

The complaint

Mrs H and Mr H complain that Nationwide Building Society won't refund to them the money that they've claimed for the servicing of a boiler.

What happened

Mr H used his Nationwide credit card in March 2020 to pay £2,528.40 to a supplier for it to supply and fit a replacement boiler. The supplier said that the boiler had a seven year parts and labour guarantee. Mr H contacted the supplier after he'd found out that the boiler had to be serviced annually for the guarantee to be valid and he asked it to cover the cost of the annual services.

It didn't agree to that so Mrs H and Mr H claimed £640.80 (which is six times the quoted cost of £106.80 for an annual service as the first service was included in the price of the boiler) from Nationwide under section 75 of the Consumer Credit Act 1974. It said that the invoice and quote provided by the supplier didn't include the cost to service the boiler and that they'd received the service from the supplier that they'd paid for. Mrs H and Mr H weren't satisfied with its response so complained to this service.

Our investigator didn't recommend that their complaint should be upheld. He didn't consider that there had been a breach of contract or misrepresentation by the supplier so he couldn't say that Nationwide had given the wrong answer to the complaint that had been made under section 75.

Mr H has asked for this complaint to be considered by an ombudsman. He has responded to our investigator's recommendation in detail and says, in summary, that the supplier failed to tell him that the guarantee was being made by the manufacturer and would require the boiler to be serviced annually at his expense in order for him to be eligible for it. He says that he wasn't expecting free annual servicing but was expecting the supplier to deal with any fault that the boiler developed in the first seven years at no extra charge to him.

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:

- Mr H used credit provided by Nationwide to pay for the boiler and, 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 Mrs H and Mr H's complaint about Nationwide, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the boiler and that Nationwide's response to the claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of their claim under section 75 as only a court would be able to do that;

- the supplier's quote and invoice for the boiler both refer to a seven year parts and labour guarantee – they don't say that the supplier is providing the guarantee and they don't set out the terms of the guarantee;
- I consider that it would be reasonable to expect the terms and conditions of a guarantee to be set out in a separate document and for a guarantee for a boiler to include a requirement that the boiler was serviced in accordance with the manufacturer's recommendations;
- if the terms of the guarantee were important to Mr H, as it seems they were, I consider that it would be reasonable to expect him to have asked about the terms of the guarantee before he bought the boiler (and I don't consider that it was enough for him to rely on what he understood from the words set out on the quote and invoice);
- the supplier has supplied and fitted the boiler and it is covered by a seven year guarantee so I'm not persuaded that there's been a breach of contract by the supplier;
- I don't consider that the supplier has misrepresented the boiler, the guarantee or the servicing requirements to Mr H and I'm not persuaded that he was induced into entering into the contract for the boiler by a misrepresentation made by the supplier;
- I consider that Nationwide's response to Mrs H and Mr H'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 Nationwide to refund to Mrs H and Mr H the amount that they've claimed for the servicing of the boiler, to pay them any other compensation or to take any other action in response to their complaint.

My final decision

My decision is that I don't uphold Mrs H and Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 28 October 2021.

Jarrold Hastings

Ombudsman