

The complaint

Ms K's unhappy that Omni Capital Retail Finance Limited hasn't accepted responsibility for a claim she's made against it under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

Complaint background

I recently issued my provisional decision setting out the events leading up to this complaint and how I considered it should be resolved. I've reproduced the key details and findings below, as part of my overall decision. I invited both parties to let me have any further comments they wished to make in response. I'll address their responses later in this decision.

What happened

In September 2022, Ms K entered into an agreement with a third party "S" to have some work carried out to the roof of her property. The work included (but wasn't limited to) replacing any broken tiles, a deep clean, removal of algae and moss, and application of a preventative coating and sealant. The agreement was part-funded using finance from Omni, who paid S directly.

Shortly after the work was carried out, Ms K expressed concerns about the quality of the roof coating. She says she subsequently noticed internal water damage to her property, which she says other roofing companies attributed to the way in which S carried out its work. As I understand it, S carried out remedial work to the roof coating and removed debris including residual moss. However it disputed that its actions were responsible for the water ingress. Ms K maintained her view but was unable to get S to accept liability.

Ms K turned to Omni to make a section 75 claim against it. She raised a breach of contract claim in relation to the way in which the work was carried out. But Omni said it wasn't liable to Ms K because the way in which the transaction was structured took it outside the parameters of section 75. Omni said that this was due to the involvement of an additional party "K" as a credit broker. Ms K was dissatisfied with Omni's response and referred her complaint to us.

Our initial conclusions

Our investigator didn't think Omni's analysis of the transaction structure was correct. He found that the available evidence supported that Omni supplied credit to Ms K under an agreement that met the relevant definition of a debtor-creditor-supplier agreement as required under section 75, the involvement of K notwithstanding.

Our investigator noted the wording of the agreement between S and Ms K, and terms he felt were incorporated into the contract by the Consumer Rights Act 2015 ("CRA"). He was satisfied Ms K had provided persuasive evidence that the work hadn't been carried out to a suitable standard, which had required remedy. But he didn't think there was enough to show that this had led to the water ingress and damage Ms K had reported.

The investigator also felt that the remedial work S had carried out appeared to be an effective repair. So he didn't consider it necessary for Omni to take any other action.

Ms K didn't accept our investigator's assessment. She said she reported the water ingress when she discovered it, and that S's representative had told her the problem was connected to residual moss and debris from the original work carried out. Ms K said S had taken over a year to carry out the remedial work, which she thought unacceptable. She arranged for an independent specialist "R" to carry out an inspection and report on her property. R's report has been shared with Omni, which has provided comments in response and remains of the view that it is not liable to Ms K. The investigator wasn't persuaded to change his view and the matter has been referred to me for review.

What I provisionally decided – and why

I'm satisfied that section 75 applies to the transaction involving Ms K, S and Omni. The necessary elements all appear to be in place such that Ms K could make a claim in breach of contract against the lender under the provisions of the relevant legislation. Having reviewed the arrangements involving K, S and Omni, I see no reason to conclude that they prevent a claim under section 75 from being made.

It follows that I can quite understand why Ms K complained that Omni didn't deal with her claim appropriately. However, events have since moved on, and it's entirely plausible that if Omni had accepted that Ms K could bring a claim under section 75, it might still have declined to meet that claim for the reasons it has more recently stated. So I can't say that Omni's initial position means Ms K's complaint should be upheld in full. Rather, I've taken it into account when considering Omni's current position, which is (in summary) that:

- R's report includes images of the interior of Ms K's property showing past, but not current, evidence of water ingress. The report doesn't link this to the work carried out by S
- The interior and exterior photographs can't be directly compared as the former is taken from the rear of the chimney, while the latter is from the front
- The report acknowledges moss build-up as a possible cause of leaks or poor roof drainage, and such build-up is evident on Ms K's neighbour's roof. However, this was outside the scope of work agreed between S and Ms K, and Ms K's own roof can be seen to be clean
- The roof cleaning procedure was non-invasive and it would be unreasonable to determine after a year that the issue of water ingress was attributable to this
- The damp issue is unrelated to S's roof cleaning service and is more likely attributable to factors beyond S's responsibility (and by extension, Omni's)

The CRA says that every contract between a trader and a consumer to supply a service is to be treated as including a term that the supplier will carry out the service with reasonable care and skill. Where that's found not to be the case, the CRA provides that the trader has not conformed to the contract and the consumer is entitled to certain specific remedies, such as repeat performance within a reasonable period of time and without significant inconvenience to the consumer. In addition, the CRA permits other common law remedies to be sought, such as damages.

The Explanatory Notes to the CRA (note 243) says that *"Reasonable care and skill" focuses on the way a service has been carried out, rather than the end result of the service. This means that, if a trader has not provided a service with reasonable care and skill, they will be in breach of this right, whatever the end result."*

So even if as a result of S's actions Ms K ultimately ended up with a clean roof, free of algae and moss, with the agreed coating, it doesn't necessarily mean that S carried out its service with reasonable care and skill. Ms K's argument, in essence, is that S did not do so and in its actions caused damage to her property due to water ingress.

I can follow Omni's reading of R's report. The report notes that the patches of damp on the interior chimney breast are not indicative of a current damp issue. It does not attribute the reason for the damp to any specific root cause, though it does offer some possible causes that do not appear to reflect the current condition of Ms K's roof. The report doesn't go as far as Omni seems to be suggesting in ruling out the damp issue as unrelated to S's services or attributing them to factors beyond S's responsibility. But it does say that:

- Based on Ms K's evidence, moss debris remained after the original treatment and power clean
- The volume of water when cleaning can build up and seep through any cracked or damaged roof tiles and enter the property
- The moss debris that was left on the valley has potentially caused the internal dampness with the possibility of damaged tiles helping to transfer moisture

R's report doesn't express any opinion on whether S carried out its services with reasonable care and skill. But while it is inconclusive in terms of the underlying claim from Ms K, I consider it is instructive in some key respects that point towards a different position from the interpretation Omni has expressed.

Ms K has provided video evidence that supports her position that moss debris was still present after the original clean. R's report comments on the possibility that this, combined with the volume of water, was the cause of the identified past water ingress noted on the interior chimney breast. I consider it fair to comment that the use of power cleaning tools in addition to the volume of water would be more likely to result in water ingress if the roof had any cracks or damaged tiles.

S subsequently conducted a further clean of Ms K's roof as part of its remedial work, removing the moss debris. The chimney breast area is now dry, indicating that any water ingress is not current. That implies that the current condition of Ms K's neighbour's roof is less likely to be the proximate cause of any dampness; if it was, there would be no obvious reason that the dampness would not be ongoing. Similarly, if the water ingress were due to adverse weather conditions, it seems to me likely that there would have been further ingress over the year or so since Ms K reported the problem.

On balance of probability then, I find it more likely than not that the water ingress and historic dampness evidenced on the interior chimney breast occurred at (or shortly after) the time S carried out its services, and that the cleaning of the roof is likely to have been the proximate cause of that water ingress.

It doesn't automatically follow that water ingress occurred because S failed to exercise reasonable care and skill. But part of S's agreement¹ with Ms K was that it would replace any broken tiles and check all mortar work. So the scope of its work included an assessment that the roof was watertight, and the water ingress that has been identified suggests that this assessment was not adequate. It's worth adding that even if this had not been part of the agreed works, I would find it difficult to conclude that applying power

¹ The agreement dated 23 September 2022

cleaning and large volumes of water to a roof without undertaking such checks would be exercising reasonable care and skill.

Having considered all of these factors, I intend to conclude that Omni has not treated Ms K fairly in concluding it isn't liable to her in breach of contract. I'm conscious Ms K has asked for a refund of the money she paid for S's services. I don't think that's the right remedy for me to award; the work has after all been carried out, albeit belatedly.

Rather, I think the fair way to resolve matters would be for Omni to recognise its potential liability by paying Ms K compensation to reflect the impact of the breach of contract. In my view, that would be the cost of making good the internal damage sustained as a result of the water ingress, and any out-of-pocket costs she incurred in obtaining the evidence in pursuit of her claim.

Ms K has indicated she's paid some £440 to contractors to inspect and assess her property. I haven't been provided with likely costs of making good the internal damage, so would invite Ms K to obtain 3 independent quotes for this work, so that I might assess an appropriate sum that she should receive. Alternatively, should Omni wish to appoint its own contractor to discuss and undertake the necessary work, this should be at a time convenient to Ms K, with any cost covered by Omni.

I've thought about what Ms K has said about her own personal health and the stress she has experienced from the situation. I understand why she feels that she should receive compensation in relation to this, in addition to the costs I've mentioned. But it can be difficult to successfully claim for this in a breach of contract action. The contract was not intended to provide peace of mind, or one purely for pleasure or relaxation, even if these were ancillary benefits of Ms K entering into the agreement. It was to clean and protect the roof of Ms K's property. It's possible Ms K might be successful if she pursued this aspect at court, but it's by no means guaranteed. I don't think it would be appropriate for me to say Omni has a clear liability to Ms K under the breach of contract claim in this respect.

I do have the power to make awards for distress and/or inconvenience in relation to Omni's own acts or omissions in the course of providing its financial services to Ms K, where I consider it appropriate to do so. And I think that overall, Omni ought to have dealt with matters rather better than it did. I don't think that makes it responsible for any shortcomings on S's part, but I am minded to think Ms K was caused some degree of unnecessary time and trouble in pursuing matters with Omni for which she should be compensated. My current view is that £350 is a fair sum in this respect.

Response to my provisional findings

Omni didn't accept my provisional findings. It said:

- the evidence provided is inconclusive as there is no clear evidence to confirm that the damage caused to Ms K's roof is a result of the jet washing. In fact, there is no clear evidence that the issue is related to the roof at all.

Given the nature of the chimney structures and adjoining properties, it is entirely plausible that the damage could have originated from an external factor, including works or issues from the neighbouring property. Without a clear and independent expert assessment directly linking the work carried out to the alleged damage, it would be unfair for it to accept liability; and

- a witness statement from ground level, where an individual was unable to directly observe the alleged issue does not constitute evidence.

Ms K also provided further comment. She didn't dispute any of my provisional findings but felt that the proposed redress should also include the cost of R's report (£300), and that noting the impact on her health condition, she asked me to consider increasing the compensation for her distress and inconvenience from £350 to £750.

She also submitted a range of quotes for remedial work, both internal and external, to make good the damage sustained and work S had not properly carried out. Copies of these quotes are submitted to Omni for review as attachments not forming part of this final 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.

Ms K's claim relates to the work S carried out in cleaning and applying preventative treatment to the roof of her house. Under section 75 provisions, if S said something factually untrue that induced Ms K into the contract, or if S breached its contract with Ms K, then she might be able to claim against Omni as it financed the transaction.

Neither party has given me cause to reconsider whether section 75 applies to the transaction or disputed the provisions of the CRA as referenced in my provisional decision. Omni's response focuses on the absence of unequivocal evidence that S's actions caused the water ingress and consequent internal damage.

In light of Omni's comments, I think it's important to clarify some matters. Firstly, the question of whether R's report constitutes evidence. Clearly it does. It is a report carried out by an independent professional person, expressing their opinion on the relevant aspects of the condition of Ms K's property. The question is perhaps more properly about the weight to be placed on any comments R made on the roof condition, given that R did not carry out an inspection at roof level.

However, R makes no comment about the roof condition in its report, save for noting that it did not inspect the roof tiles or valleys. It is not R's evidence that suggests that moss debris remained on the roof after cleaning. It was S that said it removed moss as part of the remedial work it carried out, as evidenced in Ms K's video dated 17 October 2023. There is presumably no question that S carried out that work at roof level, and no reason why S's comments should not form part of the overall body of evidence.

Secondly, it is not necessary for either party to prove their case with absolute certainty. The test that I must apply is whether on the balance of the available evidence, it is more likely that the cause of the water ingress at Ms K's property was down to S's work than any other potential cause. That is the test applied by the courts in this type of dispute, and I don't consider it is for me to apply a different standard to Ms K's complaint.

As I noted in my provisional decision, the evidence in this case doesn't conclusively attribute responsibility for the water ingress to the work carried out by S. But it does show that a) S carried out work on Ms K's roof using high-powered cleaning equipment; b) the scope of S's work included an assessment that the roof was watertight, including replacing broken tiles and mortar; c) that moss and other debris remained present after S carried out its work, requiring S to take remedial action; d) that residual moss debris and damaged tiles help to transfer moisture; and e) the internal dampness in Ms K's property is historic rather than current, suggesting the water ingress is no longer occurring.

Against that, Omni has said that a possible cause of the water ingress could be work carried out on (or other issues with) the neighbouring property. It hasn't offered any evidence that

any work has been carried out at that property that could have led to the problem. And while the photographs of the adjoining roofs show moss on the neighbouring roof, were this to be the proximate cause of the water ingress I would expect the internal dampness on the chimney breast to be persistent, rather than historic.

Weighing up the likely causes, as I said in my provisional decision, I find it more likely that the water ingress to Ms K's roof was down to the way in which S carried out its work than to a different cause.

It follows that I have no reason to depart from the conclusions I reached in my provisional decision with regard to whether Omni acted fairly towards Ms K in response to her section 75 claim in breach of contract. In my view, and for the reasons I set out in my provisional decision and adopt here as my final decision, it did not.

Putting things right

I've found that Omni did not treat Ms K fairly in concluding it wasn't liable to her in breach of contract. To address this liability, it should cover the cost of making good the interior damage to her chimney breast. Ms K has supplied quotes and estimates for a range of work, both internal and external.

Those quotes are not solely for the cost of making good the area of the chimney breast, and I'm not minded to direct Omni to meet the full cost of all the work Ms K has had quoted. As I've said, it should cover the cost of making good the interior damage to the chimney breast, which appears to be a limited area of historic water damage.

Given that R's report says that there is no current evidence of damp, I'm not persuaded it's necessary for me to require Omni to meet the cost of replacing broken roof and ridge tiles to prevent water seeping in. It appears, on the face of the available evidence, that the roof is sufficiently watertight as per the contract with S. Nor, in such circumstances, does Omni need to pay for damp treatment (other than the investigative report R carried out at a cost to Ms K of £300, for which she has supplied an invoice). This should be added to the £440 I proposed in my provisional decision.

I accept there will be an element of additional redecoration of the affected area, but I see no reason why that should cover the whole room. Omni should explore with Ms K the extent to which the quotes reflect what I have set out as my view on its liability. It remains open to Omni to arrange itself for the necessary remedial work to be carried out to a suitable standard using an alternative provider, should it wish to do so, with Omni bearing that cost.

I've considered what Ms K said in response to my provisional decision. It doesn't really amount to anything that he hasn't already said, or that I didn't take into account in my provisional decision. I see no reason to change my provisional findings and so I adopt them in full in this final decision.

As I've said, I think Omni could have done a better job of dealing with Ms K's claim, causing her unnecessary frustration, distress and inconvenience. While I don't dispute what she's said about the problems she experienced in her dealings with S and the impact of the dampness on her personal health, I've explained why I don't think that's something for which I can reasonably expect Omni to compensate her. I'm satisfied that my proposed award of £350 in recognition of the distress and inconvenience Omni caused Ms K is appropriate in all the circumstances.

My final decision

My final decision is that I uphold Ms K's complaint. To resolve the complaint, I require Omni Capital Retail Finance Limited to take, within 28 days of receiving Ms K's acceptance of my final decision, the following steps:

1. cover the cost of making good (including redecoration) damage caused to the interior chimney breast by the water ingress, in accordance with the guidance I've set out above. The schedule of works is to be agreed between Omni and Ms K based on those guidelines, and Omni can either meet the cost by paying Ms K, or by instructing and paying its own contractor.
2. pay Ms K £740 in recognition of the inspection and assessment costs she has evidenced that she incurred.
3. pay Ms K £350 compensation to reflect the way in which it failed to deal adequately with her claim, causing her unnecessary frustration, distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 9 April 2025.

Niall Taylor
Ombudsman