the collection of the goods from Mr S at a time suitable to him.
- Cancel the finance agreement and mark it as settled.
- Remove any adverse information about this account from Mr S's credit file.
- Refund Mr S his deposit of £147.20.
- Refund Mr S all the payments he has made towards this agreement.
- Add 8% simple interest to all refunded amounts from the date of payment until the date of settlement. *
- Pay Mr S £150 compensation for the distress and inconvenience caused dealing with the faulty shed and for having his section 75 claim declined.

*HMRC requires Omni Capital Retail Finance Limited deduct tax from this interest. It must provide Mr S with a certificate showing how much tax it has deducted if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 November 2022.

Jocelyn Griffith
Ombudsman