

## **complaint**

Ms T complains that Everest Limited misrepresented a finance agreement.

## **background**

In September 2016 Ms T placed an order with Everest for the installation of patio doors. There were some problems but Ms T and Everest seem to have agreed some changes and got things back on track. Everest then carried out the work.

Ms T paid a cash deposit to Everest and paid the rest with finance from a third party lender, which Everest arranged for her. Ms T says she only took finance because the Everest sales consultant told her the interest was deferred for six months and there'd be no interest to pay if she repaid the balance in full the day after making her sixth monthly repayment.

After her sixth monthly repayment, Ms T called the lender to pay off the balance. But it told her she'd been charged £805.33 of interest. Ms T didn't think this was right so she complained to Everest. In its response it said it hadn't offered Ms T an interest free period, and that its sales consultant and the documentation he'd given to Ms T had made it clear she'd pay interest.

Ms T was still unhappy so she brought her complaint to our service. The investigator that looked into it said that on the balance of probabilities, he accepted Ms T's version of events and thought Everest should refund the interest Ms T had been charged.

Everest disagreed. It said Ms T couldn't have reasonably construed that the finance had a six month interest free period. And it suggested reasons for why Ms T might have chosen to take finance instead of paying in full at the start - these included an 8.5% discount on Ms T's order.

I issued my provisional decision on 8 October 2018 and I said as follows.

*'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm intending to uphold Ms T's complaint.'*

*Everest has emphasised that the documentation it gave Ms T makes it clear that she'd be paying interest on the finance and doesn't mention an interest free period anywhere. In his statement, Everest's sales consultant says he's sorry Ms T misunderstood what he said, but that he clearly explained how the finance worked and that at no stage did he say anything about an interest free period.*

*I've seen for myself that the agreement Ms T signed clearly shows interest would be payable on the loan. But Ms T says that when they met the sales consultant told her she wouldn't pay interest for the first six months and she wouldn't pay interest at all if she repaid the finance in full the day after her sixth monthly payment. Ms T says the sales consultant said he'd text her to remind her to do this, but he didn't.*

*Ms T accepts the agreement she signed shows she'd pay interest, but says that when they met the sales consultant told her the interest free arrangement was an 'understanding'. Ms T says the sales consultant presented this arrangement to her as a way of giving her time to*

*gather her money together from different places. She says that if she'd known she was going to pay interest, she wouldn't have taken finance.*

*Ms T and Everest give very different accounts of what was said at their meeting. There's no record of the meeting and I wasn't present, so I can't say for certain what was said.*

*Therefore I need to decide what's likely to have been said. To do this I've considered the evidence that I do have.*

*I've seen that the finance agreement shows that interest is payable from the start with no mention of a deferred interest period. But Ms T has explained that the sales consultant told her something different. And Ms T's actions are consistent with what she says he told her - she made a note on the finance agreement to call the lender after six months had passed, she did call the lender and she paid off the finance in full.*

*Ms T's bank statements show that at the time she took finance, she had significantly more funds than were needed to pay for the work in full. Everest has said that by taking finance instead of paying in full, Ms T received a discount on her order, benefitted from protection under Section 75 of the Consumer Credit Act 1974 and kept her money available for other uses.*

*But I'm not inclined to think Ms T would've taken finance in order to access these benefits. Taking finance did mean Ms T received a discount of 8.5%, or £762, she otherwise wouldn't have got. But taking finance also meant she paid £803.55 interest that she otherwise wouldn't have paid. So overall Ms T paid more by taking finance. And I don't think it's likely that the extra Ms T paid was balanced out by the other benefits Everest suggests.*

*I say this firstly because Ms T had already experienced problems with this order and Everest had got things back on track for her. So I don't think it's likely Ms T would've paid extra to receive Section 75 protection since Everest had so far put problems right. Secondly, Ms T had significantly more funds in her account than the full cost of her order, so she'd still have had money available to her if she'd paid in full.*

*Therefore, on the balance of probabilities I'm minded to say that Everest misrepresented this finance to Ms T.*

*The next thing I need to decide is whether it was reasonable for Ms T to rely on that misrepresentation when she took out finance. While the agreement clearly shows that interest is payable, I'm inclined to think Ms T acted reasonably in relying on what the sales consultant told her. As I've said, there were problems with the original order and it appears that over a few months Ms T had several discussions with different people at Everest. She finally met with the sales consultant and it was at this point that the way forward was agreed, including the amount to go on finance.*

*Given all the discussions and changes, I can understand that Ms T might've relied on what the sales consultant told her as definite and conclusive. So taking everything into account, I'm minded to say it was reasonable for Ms T to rely on the misrepresentation.*

*To put Ms T back into the position she should have been in, I'm intending to say Everest should refund Ms T £803.55 for the interest she had to pay. But taking finance meant Ms T received a £762 discount she otherwise wouldn't have had, so this should be deducted. Therefore I'm inclined to think Everest should pay Ms T £41.55, plus 8% simple interest a year on that amount to compensate her for not having the use of it.'*

Everest agreed with my provisional decision, and Ms T has provided some further comments.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done that, I won't be changing my decision. I'm upholding Ms T's complaint and asking Everest Limited to pay her £41.55 plus 8% simple interest a year from the date she started making monthly finance repayments. To explain why, I'll summarise the comments Ms T provided in response to my provisional decision, and why they don't change my mind.

Ms T says it's true she received a discount of £762 for using finance, but that Everest sold her the finance under false pretences. As I set out in my provisional decision, I agree with Ms T that Everest misrepresented the finance to her and that it was reasonable for her to rely on what Everest told her. That's why I'm upholding her complaint.

Ms T has also told me more about the problems she had with Everest's work. I'm sorry to hear of these problems, but in this decision I can only consider what Everest did during the sale and the administration of the finance agreement it arranged for her. However, Ms T might have grounds to bring a complaint against the finance provider if she remains unhappy with Everest's work.

### **my final decision**

For the reasons set out above, I uphold this complaint. Everest Limited should pay Ms T £41.55 plus 8% simple interest a year from the date she started making monthly finance repayments.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 9 December 2018.

Ailsa Wiltshire  
**ombudsman**