

The complaint

Mrs M complains about the way Creation Consumer Finance Ltd trading as Creation ('Creation') handled her claim under section 75 of the Consumer Credit Act 1974 ('section 75').

What happened

Mrs M went to a retailer where, with its help, she arranged a design for a new bathroom. The sales advisor gave her an estimate of £3,200 for the goods and up to £2,900 for the installation. Acting as a broker for Creation, the retailer arranged for a fixed sum loan agreement of £3,172.02 (the 'finance agreement') to cover the costs of the goods which was paid directly to the retailer. Mrs M separately paid £50 to the retailer for it to arrange a survey to give her a more accurate quote for the installation of the bathroom. The goods were ordered on 31 July 2023 which was the same date as the finance agreement. The goods were delivered within a few days of the order being placed and the survey was completed on 16 August 2023. An installation quote of £8,000 was given by the surveyor.

Mrs M complained about a number of matters to the retailer, including the price difference between the quote given by the sales advisor and subsequently, the surveyor. Dissatisfied with the lack of response from the retailer Mrs M complained to Creation saying it should be held liable under section 75 for breach of contract by the retailer. Before Creation provided a substantive response to Mrs M, she referred her complaint to our service. And whilst the complaint was with us, Creation confirmed it didn't think it was liable under section 75 as the goods Mrs M ordered were of satisfactory quality.

Initially our investigator said Creation should be held liable under section 75 for breach of contract as, in his view, the retailer hadn't exercised reasonable care and skill when providing Mrs M with the initial quote. But when Mrs M said she didn't want to reverse the contract for the goods, he recommended the only action Creation had to take was to pay her £100 for poor customer service issues in the way it handled her claim. Mrs M disagreed with the investigator's view maintaining that she thought Creation was in breach of contract and as a result, she thought it should be held liable to pay for the installation costs of her bathroom. She also said she didn't sign the finance agreement that paid for the goods. So, the matter was passed to me for a decision.

I issued a provisional decision. I said that I was reaching the same outcome as the investigator but for different reasons. Mrs M disagreed. She reiterated that she hadn't signed the finance agreement. Creation didn't add any further comments. So, the matter has been passed back to me to finalise.

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.

As I said in my provisional decision, I'm very aware that I've summarised this complaint in far less detail than the parties. I've focussed on what I think are the key issues here which simply reflects the informal nature of our service.

I note what Mrs M said in her response to my provisional decision. But I can't see that she's added anything significantly new. I appreciate she maintains she didn't sign the finance agreement. I note Mrs M said she wanted to see the email that was sent to her *before* signing the contract. This hasn't been provided to us by either party. Creation said it can't locate any other evidence of Mrs M signing for the finance. As I noted in my provisional decision, where information is incomplete or contradictory, I'll make my decision based on a balance of probabilities – that is, on what I think is more likely to have happened in light of the available evidence.

Creation has provided us with a copy of the finance agreement showing it was electronically signed. And Creation has also provided a copy of a letter dated 31 July 2023 addressed to Mrs M which enclosed a copy of this agreement. The covering letter stated that Mrs M had entered into a finance agreement for the purchase of goods. Further, Creation has provided a copy of the receipt from the retailer also dated 31 July 2023. This states the total amount paid for the order (goods) was £3,172.02 and then went on to say that this order was paid for via a 'Creation loan' totalling the same amount. Mrs M doesn't dispute receiving a copy of the finance agreement or the cover letter that came with it. She also doesn't dispute ordering, receiving, and retaining the goods that she purchased from the retailer and that were paid for using the 'Creation loan'. So, whilst I've taken into account Mrs M's further comments on this point, I'm still satisfied that, on balance, Creation hasn't done anything wrong by activating the finance agreement. Given this, whilst I appreciate Mrs M taking the time to respond to my provisional findings, I've no reason to change my mind. My view on how to settle this matter remains as follows:

Mrs M used a fixed sum loan from Creation to fund the goods she purchased from the retailer. It's important to note at the outset that Creation isn't the supplier (the 'supplier' is the wording used in the Consumer Credit Act 1974 (the 'Act'). I will refer to the 'supplier' as the retailer throughout this decision). So, in order to decide if it has acted fairly, I need to consider Creation's role as a provider of financial services only. And with this in mind I consider section 75 to be relevant. I also think section 56 of the Act is applicable. This section says that any negotiations between Mrs M and the retailer are deemed to have been conducted by it as an agent of Creation. So, amongst other things, I've taken these sections of the Act into account as well as other relevant law such as the Consumer Rights Act 2015 when deciding how to fairly and reasonably resolve this complaint.

In terms of the finance agreement Mrs M entered into with Creation, this was solely to finance the goods for her bathroom which, as I understand it, she received. She was also able to arrange for any items that weren't fit for purpose/not of satisfactory quality to be exchanged for more suitable items. So, on balance, I can't fairly or reasonably say that Creation has acted incorrectly by not accepting liability for a breach of contract.

Mrs M says she never signed the finance agreement dated 31 July 2023 which she believes was signed in-store in her absence. And she says she was only notified it had been activated after the survey had been carried out on 16 August 2023. I note the retailer's response to Creation about this matter said the process for signing the finance agreement was that: "...the customer would have been sent an email from Creation for them to sign at home as the Finance was "referred", this would mean that they would not need to be physically in store for the Finance to go through."

So, from what I can see the retailer's process didn't involve Mrs M signing the finance agreement in-store and this would explain why she doesn't remember signing it in this way. Creation has confirmed it was signed electronically by Mrs M on 31 July 2023. I can see Creation has been able to provide a copy of the finance agreement to us which was sent to Mrs M by post on the same day she signed it. The finance agreement showed how much she had borrowed

(£3,172.02), the rate of interest (0%), and the duration of the agreement (24 months). I also note it was signed and dated the same date Mrs M entered into a contract for the goods she ordered from the retailer, who attempted delivery within a few days of her order.

Whilst Mrs M says she tried to stop the goods from being delivered, from what she has said, this seems to have been because she didn't want the goods delivered before the survey rather than because she didn't want to enter into the finance agreement. I can't see any evidence of her trying to cancel the finance agreement that funded these goods. And she doesn't appear to want the finance agreement reversed even in response to our investigator's initial recommendation for Creation to do so. Based on everything I've seen, I can't fairly or reasonably say Creation has done anything wrong in activating the finance agreement when it did which, on balance, I consider was entered into by Mrs M to fund the goods she ordered.

Mrs M says she was misled into entering into both the finance agreement and the contract for the goods – she says she entered into these contracts based on misleading statements made by the sales advisor. For me to conclude there was a misrepresentation by the retailer in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the retailer made false statements of fact when selling the goods to Mrs M. In other words, it had told her something which wasn't true in relation to one or more of the points raised. I would also need to be satisfied that any misrepresentations were material in inducing Mrs M to enter into the contract for the goods or the finance agreement. This means I would need to be persuaded she reasonably relied on any false statements when deciding to enter into these contracts.

The main misrepresentation Mrs M says she relied on was the initial quote given to her by the sales advisor which was much lower than the quote from the surveyor. But the initial quote was an estimate not a statement of fact. This was made clear within the "Installation estimate guide" itself, which said its sole purpose was to help Mrs M to decide whether to continue with a home survey and receive a final installation quote. Further, the estimate was clearly labelled 'subject to survey' and went on to say it was to be used as an indicative guide only which was also mirrored in the retailer's terms and conditions. As far as I can tell there was no requirement for Mrs M to place an order for the goods before she had the survey carried out. So, whilst Mrs M thinks Creation should be held liable to pay the installation costs for her bathroom, I can't see any basis to require it to do so. The installation costs were never part of the contract she entered into with the retailer. And the estimate she received clearly said it was only to be relied on for the purpose of deciding whether to pay for a survey. I don't think it could be reasonably relied on to enter into either the finance agreement or the contract for the sale of goods.

Even if I were to accept Mrs M entered into the finance agreement or the contract for the goods as a result of a misrepresentation, which on the face of it, I do not, there isn't sufficient evidence that she's suffered any loss. She benefited from the goods which were paid for using the funds financed by the Creation loan. And she has made it clear she wishes to retain these goods. I can also see from the retailer's notes that when Mrs M received the quote from the surveyor, she said she didn't want to proceed with the retailer arranging the installation – she opted instead to arrange for the fitting herself. So, on balance, I can't say Mrs M has lost out as a result of something said or done by the retailer for which Creation could be held liable.

Finally, in terms of the customer service issues Mrs M experienced when making her claim against Creation, I'm satisfied its communication with her was, at times, poor. For example, there were difficulties getting responses from the section 75 team and putting her through to that team. This must've caused some frustration and inconvenience for Mrs M who had to chase Creation for answers to her queries. So, for the poor service she received from Creation, which, whilst frustrating, didn't ultimately impact on the outcome of her claim, I'm satisfied the £100 compensation recommended by our investigator, which Creation has agreed with, is a fair and reasonable way to resolve matters.

For all the above reasons, I won't be asking Creation to do anything more than pay Mrs M £100 in compensation. It is entitled to deduct anything from this amount it has already paid. I appreciate this is not the outcome Mrs M was hoping for. As noted above, my role is to look at things informally. So, if Mrs M disagrees, she can reject my decision and pursue matters by alternative means if she wants, such as court (seeking appropriate advice in the process).

My final decision

My final decision is that, if not already done so, Creation Consumer Finance Ltd trading as Creation must pay Mrs M £100 for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 June 2025.

Yolande Mcleod
Ombudsman