

complaint

Mrs Y's representative complains that an agent of Weatherseal Home Improvements Limited persuaded her to take out a loan agreement to pay for a new door.

background

A Weatherseal salesman visited Mr and Mrs Y's home in January 2012. Following that visit, Mr and Mrs Y bought a new door, financed through a ten-year fixed-sum loan with a third party lender. The loan was written in Mrs Y's name.

Mrs Y is represented in this complaint by her son (referred to here as Mr D). He says Weatherseal's agent took advantage of his elderly parents by selling them the door and arranging the loan. He does not believe the loan was adequately explained to his parents, particularly because they had sufficient funds to pay for the door in cash.

Our adjudicator upheld the complaint. He concluded that the loan was not adequately explained to Mr and Mrs Y and was satisfied that they had sufficient funds to pay for the door outright. As such, he found that the loan was misrepresented to Mrs Y. He recommended that Weatherseal settle the loan with the lender and allow Mrs Y to pay the cash price for the door.

Weatherseal accepted those conclusions, however Mrs Y's representative did not. He does not feel that Weatherseal is "*being sufficiently brought to task*" by our adjudicator's recommendation. As such, the matter was referred to me.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold the complaint.

First, I am conscious that a separate investigation by the lender is ongoing. I do not intend to cover that here and have only referred to the lender where it is relevant to Mrs Y's complaint against Weatherseal.

Second, I should clarify our role. We are not a regulator and do not police the behaviour of businesses, nor do we have powers to fine or punish a business that breaks the rules – in this case, that is the role of the Office of Fair Trading (OFT). Nor are we a consumer champion. We are here to resolve the disputes referred to us without taking sides but listening to the arguments of both parties and deciding what is, in our opinion, fair and reasonable in all the circumstances of a complaint.

Mr D has sent us bank statements that confirm Mr and Mrs Y had sufficient funds to pay for the door in cash. Given their age and financial resources, I cannot see how the Weatherseal agent might have believed that a ten-year loan would have been in their best interests – a clear breach of the OFT's credit brokers and intermediaries guidance. In the circumstances, I am satisfied that the loan was mis-sold to Mr and Mrs Y.

However, I am also satisfied that Mr and Mrs Y agreed to buy the door. Whilst I appreciate that Mr D believes the Weatherseal agent took advantage of his parents, I am not persuaded that they were forced to buy the door or that they did not want it. While I find that its agent misrepresented the loan to Mrs Y, I consider it fair that she pays for the door.

The question is, therefore, how much should she pay? There are a number of separate elements to this:

- Cash price of the door. The Weatherseal invoice dated 27 January 2012 says that "*the full cash price is applicable*" if the customer chooses not to pay by finance. The full cash price is listed as £3,850.
- The cash back. As part of the finance agreement, Weatherseal gave Mrs Y £1,500 cash back in March 2013. This has not been put towards the loan therefore I consider it fair that Mrs Y refund this to Weatherseal.
- Loan repayments. Mrs Y paid a £100 deposit and has since made 13 monthly repayments to the loan. In total, she has paid £1,516.22 for the door.
- Deductions by lender. The third party lender has accepted that it made mistakes in its handling of Mrs Y's account. It has deducted £850 from the outstanding loan balance to acknowledge this (£500 on 11 March and £350 on 7 August 2013). It is reasonable for me to consider these deductions as payments made by Mrs Y.

So, I find that Mrs Y should pay Weatherseal:

$$\begin{aligned} & (\text{cash price} + \text{cash back}) \text{ less } (\text{payments to lender} + \text{other deductions by lender}) \\ &= (\text{£3,850} + \text{£1,500}) - (\text{£1,516.22} + \text{£850}) \\ &= \text{£2,983.78} \end{aligned}$$

Finally, I find that Weatherseal has caused both Mrs Y and Mr D inconvenience. Its agent persuaded Mrs Y to take out a loan when this was not necessary or in her best interests and failed to pay the £1,500 cash back promptly. Indeed, it was only Mr D's investigation that brought this to light. Having considered the general levels of awards this service makes in this area, I assess a fair award at £150.

I appreciate Mr D may consider my decision to be inadequate and I understand this. However, as I said earlier, this service is not a regulator and I do not have powers to fine or punish Weatherseal or award punitive damages against it.

Similarly, it is not this service's role to decide whether the price Weatherseal charges for its product is good value or not. Mrs Y bought a new door and I consider it reasonable that she pay for it.

I would simply point out that Mrs Y is under no obligation to accept my decision; if she does not, she remains free to pursue the matter in other ways, such as through the courts.

my final decision

My final decision is that I uphold the complaint and order Weatherseal Home Improvements Limited to:

- settle the outstanding balance on the loan agreement on the understanding that Mrs Y (or her representative) pays Weatherseal £2,983.78;
- ask the lender to remove any adverse information it has registered about this agreement with any credit reference agencies; and

- pay Mrs Y £150 for the inconvenience this matter has caused.

For the avoidance of doubt, Weatherseal should settle the loan with the lender as soon as Mrs Y (or her representative) accepts my decision. If Mrs Y (or her representative) is unable to pay the full amount immediately, the parties should agree a suitable and affordable payment plan.

Simon Begley
ombudsman