

## **The complaint**

Miss A complains about the installation and the quality of nine windows and one exterior door in her home, which she paid for by using a fixed sum loan agreement with Mitsubishi HC Capital UK Plc.

## **What happened**

In May 2021 Miss A entered into a fixed sum loan agreement with Mitsubishi, to pay for the supply and installation of nine brand new windows and an exterior door. The door and the windows were supplied and fitted by a company who I'll call 'S'.

After the installation was completed, Miss A signed a satisfaction note with S. But, around a month later, Miss A complained to S about the quality of the items she had bought and about the quality of the installation. Miss A also complained to S about some damage she says they caused to her washing machine.

By early 2022, Miss A hadn't managed to find a resolution with S. Although she says S offered to cover the cost of replacing the washing machine door as a gesture of goodwill. So, Miss A raised a claim under section 75 of the Consumer Credit Act 1974 ("section 75") with Mitsubishi.

Over the next two months, Mitsubishi arranged for S to revisit Miss A's home to look into her concerns about the installation. Mitsubishi also arranged for an independent engineer to produce a report on the quality of the items and the work to install them. In the meantime, Miss A contacted us to look into things. Miss A also says she started to purchase floor tiles, to put some of the repairs right herself.

The independent engineer gave Miss A and Mitsubishi their report in August 2022. The report found that the windows and the door conformed with building regulations and operated correctly. And while the report said the overall quality of the installation was good, some minor repairs were needed. The report estimated that the repairs would cost up to £700.

Following the engineer's report, Mitsubishi offered to make arrangements with S for them to carry out the repairs identified. Alternatively, if Miss A didn't want S to make the repairs, Mitsubishi offered to refund Miss A for the cost, if she wanted a different tradesperson to carry them out.

Miss A didn't accept Mitsubishi's offer and asked us to look into the outcome of her section 75 claim. One of our investigator's considered what had happened and found that Mitsubishi had treated Miss A fairly. She concluded that Mitsubishi's offer to either arrange or pay for the repairs identified in the report was fair. The investigator also said Mitsubishi hadn't breached their contract with Miss A, when looking at the quality of the items. And she said S had already offered to pay for the replacement of the washing machine door.

Miss A didn't agree and said she wanted further compensation for the work she's paid for, to tile a whole floor surface. She also said Mitsubishi's offer had come too late and it was

outside of the scope of the engineer's report.

The investigator didn't change her conclusions, so Miss A's case now been passed to me to make a final 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.

In doing so, I'd like Miss A to know that I'm aware that S carried out the work to install the items into her home, over two years ago. While I can see that during this time, Miss A has arranged for some repairs herself, I've thought very carefully about what has happened and the impact she says these events have had.

I also 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'm required to decide matters quickly and with minimum formality.

But, I want to assure Miss A and Mitsubishi 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.

### *The section 75 claim*

Miss A paid for the windows, the door and their installation using a fixed sum loan. This is a regulated consumer credit contract, 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 makes Mitsubishi responsible for a breach of contract or misrepresentation by S, under certain conditions. In Miss A's case, I think the necessary agreement between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time.

Additionally, the CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

It's important to note that I'm not considering a complaint against S. I'm considering a complaint against Mitsubishi. So, I have to consider Mitsubishi's obligations as a provider of financial services. In this case their liability for breach of contract or misrepresentation under section 75.

It's also important to note that compensation for distress and inconvenience caused by a supplier is limited with this type of complaint. I appreciate Miss A is very upset about what's happened in her dealings with S. But, I have to consider what Mitsubishi can be held responsible for, which is the like claim Miss A would have in court against the supplier for breach of contract or misrepresentation.

### *The quality of the windows and the door*

Miss A wrote to S in January 2022 and said that she'd be supplied with a substandard product. But, there isn't any further comment or paperwork to support why Miss A thought the items were not of a satisfactory quality. Much of Miss A's further correspondence with S and then Mitsubishi, centres on the installation and the time taken to arrange for the engineer's inspection.

From looking at the correspondence between Miss A and S, I can see that S wanted Miss A to agree to accept the findings, before the independent inspection had been carried out. This didn't help matters, as I don't think it was fair to expect Miss A to agree to an outcome that had yet to be made.

Other than what Miss A has told us, neither Miss A nor Mitsubishi have provided any evidence to show that the nine windows or the door have a fault. So, I've thought about the comments made about the quality of the items in the engineer's reports. On page six of the report, it says:

*"The windows and doors installed are compliant with all relevant building regulations."*

And

*"All windows and doors operated correctly."*

Without any persuasive evidence to suggest otherwise here, on balance, I don't think a reasonable person would say the items bought using the fixed sum loan agreement are of unsatisfactory quality. So, I don't think there has been a breach of contract for the quality of the items provided by S. It then follows that I think Mitsubishi have treated this part of Miss A's section 75 claim fairly.

#### *The installation of the windows and the door*

A month after the installation of the items Miss A bought using the fixed sum loan agreement, she complained to S about how the items had been fitted. She said, S had removed an existing doorstep and window sill without asking her and that the replacements didn't match what was there previously.

Miss A also said some of the windows had larger than expected gaps where the beads had been fitted. Furthermore, Miss A said the opening of the patio door wasn't smooth and caught on something when she tried to operate it.

Within the engineer's report, I can see that on page nine it says:

*"The overall quality of this installation is good, however there are some minor remedial works to complete on the patio door and sealing or pointing under the rear first floor windows."*

The engineer also commented on the window beading, where on page seven of the report it says:

*"In some locations the joint is not as tight, there is a gap of approximately 0.75mm. This slight inconsistency is within the industry accepted tolerance of 1mm and so it is my opinion that this issue is not one that requires further remedial action."*

The report goes on to summarise what Miss A told the engineer about the removal of a window sill and tiled doorstep. While the report doesn't make a conclusion whether S has

done something wrong, it does say that a tiled finish could be reinstated. The engineer also says the cost of the repairs are estimated to be between £500 and £700.

I've considered the submissions from Miss A and Mitsubishi. Miss A has supplied some photographs of examples of things wrong with the installation of the items. Mitsubishi and S have acknowledged where things have gone wrong. And I understand there's also been various attempts by S to remedy issues.

So, along with the report, I think there's enough to demonstrate there's been a breach of contract because the installation wasn't carried out with reasonable skill and care. Where rights under a services contract aren't met, the CRA sets out that depending on the circumstances, consumers can request a remedy. These remedies can include either repeat performance or a price reduction. So, I've considered if the remedy offered by Mitsubishi is a fair resolution in Miss A's case.

#### *The settlement to Miss A's complaint*

Mitsubishi have offered to arrange for S to remove and replace the UPVC window boards from the window sill and the doorstep. The offer also includes work to repair the patio door, make good the doorstep and to repair the sealing under the first floor windows.

Should Miss A not wish for S to carry out the repairs, Mitsubishi have said they will reimburse her for the costs of employing her own tradesperson.

Having considered everything, I think Mitsubishi have responded to Miss A's section 75 claim fairly. I think the offer allows Miss A to put the repairs noted in the engineer's report right, either by using S, or a tradesperson of her choosing.

Mitsubishi haven't said how much they would reimburse Miss A, if she chooses to ask a different tradesperson to carry out the repairs. But, given the estimates in the engineer's report and considering it's been a year since the report was produced, I think it's fair that these costs are capped at £700. I also think it's fair for Miss A to provide a description of the works and proof of payment, to claim back the cost from Mitsubishi.

I'm aware that Miss A would like Mitsubishi to cover the cost of tiling the whole of a floor surface, when she saw that S had removed the tiles from the doorstep. However, I can see that Miss A bought the tiles to do this in April 2022, which was before the independent inspection had taken place.

Furthermore, I can see from S's later correspondence with Miss A, that they are able to use a tile matching service, to replace the tiles that Miss A says were on the doorstep previously.

While I understand why Miss A wanted a consistently tiled finish in her home, I think Mitsubishi had treated her fairly, by wanting an independent inspection first. Had Miss A not replaced the tiles herself before the report was done, on balance, I think the tile matching service offered by S would have been available to her. So, I don't think Mitsubishi needs to pay for the tiling of the whole floor, which Miss A has asked for.

During her complaint to us, Miss A says Mitsubishi offered to pay for the replacement of her washing machine door. Mitsubishi say any offer to do so by S, was made as a gesture of goodwill, rather than an admission that they caused the damage.

I've looked at the photographs that Miss A has provided and I haven't been able to see the damage Miss A has told us about. And I don't think the photographs prove that S was responsible. After taking everything into consideration, on balance, I'm not persuaded S

caused damage to the washing machine door.

The gesture of goodwill to pay for a replacement door by S, may still be available to Miss A. So, I leave it to her to decide if she'd like to accept that that gesture and to contact S directly.

I appreciate Miss A is unhappy that she's been living with an installation that needs to be put right. However, I don't think the nature of the issues have caused significant physical inconvenience or discomfort. So, I don't it would be fair to ask Mitsubishi to make a payment to Miss A for the distress and inconvenience she's told us about.

### **Putting things right**

To put things right, Mitsubishi HC Capital UK Plc should arrange for S to:

- remove and then replace the UPVC window boards in the cloakroom;
- remove and then replace the UPVC window boards on the threshold to the back door
- finish off and make good the backdoor step with concrete;
- make the adjustment to the patio door; and
- scrape out the sealant under the external sills of both bathroom and rear bedrooms and then to replace it with either clear silicone sealant, or point with sand and cement.

Or, if Miss A chooses, Mitsubishi should reimburse her the reasonable cost (up to £700) for the repairs, subject to a description of the works and evidence of the cost having been paid.

### **My final decision**

For these reasons, my final decision is that I uphold this complaint and Mitsubishi HC Capital UK Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 13 October 2023.

Sam Wedderburn  
**Ombudsman**