

The complaint

Mrs T is unhappy that Creation Consumer Finance Limited, trading as Creation has declined the claim, she made under section 75 of the Consumer Credit Act 1974.

What happened

In April 2022 Mrs T entered into a fixed sum loan agreement with Creation for the supply and installation of a conservatory and front door. The total cost was £21,000. Mrs T paid £6,000 deposit and borrowed £15,000 towards the purchase. She agreed to make monthly repayments of £216.89 over ten years.

Mrs T says the supplier advised that the installation would be completed by June 2022, but there was a delay in the supplier (who I'll refer to as "W") providing the conservatory window panels and she was unhappy with the fitting of the doors. Unable to resolve her concerns with W, Mrs T contacted Creation in September 2022 for help. Mrs T explained there was water ingress, due to the conservatory still being without window panels and advised the problems with the doors were still outstanding.

Creation got in touch with W for an update and agreed to put Mrs T's account on hold. Due to the water ingress and the weather conditions Mrs T arranged for a third party to supply and fit the missing window panels for £720 in September 2022. She provided Creation with photographs showing the outstanding issues with the doors. In October 2022 W advised the window panels were in stock and it could now fit the window panels, it also advised Creation that it had completed all outstanding remedial works. On this basis Creation declined Mrs T's section 75 claim.

Unhappy with the outcome Mrs T complained, Creation didn't think it had done anything wrong. Mrs T referred her complaint to our service. She also provided evidence of leaking by the door seal, detached guttering, and gaps around the doors. Mrs T discovered that Creation had recorded adverse information on her credit file, which she said had impacted her credit rating.

Our investigator thought there was sufficient evidence to show the installation wasn't of satisfactory quality, so thought there had been a breach of contract by W. Due to the delays and the problem with the water ingress, he thought it was reasonable for Mrs T to arrange for another supplier to supply and fit the window panels. He recommended that Creation reduce the cost of the finance agreement by the £720 cost incurred for the window panels. He also said Creation should arrange for the outstanding remedial work to the doors and guttering. And recommended that it remove any adverse information from Mrs T's credit file and pay her £300 compensation to reflect the frustration caused.

Creation agreed with the investigator's recommendations. Mrs T didn't. She doesn't think the compensation goes far enough. She wants the finance agreement to be cancelled and for no further payments to be due, she says she will arrange for the remedial works to be completed.

The case was passed to me for 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.

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. And our rules allow me to do this, which reflects the informal nature of our service.

When something goes wrong and the payment was made, in part or in whole, with a point-of-sale 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. Mrs T has told us how unhappy she is with W's service; she experienced a significant delay getting the window panels and there is still some remedial work outstanding. However, I think it would be helpful if I clarify that I'm not looking at W, rather my role is to consider whether Creation handled her section 75 claim fairly and if not, whether I think it needs to take any action to resolve her complaint.

was there a breach of contract?

I'm satisfied from the images and video footage provided by Mrs T of the front door, conservatory doors and the guttering that the work carried out by W wasn't satisfactory. In addition, W failed to supply and fit the window panels within a reasonable length of time. In the circumstances I'm satisfied that the W's actions amount to a breach of contract.

The usual remedy for a breach of contract is to put the consumer in the same position as if the breach hadn't occurred. That might be reimbursing costs incurred or requiring remedial work to take place. I'm aware that more recently Mrs T has asked for the finance agreement to be cancelled with nothing further to pay, she has said this will allow her to arrange for remedial works herself.

Mrs T hasn't provided a report or anything to indicate the outstanding issues can't be addressed without difficulty nor anything to show the cost of the remedial works is anywhere near the value of the outstanding finance. In the circumstances, I don't think it would be fair to require Creation to write off the remaining balance on the loan agreement.

Mrs T has evidenced she paid another supplier for the window panels to be supplied and fitted. So, I think a proportionate solution is for Creation to either reduce Mrs T's finance agreement by the £720 or if she prefers, for it to refund her the £720 payment, adding 8% simple interest per annum from the date of the payment until the date of settlement. Given Mrs T has lost faith in W and she is concerned there may be additional issues due to the poor installation, I think it is fair for Creation to arrange for a suitably qualified contractor (this should be someone, other than W) to inspect the installation and complete any outstanding remedial works identified with the conservatory installation, guttering and doors.

adverse credit information and customer service

Mrs T says Creation agreed to give her a payment holiday whilst it investigated her complaint. However, she says she wasn't told this could negatively impact her credit score. And I can't see that she was made aware of this, so I don't think this was fair.

Mrs T says that as a result of the payment holiday her bank reduced her spending limit on her credit card. And she has provided a letter from her bank in December 2022. I can't be sure whether Mrs T would have agreed to the payment holiday if she had been made aware that it could impact her credit rating or whether she would've continued to make her monthly payments; In any event a card issuer can decrease credit limits at will for a number of different reasons and the letter from the bank doesn't confirm the payment holiday was the sole reason for the reduced credit limit. Neither has Mrs T provided any evidence to show she lost out financially due to the impact of the payment holiday. In the circumstances, I think it's fair and reasonable for Creation to remove all adverse information recorded on Mrs T's credit file.

Mrs T has told us how stressful it was waiting for W to fit the window panels and about the stress caused by it making various promises but not resolving the outstanding issues. And whilst I sympathise with her, I'm not considering W's actions here. Having looked at the way Creation handled Mrs T's section 75 claim; I think it handled the claim promptly. However, I do think it would have been reasonable for Creation to go back to Mrs T to check whether the remedial works had been completed, rather than just relying on what W had said, given Mrs T had provided it with photographs of the outstanding issues

Taking everything into consideration, I think it's fair and reasonable for Creation to pay Mrs T £300 compensation to reflect the frustration caused by not advising her about the impact of a payment holiday and for failing to check with her that W had completed the outstanding remedial works.

I appreciate that Mrs T will be disappointed with my decision, given how strongly she feels about what happened. She doesn't have to accept my decision and may wish to pursue this matter through alternative routes. But this decision brings our involvement in this matter to an end.

My final decision

My final decision is I uphold the complaint and direct Creation Consumer Finance Limited, trading as Creation to;

- reduce the outstanding balance of the fixed sum loan agreement by £720 (to reflect the payment made to the third party to supply and install the window panels) or if Mrs T prefers, refund her the £720 payment, adding 8% simple interest per annum from the date of the payment until the date of settlement
- arrange for the inspection of the conservatory installation, guttering and front door and organise for any issues identified to be remedied by a suitably qualified contractor (this should be someone, other than W)
- remove any adverse information relating to the loan agreement recorded on Mrs T's credit file (for clarification this includes any default recorded) and;
- pay Mrs T £300 compensation to reflect the distress and frustration it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 12 July 2023.

Karen Dennis
Ombudsman