

The complaint

Mr B is unhappy with how Allium Money Limited handled a claim he made to it.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mr B purchased double glazing from a supplier using finance (a fixed sum loan) from Allium.

Mr B told Allium he was unhappy with the quality of the windows (leaks and issues with the windows being compliant with regulations, including not having the correct restrictors) and says the design of the windows was mis-sold. Allium considered his claim and concluded (based on information from an independent expert report and the supplier):

- The windows were not leaking or uncompliant with regulations;
- some remedial works were necessary but these had either been carried out or were due to be booked in by the supplier for completion; and
- some of the designs were different to those originally agreed but that was because variation of contracts had been agreed to alter things.

Our investigator did not uphold the complaint about the claim outcome.

Mr B has asked for an ombudsman to look at things. In summary, he says he had an independent surveyor's report carried out which states that all the windows are defective and shows the windows are not fit for purpose and he has the right to all his money back now. He has also said that he is suing the supplier in court.

I issued a provisional decision on this case which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

To be clear here, I am aware that since Allium dealt with the initial claim matters have moved on considerably and a follow up claim has been made to it. However, the subject matter of this complaint and which was dealt with in Allium's Final Response Letter from October 2023 is all I am looking at here. That is Allium's response to the Section 75 claim made to it in August 2023 about the window installation. I am not considering any follow up claim or events since as these would be the subject matter of a new complaint. Furthermore, I know that Mr B has asked for advice from me regarding events following the initial claim – but my role is not to provide advice but make a decision on the complaint before me.

I am also aware Mr B appears unhappy with actions taken by this service during the time we have had it – but it is not my role to look at this.

Before I continue it is also worth noting that Mr B as the debtor under the credit agreement is the person who is Allium's customer and the eligible complainant to this service and whom any financial loss or distress and inconvenience award would have to relate to. So while I am sorry to hear that his wife (who is representing him on this complaint) says she has suffered a lot of stress from this matter and it has impacted her health and work – it isn't something this service could make an award for in any event.

I am sorry to hear about Mr B's issue with the window installation he paid for. However, it is worth noting here that Allium is not the supplier of this service. So when looking at what is fair I consider its role as a provider of financial services – and what it reasonably could have done to assist with the information that was reasonably available to it at the time. As Mr B used a fixed sum loan to pay for the service in dispute I consider the protection of Section 75 of the Consumer Credit Act 1974 ('Section 75') to be particularly relevant here.

Section 75

Section 75 in certain circumstances allows Mr B to hold Allium liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the loan.

There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the relationship of the parties to the agreement (known as the debtor-creditor-supplier agreement). After considering these factors I think there is potentially an issue with the validity of the claim Mr B might have against Allium due to the lack of correct debtor-creditor-supplier agreement. I say this because in order for Mr B to have a claim against Allium for the actions of the supplier he needs to show that he has a contract with Allium for the installation. In this case it looks like the contract with the supplier is with his wife as it is she who is named on and has apparently signed all the paperwork with the supplier.

There might be circumstances where Mr B is able to show that he is a contracting party here. But I don't think it is necessary for me to dwell on this issue, or investigate that further at this stage. I say this because even if there was the correct debtor-creditor-supplier agreement for Mr B to have a valid claim it would not change the outcome I am proposing here in any event.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply a service (such as the installation of windows here), there is an implied term that the service will be carried out with reasonable care and skill. Furthermore, it says that goods will be of satisfactory quality.

I think it is important to point out here that I am aware that since Allium gave its claim outcome (and Final Response Letter) in October 2023 Mr B has got an independent surveyor's report which he says shows the windows are faulty and not fit for purpose. It appears this was shared with Allium in March 2024. However, I am looking at the information that was reasonably available to Allium at the time it considered the claim made in August 2023. Here I note that it had an inspection from an independent industry approver ('Inspection A') and the details of the investigation by the supplier's own engineer.

One of the main issues Mr B complained about at the time was leaks with the windows and provided photos of some wet areas and claimed the units were faulty. Inspection A does not appear to confirm that the units are leaking or faulty, while the supplier claims they are

not leaking and have the proper drainage channels. It suggests that water has come through the frame from the night vents but concludes that water is not entering the property and the windows are sealed appropriately. Based on the information available at the time I don't consider Allium was unreasonable in not concluding the units were faulty noting that it isn't an expert in these matters.

Mr B has also said that the windows are not compliant with fire safety regulations and the design is 'illegal' and should not have been installed. But I don't see where Inspection A or the supplier's engineer concluded this. I can see that Inspection A did appear to make some recommendations and observations to improve safety (such as risk of falling) but did not specifically conclude the windows were non-compliant as installed and issued a compliance certificate. It appears that since this report the supplier confirmed it had fitted restricted hinges. While I can understand why Mr B would be concerned about safety regulations I don't see that Allium had compelling evidence that the windows were non-compliant with regulations, so its conclusion at the time was not unreasonable.

It appears that a combination of Inspection A and the supplier's visit identified some issues that did need addressing. For example, one of those was providing more fixings for the windows to suitably support the structure. But the supplier had evidenced that it had carried this out with photos. It had also said it had placed orders for some problematic replacement sashes and frames and would book these in and fit these. The Consumer Rights Act 2015 specifies that when a service is not carried out with reasonable care and skill the initial remedy will be a 'repeat performance'. So coming back to fix installation issues is not unreasonable in the first instance. Furthermore, if any issues were not strictly installation issues but related to faulty goods – in the first instance a repair or replacement is not unreasonable. Therefore, I don't consider Allium was acting unfairly in not concluding that Mr B was due a refund, compensation, or some other remedy at this stage.

Regarding the issues with the design. The main point raised at the time appears to be about the look of the vents. Mr B says the vents are 'ugly' and 'flimsy' and they were not shown these at the time of sale. I can understand Mr B is unhappy with the look of these. However, beyond the subjective nature of this element to the claim I don't see where Allium had persuasive evidence of a breach of contract or misrepresentation. There is no persuasive evidence from the time that the vents were faulty or that Mr B was promised something else to what he got, or was prevented from asking to see the design of the vents beforehand. And overall, I don't see persuasive evidence was presented to Allium at the time that the design of the windows was mis-sold.

Once again I appreciate that Mr B has obtained further information since the claim was assessed but based on the information available to it at the time, and noting its position as a non-expert I don't think Allium was acting unreasonably. Particularly in light of the fact that the windows had been signed off by an independent body via Inspection A. I know that Mr B strongly disagrees with the findings of this report and of the supplier's engineer. And he had his own survey carried out. Mr B has made a follow up claim to Allium with this evidence which, as I have already indicated, is not the subject matter of this complaint.

Even if I were to agree that with the evidence it had at the time Allium should have done more in respect of any breach or misrepresentation I am not minded to fairly uphold this complaint about the claim outcome in any event. I say this because I understand Mr B has taken legal action against the supplier in court which is ongoing. I reiterate that under Section 75 Allium's liability for any breach or misrepresentation is not separate to the supplier – the liability is based on a 'like claim' against the supplier. It follows that if a court is set to decide the claim against the supplier – this would likely extinguish any liability Allium would have for the same claim. Furthermore, and in any event directing Allium to make a payment in relation to the same claim, due to be heard by court (and presently

unstayed to the best of my knowledge) would not be reasonable.

For completeness I have considered the customer service that Allium have provided in handling the initial claim. More specifically what Mr B says was an unreasonable delay of 13 weeks to look into things. However, considering the nature of the claim here involving multiple allegations and a need to consider the expert evidence and supplier testimony I don't think Allium took an unreasonable time to handle the Section 75 claim here. So I won't be recommending that it pay compensation.

I recognise the strength of feeling here from Mr B. I am not saying he doesn't have a valid case against the supplier in relation to the installation. As I have said my role is to informally look at Allium's response to the initial claim brought to it. Mr B is free to reject my decision and continue to pursue matters via other avenues.

My provisional decision

I don't uphold this complaint.

Allium confirmed it did not have anything further to add.

Mr B responded with extensive comments on my decision. In summary, he disagreed with the outcome and maintains that Allium acted unfairly.

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.

I note Mr B has made extensive comments – and I appreciate the time and effort that has gone into this. I have read through these. However, I will only comment on the matters I consider material to this complaint. This is not intended as a discourtesy – but reflects my informal remit.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

I consider Mr B's further submissions to broadly be repeating what has already been submitted (and previously considered by me). I am aware Mr B is unhappy with the design and fit of the windows (and maintains they are non-compliant with regulations) and considers that the expert information which Allium looked at was flawed and incorrect. However, I refer back to my provisional findings which have already dealt with my position on this, including the ongoing impact of legal action on the outcome of the claim in any event.

In my provisional decision I also mentioned a question mark over there being a valid Section 75 claim here because of who agreed to the finance and who contracted with Allium. Mr B has clarified his name was on the survey report – so it seems there would likely be the requirements in place for a valid Section 75 claim as it shows he is likely a joint contracting party. However, as I have already said – this doesn't make a difference to my outcome here. Mr B has also suggested that in relation to the 'debtor-creditor-supplier' requirements for a valid Section 75 claim I am saying there is an 'illegal' agreement with Allium for goods or that the finance and supplier agreements are now void – for clarity that is not what I am saying.

I said in my provisional decision that our investigator did not 'uphold' the complaint about the claim outcome. Mr B has said 'it was held up' and then goes on to detail the alleged failings

of our service in handling the complaint. For clarity, my comment was about whether the investigator agreed in their view that Allium had acted incorrectly and needed to put things right in respect of the complaint. Our service will either 'uphold' or 'reject' a complaint. It wasn't a comment about delays. I have already explained that a complaint about our service isn't something I am covering in my decision – which is about the actions of Allium in respect of the initial Section 75 claim made to it.

I also want to underline here that my decision has only considered Allium's response to the initial claim made to it by Mr B and the evidence reasonably available to it at the time – which did not include the independent surveyor's report that Mr B has got since.

Finally, I draw specific attention to what I said in my provisional decision as follows:

I recognise the strength of feeling here from Mr B. I am not saying he doesn't have a valid case against the supplier in relation to the installation. As I have said my role is to informally look at Allium's response to the initial claim brought to it. Mr B is free to reject my decision and continue to pursue matters via other avenues.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 October 2024.

Mark Lancod
Ombudsman