

The complaint

Mr C complains that Specialist Lending Limited, trading as Duologi, treated him unfairly regarding a dispute about the installation of some windows and doors.

What happened

Mr C purchased eight windows and two doors to be installed at his property in July 2020, paid for by a fixed-sum loan agreement provided by Specialist Lending Limited, trading as Duologi (SLL for short). SLL paid the advance on the loan to a company I'll call Firm IY. Firm IY engaged another company I'll call AHI to actually install the windows and doors.

Mr C says that there were significant and repeating issues with all the doors and windows and has been in extensive contact with the businesses involved due to these significant issues. A number of the purchased items have been replaced and some replaced twice. However Mr C says that these replacements have significant faults remaining. So he complained to SLL and SLL said it had tried to help repeatedly and had replaced faulty items. So it didn't uphold Mr C's claim or subsequent complaint, which was later referred to our service.

Our service has issued an assessment which says SLL can be held responsible for the work of AHI and that to resolve this dispute Mr C is entitled to reject all the windows and doors and that SLL should organise the windows and doors being removed and unwind the finance completely.

Mr C accepted this outcome along with making a number of observations. SLL has sought a decision from an Ombudsman on the matter. Accordingly this dispute came to me to decide.

On the 27 June 2024 I issued a provisional decision on the matter upholding Mr C's complaint. Mr C accepted the decision. SLL acknowledged receipt of the decision and said it had nothing further to add.

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.

As neither party has made any significant arguments or provided any significant evidence in response to my provisional decision I see no persuasive reason to deviate from the position I set out in that provisional decision. Accordingly Mr C's complaint is upheld for those reasons. I now repeat my thinking as set out in my provisional decision save for minor adjustments to reflect the final nature of this final decision.

I think it would be fair to say that since this finance began and the original installation done there has been a substantial amount of correspondence between the parties as to resolving the problems with these windows and doors. In the interests of clarity and finality I'm going to deal with the key points in this dispute as I see them for clarity's sake. I've considered everything that the parties have said and provided to this service. However in line with our

aim of providing impartial, clear, informal, fair, and reasonable outcomes I'll only deal with the key issues in this decision.

Before I can consider the windows and doors I need to establish who's responsible

To consider whether SLL is responsible here I must consider what SLL should do having received Mr C's claim to it. To do this, I have to decide what I think is fair and reasonable, having regard to, amongst other things, any relevant law including both legislation and case law. In this case, the relevant starting point is Section 75 of the Consumer Credit Act 1974 ("S75" and the "CCA" for short) which says that, in certain circumstances, if Mr C paid for goods or services through a loan and there was a breach of contract or misrepresentation by the Supplier, SLL can be held equally responsible. But here there are a number of parties, so I need to clarify the position in relation to each of them.

For clarity's sake I shall explain the underpinning legislation concerning the DCS concept before explaining my thinking on this case. S75(1) of the CCA states:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

The CCA in Section 12 states:

*"A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—
(a) a restricted-use credit agreement which falls within section 11(1)(a), or
(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier".*

Section 11 states:

*"(1) A restricted-use credit agreement is a regulated consumer credit agreement—
(a) to finance a transaction between the debtor and the creditor, whether forming part of that agreement or not, or
(b) to finance a transaction between the debtor and a person (the "supplier") other than the creditor".*

Clearly SLL has a relevant relationship with Mr C as it agreed to provide him with the credit he used to pay for the windows and door installation. So Mr C can hold it responsible for how it fulfils its role as his creditor, and it can demand repayment of the credit it provided to him. But is this agreement here made under pre-existing arrangements, or in contemplation of future arrangements between SLL and the end supplier (AHI)?

SLL has told this Service that it has an arrangement with Firm IY to provide finance for the customers of some of the home improvement firms Firm IY works with - those that pass a vetting process that SLL has approved and Firm IY carries out. In essence this is a joint commercial enterprise between these parties where each party has a specific role which each party is aware of. Here SLL would have known that, under its arrangements with Firm IY, it would be providing finance for supply transactions between consumers and any firms Firm IY has vetted using the agreed process. So when SLL entered into a credit agreement via Firm IY and the ultimate supplier (AHI) was a firm which had been vetted and approved, then this agreement will have been made under pre-existing arrangements between the Creditor (SLL) and the supplier (AHI) as required under the CCA. This known commercial enterprise between the parties fulfils the CCA requirement for pre-existing arrangements.

The credit SLL provided was advanced to Firm IY and SLL has contested whether it can be held responsible for what happened here because it says Firm IY was acting as an intermediary between it and the end supplier of the windows and doors and their installation. It has pointed to other assessments by this service to support its position. It is clear that Firm IY have a number of contracts it uses and is an intermediary to a wide variety of situations, so I don't think this argument by SLL is persuasive in itself. I should also note that SLL should be aware of the contracts Firm IY has with consumers when it is providing the credit to pay for the advance and in this case I note it has made no significant or persuasive attempt to deal with the terms of Firm IY's contract in this case.

Here Firm IY's contract documentation between it and Mr C in this case is an important and persuasive piece of evidence to me. Here "we" is defined as Firm IY and "you" being Mr C. The contract goes on to say things like:

"We will carry out the work with all reasonable skill and care."

"We will ensure you are provided with a guarantee that covers both the installation and the goods installed."

"We will carry out the work and all communication with you to the required standards and where we use sub-contractors the will only be carried out by installers who are qualified to work safely and legally on the home improvement measures specified in this agreement and have the necessary qualifications and competencies to carry out the tasks they are required to perform."

It is clear to me that Firm IY through this wording are responsible for the installation and supply and the quality of the goods as well (according to the terms and conditions of their own contractual agreement with Mr C) supplied by it or its sub-contractors. So although Firm IY didn't physically install the windows and doors into Mr C's house, AHI did, I'm satisfied that through the workings of the contractual agreements in place SLL can be held responsible for any breach of contract or misrepresentation by AHI (and obviously Firm IY) with regard to the works it did.

Lastly there is another party involved which I'll call Company SF. SLL has said in reference to Company SF that it acts "*as a credit broker firm between ourselves and (Firm IY). They offer*

facilities to business from a panel of lenders." I'm not persuaded the presence of Company SF makes any material difference. I say this because its clear Mr C had a contract (the credit agreement) directly with SLL and another contract with Firm IY. And SLL has made clear that it paid the advance from the credit agreement direct to Firm IY. So although Company SF may have had arrangements with some of these parties here the contracts at the centre of this dispute are direct between Firm IY, SLL and Mr C. Accordingly we have a Debtor (Mr C), Creditor (SLL) and Supplier (Firm IY- who subcontract out the work to AHI).

So having established that SLL can be held responsible for what Firm IY and AHI did through both the fact of the specific wordings of contractual arrangements here and the nature of this commercial enterprise (in essence being pre-existing arrangements between the parties as per the CCA) I now need to establish what breaches of contract or relevant misrepresentations it can be held responsible for.

Liability

As I've explained, for SLL to be liable under S75 a breach of contract or a material misrepresentation by Firm IY (via AHI) needs to be established.

Mr C has summarised the following issues recently to this service:

- Front room window – replaced three times, bowing and drafting

- Downstairs toilet window – as original installed, gaps have been foamed by Mr C
- Kitchen window – replaced twice-still bowing
- Dinner window – as original installed, gaps filled with foam
- Bathroom window – replaced twice due to drooping, too big for hinges to support
- Bedroom one window – replaced three times, bowing and lets in air
- Bedroom two window – replaced twice, bowing and lets in air
- Bedroom three window – original installed-bowing.

So it's clear that the original doors and windows constituted a breach of contract in either the service of installation (reasonable skill and care) or supply of goods (satisfactory quality) or both, as otherwise Mr C wouldn't have complained and they wouldn't have been replaced. And those replacements clearly don't conform to the original purchase as there are still significant issues with drafts due to poor installation. Mr C has also pointed to the fact that the window gearing locks replaced still don't work as they should. Furthermore I should add that Mr C has always maintained that he wants them all replaced due to all of them having issues which have been repeatedly articulated to SLL and Firm IY and its sub-contractors. Mr C makes very clear that he considers some of the replacement works as 'bodge jobs' to use a colloquialism. So it seems likely that the failings stem from either the original service of surveying and recommending the windows and doors to be installed was done without reasonable care and skill, or the installation itself or the goods themselves or indeed a combination of all of these constitutes breaches of contract.

It is also clear that trust between the parties here has now reached very low levels if there is any trust left at all. I can see that the parties have pointed to the behaviours of the other in their reasonings as to the causes of why this dispute has been so long running. I don't think it fair on either party to try and remedy what happened here by insisting both parties are forced to work together going forward particularly considering the failed repairs that have taken place here. So bearing in mind we've a failed repair here and the working relationship is broken I think the fairest remedy here which leads to a clean break between the parties is to all Mr C to reject the windows and doors and start afresh with other parties.

In response to the Investigator's assessment of the matter both parties have raised issues which I'll address now.

SLL pointed to the deposit Mr C paid of £700 and asked how that is to be treated. It is my current view that this deposit should be repaid along with our standard interest along with all payments made by Mr C and unwinding the finance completely. SLL should also arrange and pay for the removal of all the doors and windows.

SLL has pointed to the logistical difficulties of removing the windows and doors and whether Firm IY wishes to take possession of removed windows and doors. Mr C has suffered a substandard windows and doors installation for years now which has not at any stage conformed to the requirements of reasonable skill and care/satisfactory quality. Both parties are to agree a mutually convenient date to remove the windows and doors by SLL or its agents. SLL should also arrange for a visit prior to this date to give Mr C an estimation of the time it expects to take to do the removal so that Mr C can coordinate with his chosen suppliers to put in the new windows and doors on or after the planned removal date. Mr C is to ensure the removed windows and doors are available for collection by SLL or parties on its behalf and stored securely without further damage.

SLL has pointed to Mr C's behaviour here and it not being allowed to fix issues and it being stopped by him from repairing issues when it has attended. However once a repair has failed the Consumer Rights Act 2015 allows rejection to be an appropriate remedy. And clearly the first replacements haven't remedied the matters here. I can understand why several years

later Mr C's patience might be tested here. It should also be remembered here that all this stems from the failings of the original installation works, which sit squarely in SLL's responsibility. It should be remembered that independent review of the windows and doors dated July 2021 found significant issues with the installation of all the windows and doors which all needed remedy. And I note the email trail between Mr C and Firm IY from May 2023 across June and July 2023. In this email trail Mr C makes clear (June 2023 email) he's available for Firm IY to visit on Tuesday, Wednesdays and Fridays in July 2023 contrary to what SLL has suggested about him mainly being available at weekends. A reading of this email trail shows to my mind that both parties were even at that early stage somewhat entrenched and adversarial. Even then this was not a good working relationship and I can see both sides already saw the other parties at fault. But it is also evident that Mr C was describing matters first hand whereas Firm IY was reliant on what its sub-contractors told it. I think Mr C's evidence across the piece is more persuasive than what SLL is saying here due to the first hand nature of his commentary on the issues present.

SLL has said Mr C hasn't said he wanted all the windows and doors rejected to SLL. I note prior to Mr C completing his complaint form to this service he'd emailed Firm IY saying in August 2023 his position was for "*for all 8 windows to be replaced*". He also refers "*we are looking at what the 3rd/ 4th repair job*" before making the point of once the repair fails rejection is available under the legislation. So I'm far from persuaded that Mr C has been unfairly elongating matters here. Particularly as he's said in the same email "*Like I said I am trying to flexible here*" and that his attitude to being flexible in resolving matters is evident across the communications available to me, albeit intertwined with some understandable frustration.

SLL has said Mr C isn't an expert on the installation and has suggested subsistence might be the cause of these issues. However it has provided no evidence to support its theory of subsistence whatsoever. Furthermore it hasn't addressed the numerous emails Mr C has provided between him and Firm IY where Mr C is trying to get to an acceptable position between the parties. Nor has it shown that all the issues identified in the review of July 2021 have been rectified. It is of note that SLL has chosen to be largely if not wholly reliant on what Firm IY says who in turn have been similarly reliant on what its subcontractors have told it. However the requirement to treat such matters fairly and be responsible for that fairness sits on SLL here. And those obligations do not apply to the sub-contractors here. So SLL choosing to rely on their submissions in its submissions to this service isn't as persuasive as Mr C's first hand representations, pictures and other evidence to my mind.

SLL has said "*It is not fair for us to be financial punished for his behaviour.*" Firstly no party here is being "*punished*". Having reviewed the evidence available I'm satisfied on balance the original attempt at repairing the accepted failings of the installation did not remedy those failings. So rejection of the installation is an available remedy. And in the circumstances I think that's a fair solution to this dispute.

SLL has pointed to a decision by a colleague in its arguments regarding DCS. I note that decision is about a different party that SLL works with and didn't have the contract terms I've pointed to in relation to Firm IY's participation here. So I don't think that argument is persuasive. It has also pointed to assessments by investigators at this service. But as it knows such assessments aren't enforceable. Only decisions by ombudsmen are enforceable. And in any event I think my thinking above is fair and reasonable for the reasons I've given.

Having repeated my thinking as articulated in my provisional decision above and seeing as neither party has provided significant comment in response, my final decision is this complaint should be upheld and remedied as set out below. I should add that it is disappointing to note SLL raised the wholly unsubstantiated prospect of subsistence being a

factor here. Yet when I addressed this in my provisional decision it chose not to respond on that matter or any other. Both facets of this argument not being evidenced or defended are disappointing. Firms are required to treat customers fairly.

Putting things right

So I direct SLL to:

- arrange for the removal of the doors and windows at no cost to Mr C or meet the costs of their removal as incurred by a new supplier once Mr C has provided satisfactory quotes to SLL prior to the removal being done.
- The finance agreement is cancelled with nothing further to pay.
- All payments (including deposit) are refunded together with 8%* simple interest from the date of payment to the date of settlement.

*HM Revenue & Customs requires SLL to take tax off this interest. SLL must give Mr C a certificate showing how much tax it's taken off if Mr C asks for one.

My final decision

It is my decision that this complaint about Specialist Lending Limited, trading as Duologi should be upheld and redressed as I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 August 2024.

Rod Glyn-Thomas
Ombudsman