

## The complaint

Mrs B complains that Nationwide Building Society won't refund a payment she made to purchase a boiler. She brings her complaint under Section 75 of the Consumer Credit Act 1974 ("S75")

## What happened

In June 2018, Mrs B purchased a boiler from a store abroad using her Nationwide credit card. She says her and her husband had purchased the boiler for their property in the same country, which they were renovating.

Mrs B says that when she visited the store she spent around an hour with the salesperson explaining what it was they needed. In summary, she says she told the salesperson they required a boiler which would heat the radiators and the hot water to their bathroom, in other words, a combination boiler. She says the salesperson was very thorough and took details of their property and the various room sizes. She says they eventually selected a boiler which the salesperson said would suit their requirements.

Mrs B says they had trouble finding a suitable person to install the boiler in their property due to a lack of qualified tradespeople in their local area. They say they were also let down by one installer after being on their waiting list for several months. Mrs B eventually hired a tradesperson from the UK to come over to their property to install the boiler. This took place in September 2019.

Mrs B says the boiler was installed but it didn't supply hot water to the bathroom taps. She says her tradesperson initially thought the boiler was faulty but then discovered that they had been supplied with a system boiler, not a combination boiler. This meant the boiler wasn't able to heat water. Mrs B says she complained to the store, but they refused to exchange it for a combination boiler. She therefore approached Nationwide for a refund under S75.

Nationwide initially considered whether it could attempt to retrieve a refund through a 'chargeback' via the relevant card scheme rules. However, the chargeback process has strict time limits which had already been exceeded by the time Mrs B contacted Nationwide.

It therefore considered her S75 claim but didn't uphold it. It said this was because so much time had passed since the sale there was nothing to indicate that the boiler didn't conform to the contract. It said the receipt showed Mrs B received the correct boiler. Further, it said the store's terms and conditions stated how long Mrs B had to return the boiler and she was now outside of that time frame.

I sent Mrs B and Nationwide my provisional decision on 21 October 2020. I explained why I thought the complaint should be upheld. I said:

*The general effect of S75 is that if Mrs B has a claim for breach of contract or misrepresentation against the store she bought the boiler from, she can bring a like claim against her credit provider (Nationwide). There are certain requirements that need to be met*

*in order for Mrs B to be able make a S75 claim. For completeness, I'm satisfied those requirements are met here.*

*I've thought carefully about how Nationwide handled Mrs B's S75 claim and complaint. I acknowledge that it isn't clear cut exactly what happened during the sales process and the information printed on Mrs B's receipt about what she received is different to what she says she was told she'd receive. However, taking everything into consideration, I think, on balance, there has been a breach of contract and it would be fair and reasonable for Nationwide to put things right. I'll explain why.*

*Mrs B has been consistent throughout in her recollections of the sales process and what she required the boiler to do. Overall, I'm persuaded but what she says. This is because it appears to be supported by other relevant circumstances and evidence.*

*Mrs B says her property didn't have an existing boiler in place. She's been clear and consistent about what she needed from a new boiler and how this would fit into the plumbing that was already in place at her property. I think it's more likely than not she would have been equally clear about this during the sales process. The comments from Mrs B's tradesperson appear to support this too. This is because he says he was instructed to install a combination boiler by Mrs B. I don't think Mrs B would have said this only to the tradesperson and not mentioned that before purchasing the boiler in the store. In addition, the tradesperson said:*

*"The pipe work connections resembled all that is proper to a 'combi' boiler, most particularly the cold water input and domestic hot water outlet. The boiler was installed and the pipe connection made in accordance with the [manufacturer's] instructions which were for a 'combi' boiler."*

*From what I've seen the manufacturer produced a system boiler and a combination boiler which were identical in appearance and size. Further, the model numbers were almost identical, except for the addition of two additional numbers at the end of the model number for the combination boiler. I can therefore understand how it might be easy for the store to have accidentally selected the wrong type of boiler, either during the sales process or when collecting it from their warehouse as Mrs B has suggested may have happened. Mrs B's tradesperson also commented on these similarities as it wasn't until he took the boiler apart did he discover it was in fact a system boiler. He said:*

*"After investigation, the moulded plastic casing which should have contained the plate heat exchanger was found to be a blank. Hence the water input and outlet pipe connections to this were also blank. Thus the boiler was found to be a heat only boiler and not the 'combi' boiler".*

*I accept the receipt Mrs B has shows she purchased a system boiler and not the combination boiler. However, I don't think its reasonable for Mrs B to have realised that given the boilers looked identical, came with the same pipework and had almost identical model numbers. I also don't think this is a case of Mrs B selecting the wrong boiler, rather I believe its more likely (given the reasons I've set out earlier) that the store incorrectly processed the wrong product through the till and/or from their stock room.*

*Taking everything into account, I think, on balance, it's more likely than not Mrs B did make it clear to the store what boiler she required and the store provided her with the incorrect model. As the boiler she was supplied with wasn't fit for its intended purpose I think there has been a breach of contract. I think its fair and reasonable that Nationwide needs to now put things right.*

*Nationwide has said that Mrs B was outside of the stores returns policy and that she took an unreasonable amount of time to raise any issue with the boiler. I don't think the returns policy is relevant here because I'm satisfied there was a breach of contract for which I think Mrs B is entitled to a remedy for. While I realise considerable time has passed since the purchase, I don't think this prevents Mrs B from raising a claim for breach of contract in this case. Despite the time that's elapsed, I'm satisfied there's sufficient evidence to say the boiler she was supplied with wasn't the one she agreed to purchase.*

*Mrs B hasn't used the system boiler as it wasn't compatible with the rest of the plumbing in her property. She therefore hasn't had any benefit from the system boiler she was originally provided with. To remedy the breach of contract I think Mrs B ought to have the boiler she intended to purchase. However, she has already purchased and installed the correct boiler from the same store. I therefore think it would be fair for Nationwide to give Mrs B a full refund of the purchase price of the system boiler. Nationwide should also arrange collection of the system boiler at no cost to Mrs B. As Mrs B pays off her credit card in full each month, she has been prevented from using the money she spent on the system boiler elsewhere. For that reason, Nationwide should also add 8% simple interest per year onto the refund from the date she paid off the purchase on her credit card to the date of settlement.*

Both Mrs B and Nationwide accepted my provisional decision and had no further comments to make.

### **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.

As both parties have accepted my provisional decision, I've seen no reason to come to a different conclusion.

### **Putting things right**

To put things right Nationwide should:

- Refund to Mrs B what she paid for the system boiler, adding 8% simple interest per year from the date she paid off the purchase on her credit card to the date of settlement. Nationwide should arrange to collect the boiler from Mrs B at no cost to her.

### **My final decision**

For the reasons given, I uphold this complaint and direct Nationwide Building Society to do what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 December 2020.

Tero Hiltunen  
**Ombudsman**