

The complaint

Mr C complains that a bathroom supplier which he engaged to carry out installation works at his home did not carry out the work to a satisfactory standard. He says that he therefore has claims against the supplier for breach of contract and misrepresentation. And, because the work was partly financed with credit provided by Omni Capital Retail Finance Limited ("Omni Capital"), Mr C says he has a claim against it in the same way he has a claim against the supplier and fitter.

What happened

In April 2022 Mr C engaged a company, P, to supply and fit four bathrooms in his home. The work was to include the removal of the existing bathrooms, the supply and installation of sanitary ware, taps, radiators, showers and pipework, along with tiling of floors and walls, and decoration.

P, in consultation with Mr C and his partner, drew up plans for each room, and P produced software-generated drawings. Mr C's partner was also able to observe a virtual-reality mock-up of the finished bathrooms.

The schedule of work included the plans and drawings and a breakdown of the price for each bathroom. The total price was a little short of £50,000. Of that, £25,000 was provided by an interest-free 12-month loan from Omni Capital.

Because of other commitments and the relatively large scale of the project, P was not able to begin work until March 2023. It confirmed in an email of 26 April 2022:

"The installation date for your bathroom will be 13 March 2023 for the duration of 8 weeks."

Work began as planned on 13 March 2023, and was completed on 27 May 2023. Mr C expressed a number of concerns about the work, both when it was in progress and after it was completed. I do not need to set them out in detail, as both he and Omni Capital are familiar with them. In summary, however, his main concerns were:

- Errors were made during the quotation process.
- He did not receive the full project management service he had been led to expect.
- The work took eleven weeks, not the eight weeks he had agreed.
- The washbasin in the cloakroom was fitted in the wrong place, so the door could not be used.
- Pipes which should have been hidden were left exposed.
- Plastic pipes were used, even though copper pipes had been specified.
- A pipe was left leaking during the installation of the master en-suite.
- Some items, including a shower screen, were not ordered.
- A niche was not in the right place.

- The boiler was not repressurised as it should have been.
- There was damage to paintwork.

Mr C set out his concerns to P in an email of 28 May 2023. P replied on 4 June 2023, rejecting Mr C's claim for compensation and saying that it would not enter into further correspondence.

Mr C then contacted Omni Capital to raise a claim, as it had financed the transaction. He provided evidence which he said demonstrated that he had a valid claim against P.

Omni Capital rejected Mr C's claim. Mr C expressed his dissatisfaction with the response. Following a review, Omni Capital agreed that its initial response had not been adequate and paid Mr C £100 in recognition of that. It did not agree to meet his claim, however.

Mr C therefore referred the matter to this service, where one of our investigators considered what had happened. He did not however recommend that the complaint be upheld. Mr C asked that an ombudsman review the case.

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.

With one minor exception, concerning damage to Mr C's boiler, I have however reached the same overall conclusions as the investigator did. I shall set out my reasons.

Sections 75 and 75A of the Consumer Credit Act 1974

One effect of section 75(1) of the Consumer Credit Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include that the price attached to any single item which is the subject of the contract is not more than £30,000.

As I have indicated, the total price for the supply and installation of the bathrooms in this case was nearly £50,000. Although that price was broken down for each room (and indeed for the individual items which were to be supplied), I do not believe it can properly be said that Mr C entered into four separate contracts with P. He entered into a single contract for the supply and fitting of four bathrooms.

It follows that the transaction fell outside the financial limits in section 75(1) and that Omni Capital therefore has no liability to Mr C under that provision.

Section 75A of the Consumer Credit Act, however, includes similar provisions to those in section 75(1) where:

- the borrower has a claim for breach of contract under a "linked agreement" (defined in section 19);
- the cash price is more than £30,000, and the credit agreement is for £60,260 or less; and
- the debtor has taken reasonable steps to pursue his claim against the supplier.

I believe those conditions were met in this case. Mr C's agreement with Omni Capital was a debtor-creditor-supplier agreement and his agreement with P was financed by it; the two agreements are therefore "linked". The contract price and amount of credit are within the financial limits. Mr C raised his concerns with P, but it rejected his claim; there is no

requirement under section 75A to take any more than “reasonable steps” to pursue a claim against the supplier, and I think Mr C has done that.

Unlike section 75(1), however, section 75A does not cover claims for misrepresentation. It only allows a debtor to pursue a claim for breach of contract against the creditor.

However, section 50(1) of the Consumer Rights Act 2015 says:

“ (1) Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if—

(a) it is taken into account by the consumer when deciding to enter into the contract, or

(b) it is taken into account by the consumer when making any decision about the service after entering into the contract.”

I have therefore considered the service which P provided, both in relation to what was in the written contract and in relation to what Mr C says he was told about it.

General principles

I believe it will be helpful for me to summarise some general principles which apply in this case.

I am required by law and by our rules to determine complaints by reference to what is, in my opinion, fair and reasonable in all the circumstances. In deciding what I consider to be fair and reasonable, I must have regard to any relevant law (amongst other things).

It is not therefore for me to decide whether Mr C has a valid claim against P or whether he has a claim against Omni Capital under the Consumer Credit Act. They are however matters which I must take into account.

Mr C’s contract with P was for the supply of materials and for their installation. That is, it was a contract for goods and services. Under the Consumer Rights Act, a contract for the supply of goods is to be read as including a term that goods will be of satisfactory quality. Under the same Act, a contract for the supply of services is to be taken as including a term that services will be performed with reasonable care and skill.

For any legal claim to succeed, it is usually necessary to show that some actual loss has resulted from that breach. It is not usually enough to show there has been a technical breach if there are no adverse consequences.

I turn now to the specific concerns which Mr C has raised.

The quotation process

It is clear from what Mr C has said about the process leading to the agreement about what work was to be done that there were many exchanges between him and his partner on the one hand and P on the other. He says that P made errors and that the process was not as smooth as it should have been.

However, even I accept that, it cannot give rise to a claim against Omni Capital. This part of the complaint concerns events before any contract was agreed and before Omni Capital had provided any finance.

Project management

Mr C says that he was assured that he would receive a full project management service. Because he didn't, he says he has a claim in misrepresentation. As I have indicated, however, section 75A does not make Omni Capital liable for claims in misrepresentation, only claims for breach of contract.

The effect of section 50 of the Consumer Rights Act, however, is that statements on which Mr C relied in deciding to enter into a contract with P are terms of the contract.

I accept that Mr C was told that P would provide project management services, and I note that its advertising (on its shop, paperwork and vans, for example) included "*Design – Sourcing – Installation – Full Project management*". Of course, not all customers would need all of those services (some might source their own materials, for example), but I am satisfied Mr C did require project management services. After all, he had not made any other arrangements to ensure the correct workers were on site at the right time or when materials were to be delivered.

On balance, however, I am not persuaded that Mr C did not receive the project management services he paid for. An individual, Mr H, was appointed as project manager, and Mr C was able to contact him when necessary. I would not expect a project manager to be on site all the time or to provide full-time supervision of workers. Project management in this case included ensuring workers were available, materials were delivered and problems resolved, as well as liaising where necessary with Mr C and his partner. The scope of the project management services was not set out in the contract, still less the exact meaning of *full* project management.

I recognise that Mr C identified a number of errors made in the course of the work and that he feels that they were matters which a project manager should have noticed. I'll discuss those in more detail below, but I don't believe I can fairly say that it means he did not receive the project management service he paid for.

Time taken to complete the work

P's standard terms and conditions included:

"6. TIME FOR PERFORMANCE

6.1 Unless specifically agreed by the Contractor in writing no Commencement Date, Completion Date or programme shall be binding on the Contractor.

6.2 Where the Contractor agrees to a Commencement Date and/or Completion Date under clause 6.1 and it becomes apparent that the Works will not be commenced or completed by those dates for reasons beyond the control of the Contractor, the dates shall be extended by such time as is reasonable."

P said in April 2022 that the work would begin on 13 March 2023 and would take eight weeks. The email saying that did not say those dates were estimates or were subject to change. In my view, that meant that the exception in clause 6.1 applied and the eight-week duration was binding on P.

Clause 6.2 allowed for an extension of a reasonable time if the work could not be completed for reasons outside P's control. Mr C says the delay was the fault of P. P disputed that.

However, even if I accept that P did not meet the timescales agreed, I am not persuaded that the delay gives rise to a claim for compensation. That is, I do not believe there is a measurable loss which arose from a delay of three weeks. The contract did not, for example, provide for a daily rate in the event of a delay (as some do), and nor did it say that time was "of the essence" – meaning the completion date went to the heart of the contract. In the

circumstances, I don't believe it would be fair to require Omni Capital to compensate Mr C for the delay.

The cloakroom washbasin

The drawings and plans with the contract show the cloakroom with a WC facing the door and a washbasin on the left (when looking into the room). The door opens into the room, with the hinges on the right. When open, the door should hang against the wall opposite the washbasin. When opening the door, there is very little clearance between it and the washbasin.

When the washbasin was fitted, there was insufficient clearance. The door would not open. (I assume the door had been removed, so this was not immediately apparent at the fitting stage.) The only way the door would open inwards would be if the washbasin were moved further into the room, towards the WC.

Mr C says that he did not want to move the washbasin. To do so would have caused significant disruption, since the tiling was already complete. The alternative solution was to change the door, so that it opened outwards, into a passageway. P paid a sum towards that arrangement, but Mr C feels that a price reduction would be appropriate as well.

I accept Mr C's claim that the washbasin was fitted in the wrong place. Whilst the plan shows that there was very little clearance between it and the door, it's reasonable to assume that, had there been insufficient space, that would have been identified at the planning stage. It also meant that it was even more important that, at the fitting stage, measurements were accurate. On balance, I think there is evidence that P did not act with reasonable care and skill.

Be that as it may, I can see that P did offer to move the washbasin so that the door would open inwards as planned. I can understand why Mr C was reluctant to accept that offer, given the inconvenience it would cause. And changing the door to open outwards was not ideal either, since it now obstructs another door if both are open at the same time.

Since Mr C declined P's offer and agreed to a different solution, however, I do not believe it would be fair to require Omni Capital to compensate him further.

Exposed pipework

This part of Mr C's complaint concerns pipework for the washbasin in the main bathroom. The washbasin and combined vanity unit is "floating" – that is, the unit hangs from the wall with a space between it and the floor. Mr C says that the plumbing for the washbasin should have been routed behind the wall, so that the pipes were invisible. That is what was done in the other rooms. Instead, the pipes simply went down from the washbasin to the floor and could be seen under the unit.

Mr C says that when he raised this, the fitter admitted that he had made an error. He had mistaken Mr C's unit for one on another job he was working on and which went all the way to the floor (so the pipes were hidden inside the unit). P later said, however, that it was not possible to place the pipes within the wall, which was concrete and load-bearing.

P offered to investigate and re-route the pipes if possible. Mr C was reluctant to do that. As with the cloakroom, tiling was complete and further work would have been disruptive. In the event, P boxed in the pipes and finished the work with matching tiles.

I accept what Mr C says about this being an error on the part of P. There seems to be no other reason to fit pipes in this bathroom differently from the other three. And, if the real reason it wasn't done was because of the wall construction, I would expect P to have discussed options with Mr C before going ahead. Of course, that might have led to the same solution of boxing in the pipework in keeping with the rest of the décor.

I have however reached broadly the same conclusions about this aspect of Mr C's complaint as I did about the cloakroom. P made an offer to rectify the position (if that were possible) and, when Mr C declined that offer, came up with a different solution. Again, I understand Mr C's concerns about further disruption, but I do not believe it would be fair to require Omni Capital to compensate him.

Use of plastic pipes

Mr C identified that the plumbers were using plastic pipes and joints. He had however specified more expensive copper pipes and joints. That had been noted on the paperwork. After he raised the issue, the plastic pipes and fittings were replaced with copper ones.

Mr C has therefore received what was agreed and what he paid for. Whilst I can understand his frustration at what happened and that it fell to him to pick up on it, this does not give rise to a claim for breach of contract. We cannot know of course whether the changes would have been made without Mr C's intervention, but I cannot make an award for things which might have happened but didn't.

Leaking pipe

Mr C says a pipe was left leaking during installation of the master en-suite. It's reasonable to assume that was because it was not isolated as it should have been. Again, that is indicative of a lack of reasonable care. However, the problem was identified and rectified, and Mr C has not suggested that any damage resulted.

It follows that there was no loss arising from this incident. It would not therefore be fair to make an award in respect of it.

Items not ordered

Some items were incorrectly omitted from the quote obtained by Mr C. They included some lights and a shower screen. He then had to pay extra for them. As I have indicated, however, the quotes listed the materials and fittings that were to be supplied. This was not an "all-in" contract where Mr C was given a fixed price. If extra items were needed, or if items included in the quote were not needed, the price would be adjusted. I do not believe however that Mr C has paid for any items which were not supplied.

Positioning of niche in master en-suite

Mr C says that a niche in the master en-suite shower is not where it should be. This means that tiles do not line up with its edges, as they do in another of the bathrooms.

Mr C has provided photographs to demonstrate his point here, but I do not believe they evidence a breach of contract. The niche has been fitted and tiled to an appropriate standard, and it is not apparent to me that there was any agreement about its precise location in relation to the individual tiles. Even if I were to take a different view on that point, it does not seem to me that any loss has resulted. I do not believe it would be fair to require Omni Capital to compensate Mr C for this matter.

Boiler pressure

Mr C has explained he came home one evening to find that the pressure on his hot water and central heating boiler was around 4 bars. A pressure of 1 to 2 bars is normal. He says that the likely cause was that it had not been properly reset after work on the bathrooms. He was worried that it might cause further damage and so called P. It was possible to reduce the pressure, but a valve had been damaged.

Mr C had the boiler serviced shortly afterwards. The engineer replaced the valve at a cost of £60.

Omni Capital said that, as there was other work going on at around the same time, it was not clear that P was responsible. Mr C said only P's contractors were in the house on that day. In the circumstances, I think it more likely than not that P's engineers did cause the problem. I accept that there was nobody else working on the property at the time, and I think it unlikely that it was a latent problem resulting from any earlier work.

Mr C says that this could have caused much more serious problems. I accept that, although boilers do of course include safety features to prevent serious damage.

Clause 10.1 of P's terms and conditions says that P's liability is limited to "... *the reasonable cost of remedying or rectifying any defects in the Works* ...". I don't believe however that means P is only liable for defects directly connected to the goods supplied or the work done. Part of carrying out work of this nature with reasonable care and skill means not damaging other things in the course of that work.

In the event, the damage to the boiler was remedied at a cost to Mr C of £60. It would be fair for Omni Capital to meet that.

Damage to paintwork

Mr C has provided evidence of damage to paintwork and decoration during the course of the work. He says that he and his partner retouched some of it and that P carried out remedial work as well – filling cracks and repainting where necessary.

I would expect builders carrying out this type of work to take precautions to avoid damage as far as possible – for example, by putting down protective floor coverings. But I don't think that minor scuffs and scratches are necessarily indicative of a lack of reasonable care.

The point here however is that the damage has been repaired, as I would expect in the circumstances. I don't believe that further compensation would be fair in the circumstances.

Distress and inconvenience

It is clear that much of what P did in the course of the work caused Mr C distress and inconvenience, even where it has not caused actual financial loss and even where problems have been rectified. However, it would be very unusual for a court to make awards for distress and inconvenience in the context of claims for breach of contract. I do not believe this is a case where a court would make such an award against P.

Our own rules do expressly allow us to make awards in recognition of any distress or inconvenience where a complaint is determined in favour of the complainant. But I cannot make an award in respect of distress or inconvenience caused by the actions of P. I can only do so in respect of the actions of Omni Capital.

Omni Capital accepted that its initial response to Mr C's claim was inadequate, and it paid him £100 in recognition of that. I am inclined to agree that the response was rather cursory and did not explain the reasons for it in the way I would have expected. But I think that a payment of £100 is adequate in the circumstances.

My final decision

For these reasons, my final decision is that, to resolve Mr C's complaint in full, Omni Capital Retail Finance Limited should pay Mr C £60.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 April 2025.

Mike Ingram
Ombudsman