

The complaint

Miss P complains that HSBC UK Bank Plc trading as first direct hasn't refunded a payment she made. She has brought a claim under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

In 2020, Miss P contracted with a supplier (who I'll refer to as "S") to supply and fit windows and a door to her property. The contract set out a price of £1,200 for this work. Miss P says she was away from her home when S arrived with the windows and door. Miss P was having other building work carried out at the time and Miss P's builder had not completed their work on time for S to be able to fit the windows. The builder then agreed to fit the windows instead. It is unclear how this agreement was reached but Miss P says she did not instruct S to do this.

When Miss P arrived home following the installation being completed, she says she refused to pay S because they had fitted the incorrect style of door. She says S drew up a new invoice for £1,050, which Miss P then paid using her first direct credit card. Miss P says this price reduction was due to S needing to replace the door with one of a different type.

In 2023, Miss P tried to complain to S as one of the windows was misting. She was unable to get a response from S so she contacted first direct to make a claim under section 75. First direct were able to get Miss P in touch with S. Miss P says it was then that she discovered that S hadn't installed the windows and that it was actually her builder that had installed them incorrectly. It was this installation which had caused the windows to fail prematurely.

S agreed to remedy the issues with the installation, but Miss P said this would not now prevent the windows from becoming worn or damaged sooner than expected because the poor installation had already impacted the integrity of the windows. She asked first direct for a refund under section 75.

First direct didn't agree there was enough evidence of a breach of contract by S for which it could be held jointly liable. It said that any issues with the windows were caused by the poor installation, which was carried out by Miss P's builder, not S. It said the amended invoice for £1,050 confirmed that Miss P hadn't paid S for installation, only supply of the windows and this likely accounted for the difference in price from the original invoice (which did include installation).

Our investigator didn't recommend the complaint be upheld. He was satisfied that first direct had responded fairly to Miss P's section 75 claim and complaint.

Miss P didn't accept that outcome. In summary, she said that she had provided irrefutable proof of a breach of contract by S. She had provided, among other evidence, copies of messages between her and S which showed that S had accepted liability for the poor installation. She said S had either failed to comply with the terms of its contract with her by not installing the windows as agreed, which in turn had caused her to suffer a loss through poor installation, or in the alternative, S were liable for the poor installation as the builder had

completed the installation as S' approved subcontractor.

The complaint has been passed to me for a final decision.

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 general effect of section 75 is that if Miss P has a claim for breach of contract or misrepresentation against S, she can bring a like claim against first direct as the provider of credit for that transaction. There are certain other requirements that also need to be met. For completeness, I'm satisfied those are met here. I've taken into account section 75 as well as other relevant law when deciding whether first direct acted fairly and reasonably in declining her claim and complaint.

It isn't in dispute that the installation of the windows was carried out by Miss P's builder. Further, all parties appear to agree that the windows are faulty due to the poor installation. The issue here therefore is whether the builder was acting on behalf of S when it installed the windows, or in the alternative, whether S was in breach of contract by not completing the installation themselves.

I think it's important to highlight that nobody has been able to explain why Miss P's builder completed the installation of the windows and not S. Miss P says she didn't agree to it so there must have been some arrangement between S and her builder. However, I've not seen any evidence of an arrangement between S and Miss P's builder for the installation of the windows. Without that, I find it unreasonable to conclude that there was some kind of arrangement and that Miss P's builder was therefore an agent (or subcontractor) of S.

On the contrary, it isn't disputed that the builder was acting for Miss P in carrying out building work to the same part of the property that the windows were due to be installed. It therefore seems to me more likely that in completing the installation of the windows the builder was acting for Miss P, rather than for S.

I note Miss P has referred to two screenshots of messages between her and S in late 2023 which she says demonstrates (alongside S' offer of a repair) that S accepts responsibility for the original installation. However, I'm not persuaded that's the case.

The messages indicate S wasn't initially satisfied it had agreed to carry out the installation as part of the contract. However, Miss P then sent a copy of the first invoice (which does state installation) and it seems on this basis S agreed to offer a repair. However, it's important to note S didn't actually carry out the installation and there was another, amended invoice from a later date that Miss P didn't supply to S during this exchange. Further, Miss P paid the later amended invoice, not the earlier one. Given it had been over three years since the contract had been agreed, I'm not surprised S didn't have a clear recollection of exactly what had been agreed previously. So, S may well have taken a different view had Miss P supplied the later invoice instead. In any event, just because S agreed to offer a repair, it doesn't automatically follow that it has liability for the original installation.

The crux of the matter is that I haven't seen anything to demonstrate S instructed the builder to carry out an installation on its behalf. Without that, it appears more likely than not, on balance, that the builder was acting for Miss P when it installed the windows.

Overall, I'm not persuaded there is sufficient evidence to demonstrate it is more likely than not that S ought to be responsible for the installation carried out by Miss P's builder.

Therefore, I can't fairly and reasonably conclude that first direct ought to be responsible for any breach of contract in relation to the poor installation.

I've also considered whether S had contracted with Miss P to install the windows and was therefore in breach of contract by not completing the install as agreed. However, I'm not persuaded that installation was included as part of the final contract Miss P agreed to. I'll explain why.

I note Miss P has said the reduction in cost on the second invoice was due to S agreeing to provide a different door. However, there is no contemporaneous evidence to persuasively support Miss P's assertions. What is available however, are the two different invoices for differing amounts, and for seemingly different work. One clearly states supply and fit, the other just lists the items that form part of the order with no mention of installation or fitting. It is this second contract that Miss P used her first direct credit card to pay.

Miss P says the second invoice doesn't say 'supply' either. But I don't think that is significant. The invoice clearly lists the items that have been ordered and supply is therefore implied, otherwise Miss P would have been paying £1,050 for nothing at all. Fitting is a separate service and if Miss P was paying for that, I would have expected it to be listed separately on the invoice for the goods and services she was receiving. Miss P received the goods listed on the invoice. She didn't receive installation from S, but that wasn't on the contract, so she has received what she paid for.

Crucially, there is a £150 difference in price between the two invoices, which suggests (given that S didn't install the windows) it's more likely the reduction was due to installation not being carried out by S. This is particularly so because both invoices list the goods as eight windows and a door. The only obvious difference is the omission of the installation and the overall price. I understand Miss P's strength of feeling around this and why she will disagree with me, but unfortunately the available evidence, in my view, does not support her case for a breach of contract for failed installation. This is because I'm not persuaded the contract (as it was eventually agreed) did include installation of the windows.

I realise this will be disappointing for Miss P, but I don't think first direct acted unfairly or unreasonably when it turned down her section 75 claim and complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 10 April 2025.

Tero Hiltunen
Ombudsman