

The complaint

Mr R complains that Creation Consumer Finance Ltd (“Creation”) were unreasonable to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 (“section 75”).

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my reasons for my 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 know it will disappoint Creation, but I agree with the investigator’s view of this complaint. Please let me explain why.

Where the information I’ve got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a fixed sum loan, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there’s either a breach of contract or misrepresentation by the supplier.

I’m not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what’s a fair way to resolve the complaint, but I don’t have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Section 49 (1) of the Consumer Rights Act (2015) says that:

“Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill”.

I think there has been a breach of contract here as I don’t think the installation has been performed with reasonable care and skill.

I say that because the report provided by an alternative plumbing company who Mr R contacted and who attended the property on 9 July 2021, shortly after the boiler had been fitted, says:

"...investigation led me to see small drops running down on side of shower. Customer explained that boiler fitters opened the nuts on shower to check water was there. Water on cold side had not been tightened back up and was spraying water back inside the wall. Have tightened up and got water back on and tested. Issue is now solved".

Creation now dispute that the boiler installers loosened the shower fitting and the supplier has suggested the leak was caused by an increase in pressure due to the gravity fed system being replaced by a pressurised one. I'm not persuaded by that argument as Mr R has provided photographs that show his shower was pressurised, albeit through a separate pump, and as the leak appears to have come apparent very shortly after the boiler was fitted I think it's very likely the shower connection was loosened by the installers and not retightened before they left.

I'm supported in that argument by the fact that Mr R's testimony has never changed. He suggested to Creation when he first raised his complaint that the shower had been disconnected as there was no water flow from it and the installers wanted to check the supply. He went on to explain that he'd been led to believe the supply had been interrupted because of changes that had been made to the layout of pipework in his loft. The supplier waited sometime before raising any concern that the installers hadn't caused the damage and I think they would have been likely to have raised the issue from the onset had that been a realistic concern.

So, on balance, I think it's likely the leak that led to part of Mr R's ceiling collapsing, damage to an artwork, and damage to his carpet, was due to the installation of the boiler not being completed with reasonable care and skill. I therefore think there has been a breach of contract here and that Creation have been unreasonable to reject Mr R's section 75 claim.

I note that the reason Creation didn't consider the claim any further was because it was being considered by the supplier's insurer. I don't think that was reasonable. Mr R had a like right to claim against Creation as he did against the merchant and it was unreasonable to suspend that claim pending the insurance investigation.

Putting things right

I think it's likely that the damage Mr R reported to his carpet, ceiling, and to a piece of artwork were incurred as a consequence of the breach of contract.

Mr R has provided three quotes to replace the carpet, refurbish his artwork, and repair the ceiling. Our investigator considered those quotes and suggested Creation should pay Mr R £2,000 in respect of the ceiling repairs, £900 for carpet repairs, and a sum of £300 in relation to the damage to the artwork Mr R has evidenced. The ceiling quote seems a reasonable amount given the spread of the quotes received and the likelihood that prices will have risen in the interim. The carpet quotes average out at not far off £900 and that therefore seems fair as well. Whilst the quotes to repair the painting vary quite markedly, I think a fair resolution would be to take the estimated purchase price that Mr R has provided into account and ask creation to pay Mr R £300.

Our investigator suggested Creation should pay Mr R £200 to compensate him for the distress and inconvenience he's experienced. I note that Mr R has asked for this to be reconsidered. When looking at a section 75 claim I'm asked to consider whether the

business (Creation) have been fair and reasonable when considering the claim. I'm not asked to consider the distress and inconvenience caused by the supplier or their chosen installers, but I can consider any distress and inconvenience caused by Creation. Creation could have resolved this matter sooner for Mr R and I think some of the delay can be attributed to them asking, I think unfairly, to wait for the insurers to pay out. Taking all of the circumstances into account I'm persuaded that there has been some distress and inconvenience caused by Creation, but I think £200 is sufficient compensation.

My final decision

For the reasons I've given above I uphold this complaint and tell Creation Consumer Finance Ltd to:

- Pay Mr R £2,000 in respect of the ceiling repairs.
- Pay Mr R £900 in relation to the repairs to his carpet.
- Pay Mr R £300 in respect of the damage to artwork.
- Pay Mr R £200 to compensate him for the distress and inconvenience their actions have caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 February 2023.

Phillip McMahon
Ombudsman