

The complaint

Ms A's complaint is in relation to a finance arrangement she entered into with Creation Consumer Finance Ltd to fund the purchase and fitting of a built-in wardrobe from a third party "W". She was unhappy with W's services, for which Creation carries connected lender liability, and with the way in which Creation continued to seek payment from her despite that dispute.

Background to complaint

I recently issued a provisional decision setting out the background to this complaint and how I was minded to propose matters were best resolved. I've reproduced my provisional decision here, which forms part of this final decision:

"What happened

In early 2021 Ms A arranged with W to design, supply and fit a built-in wardrobe at her property. The cash price attached to W's services was £4,600. Ms A paid an initial deposit, with the balance to be funded by a buy now pay later ("BNPL") loan of £2,600 from Creation. Under the BNPL terms, the loan would incur interest if it wasn't settled within 12 months of the drawdown date of April 2021.

W fitted the wardrobe. However, Ms A wasn't happy with certain aspects, which she flagged to W. Her key concerns expressed were with the sensor-activated light, the depth of one of the shelves, that W's fitter hadn't covered the unused drill holes, and that it hadn't been possible to fit some of the shelves due to a lack of space. Ms A told W she felt the interest-free period shouldn't start until she was satisfied with the work. Ms A went on to inform "H", a third party dispute resolution service, of the problems she was having.

In September 2021 Ms A informed Creation of what had happened, reiterating her dissatisfaction with W and saying that the finance agreement should be terminated. She also cancelled her direct debit.

H attempted to resolve the dispute between Ms A and W. In January 2022 it arranged for W to return to carry out remedial work; however for medical reasons Ms A asked for this to be postponed. She contacted W again in June 2022 to arrange this, but says she got no response.

In the interim Creation liaised with W and Ms A, expressing the view that it would be reasonable to attempt to rectify the problems. It declined to terminate the loan or suspend interest or payments. It continues to hold Ms A liable for repayment, and has commenced legal action for recovery due to account arrears.

Our investigator didn't think it was unreasonable for Creation to manage the loan account as it had. She noted Ms A's reasons for cancelling payment, but wasn't persuaded that this would override Ms A's contractual obligation to repay the loan as it fell due, or Creation's entitlement to apply interest.

The investigator noted that it was accepted by all parties that there were problems with the wardrobe as described by Ms A. She felt that the remedial work had been delayed for a number of reasons attributable to both W and Ms A. By way of resolution, the investigator proposed that Creation terminate the loan with nothing further for Ms A to pay, and arrange to collect the wardrobe, should it so wish.

Creation didn't accept the investigator's recommendation. It said it was still willing to facilitate the remedial work. Ms A appears unwilling to agree to this and has said she's given them the chance to rectify the problems and has lost trust in W and Creation. The matter has now been passed to me for review.

What I've provisionally 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 arrangements between Ms A, Creation, and W meet the requirements of section 75 in terms of both financial limits and structure. Ms A's claim is founded in breach of contract, based on obligations incorporated into her contract with C under relevant provisions of the Consumer Rights Act 2015 ("CRA"). Those obligations relate to the quality of the goods and to the services W provided to Ms A.

Noting the comments from H and the attempts by all parties to arrange the rectification work, it seems to be accepted that the contract hasn't been performed to a satisfactory standard. That might mean Creation is liable to Ms A in terms of a breach of contract claim. But I don't share our investigator's view as to how best to resolve matters.

There are various remedies open to Ms A under the CRA and in common law. Given the nature of the concerns Ms A raised, some of which relate to the provision of goods and others of services, it doesn't necessarily follow that Creation would be liable to her to the extent suggested in our initial assessment.

My role here isn't to determine the outcome of a breach of contract claim or predict what a court might (or might not) conclude in relation to such a dispute. Rather, it's to consider Creation's actions and whether it has acted fairly in responding to Ms A's concerns in the way that it did.

Here, the defects Ms A identified appear to be capable of being fixed. I accept that there have been delays in carrying out that work, which appear attributable to both W and Ms A. However, I see no reason to hold Creation responsible for the delay. Nor do I consider that Creation treated Ms A unfairly in showing willing to arrange for the remedial work to be carried out. Ms A's lack of faith in W doesn't mean that Creation is acting unreasonably in this respect, or that it was inappropriate for it to make such a proposal. It was, after all, the same proposal put forward by H in its role as mediator

Nevertheless, there is clearly an impasse between the parties that needs to be overcome. The defects appear capable of rectification in relatively short order by a suitably qualified fitter, but Ms A objects to W carrying out that work. To resolve this position, I propose that Creation promptly obtains from W details of the likely timescale and cost of carrying out the remedial work. Creation should undertake to pay this amount to Ms A, who will be able to use it towards the cost of engaging a fitter of her own choice.

I now turn to the question of Creation's administration of the loan. As I've said, the loan was on a 'buy now, pay later' basis with an interest-free period. There was no provision within the agreement that the interest-free period was contingent on Ms A being satisfied with the

installation. Rather, the agreement made clear that the loan would start once the goods were supplied, that the first payment was due 12 months after this, and that to avoid incurring interest the full amount advanced – £2,600 – would need to be repaid before that point.

I understand that Ms A felt it was appropriate for her to withhold payment and seek an extension to the interest-free arrangement. That didn't oblige Creation to agree, and its correspondence with Ms A was clear as to what would happen if she didn't make payment when due.

Ms A may have had her reasons for her decision not to pay, but she did so with knowledge of the consequences of that decision. In light of this, I'm not minded to require any amendment to the outstanding loan balance – which to me appears to have been correctly calculated. Further, I don't see there's any basis for me to direct any amendment to the payment information that Creation has recorded on Ms A's credit file."

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

Responses to my provisional decision

Creation acknowledged my intended conclusions. It had approached W, who were willing to carry out the remedial work without charge at a couple of weeks' notice. However, while Creation did say it was making enquiries as to cost (in the event the work was carried out by a different fitter), to date I've received no further information about this important aspect.

Ms A also responded to my provisional decision. She made further submissions about the circumstances of the installation and Creation's engagement with the claim, as well as detailed additional information about the impact the problem had on her. Noting the sensitivities within that information about Ms A's health and wellbeing, I won't set out the detail in this document.

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 want to assure Ms A that I've read her submissions in full – those she made in the course of the dispute and those she sent me in response to my provisional decision. I must make clear, it's not my intention to understate her strength of feeling or the impact she explains matters had on her. However, they don't offer a basis for me to hold Creation responsible for her decision not to make payment, or for the consequences of her not doing so.

Ms A didn't incur additional costs due to her concerns over W's fitting work, save perhaps for her own time in communication with W (and latterly, with Creation). Her contract with Creation made clear the point by which she needed to pay the loan balance in order to avoid interest. Presumably she had budgeted for this cost and was in a position to pay it. If she was not, this wasn't because of her dealings with Creation.

I can empathise with the fact that the arrangements have now cost Ms A a good deal more than she might have allowed for in her budget, and the impact this will have had on her family finances. No doubt that's been the source of much stress for her. But for the reasons I've explained here and in my provisional decision, I find these to be consequences of her decision not to pay off the loan.

I'm conscious Ms A has made a point of asking why Creation didn't pick up on her email

informing it of her decision and tell her this wasn't possible. In light of the clear wording of the finance agreement and the letters she'd already received about the pending expiry of the interest-free period, I'm satisfied she should – and would – have been aware of what would happen as a result.

Taking all of this into account it wouldn't be fair for me to find Creation liable for the financial situation Ms A has found herself in. However, I would remind Creation that as a responsible lender it has obligations towards customers in financial difficulty to ensure it deals with them fairly. I trust it will bear this in mind in any action to recover payment.

I also remain of the opinion that the rectification work, once carried out properly, would put Ms A in the position she expected to be in under the contract she had with W. That was the proposal put forward by H in 2022 and I've seen nothing to indicate why it would be inappropriate today. Ms A shouldn't be put to additional cost for this, but I also have to recognise that W has reiterated that it can carry out the work without charge.

The difficulty with this remedy is that Ms A appears to remain unwilling for this to happen. As I said in my provisional decision, that doesn't make the remedy inappropriate. However, in the interests of achieving a resolution I did ask Creation to obtain from W the cost of such work, in order that Ms A might instead appoint her own fitter to carry out the remaining work. It's disappointing to note that despite asking for this to be provided promptly, it hasn't been forthcoming. That means I need to determine an appropriate sum myself.

That W would be willing – indeed, obliged – to undertake the remedial work without charge isn't the same as saying there is no cost. It would involve a cost to W, just not one passed on to Ms A. In the absence of any useful indication from Creation, I've looked at trade guides online. The remaining work doesn't appear to require specialist knowledge or qualifications, so on the assumption of two persons being needed to undertake the work, a sum of £500 is in my view a reasonable estimate of prospective loss that Creation should pay Ms A in order to settle the complaint.

Alternatively, if Ms A does now wish for W to undertake the work, which would likely avoid costs of sourcing materials and ensure a suitable match to existing framework, this remains an option open to her. She should let Creation know if she would prefer to exercise this option, and I would expect Creation to liaise with W on Ms A's behalf to arrange a suitable time and date.

My final decision

For the reasons I've set out here and in my provisional decision, which forms part of this final decision, Creation Consumer Finance Ltd should pay Ms A £500 in settlement of her complaint. Ms A should note that accepting this sum is likely to have an impact on any claim she might seek to raise or pursue against Creation Consumer Finance Ltd in relation to the work carried out by W.

Creation Consumer Finance Ltd is not required to pay Ms A this £500 in the event that she instead elects for W to carry out the remedial work. Ms A should notify Creation Consumer Finance Ltd if this is the course of action she chooses to take.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 16 February 2024.

Niall Taylor
Ombudsman