

The complaint

Mr D complains about the quality of a boiler installation he funded through a finance agreement with Creation Financial Services Limited (Creation). He says Creation were unreasonable to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 (section 75).

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Creation, but I agree with the investigator's view of this complaint. Please let me explain why.

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 fixed sum loan, as was 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 the same right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a legal claim that a party might have under section 75 as only a court can do that. But I take section 75 into account when I think about what's a fair way to resolve the complaint.

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

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".

This contract was for the supply and installation of a boiler. The quote Mr D was given explained that the installation would *"connect onto existing wiring."* The supplier confirmed

that their engineer hadn't been able to fit the main switch as wires were missing behind the programmer. The third party electrician who Mr D asked to consider the issue has explained *"There was no permanent supply to the boiler and no pump overrun also, these feeds were easily accessible via the existing timeclock below the boiler where some slight modification would allow for the needed connections along with a new cable from the timeclock to the boiler position"*. While I can see that the supplier relied on photographs Mr D provided to them ahead of the installation I don't think it would be fair to suggest it was for Mr D to identify any missing wiring. He wasn't qualified to do so. I think the fact the controller wasn't wired correctly suggests the installation wasn't completed with reasonable care and skill and that there has, therefore, been a breach of contract.

Putting things right

The Consumer Rights Act (2015) gives consumers 30 days to reject goods that are of unsatisfactory quality, not fit for purpose, or not as described. Mr D asked to reject the goods within that time period but was prevented from doing so because the supplier wanted to charge labour costs to remove the installation.

Mr D hasn't been prepared to accept the offers made by the supplier and Creation to resolve matters for him and I don't think that was unreasonable as it seems clear that Mr D has lost trust in the supplier.

Creation should, therefore, allow Mr D to reject the goods and arrange for their safe removal at no cost to Mr D. They'll need to end the finance agreement.

They should refund any finance instalments Mr D has paid and they should add interest to that refund. I think delays have been due to Creation not accepting the remedy Mr D wanted, and that our investigator recommended. I'm not, therefore, suggesting Creation should retain any instalments in respect of the fair use Mr D has had from the goods. I say that because Mr D has had to continue to use a boiler he clearly didn't want to use, and that had impaired functionality.

My final decision

For the reasons I've given above, I uphold this complaint and tell Creation Consumer Finance Ltd to:

- End the finance agreement and arrange for goods to be safely removed and collected at no cost to Mr D.
- Refund any payments Mr D has made towards his finance agreement and add 8% simple interest* per year from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr D's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 May 2024.

Phillip McMahon

Ombudsman