

## **The complaint**

Mr A complains that Hitachi Capital (UK) plc, trading as Hitachi Personal Finance, won't refund to him the money that he paid for a boiler using a fixed sum loan agreement.

## **What happened**

Mr A entered into a fixed sum loan agreement with Hitachi Personal Finance, that he electronically signed in March 2018, to pay for a boiler. He also entered into a contract with the supplier which included a ten year free service plan and a ten year parts and labour warranty.

The supplier stopped trading so Mr A claimed a refund of the cost of the boiler from Hitachi Personal Finance under section 75 of the Consumer Credit Act 1974. It said that the terms and conditions of the service plan made it clear that it isn't liable to carry out the servicing so it didn't agree to refund any money to Mr A. Mr A wasn't satisfied with its response so complained to this service.

Our investigator didn't recommend that his complaint should be upheld. She thought that the information provided in the agreement was clear and that, in signing the agreement, Mr A had confirmed that he'd read and understood it and agreed to be bound by its terms. She wasn't persuaded that a mistake had been made by Hitachi Personal Finance as it had acted in line with the terms and conditions.

Mr A has asked for his complaint to be considered by an ombudsman. He believes that the investigator's recommendation is based on part of the offer terms and conditions only and not the full terms and conditions. He says that when the supplier breached part of the terms and conditions, the other parts automatically became invalid.

## **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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mr A's complaint about Hitachi Personal Finance, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier for which Hitachi Personal Finance is liable and that its response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr A's claim under section 75 as only a court would be able to do that;
- it's clear that Mr A entered into a fixed sum loan agreement with Hitachi Personal Finance to pay £2,500 for a boiler and that the supplier agreed to provide him with a ten year free service plan and a ten year parts and labour warranty;

- the service plan and warranty were included in a separate contract with the supplier which said: *“If the Service Plan is part of a finance package with Hitachi Consumer Finance, the service plan must be paid separately directly to [the supplier] on completion of the installation. The Customer’s Service Plan is a direct contract with [the supplier], Hitachi Consumer Finance hold no association or liability in any circumstance relating to the service plan”*;
- that contract also said: *“The terms and conditions overleaf apply to any contract between [the supplier] and the customer for the supply of work and materials by us to you. To protect your own interest, please read carefully before signing this order”*;
- the supplier has stopped trading so is no longer able to provide the service plan but I consider it to be clear from the contract that the service plan was between the supplier and Mr A and that Hitachi Personal Finance had no liability for it;
- I sympathise with Mr A because he’s no longer receiving the benefit of the service plan from the supplier but I’m not persuaded that Hitachi Personal Finance is liable in these circumstances for the supplier’s breach of contract about the service plan;
- I don’t consider that a breach of contract by the supplier automatically causes the other terms of the agreement and the contract to become invalid;
- the fixed sum loan agreement was used to finance Mr A’s purchase of a boiler – he has received that boiler and continues to benefit from it so, even if Hitachi Personal Finance was liable for the service plan, I don’t consider that it would be fair or reasonable for me to require it to refund to Mr A the full amount of the loan;
- I’m not persuaded that there’s enough evidence to show that Hitachi Personal Finance has acted incorrectly in its dealings with Mr A and I consider that its response to Mr A’s claim has been fair and reasonable in these circumstances; and
- I find that it wouldn’t be fair or reasonable for me to require Hitachi Personal Finance to refund to Mr A any of the amount that he’s claimed, to pay him any other compensation or to take any other action in response to his complaint.

### **My final decision**

My decision is that I don’t uphold Mr A’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 17 May 2021.

Jarrold Hastings  
**Ombudsman**