

The complaint

Mr W complains about the outcome of a claim he made to Omni Capital Retail Finance Limited (“Omni”) under section 75 of the Consumer Credit Act 1974 in respect of spray foam insulation.

What happened

In June 2021, Mr W agreed to enter a contract with a company I’ll call “C” for spray foam insulation to be applied to his loft space. Mr W used a fixed sum loan agreement with Omni to pay for this and the installation took place in July 2021.

Mr W engaged a claims management company (who no longer represent him) who sent Omni letters of claim, alleging the following:

- Mr W was cold called, and unfairly pressured into taking out the product.
- C didn’t tell Mr W that he could have a problem getting equity release or selling his property.
- C didn’t tell Mr W the product might produce a build-up of harmful vapours when it was installed and didn’t tell him to ventilate his property.
- C’s salesman falsely represented himself as a surveyor.
- C didn’t install the product correctly and in compliance with the British Board of Agrément (BBA) certificate.
- C didn’t tell Mr W that there were potentially cheaper methods of insulating his loft.

Omni didn’t uphold Mr W’s claim or subsequent complaint about this, saying the following:

- Mr W had failed to substantiate his claims that C had misrepresented anything to him, that the product wasn’t suitable or needed, that C had pressured him into the sale, or that C had installed the product incorrectly.
- There was no evidence that C’s surveyor wasn’t a qualified individual.
- They had received confirmation from the company who operates the licence for the product in the UK that C was accredited to carry out the installation.
- There was no evidence that the installation of the spray foam decreased the value of Mr W’s property or affected his ability to get a mortgage.

Mr W referred his complaint to us. Our investigator didn’t recommend the complaint should be upheld. Mr W disagreed. He said that he had sent photos showing the spray foam had been incorrectly applied, in that it had been applied directly onto tiles and that the felt hadn’t been patched as required. He also said the way it was installed meant there was a high risk

of timber decay in the loft.

Mr W asked for an ombudsman's 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.

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 relevant time.

In this case, the relevant law includes section 75 of the Consumer Credit Act 1974 (s.75). This provides protection for consumers for goods and services bought using credit. As Mr W paid for the spray foam insulation to be installed in his loft using a fixed-sum loan agreement, s.75 applies here. This means that Mr W could claim against Omni, the creditor, for any misrepresentation or breach of contract by C in the same way he could have claimed against C, the supplier. So, I've taken s.75 into account when deciding what is fair in the circumstances of the complaint.

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

I will address the key complaint points set out in the background of this decision.

The salesman that cold called Mr W falsely represented himself as a 'surveyor'.

It wouldn't be acceptable for someone to represent themselves as a qualified surveyor when they are not one. However, while I'm certainly not concluding the salesperson was a qualified surveyor, no evidence has been provided showing they were not. I've not seen sufficient evidence that the person involved wasn't qualified, able, or capable of undertaking the survey to Mr W's loft space.

The available evidence does not suggest to me that C made a false statement of fact as to his qualifications.

However, even if the sales representative had falsely said he was a qualified surveyor, I'd need to think this was the reason why Mr W entered into the contract with C – keeping in mind that Omni is only liable under s.75 for breach of contract or misrepresentation. I've not seen anything in Mr W's testimony that leads me to think it was the salesman's qualifications and not the potential benefits of the product that was the main driver of his decision to purchase spray foam.

From the available evidence I've not seen anything that makes me think Omni should have met Mr W's s.75 claim on this ground.

The representative failed to tell Mr W that he would have a problem getting equity release or selling his property after the installation.

There's no suggestion that Mr W was planning to sell his house or obtain equity release and he's not said that this came up during his negotiations with C before the sale. It seems

unlikely therefore that any statements as to the prospects of obtaining future borrowing (good or bad) were made by C.

Even if I'm wrong about that and taking into account that current lending criteria for some firms may be against spray foam insulation, I've seen no evidence that this was the case at the time of the sale, or that there was common knowledge within the insulation industry that there may be a risk of firms not lending. I've also not been provided with information that suggests all lenders would have refused to lend on this basis. So overall, I'm not persuaded that C said or did not say something that amounted to a misrepresentation on its part in respect of this complaint point.

The representative failed to tell Mr W that the product would give off harmful vapours or that he needed to ventilate his property following the installation.

It's possible that C didn't tell Mr W the above. But that doesn't mean that C breached its contract with him or misrepresented something to him. Had the product given off an unpleasant smell as Mr W says, I would've expected that to have been raised with C or Omni. Mr W didn't contact either until a lot of time had been passed after the product had been installed and after it had been removed. And there's no suggestion that Mr W watched the installation to know the necessary ventilation precautions weren't taken at the time.

The product was not installed correctly and not in compliance with the British Board of Agrément (BBA) certificate.

I'm not an expert on spray foam installation and neither is Omni. Even with the benefit of the information contained in the BBA certificate as to what an installer must do to obtain certification, the only evidence provided in support of a claim the installation did not meet the necessary requirements was contained within the letters of claim sent by Mr W's representatives at the time.

If the product had not been installed in accordance with the necessary standards, this might be evidence that C's services were not provided with reasonable care and skill. I've seen a copy of a letter from May 2023 from a third-party company who removed the spray foam which said that it had been installed in the wrong place as it had been applied between the rafters of Mr W's roof all the way to the eaves and had sealed the space so no air flow was being maintained in the roof area.

I've noted the contents of the letter, but I do have concerns about its independence. I say this because the company's name includes the words 'spray foam removal' and I suspect their business was run on the basis that they would be employed to remove spray foam rather than necessarily assess whether it was installed correctly. I note also that the letter says the spray foam wasn't '*neat or professional in finish*' without qualifying what was meant by this. I unfortunately can't shake the feeling I have because of the things I've mentioned that the company involved was against spray foam insulation in general, rather than them providing an objective, independent opinion on how it was applied to Mr W's property. I may be wrong about this, but that's my view.

I note also that Mr W has mentioned that he saw that the spray foam was applied directly on to tiles and that the felt hadn't been patched. Neither of those things were mentioned in the letter from the company that removed the spray foam, which strikes me as unusual if remedial works were still required.

I've also seen a copy of a letter written by another third-party company from October 2021. This effectively said the same things as the other company did subsequently in May 2023. I note though that their website says that they are '*unable to comment or survey other companies work and we recommend you contact the manufacturer or installer who you've*

contracted'. Although this is shown on this company's current website, it does strike me as odd that they would be so specific on this point and does make me question whether they were in fact independent enough to comment on what C had done. This company were also selling spray foam insulation at the time, so were competitors of C. Overall, I don't think the contents of their letter were sufficiently independent to make me think there was reasonable evidence that C installed the spray foam unsuitably and without reasonable care and skill.

So, I don't find Omni acted unreasonably in concluding there was insufficient evidence of a breach of contract in this regard.

The spray foam insulation wasn't needed in Mr W's property and was only sold to him because C pressured him.

Essentially, the allegation here is that C 'cold-called' Mr W and then pressured him into entering the contract with them. While 'cold-calling' someone isn't a banned practice, the fact that a customer didn't initiate contact initially with a company means that companies have to ensure they don't pressure someone to make a decision when the product they are selling wasn't one that a customer was anticipating buying.

At the time of the sale, The Financial Conduct Authority Handbook had in place Principles and Rules that firms had to adhere to when carrying out business; and firms had to always apply these Principles. The 'PRIN' section of the Handbook sets out at Principle 6 that a firm is required to '*pay due regard to the interests of its customers and treat them fairly*'. And Chapter 2 of the FCA's Consumer Credit Sourcebook says under section 2.2.2 that '*examples of behaviour by or on behalf of a firm which is likely to contravene Principle 6 include: (2) subjecting customers to high-pressure selling....*'.

I realise that Mr W says he was pressured, but it was ultimately his choice to decide whether to enter into the agreement with C or the agreement with Omni. Mr W signed the finance agreement and didn't attempt to cancel or withdraw from it or the contract with C. Before signing the agreement, I think Mr W was also shown pre-contract information that set out the key features of the loan agreement with Omni. On balance, I don't think there's enough evidence for me to conclude that Mr W was unfairly pressured into entering the agreement with Omni or the contract with C.

C didn't tell Mr W that there were potentially cheaper methods of insulating his loft.

As C were in the business of selling spray foam, it would have made little sense for them to have drawn Mr W's attention to other forms of insulation that they didn't sell. So, I don't uphold this complaint point.

Finally, I note that Mr W mentioned to our investigator that C's salesman told him that spray foam insulation would lead to cheaper bills. 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 suspect also that, if this statement was made, it was unlikely to be bespoke, or specific to Mr W's circumstances.

Summary

Overall, I don't find Omni unreasonably declined to meet Mr W's claim and so I don't 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 W to accept or reject my decision before 24 April 2025.

Daniel Picken
Ombudsman