

## The complaint

Mr B is unhappy with how Omni Capital Retail Finance Limited responded to his claim made under Section 75 of the Consumer Credit Act 1974. He is also unhappy that they haven't accepted his cancellation request.

## What happened

Mr B entered into a contract for the supply and installation of a boiler with a company I'll call "B" in February 2020. To finance this, Mr B took out a fixed sum loan agreement with Omni Capital Retail Finance Limited ("Omni").

Mr B says the boiler was poorly installed which caused a significant leak to the property and damaged the underfloor heating. Mr B contacted B and Omni as he wanted to cancel the contract with B and his finance agreement. However, this wasn't actioned.

B arranged for an engineer to inspect the boiler on 26 February 2020. The engineer noted that the flue was leaking to the inside boiler which would cause major damage if left. He recommended that the installer should be contacted to repair the fault. A second engineer then inspected the boiler on 11 March 2020 and noted that the boiler was leaking from the filling key which he attributed to the key not being fitted and a nut being slightly loose. The engineer carried out the necessary repair work.

Mr B contacted B initially about the installation of the boiler and then subsequently to Omni. Omni didn't uphold Mr B's claim. They said that Mr B hadn't provided sufficient evidence to show that the leak was caused by the installation of the boiler or that this caused damage to the underfloor heating. They also said that Mr B's request to cancel his finance agreement wasn't accepted as this was received after the boiler was installed.

Omni then sent a separate letter to Mr B explaining that they wouldn't be amending his credit file because he hadn't made any payments towards his finance agreement.

Mr B complained to Omni about the outcome of his claim. Omni replied quoting B's response to Mr B's complaint to them which essentially set out that they felt the leak reported by Mr B wasn't consistent with a leak from a new boiler. And that Mr B hadn't provided evidence of damage to the underfloor heating or any connection between that and the installation of the boiler. Omni then said that Mr B's claim didn't meet the requirements for a claim under Section 75 of the Consumer Credit Act 1974 ("Section 75") because the required debtor-creditor-supplier relationship wasn't in place.

Mr B referred his complaint to our service. Our investigator didn't uphold this. She said, in summary, that although Mr B was able to make a Section 75 claim, she didn't think the installation of the boiler had caused the leak and damaged the underfloor heating. And she said that Mr B wasn't entitled to cancel the agreement because he had attempted to do so after the boiler had been installed.

Mr B didn't agree and mentioned that he would be happy to settle the finance agreement for a reduced sum but only on the basis that his credit file wouldn't be adversely affected.

As Mr B's complaint hasn't been resolved, it's been passed to me to review.

### **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.

Mr B used a fixed sum loan from Omni to pay for the supply and installation of the boiler which means that Section 75 is relevant to this case. Section 75 allows Mr B in certain circumstances to hold Omni responsible for misrepresentation or breach of contract in respect of goods or services bought using the credit given to him by Omni. There are certain technical criteria that have to be met for a Section 75 claim to be valid. One of those is for a 'debtor-creditor-supplier' (DCS) agreement to be in place between the parties for the transaction.

Omni said to Mr B that no DCS arrangement was in place because he was no longer residing in the property where the boiler was installed and was no longer the beneficiary of the goods. However, I do not agree with this. Mr B took out the credit agreement, so he is the 'debtor', while the 'supplier' for the purposes of the transaction is B who received the payment for the goods and services. Mr B clearly contracted with B for the provision of those goods and services as shown by the invoice B gave him for this. The fact that Mr B no longer resides at the property where the boiler was supplied and installed is irrelevant. So, I am satisfied that the necessary DCS chain was in place and that this affords Mr B rights under Section 75 as all other necessary criteria have also been met.

Turning now to the merits of Mr B's complaint, there are two main issues as I see it. The first is about the installation of the boiler and Mr B's contention that this caused a major leak and damage to the property. And the other issue is whether Mr B cancelled the agreement.

#### *Boiler installation*

Mr B has said that engineers looked at the installation on three to four occasions. I have though only seen documentary evidence of two visits which I have referred to in the preceding section of this decision. So, I have relied on that when considering whether there was a breach of contract on the part of B, for which Omni would be equally liable.

The first engineer noted that the flue was leaking to the inside boiler. He didn't though comment on whether this was caused by poor installation of the boiler by B or whether it was an issue caused by problems with the flue. I note that the engineer said that the installer of the boiler should be contacted so it's possible he attributed the problem to how it was installed. It's also though possible that the engineer recommended this as it was more practical for the installer to repair the fault. Because of this, I haven't been sufficiently persuaded that the issue happened because of poor installation.

The second engineer noted a different problem a couple of weeks later, in that a key hadn't been fitted correctly and that a nut was loose. This wasn't the same fault as reported by the first engineer. So, it's possible that this happened because the initial repair hadn't been successful or because the boiler wasn't installed correctly. I would have thought though that the first engineer would have noticed this if the latter was true. So, I can't be satisfied that the issues identified by the second engineer resulted from poor installation of the boiler. If this was caused by the initial repair, then I can't hold Omni liable for that as this would stem from repair work needed to correct the initial fault. And I've already explained in the preceding paragraph why I can't be satisfied the initial fault was caused by poor installation.

Overall, I've not seen sufficient evidence to make me think B breached its contract with Mr B. It follows that I don't find Omni was wrong to turn down Mr B's claim under section 75. I would only add that even if I were to have found that Omni should have upheld Mr B's claim, Mr B hasn't presented any compelling evidence that the property and in particular the underfloor heating was affected purely as a result of the boiler leak.

### *Cancellation*

I've seen that Mr B e-mailed Omni asking for his agreement to be cancelled very shortly after the boiler had been installed. The contract between Mr B and B was a distance contract as it was negotiated and concluded exclusively online.

This meant that Mr B was afforded rights under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCR's") to cancel the contract he entered into with B, and by extension, the finance agreement with Omni.

Omni has said that Mr B's cancellation rights expired once B installed the boiler and has referred to B's terms and conditions. I've looked at these and note these say at clause 62 under 'Cancellation':

*'The customer will lose the right to cancel.....should the Company complete the installation of your new equipment within 14 days of your order being placed and the customer has requested that the Company perform services within this 14-day period as it will be deemed that the Company has been engaged to carry out urgent maintenance or repairs at the customer's household'.*

I've thought about this clause and have also considered how the CCR's apply to the contract between Mr B and B and how this affects his right to cancel. However, I don't intend to go into any detail about this. I say this because I don't see any pragmatic way in which Mr B's wish to cancel the agreement could now be actioned even if I agreed that he did invoke his cancellation rights.

The effect of cancelling the contract would be, amongst other things, that the goods are returned because the contract would be treated as never having existed. However, Mr B has said to our investigator that he no longer lives in the property concerned. So, it looks like there's no practical way for the boiler to now be uninstalled and returned. Mr B has also said that his contract with his landlord was such that he needed to arrange the installation of the boiler. It appears then that Mr B would have incurred the cost of arranging that come what may. I note also that it seems the boiler was eventually repaired and presumably is still working currently.

Mr B also would likely not have been able to claim under Section 75, had the contract been cancelled and treated as never having existed.

I've mentioned above that I'm deciding what's fair and reasonable in the circumstances of this complaint. Taking the above points into account, I don't think it fair, reasonable, or indeed practical to treat the contract as having been cancelled by Mr B.

For the reasons I've given, I am not upholding Mr B's complaint. So, I will not be instructing Omni to remove any adverse markers that have been recorded on Mr B's credit file in respect of the loan agreement. I will leave it for Mr B to decide whether he wishes to settle the agreement for the sum that he has proposed, and which Omni appears to be prepared to still accept. That will be something that Mr B needs to discuss with Omni.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 July 2022.

Daniel Picken  
**Ombudsman**