

The complaint

Mr R complains Creation Consumer Finance Ltd (“Creation”) didn’t accept his claim under Section 75 for a faulty boiler.

What happened

The background to this complaint is well known to both parts, so I haven’t repeated it at length here. As a summary, in November 2022, Mr R bought a new boiler from a company I’ll call “B”, which was financed through a restricted credit agreement with Creation.

The boiler was installed in November 2022, but quickly experienced problems meaning it wouldn’t function as expected. An engineer visited and said new parts would need to be ordered and were later fitted. The boiler failed again, and a replacement boiler was installed in January 2023.

In February 2023, the replacement boiler also failed, and replacement parts were ordered and fitted in March 2023, from which point Mr R has had a working boiler.

In October 2024, Mr R submitted a claim under Section 75 of the Consumer Credit Act 1974 (“Section 75”) to Creation in relation to the problems he’d experienced. Mr R said he exercised his rights to reject the boiler within the first 30 days and the problems with the boiler had a significant impact due to the time of the year, meaning he had to seek alternative accommodation and take up a gym membership as he wasn’t able to shower at home.

Creation considered Mr R’s claim and said as the boiler had been replaced and was now working, he was liable to make the payments due under the finance agreement. Creation offered £200 compensation to acknowledge its delay in responding. Creation didn’t change its position when Mr R complained, so he referred his complaint to our Service.

I issued a provisional decision on Mr R’s complaint, which I’ve included below:

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’ve given consideration to the relevant rules and regulations applicable to this complaint and while I may not comment on everything (only what I consider is key) this is not meant as a discourtesy to either party, rather reflects the informal nature of our service.

Section 75 sets out that, in certain circumstances, if Mr R paid for goods or services, in part or wholly via credit, and there was a breach of contract or misrepresentation by the supplier (B), Creation as the credit provider can be held jointly responsible.

There are conditions that need to be met for Section 75 to apply. One of these is that there needs to be a ‘debtor-creditor-supplier’ (DCS) agreement in place between the parties to the transaction. Another is that the item purchased must fall within set financial limits. I’m satisfied Mr R’s claim, meets these requirements.

Creation's response to Mr R's Section 75 claim, was that although there had been problems with the boiler, these had been rectified, so Mr R remained liable for the amount due under the credit agreement. So, I've considered whether this was a reasonable conclusion for Creation to reach.

Has there been a misrepresentation or breach of contract?

To say there had been a misrepresentation, I'd need to be satisfied that a false statement of fact induced Mr R to buy the boiler. However, I'm not aware of this happening, rather once the boiler had been installed, it didn't work as expected. Therefore, it could be considered Mr R is saying the problems with the boiler, amounted to a breach of contract.

The Consumer Rights Act 2015 ("CRA"), which is relevant legislation to the claim, means there is an implied term in Mr R's agreement with B, that the goods supplied must be of a satisfactory quality.

In reviewing the timeline of events, I think it's reasonable to conclude that the first and second boilers weren't of a satisfactory quality when initially installed, as they both stopped working shortly after installation and required replacement parts to be fitted, and in the case of the first was replaced in its entirety.

So, on this basis, I think it's fair to say a breach of contract occurred as the boilers weren't fit for purpose and required a replacement and repair respectively, before operating as expected. Mr R says he exercised his rights under the CRA to reject the boiler within the first 30 days due to the problems he'd experienced, however this was ignored by B.

I've therefore thought about whether it would be reasonable for Mr R to now reject the boiler and unwind the credit agreement. Having done so, I don't think it would, I've explained below why I think this.

I appreciate Mr R had to wait quite some time to have a working boiler, however as the second boiler is now functioning as expected, I think it's reasonable to conclude Mr R accepted the repairs and replacement, which are remedies for when something goes wrong.

As this occurred more than two years ago, I don't think it would then be proportionate to say the boiler should now be removed and for Creation to unwind the credit agreement. Rather this could leave Mr R in a worse position, needing to source and install a new boiler, which could now be more expensive.

As a result, as a working boiler has been installed and is working as expected, I think it's reasonable for Creation to say that the amount due under the credit agreement needs to be repaid. I say this as while I recognise there were a number of problems initially, Mr R has now received the goods financed by the credit agreement, so it's reasonable that this is repaid.

Further costs

I do however appreciate Mr R was put to significant inconvenience as he didn't have a working boiler for the winter months, so I've then gone on to consider whether Mr R can make a claim for the inconvenience he suffered or the further costs he says he incurred.

It's important to note that compensation for distress and inconvenience caused by the supplier is limited with this type of complaint. I appreciate Mr R was frustrated with the problems he encountered, and he's been inconvenienced due to the problems with the

boiler. But I have to consider what Creation can be held liable for – which is the like claim Mr R would have in court against the supplier for breach of contract or misrepresentation.

Courts do consider what's known as general damages. But damages aren't generally recoverable for distress or inconvenience. Awards in building cases where there's been a breach of contract which caused the claimant physical distress or discomfort can be made, but they tend to be modest.

From Mr R's testimony, I think it's fair to say he was caused physical distress and discomfort as he wasn't able to heat his home or access hot water during the winter months. Mr R was able to mitigate the impact of this by seeking alternative accommodation, but I do think an award to recognise this is fair in the circumstances. While it doesn't take away from the inconvenience Mr R suffered, I think a payment of £250 would be appropriate to recognise the discomfort caused due to the problems with the boiler.

I appreciate Mr R has raised concerns the first installer gave him Covid-19, which was of significant concern as he's considered vulnerable. I'm sorry to hear of this and can only imagine the worry this must have caused. In this decision however, I'm limited to the reviewing the evidence available to me, alongside what I consider Creation to be liable for. Therefore, while I don't wish to diminish this point, I haven't seen enough to conclusively say that the installer did give Mr R Covid-19, or that Creation must then take action due to this.

It's also possible for Mr R to claim for consequential losses, which are costs that he incurred as a direct result of the problems with the boiler, so I've gone on to consider whether it's reasonable that Creation should reimburse these.

Appointing a plumber

Mr R has evidenced he incurred costs in appointing his own plumber who identified problems associated with the boiler. I'm satisfied that but for the problems with the boiler, Mr R wouldn't have incurred this cost. So, I think it's fair that Creation reimburses this, being £72.

In line with our approach to redress, Creation should also pay 8% simple interest on this amount from the date Mr R made the payment to the date of settlement; to acknowledge the time he was without the funds.

Alternative accommodation

Mr R says that due to the boiler not working during the winter months, he had to seek alternative accommodation. From the information available, it's not clear whether Mr R incurred a cost for this, such as staying in a hotel, or was able to mitigate his costs by staying with family or friends.

Mr R has provided evidence that he was staying elsewhere, with transactions in another town, however, these appear to be for day-to-day expenses, rather than the cost of accommodation. So, at this stage, I haven't seen enough to say Creation is liable to compensate Mr R for any alternative accommodation.

If Mr R is able to provide evidence of alternative accommodation costs, I'll consider this point further, but based on the information currently available, I won't be directing Creation to make a payment towards this.

Gym membership

Mr R says he and his husband had to take out gym memberships in order to access warm showers during the period the boiler wasn't working. Mr R says the terms of the memberships meant they had to enter into 12-month agreements, at a cost of £1,740.

From the evidence available, Mr R and his husband took out gym memberships on 30 November 2022 and the first time the boiler is reported to have failed is 5 December 2022. So, I can't agree Mr R took out the gym memberships solely because of the problems with the boiler, rather they were entered into before any problems with the new boiler were experienced.

As a result, I don't think it would be reasonable to ask that Creation compensate Mr R the cost of his gym membership, as they began before any problems with the boiler were known.

Removal of the first boiler

Mr R has explained that when the second boiler was installed, the first wasn't removed from his home. My understanding is boilers need to be professionally disposed of, and this is a cost Mr R will only incur as a result of the problems he experienced with the boiler.

Therefore, if Mr R arranges for the removal of the first boiler, should he present an invoice and confirmation of the payment being made, it's fair that Creation reimburses this cost.

My understanding is it may be possible for Mr R to arrange for the disposal through his local authority, so he may wish to contact it for further advice.

Further compensation

Creation offered £200 to apologise for its delay in responding to Mr R's claim. While there isn't a set time to respond to a Section 75 claim, it took Creation nearly seven months to provide a response, and I haven't seen anything to explain why it took this long. So, I therefore think it's appropriate that Creation pays compensation to acknowledge this and find its offer of £200 reasonable in the circumstances.

Conclusion

In conclusion, I think a breach of contract occurred that means Creation is liable under Section 75. For the reasons explained above, I don't think it would be proportionate to now remove the boiler and as a result, I think it's fair that Creation asks for the credit agreement to be repaid.

I do however think Creation is liable for costs associated with the problems Mr R encountered when the boiler was installed. So, I'm minded to direct Creation to do the following to resolve this complaint:

- *Pay Mr R £250 to acknowledge the impact of the problems with the installation of the boiler;*
- *Pay Mr R £72, being the cost of the plumber; Pay 8% interest on this amount from the date of payment to date of settlement;*
- *Reimburse Mr R the cost of the removal of the first boiler once evidence of this is provided; and*
- *Pay the £200 compensation offered in its final response if this hasn't already been paid.*

Responses to my provisional decision

Creation responded to say it accepted my provisional findings.

Mr R provided clarification on two points,:

- Gym membership
 - o Mr R had upgraded their memberships in January 2023, due to the problems with the boiler and to access warm showers locally. He said they'd previously had an off-peak membership but had upgraded to access the facilities after 5pm.
- Alternative accommodation
 - o Mr R had stayed with friends over two periods, so while he hadn't incurred costs for alternative accommodation he had incurred additional petrol costs. Mr R said the journeys had totalled approx. 300 miles and calculated the cost of this at 45p a mile, totalling £135.

Mr R also said he was happy to arrange disposal of the first boiler at no cost.

Following Mr R's response, I wrote to Creation to say I was minded to recommend it compensate Mr R the petrol costs he'd incurred, which Creation accepted.

The complaint has therefore been passed back to me to make a final 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.

Having done so, I've reached the same conclusions as those of my provisional findings, with the addition that Creation should compensate Mr R the fuel costs he incurred seeking alternative accommodation, as but for the problems with the boiler I don't think Mr R would have incurred these costs.

Mr R has broken down his fuel costs at approximately £135, which I put to Creation, and it's also accepted. In the circumstances, I therefore think it's fair Creation compensates Mr R this amount.

While I've considered Mr R's comments about the gym memberships, I haven't been persuaded Creation is liable to compensate the cost of this.

Mr R had an existing membership with his gym and explained he upgraded it from off-peak to peak in January 2023, so that he could access facilities such as the showers due to having no hot water.

In considering the information provided and reviewing information on the gym website the costs between an off-peak and peak membership, alongside flexible or 12-month contracts, it appears the costs between the flexible off-peak contract Mr R entered into the before encountering the problems with the boiler were comparable with the cost of the peak 12-month contract he then upgraded to. And I can't say conclusively that Mr R did this solely because of the problems with the boiler and accessing a warm shower. Rather the upgrade also provided Mr R with further benefits such as greater access to the gym and all of its amenities.

So, on this basis, I'm not persuaded Creation is liable to compensate Mr R in full or part for the gym membership costs he's set out.

In response to my provisional findings, Mr R said he was happy to arrange disposal of the

first boiler himself. If Mr R does however incur a cost in disposing of this, for the reasons I've previously explained I think it's reasonable Creation reimburses him for this – so should he incur a cost and provide evidence of this to Creation I'd expect that it compensates him this amount.

In conclusion, for the reasons I've set out above, I think it's reasonable Mr R is liable to repay the finance agreement associated with the boiler. There were however additional costs that Mr R incurred as a result of these issues, so I think it's fair under Section 75 Creation reimburses these. I've detailed below what Creation should do in resolution of this complaint.

Putting things right

- Pay Mr R £250 to acknowledge the impact of the problems with the installation of the boiler;
- Pay Mr R £72, being the cost of the plumber; Pay 8% interest on this amount from the date of payment to date of settlement;
- Pay Mr R £135 towards his fuel costs in seeking alternative accommodation;
- Reimburse Mr R the cost of the removal of the first boiler once evidence of this is provided; and
- Pay the £200 compensation offered in its final response if this hasn't already been paid.

My final decision

For the reasons I've explained above, I uphold this complaint and direct Creation Consumer Finance Ltd to resolve this complaint in line with my recommendations above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 November 2025.

Christopher Convery
Ombudsman