

The complaint

Mr P complains that Creation Financial Services Limited ("Creation") were wrong not to process a claim he made to them under the chargeback scheme and under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

I issued my provisional decision on this complaint in December 2022. An extract from that provisional decision is set out below.

Mr P arranged for a company I call "N" to fit a new boiler for him in May 2021. He paid £1,850 using a credit card provided by Creation.

In November 2021 Mr P contacted N to tell them the heating wasn't working properly. N visited his property and advised Mr P that the filter was blocked with sludge and the system would need to be power flushed to remove the sludge and debris. That would, they said, cost Mr P a further £650.

Mr P didn't think the work N had done had been completed with reasonable care and skill and he also thought the installation couldn't be considered of adequate quality as it hadn't been durable. He explained he'd had no need to turn the heating on in the summer months but as soon as he did, in November 2021, it was clear the radiators upstairs wouldn't heat up. He didn't think a reasonable person would expect heating to fail so prematurely and he insisted there'd therefore been a breach of contract and Creation should uphold his claim.

Creation explained that Mr P had raised his claim too late for a chargeback to be considered and they didn't think there was evidence of either a breach of contract or any misrepresentation, so they didn't think a claim could be successful under section 75.

Our investigator agreed with Creation. She didn't think there was evidence N had been contracted to complete a power flush and didn't think there was sufficient evidence of breach of contract.

Mr P disagreed and he asked for a decision by an ombudsman.

What I've provisionally 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.

I know it will disappoint Creation, but I don't currently agree with the investigator's view of this complaint and I'm expecting to uphold it.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is

relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a credit card, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

It may also be possible to make a chargeback claim. The chargeback scheme isn't administered by Creation, it's administered by Mastercard and they set the rules. Creation didn't have to submit a chargeback claim but I'd think it good practice for them to do so where the right exists and there is a prospect of success.

The Mastercard chargeback rules say that claims must be submitted within 120 days from when the goods or service are provided. Mr P contacted Creation about the issue after more than 120 had passed and Creation were therefore out of time to raise a chargeback.

There are no time limits however, in respect of section 75 claims. Creation say they didn't raise one because they were unable to ascertain that the contract had been breached. I disagree.

Section 49 (1) of the Consumer Rights Act (2015) says that:

"Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill".

I think there has been a breach of contract here as I don't think the installation has been performed with reasonable care and skill.

The pre-installation guidelines for the boiler say at 4.1 and under "Cleaning Primary Systems", that the installer should follow the guidance in BS 5793.

It's that guidance that N have explained to us they followed when installing the boiler.

The guidance says at 5.2:

"Sludge is recognized as the most common cause of failure of water carrying components, including boiler heat exchangers, circulator pumps, radiators and controls. It can also prematurely wear other appliance components, such as ignition electrodes, due to increased cycling of the boiler".

So, I think it follows that an installer would want to ensure the system was cleaned so there wasn't excessive sludge in it prior to installation.

Section 7 of BS 5793 explains the cleaning regime, it says:

"Before cleaning, the system should be examined to determine the system configuration and the age and overall condition of components, in order to ascertain the cleaning regime required" ...

"There are three cleaning and flushing options... one of the following should be applied:

a) Power flushing is a cleaning and flushing procedure characterized by using an external pump and tank arrangement to effect the circulation of water or chemical cleaner solution at increased velocity and turbulence through the whole circuit and particularly through individually isolated panel radiators where fitted, such that it reaches the entire inner surfaces of the system with enough force to ensure the cleaning and complete removal of all adherent and settled sludge, foulants and debris."

N explained that when they initially visited Mr P in April 2021 to quote for the work they noted that the boiler was at least 23 years old and the system was not operational.

Given that the standard suggests they should ascertain the age and condition of the system, and that the system was old and not functioning, it would seem reasonable to suggest there would be significant sludge and debris in it.

In those circumstances it seems reasonable to suggest that N should have performed the most rigorous of the three cleaning options, the power flush, to ensure that the sludge and debris that the standard explains is the most common cause of failure, was removed to enable the boiler to perform properly.

N offered the power flush as an option at additional cost, but I don't think it was reasonable to expect Mr P to understand the importance of such work. It seems it should have been included in the quotation price as the standard would suggest that was the most appropriate pre-installation procedure.

So, I don't think the installation was completed with reasonable care and skill and I'm persuaded N's failure to carry out an appropriate cleaning regime meant that the heating system became blocked and ceased to function correctly.

And, even if I'm wrong about that, the Consumer Rights Act (2015) says that goods should be of satisfactory quality and it explains that when we consider what satisfactory quality is we should think about whether the goods have been durable. I don't think a reasonable person would consider a new boiler to be durable if it failed to heat all the radiators to the desired temperature. I think the inadequate installation procedure has most likely resulted in the boiler not being able to perform its function adequately and in those circumstances the business should put things right for Mr P.

The Consumer Rights Act (2015) gives the business an opportunity to repair goods that are not of satisfactory quality when supplied so I think they should be allowed to repair Mr P's boiler installation. N have explained that will necessitate power flushing the system so I'm expecting to ask the business to do so and to ensure that all radiators are subsequently balanced.

Mr P has been inconvenienced by this issue. He's not been able to use the boiler effectively over the winter period and I've read there are both very young and elderly people living at the property. He's also had to escalate his complaint to this service when I think it could have been resolved earlier. In the circumstances I'm expecting to tell Creation to pay him £300 in compensation.

My provisional decision

I'm expecting to uphold this complaint and to tell Creation Financial Services Limited to:

- Repair Mr P's boiler installation by power flushing the system and rebalancing his*

radiators.

- *Pay Mr P £300 to compensate him for the distress and inconvenience caused.*

Mr P accepted my provisional decision and didn't provide any additional comments.

Creation didn't agree with me, they said:

"The retailer has confirmed that when the boiler was installed and the system was flushed, the radiators were checked. They were hot and fully functional. The customer then made a payment for the work completed. It is important to note that the customer paid for the boiler installation and the power flush and not the radiators that were pre-installed. There is no issue with the boiler, and the only work that was done on the pre-existing radiators was a power flush. The existing radiators were about 23 years old at the time which does not guarantee that all sludge will be out of the system, especially due to the age of the radiators. Furthermore, the customer raised issues 6 months after the installation of the boiler which means that additional sludge could have accumulated throughout that time and therefore requires additional power flush. This may not be due to ineffective system flush completed in May 2021."

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.

I don't think the evidence suggests the system was flushed in accordance with the relevant British Standard. I explained in my provisional decision that:

"N should have performed the most rigorous of the three cleaning options, the power flush" and that they "only offered that as an option".

N's response received in August 2022 explained that when Mr P complained, and their engineer visited, they recommended a *"full chemical power flush"* and that *"this is different to a standard flush in accordance with the manufacturer's guidelines"*.

So I think it's clear that a power flush wasn't performed when the boiler was fitted only a *"standard flush"* and, as I've explained, I think that suggests the work wasn't carried out with reasonable care and skill as the standard suggests a power flush was required given the age and condition of the system.

I'm not persuaded that the sludge would have been likely to build up in the time Mr P had the boiler. It seems, as the flush wasn't to standard, it's likely sufficient sludge and debris wouldn't have been removed from the system before the boiler was fitted and it appears from the evidence provided that is the most likely cause of the failure.

Putting things right

I've not therefore been provided with sufficient evidence to merit changing my provisional decision and my provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Creation Financial Services Limited to:

- Repair Mr P's boiler installation by power flushing the system and rebalancing his

radiators.

- Pay Mr P £300 to compensate him for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 February 2023.

Phillip McMahon
Ombudsman