

The complaint

Mr R's unhappy that Creation Consumer Finance Ltd hasn't accepted responsibility for a claim he's made against it under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought Frasers should resolve it. I've reproduced my provisional findings below, which form part of this final decision.

Mr R's concerns relate to a dispute with a third party (I'll call this party "T") he engaged to supply and fit solar panels to his roof. Under section 75 provisions, if T said something untrue that induced Mr R into the contract, or if T breached its contract with Mr R, then he may be able to claim against Creation as it financed the transaction.

In 2014, Mr R entered into an agreement with T to have some solar panels fitted to his property. The agreement was funded using finance from Creation, who paid T directly. Shortly after the panels were fitted, Mr R suffered water damage to his property, which he attributes to the way in which T installed the panels and associated cabling. As I understand it, he raised the matter with T, who disputed that its actions were responsible for the water ingress. Mr R maintained his view but was unable to get T to accept liability. T later ceased trading and was dissolved in 2019.

Mr R says that in 2023 he became aware that section 75 meant he could make a claim against Creation as the credit provider in the transaction. He raised a breach of contract claim in July 2023 in relation to the way in which the installation was carried out. Creation acknowledged that Mr R had made a claim, but didn't respond in any meaningful way, other than in October 2023 to say Mr R could refer a complaint to our service. Mr R duly did so.

My provisional findings

While there are undoubtedly shortcomings in Creation's handling of matters for which he should receive compensation, I can't properly require Creation to accept Mr R's section 75 claim, or to pay him compensation equivalent to the amount of that claim. I'll explain why.

There's no dispute here that section 75 applies to the transaction involving Mr R, T and Creation. The necessary elements all appear to be in place such that Mr R could make a claim in breach of contract against the lender under the provisions of relevant legislation. Mr R entered into the contract with T in 2014, before the implementation of the Consumer Rights Act 2015 ("CRA"), which wasn't retrospective. So the relevant legislation to take into account here instead includes the Supply of Goods and Services Act 1982 ("SGSA"), which applies to consumer contracts not covered by the CRA.

Section 13 of SGSA has a similar effect as the CRA provision that replaced it, in that it says that in a relevant contract for the supply of a service, where the supplier – in the case, T – is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

But having the right to bring a claim is not the same as saying that claim will be successful. It's open to Creation to defend the claim, which it can do by reference to evidence rebutting Mr R's arguments, or other defences to the claim, which might include but are not limited to, the Limitation Act 1980.

The provisions of that Act provide a defence to a claim for breach of simple contract (as is the case here) where that claim's brought more than six years after the cause for action arose. The cause for action here is T's alleged failure to carry out its service with reasonable care and skill. So cause for action arose in 2014, when the panels were installed.

So in order for Creation to be liable to Mr R to meet his breach of contract claim, he'd need to satisfy at least all of the following:

- T failed to keep to its part of the bargain by not carrying out the installation service with reasonable skill and care, breaching its contract with Mr R;
- the effect of the breach has caused Mr R loss or damage for which he's entitled to seek restitution; and
- Mr R informed Creation of his claim within six years of T's breach (in other words, no later than 2020)

I can see there are some elements Mr R can demonstrate, and some that he might be able to make a persuasive argument for. But there are other aspects – most notably, the date of the alleged breach, that Creation might have a fair chance of defending successfully, based on what it might raise should the claim be considered by a court. Even though Creation did not raise this defence in the course of dealing with Mr R's claim, I can't simply disregard its existence when considering what constitutes a fair and reasonable conclusion to this complaint. If Creation isn't liable to meet Mr R's claim, I can't fairly require it to do so in order to deal with his complaint.

There are obvious flaws in the way Creation's handled its response to Mr R's complaint. It should have done much more to engage with his concerns, and to offer some sort of meaningful response. I would also remind Creation of its continuing obligation to engage with our service in our efforts to resolve matters. I don't have any power to make a punitive award, but it is apparent that Mr R has been put to unnecessary and material distress and inconvenience in having to pursue matters as he has. Creation could have avoided these problems by providing Mr R with a response to his claim, even if that response was to decline to meet the claim.

In light of what I've said, I don't believe I can properly find that fair compensation for the shortcomings in its complaint handling would involve Creation covering the breach of contract claim. Overall though, I think it's right that Creation pays Mr R compensation for the problems he's experienced due to its handling of his concerns. My current view is that £350 is a fair sum in this respect.

Additional observations

While it has no bearing on my finding in relation to Mr R's dispute with Creation, I think it's appropriate to note that some of the documents relating to the installation appear to

provide for an insurance-backed guarantee in relation to the solar panels. It's unclear to me whether this extends to the installation of the panels or merely covers their performance. Mr R might wish to look further into this, as it might provide a means by which he could make a guarantee claim to the insurer following T's dissolution. It is for him to decide whether to take independent legal advice over any rights he might have in this respect.

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

Responses to my provisional decision

Mr R was understandably disappointed with my intended conclusions. He had no further comments to make, other than to ask that I note the internal property damage sustained due to the water ingress. Creation didn't provide any response to my provisional 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.

Having done so, while I'm conscious of what Mr R has said about the damage to his ceilings and coving, and the extent to which remedial work will be required, I'm afraid that doesn't enable me to require Creation to cover the cost of that work.

For the reasons I set out in my provisional findings, which I adopt in full as part of this final decision, I'm not persuaded that I can fairly order Creation to do more than to pay Mr R compensation for the distress and inconvenience he incurred due to its handling of his claim. In that respect, I remain of the opinion that the £350 I proposed is a fair sum.

My final decision

My final decision is that to settle this complaint Creation Consumer Finance Ltd must, within 28 days of receiving his acceptance of this decision, pay Mr R £350.

Mr R can accept the compensation payment without affecting any right he may have to pursue his underlying section 75 claim against Creation through alternative action, such as a court claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 October 2024.

Niall Taylor
Ombudsman