

The complaint

Mr M complains Creation Consumer Finance Ltd (“Creation”) have failed to honour a claim he made under section 75 of the Consumer Credit Act 1974 (“CCA”).

What happened

I issued a provisional decision on Mr M’s case on 2 August 2024, a copy of which is appended to, and should be read alongside, this final decision. For this reason, it’s not necessary for me to go over the background to the complaint again, so I will cover the key facts only briefly:

- Mr M had a large number of doors and windows installed at his home by a company, E, for a price of £24,323. This was part-financed by a point of sale loan with Creation.
- There were various problems with the products and how they’d been installed, which had not been fully resolved by the time E went out of business in 2020.
- After unsuccessfully claiming on an insurance-backed warranty, Mr M brought a claim against Creation under section 75 of the CCA in April 2023. Creation treated the matter as a complaint but did not respond to Mr M in a timely manner, resulting in him referring the matter to the Financial Ombudsman Service.

In my provisional decision I noted that it appeared to be agreed in principle by all parties that Creation was liable under section 75, and an expert report from a third party – R – provided a fair basis for Creation to settle the complaint. However, I didn’t think satisfactory evidence had been provided of how much it would cost to carry out the works indicated in R’s report. I said I was minded, subject to any further submissions from the parties, to only direct Creation to pay the cost Mr M had incurred in commissioning the report from R.

Mr M made further submissions following the provisional decision, which I considered carefully alongside the rest of the evidence. On reflection, I thought it was possible to arrive at a fair figure to award Mr M, and I sent the following communication to both parties:

“[I]...have been thinking about how best this complaint can be resolved, bearing in mind the fact the parties to agree that something needs to be done, and that the R report has been agreed as a basis for a settlement.

I have put together a set of proposals, which (subject to any further submissions I receive) I now intend to include in any final decision I issue. The proposals, and the reasoning for them, can be found in the numbered paragraphs below.

1. *The R report indicates general issues with workmanship across the board, with many units (i.e. windows or doors) requiring adjustment or reapplication of sealant, and some units needing to be replaced. It’s also apparent that the front door has faded within the warranty period of ten years and will require replacement. The report also makes it clear that some structural repairs and the addition of a lintel will be necessary. There may be a need for scaffolding, if any of the works quoted for are*

above ground floor level.

2. *I remain of the view that the A and E2 quotes don't appear consistent with either the R report or each other, in terms of the work which is being quoted for. The R inspector has said that it could cost around £28,000 to fix all issues, but it's not clear how many doors and windows he's talking about.*
3. *There has been significant inflation between 2017 when the windows and doors were originally installed, and 2024 when we are deciding how the problems should fairly be resolved.*
4. *The Consumer Rights Act 2015 ("CRA") would have applied to the original contract and, where a service (i.e. installation) has not been performed with reasonable care and skill, which it is agreed was the case here, then a remedy permitted under the CRA is a price reduction.*
5. *There appears to be no way for me to calculate precisely what the cost would be of the remedial works identified in the R report, based on the current evidence. However, a "rough and ready" approach, based on a combination of the CRA principle of a price reduction and the SJ quote (which was for building works only), with an uplift to account for inflation, appears to me to be fair and reasonable in all the circumstances. I appreciate it will not be perfect, but ultimately I think this is the best that can be done with the information available to me, bearing in mind the informal nature of the Financial Ombudsman Service and the apparent difficulties in obtaining further quotes.*
6. *I would therefore propose that a full refund is given for all units the R inspector said should be replaced or repaired/reinstalled, plus the front door which should be replaced under the guarantee. The R report appears to indicate that most, if not all, of the other units require adjustment of some kind, or resealing. I would propose a 50% price reduction is given in respect of all other units. An uplift using the Bank of England's inflation calculator will be applied to the resulting figure, calculated from 2017 to the latest date available. The amount of the SJ quote (which was for building works to address structural issues caused by the defective E works) will then be added on top, with an adjustment for inflation over the past year. Mr M would receive a cash lump sum, and he will have the choice of putting some or all of this sum towards remedial works.*
7. *The original supplier did not itemise the cost of everything under the contract precisely, so the approach to be taken to the cost of each item, will need to be to divide the total cost by the number of elements, to arrive at a cost for each. Again, this is not perfect, but is the best that I think can reasonably be done with the information available. I have included my calculations in a spreadsheet which is attached to this communication, but the total settlement amount comes to £18,356.24, plus the cost of the R report."*

I invited Mr M and Creation to provide any further comment, prior to me making a final decision. Mr M said he would accept the proposals. Creation did not respond.

The deadline for further submissions has now passed, and the case has been returned to me once again to review.

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.

Mr M has accepted my proposed methodology for calculating redress, and Creation has not put forward any arguments against it. It follows that I see no reason to depart from the reasoned proposals I set out in email communication with the parties, as quoted above.

My final decision

For the reasons explained above, and in my appended provisional decision, I uphold Mr M's complaint and direct Creation Consumer Finance Ltd to take the following actions:

- Pay Mr M £18,356.24 – this being the amount which would be fair and reasonable for it to offer to settle his section 75 claim. Creation Consumer Finance Ltd must pay this within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this, it must also pay 8% simple interest per year* on the amount from the deadline date for settlement to the date of payment.
- Reimburse Mr M the amount he paid for the report from R. 8% simple interest per year* must be added to this amount, calculated from the date Mr M paid for the report, to the date he is reimbursed.

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 M how much it's taken off. It should also give Mr M 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 M to accept or reject my decision before 20 September 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I'm currently minded to reach a different set of conclusions to our investigator, and so I need to allow an opportunity for the parties to the complaint to provide further submissions before I make my decision final.

I'll look at any more comments and evidence that I get before 16 August 2024. This deadline is subject to potential extension in view of the complexity of the case and how long it has run for. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr M complains Creation Consumer Finance Ltd ("Creation") have failed to honour a claim he made under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

Mr M ordered new windows and doors from a company I'll call "E", in July 2017. The original price for the works was quoted as £86,580, but Mr M negotiated various discounts which eventually reduced the cash price to £24,323. A loan with Creation, organised by E, was put in place to cover £12,405 of the price, and Mr M paid the rest by other means.

The schedule of works was extensive, listing five or six doors, 27 windows, and unspecified building works. All of the windows and doors were constructed from uPVC or composite materials, in a woodgrain effect.

The products came with two warranties supplied by E. These were a "Standard" and "Lifetime" guarantee. The Standard guarantee stated that E would repair or replace, free of charge, any product which developed a fault due to defective materials or construction, for a period of ten years from installation. Any building works carried out by E were also guaranteed for a period of ten years from installation. The Lifetime guarantee stated that any double-glazed units on uPVC frames which developed condensation or fogging between the panes, would be repaired or replaced free of charge, for the lifetime of the original purchaser.

The installation appears to have been completed by the end of September 2017, but Mr M says there were various issues with the windows and doors following installation, including leaks, structural problems, frames falling out and frames not being sealed. E went out of business in 2020 while issues were still outstanding. The guarantees had been insurance-backed, but the insurer declined Mr M's claim in relation to further issues with E's work, due to a requirement that other routes for recovery were pursued first – such as section 75 claims.

This caused Mr M to bring a claim to Creation under section 75 of the CCA, in or around April 2023. He said he'd been quoted over £9,500 for remedial works, and wanted Creation to cover this. Creation treated this as a complaint, but then failed to respond to Mr M, causing him to refer the matter to the Financial Ombudsman Service in June 2023.

One of our investigators began looking into the complaint. He requested further information from Mr M about the nature of the issues with E's products and installation. Mr M

commissioned a report from a third party expert (“R”) which found a number of defects with E’s work and made the following recommendations:

1. Kitchen window to be replaced. Lintel to be fitted above opening to support the weight of the structure above.
2. Two rear doors need to be removed and re-installed, ensuring adequate damp-proofing and sealing below.
3. Window in master bedroom to be removed and re-installed with correct damming sealant applied.
4. On all windows, hinge side compression wedges should be fitted to all side hung sashes. All sashes to be adjusted by packing, to give a good alignment/seal.
5. On all windows, any cement repairs around sill horns to be refilled/resealed. Existing silicone sealant to be replaced with low modulus sealant with backing rods/foam as required.

I understand Mr M was invoiced £714 for this report.

The report was shared with Creation, and all parties agreed in principle that R’s report should form the basis of a settlement of Mr M’s claim and complaint. Disputes then arose however, over the cost of the works required. Mr M produced two quotes from well-known national suppliers (“A” and “E2”), coming to £22,843.79, and £24,396 respectively.

Our investigator recommended that Creation pay one of these quotes, but Creation objected on the grounds that the quotations specified more work than was recommended in R’s report. In particular, they appeared to specify the replacement of many of the windows. No agreement could be reached, and the case was subsequently passed to me to decide.

Having reviewed the available evidence, I also observed that the A and E2 quotes appeared to include more work than R had recommended in their report – a matter which I thought required clarification. I directed that further comment be sought from R on this issue. I could summarise R’s response as follows:

1. They did not want to know what the prices of the A and E2 quotes were, in order to preserve their impartiality.
2. There were a number of major defects with E’s installation which would require extensive works to remediate. While their original report did not specify that the affected units needed to be replaced, some or all of the units may need to be replaced due to the original poor installation and damage which could be caused by their removal.
3. Damage on removal, especially to the edges, was more likely in this case due to how long the units had been installed for, which had given them time to “settle” in place.
4. Extensive scaffolding would be required for the remedial works, which would push up the price.
5. They estimated that the price of removing and repairing the affected units, taking into account the risk of damage to the frames and the need for scaffolding, would cost around £28,000. They thought replacement of the frames, rather than removing and repairing them, would be slightly cheaper.

I wrote to Creation to request their comments on these latest developments. I observed it was not a straightforward case and that the quotes Mr M had provided did not appear to be inconsistent with R's comments in terms of their price. I also noted that the price of building works had increased significantly since 2017, but emphasised that I would like to hear from Creation with any comments they had before I made a decision.

Creation has, disappointingly, not replied to my enquiries, despite chasing for several months. It would not be reasonable to wait any longer, so I have decided to proceed with a provisional decision in the hope that setting out my current position will encourage the parties to the case either to provide further evidence or arguments to assist me in making a final decision, or to make alternative proposals as to how the complaint should be settled.

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.

Section 75 of the CCA allows consumers who have used certain types of credit to purchase goods or services, to hold their lender liable for any breach of contract or misrepresentation by the supplier of the goods or services, so long as certain technical conditions are met.

In this case, the type of loan agreement Mr M entered into with Creation is of a type to which section 75 would apply. I've thought carefully about the technical conditions which need to be met. One of these, which I considered was potentially relevant in Mr M's case, is the need for the "cash price" of the purchase to be more than £100, but no more than £30,000.

The original quote from E priced the works at over £80,000. However, it is the discounted price which is relevant for the purpose of determining whether or not the purchase is covered by section 75. The discounted price was £24,323, and so the value of the purchase falls within the range covered by section 75.

It appears to be undisputed that E was in breach of contract by failing to carry out the installation correctly, and/or by supplying defective goods, and that Mr M can therefore find Creation liable under section 75 of the CCA. It also appears to be agreed that the basis on which Creation should satisfy its liability is by covering the cost of the necessary remedial works. Creation has not put forward any alternatives, such as a cash settlement, so I've proceeded on the basis that there's an agreement in principle that Creation will settle matters by paying the reasonable cost of remedial works.

The key point in dispute has been what constitutes a reasonable cost. The quotes from A and E2 (which has since gone out of business) are very close to the original amount Mr M paid for the whole schedule of works from E, despite being for far fewer items, and I can understand Creation's concerns over this. It's not immediately apparent to me either, how the installation of approximately five windows and two or three doors could cost around as much as 27 windows and five or six doors. I also note Mr M says he was previously quoted the significantly lower amount of £9,500 for remedial works, though I acknowledge that was prior to R's report.

The report from R states that one window must be replaced, one must be removed and re-installed, and two doors must be removed and re-installed. So only two windows and two doors are specifically identified within the report as requiring repair or replacement. However, the report does say that other windows require various adjustments, and that the works required are "extensive".

R's later comments suggest that replacement of any affected units (i.e. doors or windows)

would be necessary where damage was caused by removal, which they considered was likely in this case. So it doesn't seem unreasonable to me that A and E2 would have chosen to quote to replace the affected units, rather than to repair them.

However, a problem I have with the A and E2 quotes is that they do not appear to match either each other or R's report, in terms of the items and works they include.

The quote from E2 includes the kitchen window and two sets of rear doors mentioned in R's report. It doesn't include the master bedroom window. However, it does include a front door with windows either side, two windows to the rear of a hallway, one window to the front of a hallway, and one circular window, also said to be in the hallway. None of these items were mentioned in R's report, although I note a photograph appeared in the report of the circular window.

The quote from A includes the kitchen window and one set of rear doors from R's report. It doesn't include the second set of rear doors or the master bedroom window. It does however include items which are not on R's report – a front door with associated windows either side, and the circular window.

Neither of the quotes is broken down in a way which assigns a cost to each item being replaced. Unfortunately, I don't think the quotes are helpful in establishing the reasonable cost of carrying out the remedial works identified in R's report.

So where does that leave things? As things stand, I don't think it would be fair or reasonable to direct Creation to pay any of the remedial quotes I have seen, due to the difficulties I've outlined above. There are also, potentially, other issues which might not make it reasonable for the full cost of replacement windows and doors to be covered by Creation. The windows and doors are currently around seven years old, and to replace them with brand new ones arguably puts Mr M in a better position than he would have been in, had E carried out the installation correctly in 2017. So, assuming satisfactory evidence of the cost of remedial works is supplied, a deduction may still need to be made from any settlement to reflect this and this is something the parties should bear in mind.

Regardless of the ultimate outcome of this case, I intend to require Creation to reimburse Mr M the amount he paid for R's report if he can provide evidence of this payment being made. That is because R's report established that E was in breach of contract by carrying out parts of the installation poorly, and it has been a necessary cost to Mr M in proving his case. I think it's reasonable that cost is borne by Creation.

My provisional decision

Based on the evidence currently available to me, I am minded to uphold Mr M's complaint in part and direct Creation Consumer Finance Limited to reimburse the proven cost of the report Mr M commissioned from R.

I am not currently minded to make any other award, as I have not been provided with satisfactory evidence of the reasonable cost of the remedial works required to remedy E's breach of contract, and for which Mr M could hold Creation liable for under section 75 of the CCA.

I now invite the parties to the complaint to provide any further submissions they would like me to consider, before 16 August 2024. Given the complexity and long-running nature of this case, I would be willing to consider requests for an extension to this deadline, but the parties must let our investigator know if that is the case.

Will Culley
Ombudsman