DRN-4448525

The complaint

Mr B complains Creation Consumer Finance Ltd ("Creation") hasn't dealt fairly with a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA") in respect of some home improvement works.

What happened

I issued a provisional decision on this case on 20 October 2023, in which I set out the background to Mr B's complaint along with my provisional findings, so I will deal with the events leading up to the complaint only briefly.

Mr B had signed a contract with a company ("AW") in May 2021 to install doors and windows at his home, for a price of £5,500, of which £4,950 was financed by a point of sale loan with Creation.

There were various issues with the supply contract. There were significant delays in fitting the doors and windows, and then when fitting did take place there were concerns over the standard of workmanship. Remedial works were attempted by AW several times but Mr B was dissatisfied with the results, prompting him to contact Creation in July 2022 with a view to making a claim under section 75 of the CCA.

Creation rejected Mr B's section 75 claim, and associated complaint, in August 2022. Shortly after, Mr H referred the matter to the Financial Ombudsman Service. During our investigation, various pieces of evidence were supplied relating to what was wrong with the installation of the windows and doors, and what it might cost to put things right. This included a report from a third party ("F") and separate quotes for works from other third parties ("S" and "Y").

In my provisional decision I noted firstly that section 75 of the CCA allows a consumer who has purchased goods or services using certain types of credit, to claim against their lender in respect of any breach of contract or misrepresentation by the supplier of the goods or services, so long as certain technical conditions are met. I concluded section 75 applied to Mr B's scenario and the technical conditions were in place.

In order to determine whether there had been a breach of contract for which Creation could be held liable under section 75 of the CCA, I went on to consider what Mr B had been entitled to expect from AW under the contract for the doors and windows. I said the following:

"I've seen the front page of the purchase contract between Mr B and AW. This describes the goods being supplied, where they were to be fitted, and their basic specification such as the colour. The contract shows AW was meant to install two doors on the front elevation of the property, with one door to have two long, thin windows on either side. Additionally, four windows were to be fitted to the lounge bay, three to the main bedroom and two to a small bedroom. The windows were to be finished in "anthracite" outside and white inside, with white handles.

Mr B was entitled to expect these items to be supplied and fitted. I've not seen the full terms and conditions, but the Consumer Rights Act 2015 (CRA), which would apply to a purchase like this, causes certain terms to be treated as included in the contract. Relevant to Mr B's complaint are the following such terms:

- *That any goods would be satisfactory quality.*
- *That any services would be carried out with reasonable care and skill.*
- *That any services would be performed within a reasonable time (if no specific date was set for completion)."*

I went on to note that it appeared to have been accepted that the goods were not installed within a reasonable time, and that the report from F had not been seriously challenged either by Creation or AW. I said that I thought it was reasonable to proceed on the basis that the report was not disputed, and went on to consider the areas the report identified problems with: the front door, front bay window and garage door.

Having considered the report, I concluded the front door had warped to the point that it had become very difficult to operate, and this wasn't reasonable so soon after installation. I concluded the front door had not been satisfactory quality.

Regarding the front bay window, my conclusion was that this had not been installed with reasonable care and skill. This was because the window had not been adequately sealed and this was causing draughts.

As for the garage door, the picture was slightly less clear, but I thought the evidence showed the door lock had probably been faulty and was not satisfactory quality, the handle had either not been fitted properly or was not satisfactory quality (it had fallen off), and mastic had not been applied around the door with reasonable care and skill.

I said that, overall, I was minded to find:

"…that there were several elements of the window and door replacement work where either a lack of reasonable care and skill was exercised during installation, or items were supplied which were not satisfactory quality. Bearing in mind the provisions of the CRA, this would represent a breach of contract by AW for which Mr B could hold Creation liable under section 75 of the CCA."

I then turned to the matter of what remedy Creation should provide to Mr B as a remedy. I noted this had been a problem to date. Our investigator had recommended that Creation pay one of the two quotes Mr B had provided for remedial works, but Creation had dismissed these quotes as excessive. I said, based on my analysis of what aspects of the contract between Mr B and AW had been breached, that I considered remedial works should cover the following things:

- Replacement of the front door and making good any surrounding plasterwork damaged as a result of the door having warped and excessive force being required to close it.
- Sealing the windows in the front bay, inside and outside.
- Replacing the garage door lock and handle.
- Replacing the mastic around the garage door.

I then analysed the two quotes Mr B had provided. I also thought the quotes appeared unusually high, and I think it is worth repeating that analysis and my conclusions following it, in full:

"The original contract with AW was for two doors (including some associated glazing) and nine windows. S has quoted for what appears to be a single door, at a cost higher than the entire contract with AW. S has referred to supplying "lintels" on its quote but it is unclear what it means by this. It appears to me that the S quote is disproportionately high [£5,022] *when compared to the original contract, and doesn't clearly address the remedial works I've identified above.*

The quote from Y includes the replacement of the front door, along with the lock and handle on the garage door. But the rest of the quote is vague and doesn't identify specifically what work is to be done. Again, the price seems high [£4,365] *when the scope of works (as far as can be identified given its vagueness) is considered against the original AW contract.*

While I appreciate this will come as a disappointment to Mr B who has taken the time and trouble to go out and source these quotes, I don't think I can rely on either of them as representing the reasonable cost of remedying AW's breaches of contract.

So where does this leave things? Creation has suggested that it source some quotes of its own. Mr B is reluctant to allow this, or for AW to return to fix the problems itself, given its failings to date. I think this is understandable, but on the current evidence I think it is also impossible for me as a layperson without expertise in construction, to establish the reasonable cost of remedial works."

I went on to consider what sort of remedy it would be reasonable of Creation to provide in the absence of a reasonable quote for remedial works, concluding:

"Another potential remedy outlined in the CRA and which can apply both to contracts for goods and contracts for services, is a "price reduction". The explanatory notes which accompany the CRA explain that price reductions are intended to reflect the difference in value between what someone has paid for, and what they've received. I note the courts have discouraged taking too fine-toothed an approach in calculating difference in value, and it is hardly an exact science.

With this in mind, and taking into account the remaining problems with AW's work along with its delays in carrying them out in the first place, I'm currently of the view that a price reduction of 30% of the contract price (£1,650) would be a reasonable remedy. I say this because although there are some significant problems with the work – specifically the warped front door, and poor sealing around the bay window causing draughts – the other issues seem minor in nature and a large part of the contract has been performed correctly.

There's been no suggestion there's anything wrong with the five upstairs windows for example, which were replaced as part of the contract.

So as things stand, I think it would be fair and reasonable of Creation, bearing in mind its responsibilities to Mr B under section 75 of the CCA, to pay Mr B £1,650 to settle this aspect of his complaint."

I highlighted that I was willing to consider further submissions on what would constitute an appropriate remedy for AW's breach of contract. I said it might be possible for the parties to agree, for example, on the appointment of a professional (such as a quantity surveyor) to cost the remedial works. I went on to say that I would expect Creation to cover any

reasonable professional costs involved in this.

I then turned to the matter of Creation's customer service and claims handling, which our investigator had concluded had been poor. I agreed. I thought there had been unacceptably long delays on Creation's part which had caused Mr B inconvenience, annoyance and frustration. I agreed that our investigator's recommendation of £250 compensation to reflect the impact of Creation's poor service was fair.

Concluding, I said I was minded to uphold Mr B's complaint and direct Creation to pay him £1,650 plus compensatory interest to reflect the price reduction, plus £250 compensation for its delays in handling his claim. I invited both parties to the complaint to let me have any new evidence, comments or arguments they wanted me to consider.

Creation said it would accept my provisional decision. Mr B was disappointed by the provisional decision. He said he was going to be left out of pocket and with a faulty product which the redress I'd outlined wouldn't come to close to covering the cost of putting right. He said he'd lost £1,000 in days off work and his heating bills had gone up due to the draughts. He said he'd provided quotes and didn't know what else he could do to prove his case. He said his preferred outcome was either to have the rest of what he had to pay written off, have Creation pay one of the quotes he'd provided previously, or pay another £1,000 and call it quits.

The case has now been returned to me to decide.

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.

Having done so, I can see that the only point in dispute following my provisional decision, summarised and quoted from above, is the matter of redress. Mr B is disappointed with my provisional decision and I understand why: the redress is, after all, much less than he had expected following our investigator's assessment.

I explained in my provisional decision why I didn't think I could rely on the quotes from S and Y as representing the reasonable cost of remedial works. I noted that I was willing to consider further submissions on this point and suggested one possible way of obtaining evidence – through the appointment of a professional to work out the costings, with their reasonable expenses paid for by Creation. Mr B has indicated that he doesn't want this to happen and he feels he's done enough by getting the quotes he has.

However, without further evidence I see no reason to depart from the conclusions I reached in my provisional decision: that in the absence of reliable evidence of the reasonable cost of remedial works, a price reduction would be a reasonable remedy. Taking into account the proportion of the contract which was performed correctly and the nature of the remaining issues, and the initial delays on AW's part, I remain of the view that a price reduction of 30% of the original contract price is reasonable, and this is what I will direct Creation to pay Mr B.

I have received no comments on the question of what would represent fair compensation for Creation's delays in handling Mr B's claim. Having reviewed this again, I've come to the same conclusion – that £250 would represent fair compensation – for the same reasons.

My final decision

For the reasons explained above and in the extracts and summary of my provisional

decision, I do not think Creation Consumer Finance Ltd dealt fairly with Mr B's section 75 claim. I therefore uphold Mr B's complaint and direct Creation Consumer Finance Ltd to take the following actions:

A) Pay Mr B £1,650, this amount representing a fair price reduction in respect of his section 75 claim.

B) Add 8% simple interest per year* to the amount in A), calculated from the date Creation first wrote to Mr B with a decision on his claim (15 August 2022), to the date the settlement is paid to him.

C) Pay Mr B £250 compensation for the impact on him of its delays in handling his claim.

*If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 December 2023.

Will Culley
Ombudsman