

The complaint

Mr G complains about the outcome of a claim he made under section 75 of the Consumer Credit Act 1974 to Specialist Lending Limited trading as Duologi ("Duologi").

What happened

In February 2021, Mr G entered a contract with a company I'll call 'H' for spray foam insulation to be installed in his loft space. Mr G took out a fixed sum loan agreement with Duologi to pay for the installation.

Mr G sent in a claim to Duologi under section 75 of the Consumer Credit Act 1974 ("s.75") in August 2023. He said he'd commissioned a specialist survey on his property at the request of a mortgage lender, and the surveyor deemed his loft space to be a fire risk. So, Mr G asked Duologi to pay the £2,600 cost for removing the spray foam and making his property safe again. And Mr G mentioned that he couldn't re-mortgage his property because of the presence of the spray foam insulation.

Duologi didn't think Mr G's s.75 claim should succeed. They said H hadn't found any failing with the installation and, while H agreed that spray foam insulation can be a fire risk in habitual areas, they hadn't installed the insulation in a habitual area. And Duologi said H had confirmed that the installation had met Document B requirements under relevant building and fire regulations.

Mr G didn't agree and referred his complaint to our service. Our investigator didn't recommend that it should be upheld. In summary, she said there was no evidence at the time of the sale that mortgage lenders would refuse to lend because of spray foam. And she was unable to say that the spray foam in Mr G's property broke fire safety regulations or that it had been installed incorrectly.

Mr G disagreed with our investigator. He said that a qualified specialist had said that his property was a fire risk.

As the matter remains unresolved, Mr G's complaint has been passed to me to for a 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.

I acknowledge that I've summarised the events of Mr G's complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr G and Duologi that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the

balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider circumstances,

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 think relevant law in this case includes s.75.

S.75 affords consumers (debtors) a right of recourse against lenders (creditors) that provide the finance for the acquisition of goods or services from third-party merchants (suppliers) in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against Duologi under s.75 essentially mirrors the claim Mr G could make against the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Duologi doesn't dispute that the relevant conditions are met in this complaint.

I consider that The Consumer Rights Act 2015 ("CRA") is also relevant here. This implies terms into Mr G's contract with H 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.

The CRA goes on to set out that aspects of what constitutes satisfactory quality includes 'safety'. This is key in Mr G's case as his allegation is that the spray foam insulation presents a serious fire risk to his property.

I've looked at the contents of the specialist surveyor's report and considered Duologi's comments on this. The report was compiled by a structural engineer in August 2023, who concluded the following:

"...the use of spray foam insulation (as is) makes the building non-fire compliant as the minimum recommended (30 minutes) fire rating is not achieved. Furthermore, as of June 2022, the UK Government has put a ban on the use of combustible materials in and on the external walls of buildings.

Therefore, immediate actions need to be taken to remove the spray foam roof insulation and/or improve the fire rating of the roof by encasing it.

The following alternative remedial measures were recommended and are summarised below:

- I. Engage a qualified building contractor to completely strip off the existing spray foam insulation using a safe methodology, disposing off the material with a domestic skip and installing 100mm thick mineral wool insulation to create a warm roof. The estimated cost of this option is £2500.*
- II. As an alternative, the existing spray foam insulation could be covered with a single layer of 12.5mm thick fireboard or plasterboard to provide the required fire rating of the roof. This process will require additional timber noggins to be installed between the rafters to enable fixing of the fireboard/plasterboard panels. It was noted that as the spray foam insulation has uneven soffit and edges, there will be need to chop off excess thickness of the material to create a flat soffit before the new panels can be installed between the rafters. It is envisaged that the installation process would significantly affect the integrity of the spray foam insulation, thereby reducing the thermal performance of the roof. The cost of this option is approximately £4150”.*

Duologi's position on the above report was as follows:

- The statement concerning the ban on the use of combustible materials only applies to materials used in external wall construction of buildings over 11 metres, not unoccupied roof spaces that are protected from the habitable areas by a lining board at ceiling level.
- The fire rating of 30 minutes was applicable for ground or upper stories of a dwelling and related only to habitable areas. Mr G's loft isn't in such an area.
- Mr G's loft space is separated from the habitable area by a lining board at ceiling level making the installation compliant with relevant building and fire regulations.

The difficulty I have here is that, on the face of it, Duologi has provided a reasonably credible response to the points raised in the structural engineer's report. I say this noting that the engineer's comments around the use of combustible materials relate to 2022 amendments made to the Government's 2010 Building Regulations, a copy of which I've seen. And this was before H installed the spray foam. I'm mindful also of course that the structural engineer was suitably qualified to reach his conclusions. And I'm no expert on whether relevant building and fire regulations have been met. But I have noted that Mr G has managed to find a lender who agreed to the re-mortgaging of his property. I think it probably unlikely that the lender would have agreed to do this if the property had failed relevant building and fire regulations. I may be wrong about this, but it does plant some doubt in my mind.

Overall, I haven't been sufficiently persuaded that Duologi's defence to the claim around the implications of the spray foam being present in Mr G's property was unreasonable. I of course fully understand and appreciate that Mr G remains very concerned by the presence of spray foam. But I haven't been persuaded that H installed the spray foam without reasonable care and skill, unsuitably or inappropriately.

To conclude, I don't find Duologi unreasonably declined to meet Mr G's claim and so I do not require it to do anything in respect of his complaint.

My final decision

For the reasons I've explained, 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 24 April 2025.

Daniel Picken
Ombudsman