

The complaint

Mr H complains about the quality of a bathroom refurbishment undertaken by a company that I will call "K", a transaction that was financed by way of a fixed sum loan agreement ("finance agreement") with Creation Consumer Finance Ltd trading as Creation.Co.Uk ("Creation").

What happened

On 21 August 2020 Mr H entered into a contract with K for a bathroom refurbishment costing £8,346.00. On the same day Mr H entered into a finance agreement with Creation for the same sum. Under the terms of the finance agreement, everything else being equal, Mr H undertook to make 180 monthly payments of £87.03 making a total sum repayable of £15,665.40 at an APR of 9.9%.

On 2 September 2020 K confirmed to Mr H that the bathroom "goods" would be delivered on 16 October 2020 and the refurbishment would commence in the week beginning 19 October 2020. Mr H says K initially agreed a refurbishment date with him of 21 September 2020.

On 4 September 2020 K agreed to a goods delivery date of 2 October 2020 and a refurbishment date commencing in the week beginning 5 October 2020.

On 2 October 2020 K contacted Mr H to confirm that the goods would now be delivered on 6 October 2020 (with the refurbishment beginning the same day).

On 5 October 2020 K contacted Mr H to confirm that the refurbishment would now commence on 7 October 2020.

On 7 October 2020 the refurbishment commenced. But due to the fitter suffering an injury it wasn't completed.

On 14 October 2020, and with the refurbishment still not completed, Mr H contacted K.

On 15 October 2020 a second fitter attended Mr H's property and concluded there were a number of issues with the refurbishment and substantial remedial works were required. K said it would start the necessary remedial works in the week beginning 26 October 2020.

On 16 October 2020 Mr H contacted K to arrange for rubbish placed in his front garden to be removed.

On 22 October 2020 most of the rubbish, but not all, was collected from Mr H's front garden by K.

On 22 October 2020 K contacted Mr H to say that it would like to complete the refurbishment in the week beginning 26 October 2020, but it wasn't prepared to pay anything by way of compensation.

On 23 October 2020 Mr H contacted K to say his contract for the refurbishment should be treated as cancelled by him.

On 26 October 2020 K contacted Mr H to say that it would complete the refurbishment on 30 October 2020. Mr H then contacted K to say that he had cancelled the contract for the refurbishment on 23 October 2020.

On 26 October 2020 Mr H contacted Creation.

On 28 October 2020 Mr H asked another company that I will call "J" to inspect the bathroom refurbishment and to quote for remedial works.

On 30 October 2020 K contacted Mr H to say that it would like to complete the refurbishment and that it was entitled to be given the opportunity to do so.

On 2 November 2020 Mr H contacted K to say that he believed the finance agreement had been mis-sold to him and he had been quoted £8,468.22 by Creation to settle it, £122.22 more than the capital sum 'advanced' of £8,346.00.

On 3 November 2020 K contacted Mr H to say, amongst other things:

- It was satisfied that Mr H had contracted with it for a bathroom refurbishment at a cost of £8,346.00 and the finance agreement hadn't been mis-sold to him.
- Under the refurbishment contract, it was entitled to move supply and refurbishment dates.
- The refurbishment had to be "*halted*" due to the (first) fitter injuring himself on "*day 6*" of the refurbishment.
- It accepts that the (second) fitter, who attended the property on 15 October 2020, "*found that some works were not up to the standard required and some further materials and works would be needed to bring to standard*".
- It was prepared to complete the refurbishment, but Mr H had refused it access to his property.
- It accepted there were issues with the supply of one or more bathroom goods ordered.
- On Mr H allowing it access to his property, it was prepared to complete the refurbishment, pay him £250 and refund him the £122.22 'cost' of settling the finance agreement.

On 11 November 2020 Mr H settled his finance agreement with Creation in full.

On 14 November 2020 K contacted Mr H to say completion of the refurbishment had been scheduled for 18 November 2020. Mr H contacted K to reiterate that he had cancelled the refurbishment contract on 23 October 2020.

On 15 November 2020 K contacted Mr H to say the refurbishment contract still 'stood' as did all its rights under it.

On 24 November 2020 Mr H noticed water leaking from the bathroom into the toilet directly below.

On 7 December 2020 K contacted Mr H to see if was prepared to accept its offer of 3 November 2020.

On 9 December 2020 Creation contacted Mr H to enquire whether he had secured a refund from K and if not whether he would like it to consider a claim from him under section 75 of the Consumer Credit Act 1974. Mr H confirmed to Creation that he would like it to look at a claim from him under section 75 of the Consumer Credit Act 1974.

On 18 December 2020 K contacted Mr H to say that if it didn't hear from him by 4 January 2021 it would treat the refurbishment contract "*as satisfied*".

On 19 December 2020 Mr H contacted K to say that he wouldn't accept the refurbishment contract as satisfied and he had now instructed a solicitor who would be in touch in due course.

On 24 December 2020 Mr H noticed water coming through the bathroom lights.

On 30 January 2021 Mr H advised his (second) appointed solicitor that he had appointed a builder that I will call "J" to complete his bathroom refurbishment on 8 February 2021.

On 12 February 2021 J completed Mr H's refurbishment to his satisfaction at a cost of £6,740.00 (£5,915.00 as originally quoted plus £825.00 for further works).

On 25 February 2021 Mr H contacted Creation.

On 9 April 2021 Mr H contacted his appointed solicitor to say that it had now come to his attention that there were issues with the fuse box upgrade undertaken by K as part of the bathroom refurbishment contract price of £8,346.00.

On 10 May 2021 Mr H's appointed solicitor contacted both K and Creation. K responded to say it was still prepared to complete the refurbishment. Creation didn't respond.

On 5 July 2021 Mr H's appointed solicitor contacted both K and Creation.

On 11 August 2021 Mr H referred matters to our service.

On 16 August 2021 Mr H's appointed solicitor contacted K to say that it believed it was in breach of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

On 29 September 2021 Creation issued Mr H with a final response letter ("FRL"). Under cover of this FRL Creation said that K doesn't dispute that there were issues with the bathroom refurbishment. But because K has always been prepared to complete the refurbishment, it has no liability under section 75 of the Consumer Credit Act 1974.

On 20 October 2021 Mr H's appointed solicitor contacted K. It also suggested to Mr H that he hold off issuing court proceedings against K until after our service had concluded our investigation into his complaint (about Creation).

In April 2022 one of our investigators came to the view that Mr H's complaint should be upheld, and that Creation should refund him £4,173.00 (plus interest), £4,173.00 being 50% of the original bathroom refurbishment contract price of £8,346.00.

Mr H accepted the investigator's view, but Creation said that it would like sight of a number of documents supplied by Mr H to our service (and which the investigator had relied on) before it could confirm acceptance or rejection.

The investigator provided Creation with what he felt it fairly and reasonably needed sight of in order to be able to decide whether it wanted to accept or reject his view.

In July 2022 Creation forwarded a response it had received from K, but it didn't say whether it was accepting or rejecting the investigator's April 2022 view.

Following the above communication, the investigator confirmed to Creation that he stood by his April 2022 view and that he would be grateful if it could confirm its acceptance or rejection of it.

Creation didn't come back to the investigator to confirm its acceptance or rejection of his view, so Mr H's complaint was passed to me for review and decision.

In February 2023 I issued my provisional decision on this case. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what's fair and reasonable, I'm required to take into account relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

The relevant law in this case includes, but isn't restricted to, the Consumer Credit Act 1974 (in particular section 75) and the Consumer Rights Act 2015.

I would also like to make it clear that I'm only considering in this decision Mr H's complaint against Creation, not any complaint he might have against K. I would also like to make it clear that I'm unable to say what bearing (if any) Mr H's acceptance of this decision, and any final decision that I issue, might have on any court proceedings he might wish to instigate against K (or any other party).

It's clear Mr H has very strong feelings about this complaint. He has provided detailed submissions in support of his view which I can confirm I've read and considered in their entirety. However, I trust that Mr H will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

The effect of section 75 in this case is that, if Mr H has a claim for breach of contract against K, he has a like claim against Creation. That's because it financed the purchase with credit provided to Mr H under arrangements with K.

Under the Consumer Rights Act 2015 the contract between Mr H and K was to be read as including a term that the bathroom would be of satisfactory quality and the refurbishment would be undertaken with reasonable care and skill. And the same Act includes provisions about the appropriate remedy where this doesn't happen.

Creation accepts that the supplied bathroom was of unsatisfactory quality and the refurbishment wasn't undertaken with reasonable care and skill. But it says it isn't liable to Mr H under section 75 because of what K said it was prepared to do to remedy its contract breach.

The Consumer Rights Act 2015 provides for a range of possible remedies where goods aren't of satisfactory quality. They include, for example, repairs, replacement, a refund, price reduction and rejection. What is appropriate will depend on the circumstances – including the nature of the goods and of the defect.

In most cases involving the supply of unsatisfactory goods and/or the provision of an unsatisfactory service the most appropriate remedy is for the supplier to be given one opportunity to make 'things good', an opportunity Mr H refused K. But this doesn't mean Creation was correct to conclude that it wasn't liable to Mr H under section 75.

In this case I can see that there were, amongst other things, a number of cancelled refurbishment start dates and that the refurbishment (once underway) had to be halted through no fault of Mr H. I can also see that in the opinion of K's second fitter and J the quality of the refurbishment (up to the point in time it was halted) was very poor and required substantial (rather than just minor) remedial works.

With the above in mind and having viewed the collection of photographs supplied by Mr H in support of his claim/complaint, I'm not persuaded it was entirely unreasonable for him to have refused K the opportunity to carry out remedial works and complete the refurbishment.

But even if I was to find that Mr H should have allowed K to undertake remedial works and complete the refurbishment, this is no longer possible given that Mr H has since had the necessary works undertaken by J. Also having had these works undertaken by J also means that replacement and rejection of the goods isn't an option, at least not a viable one.

This leaves a refund, or a price reduction as possible remedies.

Like the investigator I'm satisfied that a full refund wouldn't be an appropriate remedy given, amongst other things, Mr H received at least some value for the work undertaken by K and that some of the items supplied by K were reused by J. So, this leaves a price reduction as the only viable remedy.

I've considered what an appropriate price reduction might be. And having done so I can confirm that I agree with the investigator's findings that taking everything in the round a price reduction of 50% of the 'invoiced' cash price is both fair and reasonable in the particular circumstances of this case. Therefore, I find that to fairly and reasonably compensate Mr H Creation should pay him £4,173.00 together with interest at 8% simple a year from the date he settled the finance agreement to the date of settlement.

For the sake of completeness, and for the avoidance of any doubt, I can confirm that I've considered the rights Mr H has under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

It might be the case that under the above regulations Mr H is entitled to an award of more than £4,173.00. But I'm tasked with deciding what is ultimately fair and reasonable in all the circumstances having regard to the law. In other words, I'm not bound by the law, and I can come to a different outcome to the one a court might reach when presented with the same facts.

And taking everything into account, I'm satisfied that a price reduction of 50% of the 'invoiced' cash price is both fair and reasonable in the particular circumstances of this case.

Both parties responded to my provisional decision to say they accepted it.

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.

Given that both parties have confirmed they accept my provisional findings I see no reason to depart from them and I now confirm them as final.

My final decision

My final decision is that Creation Consumer Finance Ltd trading as Creation.Co.Uk must:

- pay Mr H £4,173.00, representing a 50% refund of the invoiced cash price of £8,346.00
- pay Mr H interest on the above sum of £4,173.00 at 8% simple a year from the date he settled his finance agreement to the date of settlement*

** HMRC requires Creation Consumer Finance Ltd trading as Creation.Co.Uk to take off tax from this interest. If M H asks for a certificate showing how much tax has been taken off this should be provided*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 April 2023.

Peter Cook
Ombudsman