

complaint

Mrs K is unhappy with the response of Creation Consumer Finance Ltd ('Creation'), following her claim against it under section 75 of the Consumer Credit Act ('CCA') 1974.

background

Mrs K took out a contract with a solar panel provider, I'll refer to it as 'B', to supply and install solar panels on her home. The contract was financed through a loan with Creation.

During the installation of the solar panels a scaffold board was dropped on to Mrs K's conservatory roof, causing damage. B accepted responsibility for the damage, and as a replacement roof panel was no longer available, agreed to replace the conservatory roof in its entirety. Mrs K says that since the replacement roof has been installed it has leaked causing damage to her internal decorations and furnishings. She supplied a report completed by a double glazing firm that said the replacement roof hadn't been fitted correctly as it wasn't suitable for a low pitch roof. B said Mrs K's old conservatory roof had been leaking.

B has since gone into liquidation. So, Mrs K made a claim under section 75 ('s75') of the CCA to Creation.

Creation looked into what had happened. It said that as the replacement roof was completed and paid for by B it didn't form part of the original contract and it therefore wasn't liable under s75.

Unhappy with this, Mrs K referred her complaint to our service. One of our investigators looked into what had happened. She thought that Creation was liable for the standard of the repair work carried out. To put things right she recommended that Creation:

- replace the conservatory roof including the internal cills, skirtings and apron,
- pay for any costs incurred for the independent report,
- repair or replace any items damaged in the conservatory due to water penetration, and;
- pay Mrs K £150 for the trouble and upset caused.

Mrs K accepted what the investigator had said. Creation didn't. In summary, it said s75 didn't apply to the replacement roof as it didn't form part of the solar panel installation contract.

Because of this the case has been passed to me for an ombudsman decision.

my findings

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

Firstly, I'd like to thank Mrs K for her patience whilst her complaint has been looked into by this service.

S75 states:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12 (b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in the respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

Creation agrees that s75 applies to the contract that Mrs K had with B to install solar panels on her roof. This is because the debtor-creditor-supplier, or DCS relationship, exists. Mrs K was the debtor, Creation was the creditor and B was the supplier.

But it disputes that a DCS relationship exists for the replacement conservatory roof. It says that this was a separate contract between Mrs K and B and therefore it doesn't have any liability under s75.

I don't agree with Creation. Neither party disagrees that the conservatory roof was damaged when the scaffolding, that had been put up to install the solar panels, was taken down. The original contract to supply and fit the solar panels was covered by the Consumer Rights Act 2015 ('CRA'). The CRA sets out the goods must be of satisfactory quality and services must be carried out with reasonable care and skill.

And within the contract that Mrs K had with B for it to supply and install solar panels to her home there is an implied term that the trader, in this case B, must perform the service with reasonable skill and care.

The scaffolding was required to install the solar panels and does therefore in my view form a key part of the installation service for the solar panels. I'm satisfied that the erecting and dismantling of the scaffold formed part of the contract between Mrs K and B. And B therefore had a responsibility to ensure that this was carried out with reasonable skill and care. Reasonable skill and care would in my view mean that the entire installation was carried out without damage to other parts of Mrs K's home. As erecting and dismantling the scaffolding again forms a key part of the installation process reasonable skill and care would mean the scaffolding was put up and taken down without further damage being caused to Mrs K's home.

As it was the dismantling of the scaffold that caused the damage to Mrs K's conservatory roof I'm not satisfied that the installation was carried out with reasonable skill and care. Because of this, I would consider this to be a breach of the contract between Mrs K and B. As there's been a breach of contract I think it's reasonable for Mrs K to seek reimbursement of any losses that flow directly from the breach.

For avoidance of any doubt the contract I refer to is the one between Mrs K and B to supply and install solar panels to her home. And, as this contract was financed by Creation, there is a DCS link and Mrs K is able to make a 'like claim' against Creation.

As B agreed to carry out repairs to the roof I think this also demonstrates that it accepted responsibility for the damage caused to Mrs K's roof as a direct result of the failure to reasonably install the solar panels. Had those repairs been sufficient I might have found that was sufficient to remedy the breach of contract in this instance. However, Mrs K has supplied an independent report from a double glazing firm that says the replacement roof fitted by B isn't suitable for a low pitch roof. As the wrong or inappropriate roof has been installed and this is what's likely to have caused additional problems with leaks, I'm not persuaded that B has successfully remedied the breach of contract. As B is now in

liquidation, and therefore unable to rectify the problems, Creation is liable for rectifying the work that was carried out.

Creation has said that Mrs K's old conservatory roof leaked. And it has provided an email from B to support this. On the other hand, Mrs K disputes this. Creation has said that as it is of the opinion that the old conservatory roof leaked, any work to rectify the current leak could be considered as putting Mrs K in a better position than she was in previously.

I've thought carefully on this point. Understandably, there is very limited information about the condition of the old conservatory roof. Mrs K and Creation disagree on whether it was previously leaking or not. I'm minded to agree with Mrs K that the old roof didn't leak. I say this because I think it is unlikely that she would've entered into a finance agreement to carry out further home improvements if there was, what I would consider to be essential, repair work needed to another part of her property. In this case the conservatory roof. I'm not persuaded therefore the roof was already leaking or that Mrs K will be put in a better position by having a roof that doesn't leak.

Mrs K has said that the ongoing leak has caused damage to the internal decorations within her conservatory. She has already provided Creation with quotes to carry out the repair work to the internal decorations that's required. This work includes stain blocking the damaged walls, repainting them and the woodwork within the conservatory and re-wallpapering a feature wall. As the quote provided is from a number of months ago I think Mrs K should provide Creation with a new quote to pay for the works identified above. I would expect a revised quote to cover the same issues as previously set out and be a similar amount, albeit there may be a small increase due to the passage of time.

Mrs K has since provided further information and quote for the work that needs to be carried out from a double glazing firm. The information says:

'Following on from this, the roof was not 'repaired' until February 2016. This resulted in permanent damage to the internal cills, the wallpaper, the laminate floor, and, not made any better by the fact the roof wasn't installed properly (see photos).

The installation of the 'new roof' wasn't fitted by a reputable company, and again this is obvious from the pictures that are attached.

This conservatory, apart from the pvc frames on the walls, is beyond repair to such an extent that everything will need to be replaced to return the conservatory to its original condition, i.e. wind and water tight, which it hasn't been for the last 4 years.

I would advise that the customer undertake the replacement works as a matter of urgency, and we can confirm that we are able to do this within the next 2-3 weeks. We would therefore be replacing the roof, the internal cills, the skirtings and apron, the laminate flooring, the ceiling and all internal plaster work which has been damaged due to the dampness.'

A copy of this information has been shared with Creation by our investigator.

Taking the above into account I'm minded to agree that Creation should pay for the above work to be completed. This is because I'm satisfied that the damage identified flows from the breach of contract as above.

Mrs K has also said that there has been damage to her home furnishings including heater, dining room table and chairs, a television and window blinds. Mrs K has been unable to provide any evidence, such as photos, to support this due to the amount of time that has passed since the roof was damaged in December 2015. I've thought carefully on this point and Mrs K's testimony throughout her complaint. The damage and poor workmanship that has been identified with the replacement conservatory roof means I'm persuaded that there would have been damage to some of Mrs K's home furnishings. And due to the amount of time that has passed I don't think it is unreasonable that Mrs K is unable to provide any photos of the damaged furnishings as she has since disposed of them. She has provided this service with an estimate of the replacement costs of a new heater, dining room table and chairs, television and heater of £1,550. And taking all the points above into account I'm satisfied that Creation should make a payment to Mrs K for this amount.

This ongoing issue has caused Mrs K trouble and upset. Having considered the £150 proposed by the investigator I'm satisfied that this is fair in the circumstances of this complaint. This is because Mrs K has been left with a leaking roof and this isn't something that she would've expected.

In summary, I'm satisfied that s75 does apply to the original supply and installation contract that wasn't carried out with reasonable care and skill. And that Mrs K is able to make a 'like' claim against Creation. Therefore, I find Creation responsible for the failings of B relating to the poor standard of work completed when the conservatory roof was replaced.

my final decision

My final decision is to uphold this complaint. In full and final settlement of it Creation Consumer Finance Ltd must:

- arrange for the replacement of the conservatory roof including internal cills, skirtings, apron and internal decorations including plaster work and meet the costs associated with that,
- pay for any costs incurred for the independent report and add 8% simple interest* from when the report was paid for until date of settlement,
- pay Mrs K a lump sum of £1,550 to replace any items damaged in the conservatory due to water penetration, and;
- pay Mrs K £150 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 16 November 2019.

Michael Fisher
ombudsman

*If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs K how much its's taken off. It should also give Mrs K a certificate showing this if she asks for one, so she can claim the tax from HM Revenue & Customs.