

## **The complaint**

Mr G is unhappy that Specialist Lending Limited trading as “Duologi” declined a claim made under s.75 of the Consumer Credit Act 1974, in respect of spray foam insulation that was applied to his property.

## **What happened**

In February 2021, Mr G agreed to purchase open cell spray foam insulation from a company I’ll call “T”. The cash price for this was £6,735 which was funded via a fixed sum loan agreement provided by Duologi. Mr G paid an advance payment of £1,500 and the total amount payable under the agreement of £9,938.26 was to be repaid over 120 months. In early March 2021, the installation of the spray foam took place at Mr G’s property.

In May 2022, Mr G contacted T and explained that a recent survey carried out by a mortgage lender highlighted the spray foam installed at his property was a “security risk” and therefore any additional borrowing or new mortgage application would be denied. T responded and provided a copy of the warranty and the product information sheet.

Mr G explained his mortgage lender was still advising the spray foam product was a security risk and he would therefore be having it removed as soon as possible. T called Mr G back following his correspondence and in summary said it was initiating legal action regarding chartered surveyors not differentiating between open and closed spray foam. It said given this Mr G should wait before taking any decision to remove the spray foam.

In December 2022, Mr G arranged for the spray foam to be removed at a cost of £5,520.

In May 2023, a formal complaint was raised with Duologi which in summary raised the following points:

- The spray foam had been installed just 11 days after the contract was signed which was within the 14-day consumer cancellation period.
- T had “cold called” Mr G and offered him a free no obligation survey.
- The salesperson wasn’t a surveyor and had misrepresented themselves as one.
- The spray foam wasn’t installed correctly.
- T didn’t advise Mr G that he could have issues getting an equity release mortgage or selling his property due to having the spray foam installed.

- Mr G wasn't made aware the spray foam would give off a pungent and repulsive smell. Nor that it was a flammable product that would give off poisonous and noxious gases if burnt.
- Mr G was falsely told his existing rock wool mineral fibre insulation was damp and needed to be replaced.

In response Duologi issued its final response not upholding the complaint on 4 July 2023. In this it said:

Mr G had approached T via its website, so no cold call had taken place.

- Mr G had spoken to T over a year after the product was installed and confirmed he had done extensive research on the spray foam market and was happy with the performance of what he had been provided with.
- Duologi said it was clear from T's website it didn't represent itself as professional surveyors registered under the Royal Institute of Chartered Surveyors (RICS) and given the extensive research Mr G advised he had carried out; he would be aware of this.
- Duologi confirmed that T explained it is approved by the European Technical Approval Board (ETA) and The British Board of Agreement (BBA) as an approved installer. Therefore, Duologi had no reason to believe the installation wasn't in line with the expected requirements.
- Duologi said it couldn't comment on the specific lending criteria of mortgage lenders. But it had been reassured by T that not all mortgage lenders have an issue with the open cell spray foam it provided to Mr G.

Unhappy with Duologi's response, the complaint was referred to our service to consider. Our investigator didn't recommend the complaint should be upheld. Mr G didn't agree and asked for an ombudsman's decision.

I issued my provisional decision on 8 January 2025, in which I said the following and which forms part of my final decision.

*'When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. I note firstly that Duologi has said that it is no longer responsible for the complaint as it transferred ownership of Mr G's account to a new business. I don't agree with Duologi's position regarding this and have explained why below.*

*Duologi appears here to have transferred ownership of its loans to a third party. But that doesn't mean it automatically is no longer responsible for the complaint Mr G has raised here.*

Mr G used a fixed sum loan agreement from Duologi to pay for the spray foam installation. His complaint relates to a s.75 claim he brought against Duologi. This allows, in limited circumstances, someone buying goods and/or services on credit to claim for a breach of contract or a misrepresentation against their credit provider when there is a like claim against the supplier. Mr G has raised claims for both breach of contract and misrepresentation within his complaint made against Duologi.

I acknowledge Duologi has explained the sale of Mr G's account included all rights and obligations under the agreement. But importantly here, the breach of contract and misrepresentation allegations that Mr G's complaint arises from all took place prior to any assignment of the account to a third party. Breaches on the part of Duologi pre-assignment under s.75 don't impose any positive liability on the third-party assignee. Taking this into consideration, I'm satisfied Duologi remains the correct business to answer Mr G's complaint regarding the s.75 claim.

I'll shortly go on to consider the merits of the s.75 claim Mr G raised with Duologi. From what I can see, all the necessary criteria for a claim to be made under s.75 have been met.

Just before I do so though, I note that Mr G has raised concerns surrounding the recording of a call he had with T in June 2022. Mr G has advised he wasn't told the call was being recorded. Therefore, he considers that the call recording is illegal, and that our service can't take it into account when considering his complaint. The Financial Ombudsman Service has wide-ranging and flexible powers in relation to how it may consider evidence, and under DISP 3.5.9R (1) it is entitled to exclude evidence that would be admissible in a court or include evidence that would not be admissible in court. Given the relevance of the recording to the circumstances of the complaint I am satisfied it is appropriate to take it into account and consider it. I don't have any powers to consider the legality of the recording by T in this case, but I'm not persuaded any legal issues regarding it prevent me from taking it into account under our rules where it is relevant and material to the complaint.

Turning back to the merits of the complaint, I consider that The Consumer Rights Act 2015 (CRA) is relevant here. This implies terms into Mr G's contract with T that, amongst other things, the service being provided would be done so with reasonable care and skill and any goods provided would be of satisfactory quality. So, I've taken the CRA into consideration as well when considering this complaint.

In my background to this complaint, I laid out the key complaint points raised and will address each of these in turn.

T breached Mr G's consumer rights by installing the spray foam within the 14-day consumer cancellation period.

It appears there was an 11-day timeframe from when the contract was entered into and when the spray foam installation took place. While I acknowledge this is under 14 days, it doesn't automatically mean that Mr G's s.75 claim would be successful. For that I would need to be persuaded that, for example, Mr G indicated that he may change his mind inside the 14 days.

I don't believe that is the case here. There isn't anything to suggest Mr G was looking to change his mind or that he contacted anyone around the time to make cancellation enquires. In fact, following the installation Mr G didn't contact T or Duologi until over a year later and that contact was driven by his mortgage lender highlighting a security risk.

So, I don't think that the installation being completed inside the cancellation period has resulted in any unfairness to Mr G or that he suffered any detriment as a result.

Mr G was "cold called".

*I've seen evidence to indicate that it was Mr G that first made an enquiry on T's website and that was following a google search. After this T contacted Mr G and the contract was signed for installation to commence. In Mr G's call with T in June 2022, he also explained he had carried out extensive research on spray foam installation and believed the product T supplied was the best.*

*Taking this into consideration, I don't believe Mr G was cold called and it was him that actively asked T to see if it could help after carrying out his own research.*

The salesperson wasn't a surveyor and had misrepresented themselves as one.

*Following Mr G's enquiry, T has said that one of its representatives spoke to Mr G and booked him in for a free loft inspection that T offered. This took place on 22 February 2021 and following that, the contract to provide the spray foam was signed with them on 26 February 2021.*

*T has explained to our service that it doesn't state or even imply that the loft inspection would be carried out by a professionally trained surveyor. There isn't sufficient evidence in my view here that suggests T's representative, that signed the sale contract, said they were a chartered or qualified surveyor. The contract being signed under the heading of 'surveyor' doesn't mean the representative didn't have the credentials to undertake the relevant survey required to determine whether Mr G's home was suitable for spray foam to be installed.*

*From what I've seen there isn't anything to suggest a survey, for the purpose of spray foam installation, must be carried out by a qualified or chartered surveyor. And I've not seen sufficient evidence that T's representative wasn't qualified to, able to, or capable of doing the survey.*

The spray foam wasn't installed correctly.

*I haven't been provided with evidence here that persuades me there was any issue with the installation or that it wasn't carried out in line with regulations. I note that Mr G signed the customer satisfaction document from the time of the install confirming he was happy with the product and service and would recommend T going forward.*

*In Mr G's call with T from June 2022, he explained that from his research the product supplied by T was by far the best one on the market and it was working very well for what he needed it for. I wouldn't have expected Mr G to advise the product was working well for what he needed, over a year after it was installed, had there been an installation issue, or the product was of unsatisfactory quality.*

*The spray foam has now been removed which makes evidencing any possible installation issue far more difficult to show. The company that removed the spray foam didn't comment on why it was being removed or whether it had been installed incorrectly or outside of regulations.*

*The removal companies invoice said it was carrying out the removal and disposing of the spray foam, providing a certificate of completion and making good of the felt membrane where required. There is no further context around if and to what degree any felt membrane repairs were needed or why this may've been required. If any felt membrane work was needed on Mr G's property, this could've been for several reasons and doesn't mean the installation was incorrectly carried out. The invoice from the removal company did also say that "no timber decay was present during the process". This therefore doesn't support the claim that the spray foam installation was unsatisfactory – I say this because, if the spray foam had caused damage to the property, I'd expect this damage to have been highlighted when it was removed. A second survey report from April 2023 has also been provided. From reading the conclusions to this report, there again isn't anything to suggest the spray foam caused damage to Mr G's property after it was removed.*

*It appears here that the only reason that led to the Mr G wanting the spray foam removed was due to mortgage lending issues he was encountering (which I'll go on to address a bit later in my decision), rather than because of any installation issue, or the product not being fit for purpose.*

*Mr G wasn't made aware the spray foam would give off a pungent and repulsive smell. Nor that it was a flammable product that would give off poisonous and noxious gases if burnt.*

*There isn't any suggestion here that the spray foam installed at Mr G's property gave off any pungent or repulsive smell. Had this been the case, I would've expected that to have been raised with T or Duologi. Mr G didn't contact either for over a year after the installation and again confirmed he was happy with how the product was working for his needs.*

*There isn't any persuasive evidence either way to say whether Mr G was made aware the spray foam would give off poisonous or noxious gases if burnt. But even if T didn't disclose this to Mr G, I don't think this means that there has been a breach of contract or a misrepresentation. T has said the spray foam installed at Mr G's property doesn't contain any harmful chemicals and is odourless once set. It does acknowledge the foam is combustible, but that it is also self-extinguishing.*

*It appears to be accepted within the industry that if burnt, spray foam might pose a health risk. But there isn't any evidence here to suggest this posed an issue for Mr G and his installation. There isn't evidence for example that the spray foam was placed close to a source of heat that would increase the chance of it being burned. There is always a risk something hazardous might happen in a home, but I'm not persuaded here there was an increased risk because of Mr G's spray foam installation.*

*As I've said above, the evidence here points to the installation being carried out with the reasonable amount of care and skill.*

*Mr G was falsely told his existing rock wool mineral fibre insulation was damp and needed to be replaced.*

*I haven't seen anything from the time of the sale that suggests Mr G was told his existing insulation was damp. But if he was told this, I would need to see evidence this wasn't correct to conclude T misrepresented the position to Mr G. Unsurprisingly, since the old insulation would likely have been disposed of at the time, there isn't anything to suggest the previous insulation wasn't damp.*

*I think it's also worth noting here that Mr G actively asked T to install the spray foam and as highlighted previously, had researched this beforehand. So, I don't think T deceived Mr G into thinking his previous insulation wasn't working as it should, as he wanted this replaced regardless.*

*T didn't advise Mr G that he could have issues getting an equity release mortgage or selling his property due to having the spray foam installed.*

*Firstly, there isn't evidence to suggest that at the time of sale Mr G was looking at selling his house, applying for an equity release, or looking at additional borrowing secured against his house.*

*Mr G has stated that the industry was aware from early to mid-2021 that spray foam being installed in a property would cause issues with mortgage lending and all lenders would be against it. I've seen no evidence that suggests all lenders at the time of Mr G's sale would be against mortgage lending or that there was a well-known common knowledge of risk of firms not lending.*

*I appreciate in Mr G's case it appears his mortgage lender did have issue with the spray foam being present. But this was over a year after the sale and of course each lender will have its own criteria. It doesn't mean that all lenders would've highlighted the spray foam as being a risk at that time.*

*Given this, and that Mr G didn't raise to T that he might be looking secure a form of mortgage lending in the future, I don't believe T had a duty to disclose at the time of Mr G's sale that spray foam might impact mortgage lending.*

*Following the investigator's view Mr G also raised concerns that T misrepresented the benefits of spray foam insulation. I've therefore also considered this point.*

*Misrepresented benefits of spray foam insulation.*

*I appreciate that Mr G has gone into detail regarding the information the product literature provided at the time of the sale. He has said the information misrepresented the true facts of the product. Some of the issues raised I've already considered above.*

*T's claims in respect of energy saving are that installation of spray foam could save customers up to 50% on their energy bills – and this language is reflected on the supplier's website. However, there is no language in any of the documents I have been provided with that indicates a specific promise was made in respect of Mr G's energy bill savings; rather this is presented as a potential benefit. Any form of insulation can deliver savings on energy bills over time by reducing heat loss, and therefore the amount of energy that needs to be expended heating a home, so I don't think the claim that energy savings could be achieved was unreasonable. I also note this was a statement made to the world at large, not bespoke, or specific to Mr G's circumstances. There is no evidence that a bespoke energy saving quotation or promise was made.*

*Other benefits of the spray foam such as it being more comfortable, healthy, and ability to protect the home have also been raised. But again, these are generic and not tailored to the sale involving Mr G. I also think it's worth repeating here that Mr G made the enquiry to T and has said this was following extensive research that confirmed why he thought the product was the best on the market. Mr G also made it clear the product was working as intended for his needs.*

*So, Mr G chose to ahead with T's services and was satisfied with his decision to do so over a year later. Given this I'm not persuaded there was any misrepresentation of the benefits made to Mr G, that induced him to enter into the contract with T'.*

My provisional decision was that I wasn't planning to uphold Mr G's complaint. I then asked both parties to submit any further evidence or comments they wanted me to consider.

Mr G replied saying he remained disappointed with the entire product installation and asked which, if any, mortgage providers are happy to loan funds against residential properties with spray foam insulation in the lofts. He also said he was surprised mortgage lenders aren't making more of an effort to advertise the fact this product will put homeowners at risk. And he mentioned that he would share his experience to ensure so no-one else would be put in a situation where the impact of spray foam installation isn't fully shared.

Duologi 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'd like to thank Mr G for his reply to my provisional decision. And I note what he's said about how mortgage lenders are currently viewing spray foam insulation. I don't have a list of mortgage providers who are happy to lend because it's not really within my remit to set out what mortgage providers do and don't take into consideration when assessing applications. I mentioned though in my provisional decision that each mortgage lender has their own criteria and I'm not aware that every mortgage lender will refuse an application because of the product being installed in the home. And to my knowledge there wasn't any wider concerns about spray foam and how these might affect mortgage lenders' decision when T sold Mr G the product.

I'm sorry to disappoint Mr G as I appreciate how unhappy he is about what happened. But I haven't been persuaded to change my provisional decision for the reasons I've given above. And, for those reasons as well as those given in my provisional decision which I have included in this decision, I won't be upholding this complaint.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 February 2025.

Daniel Picken  
**Ombudsman**