

The complaint

Mrs D complains about Creation Consumer Finance Ltd's response to a claim she made to it under section 75 of the Consumer Credit Act 1974. She's assisted in bringing this complaint by her son, Mr D. For ease of reading I'll refer to any actions or submissions by Mr or Mrs D as being from Mrs D.

What happened

In October 2021 Mrs D had some replacement doors and windows supplied and fitted by a company "W". She paid for the work using a fixed sum loan provided by Creation. Shortly after the fitting, Mrs D identified a number of problems with the work W had carried out, most notably in relation to the installation of the front windows, which she felt was defective. She attempted to resolve the issue with W, who over the course of the following months visited her property to make adjustments and check the work had been carried out to an appropriate standard.

Unfortunately, Mrs D remained dissatisfied with the windows, which continued to be draughty and noisy when it was windy outside. She ended up getting a quote from an alternative fitter to replace the windows at a cost of £1,140, which she sought to claim from W. By July 2022 W considered that it had resolved the problems and wasn't willing to cover the cost of the replacement windows. Mrs D turned to Creation, which has a potential liability for a breach of contract claim against W under the connected lender liability provisions of section 75.

Creation made enquiries of W to establish the actions it had taken to rectify the problems. After receiving W's version of events, Creation declined to meet Mrs D's claim, saying that W had advised it had carried out repairs to a suitable standard. Mrs D ended up replacing the windows with the alternative fitter in November 2022.

Mrs D was unhappy with Creation's response to her claim and asked us to look into matters. Our investigator noted the provisions of the Consumer Rights Act 2015 ("CRA") and the number of times W had been out to attempt to rectify various issues. He felt this, along with the evidence Mrs D supplied, pointed to the windows failing to meet the threshold for satisfactory quality.

The investigator wasn't satisfied that the evidence Creation provided demonstrated W had carried out an effective repair. He recommended that Creation adjust the loan balance by £1,140, that it pay Mrs D £250 compensation for the difficulties she'd experienced, and that it arrange for a different fitter to check the outstanding issue Mrs D had with the other window and door handles.

Creation has agreed to the investigator's recommendation of £250 for Mrs D's distress and inconvenience. It hasn't agreed to his other recommendations, maintaining the position taken by W that the problems with the windows had been rectified by W in July 2022. It has cited W's own inspection report in support of that position.

Our investigator wasn't persuaded by Creation's arguments. Creation said it would respond

further when it had discussed the matter further with W. However, other than its agreement to the £250 payment mentioned, Creation has provided no further evidence and in the interests of resolving matters, the complaint has been passed to me for review and determination.

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.

The parties accept that the transaction in question meets the requirements – both in financial terms and in the way the arrangements were structured – to enable Mrs D to bring a claim under section 75. For clarity, section 75 has the effect that, if Mrs D has a claim in misrepresentation or in breach of contract against W, she has a like claim (joint and several) against Creation. Here, her claim is one of breach of contract; that is, that the service W undertook to provide to her was not carried out with reasonable skill and care, as incorporated into the contract by the Consumer Rights Act 2015 ("CRA").

Creation accept that Mrs D has such a claim. Indeed, given W's undertaking of rectification work it would be difficult to reach any other conclusion than that the service relating to the original installation failed to meet the appropriate standard. With this in mind, the question is not whether there was a breach of contract, but whether the acknowledged breach was remedied by W's subsequent rectification work.

Mrs D considered that it had not. She said the windows were still draughty and there was a whistling sound when it was windy. W provided its own inspection report, dated 14 July 2022, signed off by its head of installations. W's report concluded that it had rectified the problems that had been identified, and that there were no leaks or draughts on the date of its visit. It appears that Creation seeks to rely on W's report in support of its position that it has no further liability to Mrs D.

I don't consider it reasonable for Creation to place as much reliance as it has on W's report. Aside from the rather basic position that a report compiled by W can't properly be considered to be independent evidence, W's letter of 22 July 2022 advised there was no wind on the day the inspection was carried out. I can't therefore see how it provides Creation with sufficient evidence that the additional work resolved the problems caused by the original installation.

I'm conscious that it is now not possible to obtain an independent inspection that might have properly established whether the noise and draughts persisted after W completed its work. I've no reason to think Mrs D would have proceeded in November 2022 to replace the windows if the problems had been fixed. Further, it was open to Creation to obtain and provide persuasive evidence that an effective remedy had been performed before Mrs D had the windows replaced. She informed it of her claim in early August 2022, and it set out its response later that month. If that opportunity has since passed, I don't consider Creation can fairly argue that was down to Mrs D's actions.

I've noted the comments relating to the window and door handles, and it seems that this remains an outstanding concern that requires further inspection and possibly rectification. I'm satisfied Mrs D raised it within the guarantee period and within a reasonable time period that might apply under considerations of durability. So I find it appropriate to include this aspect within the overall resolution intended to bring matters to a close.

It doesn't seem to me reasonable to say that Creation has done enough to demonstrate it has had proper regard for its potential liability to Mrs D, given the known shortcomings of

W's report and the onus the CRA places on the trader (and by extension, Creation) to demonstrate the work conformed to contract. It follows that I am upholding Mrs D's complaint.

Putting things right

The remedies available to Mrs D under the CRA include – but aren't limited to – requiring repeat performance, a price reduction, reimbursement where consideration for payment of the money has failed, and a damages claim. Noting that Mrs D has replaced the windows (which appears to have addressed the problems she was experiencing), some of those remedies are no longer appropriate. And some of them have broadly the same effect as each other.

Bearing all of this in mind, I share our investigator's view that to settle Mrs D's complaint (and by way of addressing Creation's liability for the breach of contract claim), Creation should – within 28 days of receiving Mrs D's acceptance of this decision – take the following steps:

1. apply a credit of £1,140 to Mrs D's finance balance to reflect the additional cost she's incurred in addressing the problems caused by W's installation. For the avoidance of doubt, this credit should be backdated to November 2022, when Mrs D replaced the windows
2. pay Mrs D £250 (as it has already agreed to do) in recognition of her distress and inconvenience
3. arrange for an appropriate business to inspect the outstanding issues with the window and door handles, and pay for any remedial work identified as necessary

My final decision

My final decision is that I uphold this complaint and direct Creation Consumer Finance Ltd to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 22 September 2023.

Niall Taylor
Ombudsman