

The complaint

Miss M complains about how Hitachi Capital (UK) Plc, trading as Hitachi Personal Finance, handled her claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to a defective conservatory.

What happened

In February 2020 Miss M entered into a regulated fixed sum loan agreement with Hitachi to pay for replacement windows and doors for her conservatory. That work was to be carried out by a third party which I will call the supplier. It is not in dispute that Hitachi is liable under section 75 for any breach of contract by the supplier.

The cash price of the work to be carried out, and for the replacement parts, was £12,000. Miss M paid a deposit of £500 and borrowed £11,500. The terms of the loan were that if she repaid the £11,500 in full within twelve months of the date of installation (together with a fee of £29), then she would owe no interest; otherwise, she would also have to pay interest of £5,306, over 120 monthly instalments of £140.05. Miss M says that she intended to take advantage of that clause and to pay off the loan within the first year.

The original conservatory had frames made of timber. The new window frames and door frames were made of UPVC. It is not in dispute that this was an unsuitable material to use, since it was not strong enough to support the weight of the conservatory. After they were installed, the supplier told Miss M that steel supports would need to be added to support the windows and the roof, and that she would have to pay an additional £1,000 for that. But when some further work was carried out on the conservatory, the steel supports were not added. There appears to have been some confusion at the time about whether the steel supports had been added or not, but it is now accepted that they were not, and that further support is needed. After some time, the supplier eventually agreed not to charge Miss M the extra £1,000.

Since then, two independent engineers have inspected the conservatory and have each found that it is not structurally sound. They say that the UPVC frames should not have been used, as they do not adequately support the weight of the structure, and they flex too much when a horizontal force is applied to them, which means that they do not sufficiently withstand high winds. Over time, this has led to significant damage. It is not in dispute by the supplier or by Hitachi that a significant amount of remedial work is now required. The supplier and Hitachi have agreed in principle that this should be done at no cost to Miss M, but at time of writing the work has still not been done yet.

Miss M has obtained quotes from two firms for the remedial work. The cheapest of the two, dated 21 April 2023, was for £60,000; it has been shared with Hitachi. (That quote was only valid for 30 days, but I understand that Miss M has obtained an updated one.)

In September 2023, our investigator upheld this complaint, based on the expert evidence which had been provided. She recommended that Hitachi arrange and pay for the necessary remedial work to be carried out, including fitting proper supports to the windows, and that this should be done within a reasonable amount of time. She also said that Hitachi should

not charge Miss M interest yet, as but for the condition of the conservatory, Miss M would probably have repaid the loan within the first year and so would not have incurred any interest; but she said Hitachi could charge interest after the remedial work was completed, if Miss M did not then repay the loan. The investigator went on to say that Hitachi should refund the cost of a survey Miss M had paid for (£630), and pay interest on that refund, and should also pay Miss M a further £500 for her inconvenience.

Hitachi neither accepted nor objected to the investigator's opinion, but it said it was waiting for the supplier to obtain a third report, which it had been trying to get since August 2023. The investigator therefore referred this case for an ombudsman's decision. Since then, in November, Miss M reported that further damage had occurred to the conservatory. The further report sought has still not been provided; in light of the continuing damage and the fact that there are already two reports, I decided not to wait for the third report.

I wrote a provisional decision which read as follows.

What I've provisionally 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.

I have read the engineers' reports dated 2 August 2021 and 9 March 2023. The second report includes photos of the damage. Both reports seem to me to be thorough and reliable, and I accept their findings and conclusions.

Both reports are clear that the window frames are not adequately supporting the roof, and that the addition of further supports is required. The first report says that the structure does not comply with building regulations. The second report says that structural damage has resulted directly from the lack of proper support. (It rules out the possibility that the problem has been caused by the foundations, because the dwarf wall is undamaged.) It goes on to say that the remedies which had been proposed by the supplier at the time of writing were not acceptable, because they were both structurally and aesthetically unsuitable.

The remedial work required is that the existing glazed screens must be replaced with suitable structural framing, including proper supports for the inner rafters adjacent to the rear wall of the property. The new design must comply with building regulations.

As I've said, it's not in dispute that further work is needed, and so I uphold this complaint.

I agree with most of what the investigator has recommended by way of putting things right. However, I think that £500 is not enough to reflect the inconvenience to Miss M. This matter has been dragging on for a long time, extensive work will be necessary, and she has found the matter to be stressful and time-consuming. The condition of the conservatory has recently deteriorated significantly. I currently think that £1,500 would better reflect this.

Apart from that, I agree with the rest of what my colleague said. So I will require Hitachi to arrange for the remedial work to be carried out at no cost to Miss M, to refund her the cost of the report she paid for (plus interest at 8% a year), and not to charge interest on the loan if Miss M repays the £11,500 within 30 days of when the remedial work is completed.

Responses to my provisional decision

Both parties accepted my provisional decision.

Miss M provided updated quotes from two firms. (I have shared these with Hitachi.)

Hitachi asked me if it could instruct its own choice of firm instead, as it could obtain discounted rates not available to the public. But this would require its contractor to visit the premises, carry out a new survey, and prepare a new schedule of works. Miss M objected to that, as this would introduce further delay, and her own contractors are ready to go.

I have weighed up the arguments of both parties, and I think both have made reasonable points. But given how long this matter has gone on for, I am more persuaded by the need to avoid further delay than by the need to mitigate the costs. So on balance, I think it would be fair and reasonable to require that the work be carried out by one of the two firms which has recently provided quotes to Miss M, and that should be whichever is the cheaper of the two. (I had better not say here which of the two that is, because one of the quotes was only valid for 30 days, and that time has already expired, so it will be necessary to check if the price has changed and by how much; but I can leave that to the parties to do.)

My final decision

My decision is that I uphold this complaint. I order Hitachi Capital (UK) Plc to:

- Identify the cheaper of the two quotes which were provided to Miss M in January 2024, and pay for all of the remedial work set out in that quote to be carried out by the firm which produced it (this includes paying any deposit in advance);
- Waive the interest on the loan if Miss M repays the Amount of Credit (£11,500) within 30 days of when the remedial work is completed;
- Refund Miss M £630 (being the cost of her structural inspection report dated 9 March 2023), with simple interest at 8% a year from 4 April 2023 to the date of settlement;¹ and
- Pay Miss M £1,500 for her inconvenience (without off-setting this sum against the loan).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 6 March 2024.

Richard Wood
Ombudsman

¹ This refund may be off-set against the loan if Hitachi chooses. If Hitachi considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Miss M how much it has taken off. It should also give her a tax deduction certificate if she asks for one, so that she can reclaim the tax from HMRC if appropriate.