

The complaint

Mr V complains that Creation Consumer Finance Ltd didn't act fairly in response to his claim under Section 75 of the Consumer Credit Act 1974.

What happened

Mr V entered into a credit agreement with Creation in April 2022 to finance the installation of two bay windows. He says that during the installation the supplier caused structural damage to his property. He raised a complaint with the supplier supported by photographs of the damage and an independent survey but says the supplier didn't provide a proper response or offer a reasonable resolution. He then raised a claim through the courts against the supplier, but no resolution has been given. Mr V then raised a claim with Creation under section 75 requesting that the cost of the remedial work arising from the poor installation be covered.

Mr V said this issue has caused a great deal of stress and he has had to pay for the remedial work himself. He requested that the cost of the repairs and re-plastering be refunded along with the cost of raising the court action and that he be paid compensation for the distress and inconvenience he had been caused.

Creation said that it had requested information from the supplier but this hadn't been received and so it was unable to progress Mr V's complaint and provided him with referral rights to this service.

When our investigator contacted Creation about this complaint, it noted the court action that was ongoing with the supplier. Our investigator said that this didn't mean that we couldn't consider Creation's response to Mr V's section 75 claim.

Our investigator upheld this complaint. He noted Creation's comment about not being able to progress Mr V's claim without further information from the supplier but thought that based on the evidence that had been supplied, Creation should have progressed the claim sooner. Because of this he recommended that Creation pay Mr V £150 compensation.

Our investigator then considered whether Mr V had a valid claim under section 75. He noted that under the Consumer Rights Act 2015, services needed to be carried out with reasonable care and skill and said this was a term in the supplier's contract. Based on the evidence Mr V had supplied our investigator didn't find that this had happened and therefore said there had been a breach of contract. Because of this he thought it fair that Creation refund Mr V the costs of the remedial work carried out in August 2023 (£3,830.40). He noted Mr V's request to cover the cost of the re-plaster but said that he hadn't received evidence of this cost and without this he didn't find he could ask for this to be refunded. He also didn't accept that Creation was required to cover the cost of Mr V's court action.

Creation didn't reply to say it accepted our investigator's view and so as a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman to issue a decision.

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.

This decision is against Creation and not the supplier. The decision regards whether Creation took reasonable action and treated Mr V fairly when he raised a claim under Section 75 for the damage caused when he had two bay windows installed.

Mr V entered into a credit agreement with Creation to finance the installation of two bay windows. Under the regulations, specifically the Consumer Rights Act 2015, the installation needed to be undertaken with reasonable care and skill. Mr V has said that this didn't happen and so after failing to secure a resolution to this issue with the supplier, he raised a claim under section 75.

Section 75 says that in certain circumstances, the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. The installation of the windows not being undertaken with reasonable care and skill would be a breach of contract and I note that the supplier's contract states that its aim is to always provide services using reasonable care and skill.

When Mr V raised his claim with Creation, he explained the issue with the installation and that he had provided photographs and a survey to the supplier, but it hadn't taken adequate remedial action. While I think it right that Creation would have contacted the supplier about this, I do not find that the lack of a response meant that Mr V's claim shouldn't have been considered. Mr V had made it clear what the claim was regarding and had explained he had evidence to support this. Given this I think that Creation should have considered Mr V's claim.

I have thought about what would likely have been identified had the claim been considered. In this case, Mr V has provided photographs showing the damage to his property and photographs showing the property without damage before the installation. He has also provided a copy of an observations and estimate document from a third party which sets out the suspected cause of the damage and confirmed that there is no evidence of subsidence. As the two suggested causes for the damage both relate to the installation of the windows, I find that without further evidence to the contrary, it is reasonable to accept that the replacement windows weren't installed with reasonable care and skill.

I note the comment the supplier made about damage being previously present, but this hasn't been evidenced. Mr V requested copies of the survey undertaken before installation but the only information in the survey supplied regards the details of the windows being installed and doesn't give any evidence of the structural status of the property. Without clear evidence that the damage Mr V has evidenced was present before the installation took place, I find it more likely than not that this arose as a result of the installation.

As I believe that Mr V's section 75 claim should have been upheld, I have then considered what is a reasonable remedy. Mr V has said he is happy with the windows and so I find it reasonable that these remain in place and that Mr V is liable for the costs. However, Mr V has needed to pay for remedial work to be undertaken due to the damage that was caused. I can understand why Mr V paid for this when the supplier was unresponsive as given the damage it was possible that without a quick resolution the damage could have increased. Therefore, I find it fair that Mr V is refunded the costs of the remedial work.

As our investigator has said, without evidence of the cost of the re-plastering it isn't

reasonable for me to require Creation to refund this and we wouldn't expect Creation to refund Mr V's legal costs. However, I do agree that Creation didn't provide the service it should have in response to Mr V's section 75 claim, and this caused him further distress and inconvenience and I think the £150 recommended by our investigator is fair compensation for this.

Putting things right

Creation should:

- Refund Mr V £3,830.40 and add 8% simple interest from the date of payment to the date of refund (subject to Mr V confirming that no further claim for these funds will be made).
- Pay Mr V £150 for the trouble and upset caused by its handling of the claim.

Mr V has requested that the payment is used to clear the loan balance first and then any remaining funds be paid to him by BACS.

My final decision

My final decision is that I uphold his complaint. Creation Consumer Finance Ltd should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 12 December 2024.

Jane Archer
Ombudsman