DRN-5500282

The complaint

Mr W complains about the outcome of a claim he made to Capital One (Europe) plc ('CO').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr W paid for a boiler installation with his CO credit card. Mr W says he had issues with the boiler which led to him finding out that it had not been installed correctly. And because the original supplier was no longer trading he paid out for remedial work.

Mr W approached CO with his claim which it considered under Section 75 of the Consumer Credit Act 1974 ('Section 75').

CO made a full and final settlement offer to Mr W of £2203.50 which covered the cost of remedial work and an initial diagnostic report which Mr W paid for.

Mr W didn't accept this. He says that he should also get back the following consequential losses due to boiler wiring faults:

1. £600 for the cost of wasted gas usage; and
2. £812 cost for increased boiler wear.

Our investigator considered it fair that CO pay for item 1, but not item 2. CO agreed with our investigator but Mr W has said he disagrees and would like an ombudsman to consider things further. In summary, he says that the fault caused increased wear and tear on the boiler which has reduced its 10 year design lifespan. So it is fair he is compensated for this.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

I am sorry to hear about Mr W's issue with the boiler installation he paid for. However, it is worth noting here that CO is not the supplier. So when looking at what is fair I consider its role as a provider of financial services – and what it reasonably could have done to help with the information that was reasonably available to it at the time. As Mr W used a credit card to pay for the service in dispute I consider the protections of chargeback and Section 75 to be relevant here.

No parties have really focused on chargeback, and a dispute via this method was not apparently raised by CO. For completeness, I don't see that chargeback had a reasonable prospect of success as the timeframes for bringing a chargeback from the date of the install

had long since expired by the time Mr W brought his claim to CO. Furthermore, it doesn't make sense for me to focus on chargeback here in any event, as Mr W's outstanding dispute relates to consequential losses which are not claimable under the chargeback scheme.

Section 75

Section 75 in certain circumstances allows Mr W to hold CO liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.

There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods and services or the way payment was made. After considering these factors I think the requirements are in place for Mr W to have a valid Section 75 claim against CO. So I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to CO at the time it considered the claim. And if so, what CO should fairly do now to put things right.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I don't consider this claim relates to misrepresentation. So I don't consider it unreasonable that CO focused on breach of contract here.

In considering breach of contract I note The Consumer Rights Act 2015 ('CRA') is of particular relevance . It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". Furthermore, it says that services need to be performed with "reasonable care and skill". I note here that the claim Mr W presented to CO was essentially about the standard of the installation rather than any faults with the boiler itself. Therefore, the standard of reasonable care and skill was pertinent to CO in its considerations along with the express terms of the agreement between the supplier and Mr W.

Reasonable care and skill is not expressly defined in the CRA but is generally expected to be the reasonable standard in a particular industry. Here that would be what would reasonably be expected with an installation of a boiler of this kind.

I am not going into detail about whether it appeared the supplier breached its contract in relation to the quality and features of the install - because CO has already accepted that the supplier breached its contract with Mr W - based on the various expert commentary Mr W has provided. For completeness, I will comment on it briefly. I agree that Mr W provided persuasive evidence from experts to make his case that the wiring of the boiler was incorrect, and that there were other issues with the installation which were not up to standard or generally in accordance with the agreed contract – including the lack of appropriate expansion tank, poorly situated magnetic filter, and missing plasterboard.

CO eventually agreed to pay for the cost to put right these issues which Mr W claimed. Along with reimbursement for the original diagnostic report. Prima facie this strikes me as fair. And I think the parties are all in agreement on this. So I don't consider it central here or requiring further reasoning. I think the key matter of contention is whether CO should have accepted Mr W's claim for consequential losses too. So I turn to these claimed losses now.

Mr W claimed to CO in his submissions that because of the nature of the fault with the boiler wiring a specific loop in the system between the valves and the boiler was not

switched off when it should have been until the issue was fixed, causing gas wastage. CO are not experts in this field – so I consider it reasonable that when considering a claim of this complexity it would rely on expert information. In doing so I note the expert report on the electrical issue summarises:

Our findings, detailed below, concluded that your assumption of wasted energy are to be correct. We found the electrical installation side to be constantly live meaning your boiler could never have turned off without the full isolation of the circuit.

I think this persuasively shows that there is likely detriment here in respect of energy use. However how the electrical faults specifically relate to the nature and extent of increased gas usage Mr W had claimed to CO is not particularly clear to me – nor do I consider it would have been completely clear to CO at the time. And despite Mr W providing his own detailed workings to CO to justify the additional costs he was claiming, it is not in my view a substitute for the findings of an independent expert on this matter backed up by relevant test readings and other relevant information (such as energy bills).

With that said, I note that since our investigator's view CO has accepted Mr W's claim of £600 to reflect wasted energy costs due to the faulty installation. Therefore, I don't consider I need to comment further on the calculations Mr W supplied. And with the (albeit limited) comments of the expert on this issue along with CO's acceptance of the quantum I consider it fair to direct CO to pay this.

I now turn to the £812 Mr W is claiming for increased wear on the boiler. Essentially Mr W has said the lifespan of the boiler had been reduced (from its expected 10 years) due to part of the circuit running when it should not have been over several years. He has calculated this as £812 and provided CO his workings. However, while I understand and do not dispute the potential for a fault with the goods causing accelerated wear and tear (and a possible award of damages based on this) I note that:

- Mr W didn't provide independent expert evidence to CO to persuasively show that the electrical fault (and its symptoms) caused lasting damage to the boiler and/or would likely result in a material decrease to its serviceable life expectancy. Considering the complexity of these types of installations and the fact Mr W had already commissioned an expert investigation which didn't go into this I don't consider it unreasonable that CO did not simply rely on Mr W's own testimony on the matter; and
- the nature of Mr W's claimed financial loss was unclear in any event. Also noting that any premature failure of the boiler due to the faults identified had not occurred at the time of the claim and might never occur.

I note Mr W has recently made more arguments around this point and clearly feels very strongly about this issue. He has offered to provide more supporting evidence if necessary. I acknowledge this. But I am considering if CO acted fairly in looking at the claim based on the information reasonably available to it at the time. All things considered, I don't think CO was acting unfairly in rejecting this part of Mr W's claim.

I note Mr W had expressed to CO that he wasn't happy with its general handling of his claim. It hasn't been central to the complaint Mr W brought to this service – and Mr W's submissions since the view. Mr W has said the only area of disagreement relates to consequential loss. Therefore, I have not focused on it here – but I have thought about it and will mention it for completeness. I can see that it did take some time from when Mr W contacted CO about his claim originally to when it gave him its offer of settlement. However, looking at the records of correspondence I think CO were not acting unfairly in not making this offer sooner. I say this noting the complexity and value of the claim, and the fact it requested further input from Mr W to clarify whether certain matters pertaining to further work carried out on the boiler were directly related to any breach of contract by the supplier.

Overall, I consider that CO were generally engaged with the claim, despite not conceding liability as early as Mr W would have liked. And while he did suggest that it had acted so as to limit his options for taking the matter to court (in respect of limitation periods) I don't see persuasive evidence of that. And note that it was ultimately Mr W's decision as to whether to pursue the matter via court instead - if he was concerned about this aspect.

Putting things right

I direct CO to put things right as set out below. It is now up to Mr W if he wishes to accept this to resolve his complaint.

My final decision

I uphold this complaint and direct Capital One (Europe) plc to pay:

- £2203.50 to cover the repairs to the boiler Mr W paid for (which breaks down as £144 for a diagnostic report, £592.80 for electrical repairs and £1,466.70 for other repairs);
- £600 for consequential losses relating to energy usage; and
- 8% simple yearly interest on the refunded amounts from the date it originally made the settlement offer in respect of Mr W's claim to the date of settlement.

If CO considers it necessary to deduct tax from my award it should provide Mr W with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 May 2025.

Mark Lancod
Ombudsman