DRN-3747874

The complaint

Mr H complains about a timber framed summerhouse he bought using a fixed sum loan with Omni Capital Retail Finance Limited.

What happened

In June 2021 Mr H bought a flat packed timber framed summerhouse from an online supplier. To pay for the summerhouse, Mr H took out a fixed sum loan with Omni.

Shortly after receiving the summerhouse, Mr H contacted the supplier and told them he found it to be of poor quality. He also said he was disappointed to find the windows were made of plastic, instead of glass. So, Mr H asked to return the summerhouse.

The supplier agreed and told Mr H that they would collect the summerhouse on 14 June 2021. But, Mr H says the supplier didn't follow through with the arrangements. Mr H also says he was working away from his home the day after the planned collection, so hadn't rearranged another date with the supplier.

In his absence, Mr H says a family member built the summerhouse as a surprise, ready for his return. Once back home, Mr H tried to arrange another collection date with the supplier. However, the supplier told Mr H that it was part of the terms and conditions of his agreement with them, that they wouldn't collect the summerhouse, if any assembly had started.

Mr H still wanted to return the summerhouse, so he contacted Omni and made a claim under section 75 of the Consumer Credit Act 1974 (CCA). Omni replied to say they agreed with the supplier, in that as the summerhouse was assembled, he couldn't return it. Omni also said the materials used for the summerhouse were made clear before Mr H entered the fixed sum loan agreement. But, as a gesture of goodwill, Omni offered to pay Mr H ten percent of the cash price of the summerhouse.

Mr H didn't accept Omni's offer and brought his complaint to us. One of our investigators looked into the case and found that Omni hadn't treated Mr H fairly. She said the summerhouse was ready for the supplier to collect on the arranged date. And it was only after the supplier failed to collect the summerhouse, that it was assembled, outside of Mr H's knowledge or control.

The investigator concluded that Omni should collect the summerhouse at no cost to Mr H, refund all the repayments he had made and refund the £165.50 deposit paid to the supplier. The investigator also asked Omni to pay Mr H interest on the deposit amount, as Mr H lost the use of those funds, once he had paid them.
Mr H accepted the investigator's findings, but Omni didn't. They said the supplier's terms and conditions meant Mr H wasn't able to return the summerhouse, once it had been built.

The investigator didn't change her conclusions and now Mr H's case has been passed to me to make a decision.

I sent Mr H and Omni my provisional decision on this case, on 16 September 2022. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

Section 75 of the CCA

This case is about an application for a fixed sum loan agreement, which is a regulated financial product. As such, we are able to consider complaints about it.

The relevant piece of legislation I've thought about is section 75 of the CCA. This provides protection for consumers for goods and services bought using credit. Under section 75, subject to certain criteria, consumers who use a fixed sum loan to pay for goods and services, have an equal claim against the finance provider, for any breach of contract or misrepresentation by the supplier.

In Mr H's case, he says section 75 means he has an equal claim against Omni, because the supplier breached the contract he had with them. So, with what I've said in mind, I agree that Mr H was able to ask Omni to consider if he has a claim under section 75 of the CCA.

The quality of the summerhouse

Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality. The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances.

In Mr H's case, he says the summerhouse was made of poor quality materials. If the goods provided by the supplier are not of satisfactory quality, then this is a breach of contract. So, Omni's responsibility to Mr H is to consider his section 75 claim and decide if the summerhouse was of satisfactory quality. If it's found it was not of satisfactory quality, it would be for Omni to then offer Mr H an appropriate remedy.

The underlying issue with Mr H's section 75 claim is that the summerhouse was assembled before the supplier or Omni could arrange for an inspection of the materials used. This was largely out of Mr H's control, seeing as it was built by someone else without his knowledge or consent. So, I've considered the evidence we do have, to look at the quality of the summerhouse.

Mr H says the person who built the summerhouse made remarks about the materials and the chances of it standing up to various weather conditions. We don't have an expert report from Mr H, but I've looked at the photographs he's provided, showing what he says are poor quality materials.

The photographs show various gaps where the wooden panels meet and holes at points, where Mr H says water ingress could cause further damage. The photographs also show damage to the material used for the windows.

I acknowledge that Mr H has provided evidence of the problems he's found. But, in all the circumstances, I think it's difficult to tell from the evidence we have, if the materials used for the summerhouse are of an unsatisfactory quality. I think Omni's ability to investigate that further was hampered by the assembly of the summerhouse, where it was no longer in a similar condition, to when Mr H took delivery of it.

With this in mind, I think Omni have treated this part of Mr H's section 75 claim fairly.

Misrepresentation

Mr H also says the supplier gave him incorrect information about the materials used within the summerhouse. He says he expected the summerhouse to have glass windows, thicker and treated timber, as well as a different sized guttering.

I've looked at the supplier's description of the summerhouse Mr H bought. It says:

> *"Single styrene glazed double french(sic) doors"*

Mr H says he thought 'glazed' meant the summerhouse doors would come with glass windows. But, I don't think the supplier's description gave Mr H incorrect information. I think the supplier told Mr H, the doors were styrene glazed. And having considered that further, I can see that styrene is similar to plastic, which is what was supplied to Mr H.

I acknowledge that Mr H says the supplier has since changed how the summerhouse is advertised. We don't have previous versions of the supplier's brochure. However, I can see that the supplier offers the option of different types of windows for a further cost. I can also see that the styrene windows are offered as the standard option. Based on all the other evidence, I'm not persuaded Mr H was given incorrect information about the material used for the doors.

The invoice from the supplier to Mr H dated 1 June 2021 doesn't give a measurement for the guttering delivered with the summerhouse. And there isn't any mention of the guttering within the supplier's description of the summerhouse, in the brochure. I accept Mr H may have disliked the guttering he was sent, but I don't think the supplier told him something about it that wasn't true.

I've also considered where Mr H says the timber wasn't pressure treated and not of the correct thickness he was expecting. The invoice shows that Mr H received a 19mm tongue and groove floor. Mr H says this was only 11mm, the same thickness as the cladding. The invoice also says Mr H received pressure treated timber.

Overall, I think what Mr H says differs from the supplier's description from the brochure and the invoice given to Mr H prior to delivery. So, I've considered that the supplier doesn't appear to offer anything different than a 19mm tongue and groove floor and that all the timber supplied is treated as standard. And that I've not seen any persuasive evidence or report from Mr H about the timber.

Having looked at everything, on balance I'm not persuaded the supplier gave Mr H incorrect information about the materials used within the summerhouse. So, I think Omni have treated Mr H's section 75 claim fairly.

The supplier's terms and conditions

I've looked at the emails between Mr H and the supplier sent shortly after the summerhouse was delivered. And I think Mr H correctly exercised his right to change his mind over the purchase. Section 11 of the terms and conditions of Mr H's contract with the supplier say:

> *"If you are a consumer then for most products bought online you have a legal right to change your mind within 14 days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail in these terms."*

Mr H's correspondence with the supplier also shows it was agreed for the summerhouse to be collected on 14 June 2021. So, I think the supplier acted in line with the terms and *conditions of the agreement, by arranging for Mr H to be able to return the summerhouse. However, the supplier didn't follow through with this arrangement, which meant it was for both parties to try and arrange another date. I can see how this was inconvenient for Mr H, as he had plans for the following days, to spend time away from his home.*

Mr H has told us that without his knowledge or permission, a family member built the summerhouse with the intention of surprising Mr H, when he returned from his time away from home. Mr H has explained that the family member is a builder.

Section 11 of the terms and conditions of Mr H's contract with the supplier goes on to say:

> *"Your right as a consumer to change your mind does not apply in respect of:*
>
> *▪ Products which you have begun to assemble;*
>
> *▪ Products you have modified/cut/drilled/changed; and*
>
> *▪ any Products which an ancillary service has been begun to be performed (for example, holes cut for electrical installation)."*

Within the complaint to Omni, Mr H says the assembly of the summerhouse was out of his control and this could have been avoided, had the supplier met the agreed collection date. Omni says that assembling the summerhouse, means it's no longer in a saleable condition.

I've thought carefully about this and although I can empathise with the position Mr H found himself in, I don't think it would be fair to hold Omni responsible for it either. I say this because neither the supplier nor Omni could have foreseen that Mr H's family member would have tried to help out in Mr H's absence.

I think Mr H's contract with the supplier is clear, in that any assembly of the summerhouse would mean his right to return it, would end. I understand the difficulties caused by the family member's attempts to help and how this impacts Mr H's personal circumstances. But, I don't think Omni should have to provide a refund of the repayments made to the fixed sum loan because of the missed collection date by the supplier.

Omni's offer to Mr H

Throughout Mr H's complaint, Omni have said the supplier's offer to refund £165.50 is fair. In addition, Omni have offered to reduce the outstanding balance of Mr H's fixed sum loan by £250. And Mr H still has the summerhouse, albeit he says it's now in a poor condition. So, Mr H may not be able to realise a significant value from any private sale.

Having thought about this further, I think the two amounts go part way to what Mr H had initially asked the supplier for. I accept it's not as much as Mr H wanted, when he first raised his concerns. But, I think Omni's offer is fair and reasonable, taking into consideration my conclusions about Omni's responsibility to Mr H under section 75 of the CCA.

Furthermore, given the passage of time that has now passed, Mr H's fixed sum loan may have been repaid. So, Omni may need to pay the £250 directly to Mr H. I should also add that by endorsing the supplier's offer to pay Mr H £165.50, Omni has a responsibility make sure that part is completed, should Mr H accept this decision.

Finally, I remind Omni of their responsibility to treat Mr H's financial circumstances with due consideration and forbearance, should he need support with the repayment of any outstanding balance of the fixed sum loan.

Mr H didn't accept the provisional decision and in summary, he said:

- Had the supplier collected the summerhouse as planned, it wouldn't have been built.
- The materials used in the summerhouse were of poor quality.
- A report from a builder supports the argument that the materials were of a poor standard.
- Photographs taken since the summerhouse was built, show it wasn't built to last and would never be watertight.
- A professional cleaner was unable to offer their service to clean the summerhouse, as it was in a poor condition.
- He shouldn't have to pay for a summerhouse that he could never have used.

Omni responded and 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.

I acknowledge Mr H's disappointment with my findings and how they differ from the investigator's conclusions. I've read Mr H's additional comments and I've looked carefully at the photographs he's provided. I've also looked at the reports from the builder and the cleaner, who have both summarised the condition of the summerhouse. Having done so I still don't think Omni need to increase the offer they've made to Mr H.

The report from the builder was completed around nine months after the summerhouse had been built. In the report, the builder passes comment on the quality of the materials used and the impact of that, on the quality of the construction. I can see that the builder looked at the summerhouse after it remained in Mr H's garden for a significant time, in what Mr H says was changeable weather conditions.

Moreover, the photographs Mr H has provided are similar to those I've already considered. They do show water ingress and gaps where wooden panels are supposed to meet. But. I've concluded that it's difficult to establish the quality of the materials used in the summerhouse, after it had been built. And, I've not seen anything to change my conclusions here.

Although I've carefully considered what Mr H has sent to us, I'm not persuaded it shows that the summerhouse delivered to him by the supplier was of standard that a reasonable person would say is of unsatisfactory quality.

I've also thought about the report Mr H has provided from a professional cleaner. This report was completed around seven months after the summerhouse was built. Again, the summerhouse had stood in Mr H's garden throughout this time and was subject to the various weather conditions.

The cleaner's report tells us the cleaner declined to offer a quote on the grounds that they thought it too unsafe to work in the summerhouse. But, it doesn't persuade me that the summerhouse itself is of poor quality.

In Mr H's case, I've concluded that the building of the summerhouse has impacted his and

Omni's ability to appraise the goods delivered to him. Overall, I don't think it follows that the missed collection date, resulted in the construction of the summerhouse. This missed collections was indeed down to the supplier. But, I don't think I can fairly conclude that Omni should refund the total cost of the summerhouse to Mr H, as it's subsequent construction wasn't a consequence they could fairly foresee.

Mr H has explained that he may look to cancel his direct debit with Omni. I should add that doing so, may have further implications with the information recorded with credit reference agencies. In any case, I remind Omni of their responsibility to Mr H, to treat his financial circumstances with due consideration and forbearance.

Having considered everything, I still don't think it would be reasonable to hold Omni responsible for the summerhouse being built. I accept this was to some extent out of Mr H's control, but it meant there was an impact on Mr H's contract with the supplier. And while I empathise with Mr H's circumstances, I haven't been able to find that there's been a breach of contract or misrepresentation by the supplier, which he can hold Omni responsible for.

In all the circumstances, I think Omni's offer to reduce Mr H's fixed sum loan account by £250 and to honour the supplier's offer to pay Mr H £165.50 is fair.

Putting things right

For these reasons Omni Capital Retail Finance Limited should:

1. reduce Mr H's fixed sum loan account by £250; and
2. arrange for the supplier's refund of £165.50 to be paid directly to Mr H.

My final decision

My final decision is that I uphold this complaint and require Omni Capital Retail Finance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 November 2022.

Sam Wedderburn
Ombudsman