

complaint

Ms H complains that John Lewis Financial Services Limited will not refund to her the money that she paid for a conservatory. Her complaint is made against John Lewis Financial Services under section 75 of the Consumer Credit Act 1974 and she is being helped with her complaint by a relative.

background

Ms H used her John Lewis Financial Services credit card in February 2013 to pay £400 towards the cost of a conservatory which cost £3,930 in total. She also paid £2,530 using a debit card and paid the builders £1,000 in cash and a cheque. Ms H experienced some problems with the conservatory and two reports were produced which showed that there were problems with the fitting of the conservatory. She complained to the supplier and then to John Lewis Financial Services under section 75. She was not satisfied with John Lewis Financial Services' response so complained to this service. John Lewis Financial Services then offered to refund £4,558 to Ms H (which was the amount she paid for the conservatory and the cost of the two reports) and to pay her £500 for the trouble and upset that had been caused. Ms H did not accept its offer.

The adjudicator recommended that this complaint should be upheld. She concluded that there had been a breach of contract and that John Lewis Financial Services should pay £7,942 for a replacement conservatory, refund £620 to Ms H for the reports and pay her £500 for the unsatisfactory service and delays caused at the beginning of the complaint.

John Lewis Financial Services has asked for this complaint to be considered by an ombudsman. It says, in summary, that Ms H went to a budget retailer, paid for a budget job and paid the fitter in cash and that section 75 is not designed to place the consumer in a position that is better or enhanced than if the contract was performed. It says that the most equitable option would be to obtain a quote for the removal of the conservatory which – together with its existing offer – would fully restore the pre-transaction position.

Ms H says that she should receive £2,000 compensation for her distress and inconvenience and that the cost of her choice of replacement conservatory has increased by £400.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms H and to John Lewis Financial Services on 8 June 2015. In my provisional decision I said as follows:

"In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. To be able to uphold Ms H's complaint about John Lewis Financial Services under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the supplier of the conservatory. John Lewis Financial Services has accepted that there has been a breach of contract and the outstanding issue is the remedy that is appropriate.

Ms H paid £3,930 for a conservatory to be supplied and fitted. That conservatory has faults – which the independent reports conclude have been caused by poor fitting. I consider that the normal remedy in these circumstances would be for Ms H to be put

in the position that she would have been in if the contract had been properly completed – that is she would have a conservatory of the standard that she had paid for. I do not consider that it would be fair and reasonable for Ms H to have a higher quality conservatory installed than the conservatory that she paid for.

The quotes that Ms H has provided show a replacement cost of £7,942 which she says has now increased to £8,342. I am not persuaded that a conservatory costing £8,342 is a like for like replacement for a conservatory that cost £3,930 in February 2013. No quotes for a conservatory at similar cost to that paid by Ms H have been provided. I therefore do not consider that it would be fair or reasonable for me to require John Lewis Financial Services to pay for a replacement conservatory that is substantially more expensive than the conservatory that was originally chosen by Ms H.

As I do not consider that remedy to be fair and reasonable, I consider that it would be appropriate to return Ms H to the position that she was in before she entered into the contract with the supplier. John Lewis Financial Services has agreed to do that. It has offered to refund to Ms H the £3,930 that she paid for the conservatory, to pay her for the independent reports and to pay her £500 for her distress and inconvenience. It has also said that it would consider a claim for the removal of the conservatory. I consider that John Lewis Financial Services' offer – revised to include the cost of removing the conservatory - is fair and reasonable in the circumstances. When responding to my provisional decision I ask Ms H to provide at least two quotes for the removal of the conservatory so that they may be agreed by John Lewis Financial Services before I issue a final decision on this complaint.

I consider that £500 compensation for Ms H's distress and inconvenience is fair and reasonable in the circumstances. I do not consider that it would be fair or reasonable for me to require John Lewis Financial Services to increase the amount of compensation that it has offered to pay to Ms H."

Subject to any further representations by Ms H or John Lewis Financial Services, my provisional decision was that I was minded to uphold this complaint in part.

Ms H's mother has responded to my provisional decision on her behalf and says, in summary, that: she has obtained two quotes for the conservatory to be dismantled, and she would like John Lewis Financial Services to pay her, in advance, the money that has been agreed for the defective conservatory and the cost of dismantling it. John Lewis Financial Services says that it will pay the cost of dismantling the conservatory upon receipt of an invoice when the work has been completed.

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 am not persuaded that I should change my provisional decision.

Ms H has provided an estimate of £1,800 for the conservatory to be dismantled. I consider it to be fair and reasonable for John Lewis Financial Services to pay that amount directly to the dismantler upon receipt of an invoice when the work has been completed. I do not consider that it would be fair or reasonable for me to require John Lewis Financial Services to pay that money directly to Ms H or to pay it before the work has been completed.

my decision

For the reasons set out above, my decision is that I uphold Ms H's complaint in part. In full and final settlement of it, I order John Lewis Financial Services Limited to:

1. Refund £3,930 to Ms H.
2. Pay her £620 for the cost of the independent reports.
3. Pay interest on those amounts at an annual rate of 8% simple from the date of payment to the date of settlement.
4. Pay £500 to Ms H to compensate her for the distress and inconvenience that she has been caused.
5. Upon receipt of an invoice and after completion of the works, pay £1,800 for the conservatory to be removed and the site restored.

If John Lewis Financial Services deducts tax from the interest element of my award, it should send Ms H a tax deduction certificate when making payment. She can then use that certificate to reclaim the tax if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms H to accept or reject my decision before 9 November 2015.

Jarrod Hastings
ombudsman