

The complaint

Mrs S complains about the outcome of a claim she made to Creation Consumer Finance Ltd (“Creation”) under section 75 of the Consumer Credit Act 1974 (“s75”), about a bathroom installation.

What happened

In November 2022, Mrs S entered into a fixed sum loan agreement with Creation to finance the cost of a bathroom installation by a company I’ll call ‘K’. The agreement shows that the cost of the goods was £9,294 and that Mrs S was to pay a total of just under £12,000.

Mrs S says that K applied cladding to the bathroom but didn’t complete this as not enough had been ordered. K returned some weeks after to apply cladding around the cupboard door, but the colour didn’t match the rest of the cladding, and this was then removed by K.

Mrs S complained to K about this. K said they would reclad the area that was removed with the same design as the other cladding they’d applied, but this would be from a different batch. K said there would be a slight colour difference in the shading of the cladding as a result. They then offered Mrs S the option for her to choose any colour of her choice to reclad the cupboard wall. They also offered to pay Mrs S £350 as a gesture of goodwill.

Mrs S didn’t accept K’s offer and raised a s75 claim to Creation. Creation wrote to Mrs S on 5 October 2023 and said, in summary, that K’s offer was fair.

Mrs S wasn’t happy with Creation’s response and so referred the matter to us. Our investigator initially felt that it would be fair for Creation to accept Mrs S’s proposal to resolve her complaint, which was for them to cover the costs to reclad the cupboard door and the adjacent radiator wall. And he said Creation should honour K’s offer of £350 and pay Mrs S a further £100 for errors they’d made in considering her s75 claim.

Creation didn’t agree. They felt K’s proposal was still reasonable, although they did agree to pay Mrs S £500, rather than the £450 proposed by our investigator.

Our investigator then spoke with Mrs S who said she wanted to reject the goods. So, our investigator said to Creation that she should be allowed to do this and receive a 100% price reduction. He said that Creation should arrange to remove the bathroom, settle the finance agreement with nothing further for Mrs S to pay, and refund all payments she’d made under the agreement (with interest).

Creation didn’t agree and said this was an excessive request.

I issued my provisional decision on 4 July 2024, in which I said the following and which forms part of my final decision:

‘Here, I am looking at the actions of Creation and whether it has acted fairly and reasonably in the way it handled Mrs S’s claim. In doing so I consider relevant law which includes, among other things, s75. This provides that in certain circumstances the borrower under a

credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Was there a breach of contract?

Creation has said to our investigator that there wasn't a breach of contract. I don't agree. The Consumer Rights Act 2015 ('CRA') implied terms into Mrs S's contract with K. One of those terms was that any goods supplied to her would be of satisfactory quality. The CRA sets out that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of any description of the goods, the price and all the other relevant circumstances.

Appearance and finish are relevant aspects in determining whether goods are of satisfactory quality.

There's no dispute that the cladding around the cupboard door didn't match the colour of the rest of the bathroom when K applied this. K has accepted this. They've also accepted that this won't likely ever match because the batch that will be used will be different to what has been applied. I note that K has said they already tried to use a number of batches, but these all had a slight difference in shade and colour.

Mrs S paid over £9,000 for a brand-new bathroom, so she'd have reasonably expected the appearance and finish of the goods to be free from production batch mismatches in colour. The photos Mrs S has provided shows they weren't free from such things. So, it appears the goods K supplied to Mrs S were most likely not of satisfactory quality, in breach of the term implied by the CRA which said they would be.

I've considered Creation's offer to put things right, along with Mrs S's submissions in respect of what she wants from Creation. It seems Creation (and K) accepts that recladding the area around the cupboard door is unlikely to result in a matching appearance throughout the bathroom. Creation has agreed to arrange for that area to be reclad in the original cladding or for it to reclad with a colour of Mrs S's choosing. And they've agreed to pay Mrs S £500.

Mrs S says this doesn't go far enough, as she expected, and wants, her bathroom to be matching throughout.

I've thought about what Mrs S might have been entitled to claim under the CRA. This set out that in Mrs S's situation, where goods were not of satisfactory quality, she had the right to ask for the goods to be repaired or replaced by K. And if after one repair or replacement the goods still did not conform to contract, she could ask for either a price reduction (up to the full cost of the goods) or exercise a final right to reject the goods.

K had at least one attempt at repair when it tried to reclad the area around the cupboard wall. However, the goods still do not conform to contract in the sense they are not of satisfactory quality. So, it's likely Mrs S had the right to ask for a price reduction or the final right to reject. In the event Mrs S exercised her right to reject the goods and receive a full refund, K, and most likely a court, would ordinarily have expected her to hand the goods back – which in this case presumably would mean the deinstallation of the bathroom. And if she exercised her right to receive a price reduction, it's very unlikely she could have claimed the whole cost of the bathroom given the nature of the problem. It's likely that a fair reduction in price would have considered that not all the parts of the bathroom were of unsatisfactory quality.

Having considered the matter, I find that it would be fair that the area around the cupboard door is reclad, either with the original cladding or with a colour of Mrs S's choosing. This is essentially what K offered to do and what Creation has agreed to arrange. I realise this will

mean that the colour of the bathroom won't match. And I accept that Mrs S was perfectly entitled to expect that it would.

With this in mind, I think it would be reasonable for Creation to reduce the overall cost of the purchase by £1,000, so in effect, Mrs S is receiving a price reduction for the goods for that amount. I accept that working out an exact method for an appropriate price reduction isn't going to be possible. But I have tried to think of a fair and reasonable outcome here considering all the variables at play.

I agree with our investigator that Creation didn't handle Mrs S's claim particularly well, insomuch as they delayed their response to this for some time. I find that Creation should pay Mrs S £100 in respect of this'.

I asked both parties to send me any further comments or evidence they wanted me to consider.

Mrs S replied saying that she didn't think it was reasonable for the area around the door to be re clad with the original cladding as this wouldn't match the rest of the bathroom, and this contradicted her right in law for there to be no mismatches in colour. She said that her proposal to replace the cladding around the cupboard door and the adjoining radiator wall was a reasonable solution.

Mrs S also said that £100 wasn't fair compensation for the 18 months she had lived with this problem. And she asked whether she still had the right to reject the goods in full.

Creation didn't reply.

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 realise that what I proposed in my provisional decision means that the cladding in the bathroom won't now likely ever match. But I can't see a situation where the cladding will match. I don't find that it would be proportionate for Mrs S to reject the goods in full. I say this because this would mean the entire bathroom is taken out and I don't think that is proportionate bearing in mind that it seems the issue is with the colour of the cladding rather than the bathroom units themselves.

I completely agree that Mrs S had a right to expect that there would be no mismatches in the production batches of the cladding. But my role is to determine what I think is fair and reasonable. Here, I think that a price reduction is the most reasonable outcome. And, as the bathroom is presumably functional as intended, I think that a price reduction of £1,000 is a reasonable figure. That sum can be deducted from the amount Mrs S owes under the finance agreement or paid directly to her if she has already repaid this agreement.

The issue with the cladding remains outstanding. I think it fair that the area around the cupboard door is re clad, either with the original cladding or with a colour of Mrs S's choosing. Again, I realise this will mean the colours won't match. But as I've said above, I can't see a situation where this will happen. So, I think this is a next best solution, although if Creation (or K) agree to Mrs S's proposal to replace the cladding around the cupboard door and the adjoining radiator wall, then that may also resolve the dispute between the parties.

In my provisional decision, I said it would be fair for Creation to pay Mrs S £100 for the distress and inconvenience their handling of the claim caused her. I still find this is a

reasonable figure. Creation can be held equally liable for the breach of contract from K, but not for a claim for distress and inconvenience arising from this. My award is about Creation's handling of Mrs S's s.75 claim which in my view wasn't helpful, in that they asked her for information about the dispute that they already had.

Putting things right

Creation needs to do the following:

- Arrange for the area around the cupboard wall to be reclad either in the original cladding or with a colour of Mrs S's choosing; and
- Credit Mrs S with a £1,000 price reduction either by reducing her liability under the loan agreement; or if this has been repaid, refunding Mrs S directly.
- Pay Mrs S £100 for distress and inconvenience caused to her by their handling of her claim.

My final decision

I uphold this complaint and direct Creation Consumer Finance Ltd to do what I've set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 30 August 2024.

Daniel Picken
Ombudsman