

The complaint

Mr I and Mr J complain about the response of Infinity Energy Organisation Limited to their claim made under section 75 of the Consumer Credit Act 1974. The claim related to a credit agreement entered as part of a Green Deal Plan in relation to the installation of a replacement boiler.

What happened

Mr I is the owner of a property which is rented to Mr J. Mr J pays the energy bills for the property. Mr J does not speak English as his first language and has been represented in this complaint. He has said that, in 2015, the boiler in the rented property was experiencing a few problems and when a leaflet was posted through his door about a boiler scheme he became interested. Infinity Energy posted a letter titled Green Deal Quotation to the rented property, addressed to Mr I.

This letter set out that, although the value of the installation would be around £4,500, Mr I's total contribution for having the new boiler would be £0.00. The letter also said that the annual savings from the measures would be £772.62. But it then went on to say that he would have to pay £1.58 per day for around 12 years to cover the cost of the green deal measures.

The installation cost was actually covered by a Green Deal loan. The loan agreement gave the estimated first year savings as £579.47. This is significantly different to the figure provided in the letter above. The cost for this loan was actually something Mr J would have to meet, as the repayments would be added to his energy bills.

The loan was taken out and the boiler was installed. Subsequently, the supplier of the boiler has stopped trading.

In 2020, Mr J contacted Infinity, saying that the loan was taken out without his knowledge. He said that he understood the boiler would be provided free of cost.

Infinity responded confirming the loan was taken out by Mr I and saying:

"We as a green deal provider don't work with any lead [generators] so we have nothing to do regarding anything that was offered to you. We only processed your green deal loan application when it was submitted to us by [the supplier] ... If you claim that this boiler was mis sold, you may take any legal action against [the supplier]."

Mr J and Mr I brought their complaint about this response to this service. Our Investigator thought that it was likely Mr J and Mr I were provided with enough information to let them know they were entering a loan.

However, our Investigator also said that the "golden rule" which is a requirement of Green Deal Plans was not met by the arrangement. She explained that under this rule, the annual repayments of the loan could not exceed the estimated savings for the first year of the plan.

And that this rule was designed to make sure measures that were installed were effectively self-funding.

She noted that, although different, both figures provided at the time of the sale in relation to the estimated annual savings exceeded the £576.70 annual cost of the loan. However, she was not satisfied that the estimates had been appropriately reached. She noted that the pre-installation Energy Performance Certificates (EPC) predicted annual savings of less than £100 for a replacement boiler. And that the Energy Saving Trust's website suggests that a boiler replacement for similar house would lead to savings of at most £205. Whilst she noted that such indications were averages, rather than specific to the property in question, she didn't consider that an estimated saving of over £576.70 was credible.

Based on this, our Investigator did not think it was likely that the Green Deal Plan entered by Mr J and Mr I met the "golden rule" and so she thought the benefits of the plan had been misrepresented to Mr J and Mr I.

Our Investigator then went on to explain how she thought things should be put right. She explained that the approach of this service to correcting a mistake by a financial business, was to try and put the parties back in the position that they otherwise would've been in. In this case, she felt that meant the boiler would not have been replaced, Mr J and Mr I would not have been inconvenienced, and the loan would not have been entered.

However, whilst she thought the loan should be cancelled and all payments made refunded with interest, the Investigator did not consider it practical to reinstate the original boiler. She did not consider the original boiler could still be found, and she felt that replacing the new boiler with one of a similar quality to the original would cause Mr J and Mr I further distress and inconvenience. So, whilst she recognised that Mr J and Mr I would benefit from having the new boiler, she thought this was appropriate compensation for the distress and inconvenience caused to them.

Mr I and Mr J accepted the Investigator's recommendations. But Infinity did not. Whilst they accepted the outcome generally, they did not think it was fair to refund all of the payments made on the loan as they considered Mr I and Mr J had benefitted from having the new boiler. As such, this complaint has been passed to me for 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.

For the same reasons as set out by the Investigator, it seems clear to me that the arrangement was mis-sold to Mr I and Mr J.

I agree that the estimated savings of having the boiler replaced were most likely incorrect and were misrepresented. And that the Green Deal Plan did not meet the requirements of regulation 30 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012, which states:

"The first year instalments must not exceed the estimated first year savings"

This is though based on the assumption that those estimated first year savings are achievable. It isn't clear how savings of between £579 and £772 came to be estimated. But I haven't been provided with evidence to demonstrate this was a correct estimation. And the other resources generally available point to these figures being incorrect.

It may be that the errors leading to this were actually caused by the supplier of the boiler. But, even if this is the case, Infinity would still be responsible for rectifying this under section 75 of the Consumer Credit Act 1974. Under this section, a creditor is jointly and severally liable for certain actions of the supplier of goods purchased by the credit provided.

So, I think Infinity is responsible for putting things right. And the matter at hand is the appropriate method of resolving this situation.

I do appreciate the comments of Infinity and I agree that Mr I and Mr J will have the benefit of a replacement boiler. But I also agree that the arrangements themselves also caused Mr I and Mr J distress and inconvenience. It is also true that returning them to the position they would otherwise have been in would cause them further distress and inconvenience. So, were I to direct the old boiler, or a boiler of similar quality, to be reinstalled into the property, I would also need to direct Infinity to compensate Mr J and Mr I for the impact of the arrangements and the reinstallation.

Rather than direct this, I consider that a just and appropriate way of resolving the situation is for the outstanding sum on the loan to be waived and for the repayments made so far to be refunded, with interest.

Putting things right

Infinity Energy Organisation Limited should put things right by:

- Cancelling the Green Deal credit agreement and writing-off any outstanding loan balance;
- Removing any record of the Green Deal finance from Mr I and, if necessary, Mr J's credit files; and
- Refunding to the payee any loan repayment instalments paid, adding interest at a rate of 8% simple per annum from the date of the each payment to the date of settlement.

My final decision

My final decision is that I uphold this complaint. Infinity Energy Organisation Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I and Mr J to accept or reject my decision before 20 April 2022.

Sam Thomas
Ombudsman