

The complaint

Miss S complains about the supply and installation of five windows and a door to her home. To pay for the goods and their installation, Miss S used a fixed sum loan with Creation Consumer Finance Ltd.

What happened

In February 2021, a supplier, who I'll call 'A', completed a survey at Miss S's home to help them provide her with a quote for some new windows and a door. Shortly after reaching an agreement with A, Miss S sent them an email to say she had changed her mind. She says A told her that as they had already started to manufacture the goods she'd agreed to buy, it was too late to cancel her order.

A week after Miss S's conversation with A, she signed a fixed sum loan agreement with Creation, to pay for the goods and installation. A few months later in June 2021, A completed the work to Miss S's home, prompting Creation to make the payment to A and for Miss S's fixed sum loan to start.

But, soon after the installation, Miss S noticed some parts of the work she wasn't happy with. Amongst other things, she said there were large gaps around the windows, evidence of condensation and that the front door didn't lock properly. Miss S sent several messages to A, but didn't get a response. So, she raised a claim under section 75 of the Consumer Credit Act 1974 ('section 75') with Creation.

Neither Miss S, Creation nor A could agree on the repairs needed to put things right. So, Miss S complained to Creation about how they'd handled her section 75 claim. And because she remained unhappy with Creation's response to her complaint, Miss S contacted us to look into her case.

While we were looking into her complaint, Miss S arranged for a repair to the door handle. She also paid for an independent report to be carried out by an engineer, to inspect the installation of the windows and the door.

The report concluded that building regulation compliance hadn't been achieved and that the installation hadn't been surveyed in accordance with the relevant code of practice. To put things right, the report recommended the removal and replacement of three of the five windows. The report also said a fourth window and the door needed repair, as well as some repairs to the plasterwork near the front door.

One of our investigators looked into the case and concluded A had breached the contract they had with Miss S. So, under section 75 they said Creation needed to offer a remedy. The investigator found that Creation should end the fixed sum loan agreement, refund the repayments Miss S had made and pay her £250 for the distress and inconvenience caused.

Additionally the investigator said Creation should remove any adverse information from Miss S's credit file, pay for the cost of the inspection report and the repairs to the plasterwork. The conclusions went on to say that Miss S would then be free to have a

different supplier carry out the replacements and repairs.

Miss S accepted the investigator's findings and provided quotes for the plasterwork she says is needed to her home. Creation accepted some of the points put forward by the investigator. But, they didn't think they should be responsible for all of the repairs to the plasterwork.

As things couldn't be resolved, Miss S's complaint has been passed to me to make a decision. After reviewing Miss S's case, I issued a provisional decision that said:

I'm aware of the time that has elapsed since Miss S first raised her complaint with Creation. Indeed it has been around two years since the work was completed by A and from when Miss S first raised her concerns. I acknowledge the very difficult personal circumstances which Miss S has explained to us. I also empathise with the difficulties she must have had, with keeping her home safe and warm.

Within my decision, I've summarised the various circumstances 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 S and Creation 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 fixed sum loan agreement

Miss S paid for the five windows and the door using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

The relevant law in this case is section 75. This makes Creation responsible for a breach of contract or misrepresentation by A, but only under certain conditions. Having considered that further, I think the necessary relationships 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. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also 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 A. I'm considering a complaint against Creation. So I have to consider Creation's obligations as a provider of financial services. In this case I have to think about the liability for a breach of contract or misrepresentation under section 75.

The supply and installation of the goods

Miss S complained to A within a few days of the installation of the windows and the door. In her complaint, she said A had installed incorrectly sized frames, the windows showed signs of condensation and that the lock didn't work properly on the front door.

I can see from the correspondence between Miss S and Creation that the work carried out by A wasn't looked at until a surveyor went to Miss S's home in April 2022. I'm aware that part of this delay was because Miss S told Creation that she had to isolate, after suffering an injury. But, I can also see that A didn't return to Miss S's home, despite numerous attempts

by Miss S to ask them to do so.

In August 2022, Miss S paid £480 for an independent engineer to carry out an inspection report on the supply and installation of the windows and the door. Amongst other things, the report commented on three of the windows and said:

“The size of the frame was not necessary and the windows should have had the same smaller section to make them uniform.”

In her initial complaint to A, Miss S told them about her concerns about the size of the frame used on some of the windows. This led her to complain that A hadn't provided the correct items and the items they had provided were not of a satisfactory quality. These concerns are supported by the photographs Miss S provided and those taken by the engineer in the inspection report.

The engineer also found that:

“The installation has not been surveyed in accordance with BS8213-4:2016 Windows and doors. Code of practice for the survey and installation of windows and external doorsets. Building regulation compliance has not been achieved with regard to Approved Document C – Site preparation and resistance to contaminants and moisture.”

In the conclusions, the engineer said that three of the five windows and their frames should be replaced to match the standard of the others. The report also says that a fourth window needed repairs to the outside edge, the hinge and the glazing. Finally, the report also said repairs were needed to the external sill and a panel on the front door, while the area above the door needed replastering.

After considering the report, Creation accepted that repairs were needed following the work carried out by A. Having thought about the report, the pictures provided by Miss S and the correspondence between all parties, I think A supplied goods that were not of a satisfactory quality to Miss S.

I also think the installation of the windows and the door wasn't performed with reasonable care or skill. So, in all the circumstances, I think A breached the contract they had with Miss S, meaning Creation should offer a remedy.

Creation has asked that A be given the opportunity to put into place the recommendations of the engineer's report. The CRA sets out that this is a remedy available to Creation. But, Miss S says she complained to A about the windows and the door, the day after they were installed. And I can see from the correspondence from Miss S, that she continued to ask A to carry out repairs in the months that followed.

Having considered everything, I think Miss S has already given A and Creation a fair opportunity to carry out the repairs. I think A attempted repairs in April 2022, but they didn't work and this is supported by the engineer's report in August 2022. Because the repair didn't work and wasn't offered in a reasonable time, I think Miss S should be offered a different remedy to the steps proposed by Creation. So, I'll now go on to outline what I think is a fair and reasonable outcome for Miss S.

The remedies now available to Miss S

Where there's been a breach of contract, the CRA says that a customer has the right to ask for a price reduction or to reject the goods and claim a refund, if a repair or replacement

doesn't work. I've concluded that A breached their contract with Miss S and that a repair hasn't worked. It then follows that Miss S is entitled to some of her money back, or to reject the goods and claim a refund.

I think it's reasonable for Mrs S to want the brand new windows and doors on her house to match. I also think it's reasonable where Miss S says she's lost confidence in A and would rather approach a different supplier.

The engineer's report suggests that five of the six items supplied by A, need repair or replacing completely. So, I think it's fair for Creation to allow Miss S to reject the goods and claim a refund. Miss S will then be able to contact a supplier of her choice to carry out the work she needs. To put this remedy into place, I think Creation should allow Miss S to exit the fixed sum loan agreement with nothing further to pay.

While Miss S has had use of the windows and the door since June 2021, she says she experienced difficulties keeping her home warm and safe. Miss S also says the fitting caused damage to her home, where she now needs to arrange further repairs.

Again, after looking at the engineer's report, the correspondence from Miss S and the photographs she's provided, I'm persuaded by the majority of what Miss S says here. So, I don't think Miss S has had the use she could have reasonably expected of the windows and doors. In all the circumstances, I think it's fair for Creation to refund all of the repayments Miss S has made towards the fixed sum loan.

In light of my conclusions about the ending of the agreement and the refund of repayments, I don't think it would be fair for Miss S to suffer from any adverse information Creation may have recorded with credit reference agencies. So, I think Creation should remove any adverse information they may have passed on to those agencies, about the fixed sum loan agreement in Miss S's name.

To support her view about the unsatisfactory quality of the goods provided by A and unsatisfactory installation, Miss S paid a total of £480 for an engineer's report. I've seen where Miss S paid for the report in two transactions of £240 on 1 August 2022 and 19 September 2022 respectively.

Creation have offered to pay for the cost of the report and I think that is fair, given they asked Miss S to evidence her concerns. It's not clear if Creation have made the payment to Miss S for the cost of the report. But, if they haven't, I think it's fair they do so as part of the settlement to this complaint.

Miss S has been without the use of the funds from the repayments she's made towards the fixed sum loan agreement and for the cost of the engineer's report. So, I also think it's fair for Creation to add interest at 8% a year simple to those amounts, from the date they were paid, to the date of settlement of this complaint.

More recently, Miss S has told us about extensive damage to her home, that she says was caused by the installation carried out by A. To support what she says, Miss S has provided a quote from a plasterer, to carry out work to the ceilings in her home.

While I acknowledge the quote Miss S has sent to us and where the ceilings in her home may need to repair, I'm not persuaded this was caused by A. I don't think the information provided by Miss S, draws a convincing enough connection between the installation and the damage to the ceilings she has complained about. Additionally, the engineer's report doesn't give details of any plaster work needed, other than an area above the front door.

Having thought very carefully about the plasterwork needed, I think it's fair for Creation to reimburse Miss S for the reasonable cost to repair to the plaster above the front door. From looking at the quote, I think it's fair for Creation to pay Miss S up to £400 for those repairs. I also think it's fair that Miss S provides Creation with description of the works carried out by her chosen tradesperson and evidence of the cost having been paid.

I can see from what Miss S has told us, that she says she paid for another tradesperson to fix the door handle in May 2022. I can also see where the investigator has asked Miss S to provide evidence of the payment she made to that tradesperson. But, Miss S hasn't been able to send that evidence to us. So, based on all the information we have, I don't think it's fair to ask Creation to reimburse the cost of the door handle repair to Miss S.

Miss S first complained to Creation about A's work in October 2021. I can see from Creation's correspondence with Miss S that they didn't provide their response to the complaint until May 2022, some seven months later. Additionally, I think Miss S made Creation aware that she had been trying to get A to review their work, since the day after the installation.

After looking at all the evidence, I think Creation could have moved Miss S's section 75 claim forward sooner. Instead I think they expected Miss S to organise and pay for an inspection, when it was clear she wasn't satisfied with the installation so soon after A had finished their work. So, I think Creation caused Miss S distress and inconvenience during the handling of the section 75 claim and that they should make a payment to her in respect of that.

I acknowledge that the majority of Miss S's concerns are about how A has treated her. But, I'm only able to consider Creation's obligations to her. In all the circumstances, I think it's fair for Creation to pay £250 to Miss S, for the distress and inconvenience she has experienced.

Finally, it's likely the goods supplied by A will need to be removed and collected from Miss S's home. Creation may wish to come to an agreement with Miss S about how that is done. In other words, they may be satisfied to allow the supplier chosen by Miss S, to carry out that work.

While I think this part of the settlement will be for Creation to arrange, I'll leave it to them and Miss S to reach an agreement, so all parties understand what is expected of each other.

Creation accepted the provisional decision and said they would leave it to Miss S and her new supplier to dispose of the door and the window.

Miss S replied to the provisional decision and said she was disappointed she would need to pay for some of the repair work needed to some of plasterwork in her home.

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 what Miss S has told us about the damage she's found with the plasterwork in her home, other than those covered in the report. I've thought very carefully about what Miss S says and the quotations she's provided from a plasterer. However, I'm still not persuaded that the evidence links the damage she's seen, to the installation carried out by A. So, I don't think it would be fair to ask Creation to meet the quotations Miss S has sent to us.

I've also thought more about the disposal of the windows and the doors, given Creation's

suggestion that Miss S's new supplier be allowed to remove them from her home. Having done so, I think Creation's suggestion is fair and it will allow Miss S to move forward with putting things right in her home, when she is ready to do so.

Although Creation has agreed that Miss S can do that, I think it's fair to keep the disposal of the goods as part of the settlement to this complaint, so Miss S can refer to this decision, should she need to.

I'd like to thank both parties for acknowledging and replying to my provisional decision. But, in all the circumstances, I see no reasons why I should depart from the conclusions I reached in that decision.

Putting things right

For the reasons I've explained, Creation Consumer Finance Ltd should:

1. allow Miss S to exit the fixed sum loan agreement with nothing further to pay;
2. remove any adverse information in relation to the fixed sum loan agreement from Miss S's records with credit reference agencies;
3. make arrangements with Miss S to remove and collect the windows and the door;
4. pay Miss S a total of £480 for the inspection report carried out on the installation of the windows and the door;
5. refund all the repayments Miss S has made under the fixed sum loan agreement from inception, to the date of settlement of this complaint;
6. add interest at a rate of 8% a year simple to parts four and five of this settlement, from the dates they were paid, to the date of settlement of this complaint;
7. reimburse Miss S for the reasonable cost (up to £400) for the repair to the plaster above of the front door, subject to a description of the works and evidence of the cost having been paid; and
8. pay Miss S £250 for the distress and inconvenience caused.

Creation must pay these amounts within 28 days of the date on which we tell them Miss S accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Creation deducts tax from any interest they pay to Miss S, they should provide Miss S with a tax deduction certificate if she asks for one, so she can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Creation Consumer Finance Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 18 July 2023.

Sam Wedderburn
Ombudsman