

## **complaint**

Mr M is unhappy with a water and heating system he purchased using a loan from Creation Consumer Finance Ltd (Creation). Mr M is represented by Mrs M, his wife.

## **background**

I issued my provisional decision on 30 June 2020. A copy of my provisional decision is attached and forms part of this final decision.

My provisional decision sets out the background to this complaint and explains why I think it should be upheld and what I think Creation should do to put things right.

Creation says it accepts my provisional decision.

On behalf of Mr M, Mrs M has asked me to consider some additional points, which I've summarised and addressed below.

## **my findings**

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

First, I'd like to thank Creation and Mrs M for replying so swiftly to my provisional decision.

In reply to my provisional decision, Mrs M:

1. says she accepts that she and Mr M would have had to save £156.27 a month for the system to 'pay for itself within 5 years' – but they planned to use any savings they made to repay the loan early;
2. has reiterated that she and Mr M believe they would have paid off the loan early – possibly by now – if the system had been installed correctly;
3. says she can't be sure but she thinks the inconsistencies in her emails about the amount they were told they'd save, expressed in percentage terms, may have simply been typos;
4. confirmed that the subcontractor didn't provide her and Mr M with anything in writing and that the information she provided was based on the conversations she had with the subcontractor's engineers;
5. stressed that a power flush wasn't carried out – and one is needed urgently;
6. says she doesn't think she asked me to tell Creation to pay Mr M the sum they've paid Business B for its ongoing support as this was their decision;
7. says the only written correspondence Mr M received from Creation was its short letter dated 13 June 2017;
8. wants me to tell Creation to do the things I said it should do; and,
9. also wants me to tell Creation to refund Mr M's deposit and the loan payments he's made, cancel the loan agreement and remove it from his credit file – Mrs M says that if I don't tell Creation to do this, Mr M will have to pay more in loan payments over the next three years than he'll receive in compensation and Mrs M doesn't think this would be fair given the time it's taken to resolve the problems and the considerable stress this has put them under.

I'll address point 6 first. If I misunderstood Mrs M's submissions on behalf of Mr M, I'm sorry. And I'd like to thank Mrs M for clarifying some other aspects of this case.

Mrs M has made three points that I'd like to address specifically.

First, I appreciate that the inconsistencies in Mrs M emails may have been typos. To her credit, Mrs M was honest and said she can't remember. But if they were typos, I still don't think I could safely conclude, on the evidence available to me, that the sales person made a specific 'statement of fact'.

Second, when Mrs M says she and Mr M planned to use any savings they made to pay off the loan early and that if the system had been installed correctly, they would have paid off the loan early, I don't see how. Mr M's loan payments are £123.74 per month. And as I explained in my provisional decision, in the year before the system was installed, on average they paid £155.35 per month for electricity and gas. If the new system had reduced their energy bills by 30%, they'd have saved, on average, £46.61 per month – which isn't enough to make Mr M's scheduled loan payments, let alone overpayments. So I don't think Mr M would have repaid the loan early even if the system had been installed correctly.

Finally, Mrs M wants me to tell Creation to refund Mr M's deposit and the loan payments he's made, and unwind the loan. This is often a remedy for misrepresentation. But, as I explained in my provisional decision, on the evidence available to me, I don't think I can safely say that the sales person misrepresented the benefits of the system. In this case, I think there was a breach of contract. The usual remedy for a breach of contract is to compensate the injured party for their actual loss as a result of the breach. And that's what I've tried to do in this case. I don't think it would be fair to also tell Creation to refund everything Mr M has paid for the system, which he chose to buy and which is now working well.

### **my final decision**

For the reasons I've explained above and in my provisional decision, I uphold Mr M's complaint against Creation Consumer Finance Ltd. Creation Consumer Finance Ltd should:

- refund the £198 Mr M paid Business B to fix the problem with the heating;
- refund the £400 Mr M paid to repair the damage caused by the leak;
- add simple interest at 8% per year on both of these from the date he made each payment until the date he receives the refund;\*
- pay Mr M £500 so that he can pay for a power flush; and,
- pay Mr M an additional £1,800.

\* If Creation Consumer Finance Ltd thinks it is required by HM Revenue & Customs (HMRC) to deduct income tax from this interest payment, it should tell Mr M how much it's deducted. It should also give him a certificate showing how much it's deducted if he asks for one so that he can claim it back from HMRC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 August 2020.

Christopher Reeves  
**ombudsman**

My provisional decision

### complaint

Mr M is unhappy with a water and heating system he purchased using a loan from Creation Consumer Finance Ltd (Creation). Mr M is represented by Mrs M, his wife.

### background

Below, I've summarised the material facts in this case.

- In 2014, Mr M borrowed £8,875 from Creation to pay for a water and heating system to be supplied and installed by a separate company, which I'll call 'Business A'. He also paid a deposit of £500. (Whoever wrote the loan agreement made a mistake: next to the words 'total amount of credit', it says £8,775 – but it's clear from the 'total cash price of the system', the monthly repayments, the number of payments and the 'interest charge', that Mr M borrowed and will have to repay £8,875.)
- Mr M says that, since installation, there have been several problems with the system. Specifically, he says:
  1. the water temperature was so hot that members of his family were scalded washing their hair over the bath or washing at the sink, and only a thermostatic shower valve prevented this from being a problem with the shower;
  2. there was a problem with the system, which meant that the central heating either didn't come on at all, even on very cold days, or was far too hot; and,
  3. his energy and water bills increased when he was told the system would reduce his bills significantly.

Additionally:

4. Mr M says he was told the system would take two days to install. Instead, it took a week, so he had to take more time off work.
  5. Leaks damaged the hallway and bathroom carpets and the kitchen ceiling. Mr M says he was told the leak happened because Business A's subcontractor used the existing plastic piping when it installed the system, and this couldn't withstand the increase in water pressure.
  6. When the system was installed, the bathroom radiator leaked for two days.
  7. Mr M says Business A said it would check the efficiency of the system after it was installed and 'balance' the radiators to ensure efficiency. He says this didn't happen.
  8. Mr M says Business A said it would service the boiler annually, for free, for nine years. He says it hasn't serviced it since 2016.
  9. In February 2018, Mr M told us the radiators in his living room and conservatory stopped working. He says he was told they stopped working because of 'sludge in the system', and there was 'sludge in the system' because a small tank, which is still in use, was not sealed when the system was installed. Mr M says this also shows that a full 'power flush' wasn't done by Business A's subcontractor when the system was installed.
- Mr M says Business A misrepresented the benefits of the system. He says it also made several mistakes when it installed the system and it did not do what it agreed to do, so it breached the contract. He wants Creation to:
    - refund his deposit and the loan payments he's made;
    - cancel the loan agreement and remove it from his credit file;
    - refund the money he's paid to resolve the problems with the system and to repair the damage caused by those problems;
    - refund the extra he's paid for gas and electricity;
    - pay, or contribute to, the cost of an annual service of the boiler;
    - compensate him (and his representative and family) for the distress and inconvenience caused by the problems with the system, Business A's failure to rectify those problems and the way Business A and Creation have handled his complaint.

### my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what is, in my opinion, fair and reasonable in all the

circumstances of the case, I'm required by DISP 3.6.4 R of the Financial Conduct Authority (FCA) Handbook to take into account:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.'

Where the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

#### The law

Section 75 of the Consumer Credit Act 1974 (CCA) protects consumers who buy goods and services on credit. This says that, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

Section 56 of the CCA is also relevant. This says that any pre-sale negotiations between the consumer and the supplier are deemed to have been conducted by the supplier as agent of the finance provider. In this case, it is not disputed, and I am satisfied, that Mr M entered into a contract with a supplier, Business A, for goods and services purchased on credit and has a 'like claim' against Creation under section 75 of the CCA.

Section 13 of the Supply of Goods and Services Act 1982 (SGSA) says that, in a contract like this, there's an implied term that the supplier will carry out the service with 'reasonable skill and care'. And section 14 of the Sale of Goods Act 1979 (SGA) says there's an implied term that the goods supplied will be of 'satisfactory quality'.

#### Misrepresentation

A misrepresentation is a statement of fact by one party to a contract, which isn't true and which persuades the other party to enter into the contract.

Mr M says Business A misrepresented the benefits of the system. He says the sales person made specific promises about the savings he'd make on his energy bills. And he says it was only because of these promises, which were made orally, that he agreed to buy the system.

I can't know exactly what was said when Mr M met the sales person from Business A. I think it's very likely Mr M was told the system would be more efficient than his current boiler, which was 15 years old, and that, as a result, his energy bills would be cheaper. Indeed, the manufacturer of the boiler makes these claims in its promotional material, which Mr M has provided. But on the evidence I've seen, I don't think I can safely conclude that the sales person made specific promises about the savings Mr M would make. I'll explain why.

Mr M has sent us the emails Mrs M sent Business A and Creation in an attempt to resolve the problems with the system. I've read them all. On 29 July 2016, in an email to Business A, Mrs M wrote that an increase in their water and energy bills was 'contrary to the promise we were made that the installation of this system would reduce our bills by *up to* 30%.' On 17 September 2016, in another email to Business A, Mrs M wrote, '...we agreed to the installation to save *up to* 20% on our utility bills'. The emphasis here is mine.

On 22 July 2017, in an email to our service, Mrs M wrote: 'When agreeing to this installation we were told that the efficiency of it would reduce our bill by such an amount that we would be able to settle the debt early'. And in emails we received on 11 October 2017 and 29 January 2019, Mrs M wrote that they were told the installation 'would pay for itself within 5 years'. Finally, on 20 May 2019, in an email to our service, Mrs M wrote:

'We were told that we'd make a 10% saving on electricity and a 20% saving on gas. The statement made was that the installation would "pay for itself within 5 years" due to the savings we'd make on the electricity and gas.'

There seems to me to be two elements to this and I've considered them separately and together.

First, for the system to 'pay for itself within 5 years', Mr and Mrs M would have to save at least £156.25 every month. This is the total cost of the system, £9,375, divided by 60. It doesn't include any interest.

I've looked at how much Mr and Mrs M paid for electricity and gas each month in the year before the system was installed. It fluctuated seasonally, as I'd expect. For example, in December 2013, they paid £233.38 for both; in June 2014, they paid £95.85. But on average, they paid £155.35 per month for electricity and gas.

For the system to 'pay for itself within 5 years', Mr and Mrs M would have had to save more than they paid – which obviously isn't possible. Mr M may not have known exactly how much he paid for electricity and gas each month, but I think he'd have known roughly what he paid and would therefore have realised he couldn't possibly save £9,375 in 5 years – especially if he was also told he'd save just 10% on electricity and 20% on gas.

Second, the amount Mr and Mrs M say they were told they'd save on their utility bills, expressed in percentage terms, varies. I want to be clear that this isn't a criticism – they were sold the system two years before the earliest email I've seen, so it's understandable if they don't remember exactly what was said. But Mrs M's testimony is the only evidence I have of what was supposedly said and it isn't consistent.

To conclude that the sales person misrepresented the benefits of the system, I must first find that he made 'a statement of fact'. On the evidence available to me, I don't think I can say it's more likely than not that he said the system would 'pay for itself within 5 years' or that Mr and Mrs M would save a specific amount.

For completeness, I'd add that when Mrs M emailed Business A, she wrote that the sales person said they'd save 'up to' an amount. Those two words mean that even if I was persuaded that the sales person said Mr and Mrs M would save 'up to 20%' or 'up to 30%' as alleged, I don't think I could say either statement was untrue: installed correctly, I'm satisfied a new system is more efficient than a 15-year-old boiler, and that Mr and Mrs M will save money as a result. Indeed, Mrs M has recently confirmed that, now the system is working well, they have 'benefitted from cheaper bills'.

#### Breach of contract

Mr and Mrs M have explained in some detail the problems they've had since the system was installed. The question is: what caused those problems?

#### *Hot water*

Based on an email Mrs M sent our service on 16 December 2018, I understand the issue with the hot water (complaint point 1, above) was caused by a faulty cylinder. Mrs M told us this was replaced, under warranty, by the manufacturer in or around 2016.

In an email Mrs M sent Business A on 29 July 2016, she explains that she had to contact 'the subcontractor', which installed the system for Business A, on numerous occasions about various problems. Among other things, she mentions inflated energy bills. She also says:

'One of the main issues was the boiler/tank and it has taken 2 years to resolve this, the heating/thermostat, as detailed above, has yet to be resolved 2 years later.'

In these circumstances, I think it's fair to assume the cylinder was faulty when it was installed and was not, therefore, of 'satisfactory quality'. I'll consider Mr M's loss as a result, below.

#### *Heating*

The system has been inspected on several occasions. Below, I've summarised the evidence I've received about each inspection.

- On 3 June 2016 and 31 March 2017, the system was inspected by an engineer from the manufacturer of the boiler ('the manufacturer'). He wrote two brief reports. The first says he 'found [an] external wiring/controls issue'. The second also refers to 'external control and wiring issues' and includes a one-line opinion:

'From the history of the job and what the customer tells me I feel this is a system controls issue and needs to [be] taken up with the installer.'

- On 24 February 2017, in an email to Business A, Mrs M wrote that an engineer from the subcontractor had identified a 'wiring issue' when he inspected the system the day before. Apparently, this 'wiring

issue' was causing the problems with the water temperature and may have been causing the problems with the central heating.

- An engineer from the subcontractor re-inspected the system on 28 April 2017. The compliance director at Business A emailed Creation on 13 June 2017. She wrote:

'[The subcontractor] has detected the wiring between the airing cupboard and boiler is faulty, this has attempted to be resolved previously but to no avail...this is an existing problem and is unrelated to the installation...'

And in an earlier email, the same person at Business A told Creation that the 'wiring issue' was 'affecting the water valve leading to the problems with overly hot water'. Apparently, Business A had 'continually chased and called [the subcontractor] to go and visit this customer'.

- An engineer from the subcontractor went to Mr and Mrs M's house on 13 June 2017. There is a dispute about both the nature of the visit and what the engineer said when he was there.

Business A and Creation say the purpose of the visit was to remedy the fault with the wiring, which was unrelated to the installation of the system, as a 'gesture of goodwill'.

Mrs M, on behalf of Mr M, says the visit was not a 'gesture of goodwill' but an effort to remedy a mistake made when the system was installed. In an email she sent our service on 22 July 2017, Mrs M wrote:

'[The subcontractor's engineer] informed me, after tracking the wiring back and carrying out tests for 2 hours, that the installation had originally been wired incorrectly...When he left, he stated he would speak to his boss [...] and arrange to call back to run a new cable and resituate the boxes from the kitchen to the airing cupboard, where they should have been fitted in the first place...'

Neither Business A nor Creation can provide a report from the subcontractor or any other written evidence or testimony from it or its engineers. Mrs M told us she and Mr M were repeatedly promised written reports from the subcontractor but haven't received any.

- Mrs M arranged for an engineer from a different business, which I'll call 'Business B', to inspect the system on 28 July 2017. This cost Mr and Mrs M £198. Mrs M has confirmed that the engineer from Business B fixed the problem.

According to Mrs M, the engineer: checked the entire system thoroughly; identified a fault with the receiver in the kitchen and the valve on the tank; removed the faulty receiver and fixed the problem with the valve; questioned the need for separate thermostats in the kitchen; said that copper piping should have been fitted when the system was installed; installed a 'Hive' hub, thermostat and controller (which are all working); confirmed there isn't a gas leak; and, suggested the faulty receiver and valve may have contributed to the increase in gas use. Mrs M sent us photos of the 'redundant items' he removed.

The engineer's report is very brief and simply says:

'Found wiring on central heating fitted correctly, fault on receiver, replaced w hive control'.

- I've seen emails between Creation and Business A, which imply that the subcontractor planned to do something similar. The subcontractor told Business A that installing a 'Hive' and removing the 'programmer' and room thermostat should 'resolve the issue'. In an earlier email, the compliance director of Business A told Creation that she'd spoken to the subcontractor, who said 'this is an existing fault and not due to his installation'.

One of our adjudicators upheld Mr M's complaint, based in part on what Mrs M says she was told by the engineer from the subcontractor on 13 June 2017.

In reply, Business A said it was 'unaware that [the subcontractor] has supposedly admitted liability to the customer. They have always denied liability and this has come as a surprise.' It explained that it had sent the subcontractor a copy of the assessment and asked it to comment on it. Business A also made the following points: Mr M has confirmed that the system is now working to his satisfaction; and, if the system had been wired incorrectly on installation, Mr and Mrs M's energy bills would have increased immediately not, as implied by the assessment, 15 months after the system was installed.

Creation responded separately. It:

- thinks more information is needed;
- thinks the reason for the increase in Mr and Mrs M's energy bills is unclear – and suggested we compare their energy bills before the system was installed with their bills after the system was installed;
- asks why Mr and Mrs M didn't contact Creation until 2017 if they'd had problems from day one; and
- says the subcontractor hasn't admitted liability to either Creation or Business A – on the contrary, according to Business A, it has denied liability.

I can address Creation's third point briefly.

Mrs M told us she's been dealing with the subcontractor directly since the system was installed. She says this was partly at the subcontractor's suggestion, and partly because Business A was slow to respond when Mrs M called to complain or it did not return her calls at all. When it did respond, Mrs M says it referred the matter back to the subcontractor.

I accept Mrs M's explanation. I think it was sensible for her to try to resolve the problems with Business A and the subcontractor before involving Creation.

I'll consider Mr and Mrs M's energy bills below. I accept that, on occasion, an increase in energy use may be indicative of problems with a water and heating system. However, the two aren't necessarily linked. And I don't think I need to consider Mr and Mrs M's energy bills to determine whether or not the components of the system were of 'satisfactory quality' or the system was installed with 'reasonable skill and care'. I'm satisfied they were not and/or it was not, based on the evidence I've summarised above. I will therefore consider Mr and Mrs M's energy bills when I look at Mr M's loss. But first, I'll explain why, provisionally, I think there was a breach of contract.

Mrs M has confirmed that the system is now working well. And it has, since the engineer from Business B removed the thermostats in the kitchen and replaced them with a 'Hive' hub. So despite the reference to 'wiring issues' by the engineer from the manufacturer, and the conclusion of the subcontractor that the problems were caused by a 'wiring issue', I accept the conclusion of the engineer from Business B that the wiring was 'fitted correctly' and that the problem was instead caused by the thermostats and a faulty receiver.

That said, I think Mrs M's email of 22 July 2017 accurately reflects what she was told by the engineer from the subcontractor on 13 June 2017. First, Mrs M emailed us just over a month after the inspection, so I'd expect her to remember what she was told. Second, Business A also told us the subcontractor thought the root cause of the problem was the wiring – even if we now know it wasn't. Third, the diagnosis of the problem is so detailed and specific that I think it's very unlikely it came from anyone other than a heating technician. Finally, Mrs M wrote her email in anticipation of a report from the subcontractor, so I think it's very unlikely she would have embellished or misrepresented what she was told.

I've explained why I think Mrs M's email accurately reflects what she was told by the engineer because she told us the engineer planned to 'resituate the boxes from the kitchen to the airing cupboard, where they should have been fitted in the first place'.

And as I've explained above, according to Mrs M, the engineer from Business B also questioned the need for thermostats in the kitchen. When he removed them and the faulty receiver the system worked well.

What's more, the subcontractor subsequently told Business A that installing a 'Hive' and removing the 'programmer' and room thermostat should 'resolve the issue'. The subcontractor doesn't say why it put thermostats in the kitchen in the first place, why it didn't remove or replace them sooner, how 'this is an existing fault and not due to his installation', or how it fixes the 'wiring issue', which is what the subcontractor told Business A was the cause of the problems.

Late in the day, there seems to be a consensus that there was a problem with the system controls caused by the way the system was set up and faulty components.

#### *Power flush*

Mr M has sent us a copy of the one-page contract with Business A, which he signed on 26 July 2014. As well as information about the price of the system, including installation, there's a handwritten note that says: '[illegible word], installation – V phase, megaflo, Worcester, [illegible word], power flush'. I'm therefore satisfied that a 'power flush' was included in the contract price.

In February 2018, Mr M told us the radiators in his living room and conservatory stopped working. An engineer from Business B was called out. According to his brief report, he 'replaced pump which was very dirty!!' (The exclamation marks are in the original and I've seen photos which appear to show that the pump was dirty.) He recommended a power flush. In a separate box, the engineer wrote:

'Customer asked if central heating is sealed which is not as it has feed & expansion tank working!'

In an email she sent our service on 4 March 2018, Mrs M wrote:

'[The engineer's findings] were that there is sludge in the system, caused (or contributed to) by the fact that, when the installation was done, the main tank in the loft was disconnected but the small tank was left in use but had not been sealed. This has led to over 3 years' worth of dirt entering the system...His solution was to recommend that we have a power flush done at a cost of just under £700.'

On 28 October 2018, Mrs M emailed our service to tell us that the pump was failing again and, according to her plumber, this indicates that a power flush wasn't done when the system was installed.

One of our adjudicators agreed, and recommended Creation reimburse Mr M for the cost of a power flush (on receipt of an invoice). In reply, Creation said it was 'standard practice' for Business A to complete a power flush on installation and it has 'no reason to believe this would not have been completed in this situation'. It also says an annual boiler service should prevent the build-up of sludge – so unless Mr M can show he had the boiler serviced every year, it thinks the sludge built up because Mr M didn't look after the boiler properly.

First, it's worth pointing out that Business A didn't install the system, its subcontractor did. I don't know what, if anything, Creation knows about the subcontractor, its 'standard practice' or its reliability. Second, Mr M says the subcontractor serviced the boiler annually until 2016. And he's provided evidence to show the boiler has been serviced annually by Business B since 2017. So I don't think the build-up of sludge can be attributed to 'improper care'. Mrs M says her plumber and the engineer from Business B both told her that it was unlikely that a power flush was done when the system was installed. Based on the evidence I've seen so far, I agree: I think it's unlikely a power flush was done or was done properly. So I think Creation should pay for a power flush.

Mrs M has sent us a quote for a power flush: £400 plus VAT. This doesn't seem unreasonable – so, provisionally, it's how much I think Creation should pay Mr M.

### *Leaks*

Mr M says the bathroom radiator leaked for two days after the system was installed. (This is complaint point 6, above.) I haven't seen any evidence that this caused any permanent damage to the bathroom carpet or anything else, but I appreciate that it must have been upsetting and inconvenient.

However, there was a more significant leak under the bath, which damaged the kitchen ceiling and hallway carpet. (This is complaint point 5, above.) Mrs M has also sent us photos, which show that the airing cupboard floor was badly damaged by a leak.

I've seen a report by an engineer from 'Business C', which appears to be another subcontractor of Business A. The engineer visited Mr and Mrs M's home on 9 December 2016. He wrote:

'Leak through ceiling – cylinder stat appears to be faulty causing temp/PRU to discharge, leaking from unglued fitting (I have re-glued)...Damage to ceiling and carpet – taken photo and sent to office.'

And he recommended:

'New cylinder stat and new discharge to be run to outside and in copper.'

I understand the subcontractor that installed the system replaced the plastic pipes with copper pipes in February 2017. That it did this without charge would indicate that it should have done this initially or at least identified that it couldn't use the existing pipework when it installed the system. That said, it's clear from the engineer's report that an 'unglued fitting' caused the leak. The engineer 're-glued' it and took photos of the damage – which would indicate that it should have been glued in the first place. So that's my conclusion. Mr M has provided an invoice to show that he paid £400 to repair the ceiling. Based on what I've seen so far, I think Creation should refund this.

Mrs M has confirmed that the airing cupboard was repaired at no cost to Mr M, so I don't need to consider this further.

Mrs M has also told us about a leak under an en-suite shower, which damaged the floor and walls. This was uncovered when Mr and Mrs M had work done recently. I haven't seen any evidence that this damage was caused by the leak I've already mentioned or that there was another leak due to the 'unglued fitting', the use of the existing piping or some other mistake made when the system was installed. Nor has Mr M told me how much extra he had to pay. So unless, in reply to this provisional decision, Mr M provides me with evidence to show that the leak was caused by a mistake made when the system was installed and that he's out of pocket as a result, I won't tell Creation to compensate him for the leak under his en-suite shower.

#### *All other matters*

As I've explained above, Mr M signed a one-page contract with Business A, which says very little. It is essentially a tick-box form – half the page is a list of products, which, in this case, have been crossed out by hand with the abbreviation 'N.A.' ('not applicable') written across them. However, Mr M says the sales person made specific promises orally.

Mr M says he was told the system would take two days to install – instead, it took a week. (This is complaint point 4, above.) I don't think I can say, based on the evidence I've seen, that installing the system in two days was a contractual term rather than merely an indication of how long it might take.

Mr M also says the sales person from Business A said it would check the efficiency of the system after it was installed and 'balance' the radiators, and service the boiler annually, for free, for nine years. (These are complaint points 7 and 8, above.)

When Mrs M emailed Business A on 29 July 2016, she made the same point about the efficiency check. And on 8 November 2016, someone from Business A emailed Mrs M to say it would carry out the efficiency check on 18 November 2016. This didn't happen for some reason, and it still hasn't happened. But I think it's clear from Mrs M's email, and Business A's response, that an efficiency check was included in the purchase price.

Similarly, the emails I've seen between Mrs M and Business A indicate that an annual boiler service was also included. Mrs M emailed Business A on 8 November 2016 and 18 November 2016 to complain about its subcontractor, Business C, which had not serviced the boiler as scheduled on two separate occasions. I think it's clear from Business A's reply that it had arranged for its subcontractor to service the boiler and, as I've mentioned above, Business A's subcontractor serviced the boiler annually until 2016. So unless, Creation or Business A send me evidence that shows Mr M paid for the boiler service each year, I think it's fair to infer that an annual boiler service was included with the purchase price. And I accept the consumer's testimony that it was for nine years – which would be consistent with a ten-year loan.

#### What does Creation need to do to put things right?

Above, I've explained why, provisionally, I think:

- the cylinder – subsequently replaced under warranty – was faulty when it was installed;
- there was a problem with the system controls because of faulty components and the way it was set up;
- an 'unglued fitting' – which should have been glued – caused a leak, which damaged the kitchen ceiling and hallway carpet;
- a power flush was included in the contract price – and it either wasn't done or wasn't done properly;
- an 'efficiency check' was included in the contract price, and hasn't been done; and,
- an annual boiler service was included in the contract price, but the boiler hasn't been serviced by Business A (or one of its subcontractors) since 2016.

What's more, Business A's subcontractors have had to carry out remedial work intermittently, for example, replacing the plastic pipes.

Accordingly, based on what I've seen so far, I don't think the system was installed with 'reasonable skill and care', I think components of the system were not of 'satisfactory quality', and I don't think Business A has done everything it was contractually required to do.

I've thought carefully about what I think Creation should do to put things right.

Elements of this are relatively straightforward. It should, for instance, refund the £198 Mr M paid Business B to fix the problem with the heating and refund the £400 he paid to repair the damage caused by the leak – and it should add simple interest to both at 8% per year from the date he made the payments. It should also pay Mr M £500 (£400 plus VAT) so that he can pay for a power flush.

Mr M's other losses are harder to quantify.

Mr M has sent us a breakdown from his energy supplier, which shows how much electricity and gas he used each month from August 2013, how much it cost and how it compares to the year before.

The system was installed in August 2014, the problem with the hot water was resolved sometime in 2016, and the problem with the heating was resolved in July 2017.

Creation says I should compare Mr and Mrs M's electricity and gas use after the system was installed with their use before. But this won't tell me how much electricity and gas they would have used if the system was working well.

For example, in September 2014, Mr and Mrs M used 17% less electricity and gas than the year before. Would they have used even less if the system was working well? If so, how much less? It's worth noting that in July 2014, the month before the system was installed, they used 18% less than the year before. They also used less than the year before in May and June 2014 – 20% and 11% respectively. For whatever reason, year on year, Mr and Mrs M were using less electricity and gas even before the system was installed.

However, in October 2014, Mr and Mrs M used 15% more than the year before. All things being equal, I would have expected them to have used less electricity and gas after the system was installed. But were all things equal? There doesn't appear to be a discernible pattern: in March 2015, Mr and Mrs M used 46% more than the year before, but 17% less in November 2015, December 2015 and January 2016.

I also don't think it would be helpful to compare Mr and Mrs M's electricity and gas use after the system was fixed with their use before it was installed. Mr and Mrs M's grandson was born in January 2018 so they've had their heating on a lot more than they did before. I wouldn't be comparing like-for-like.

That said, I think it's fair to assume Mr and Mrs M have used more electricity and gas than they would have done had the system been working well from the start. In the same way I think a new system is likely to be more efficient than an old system, I think a system with the problems I've mentioned is likely to be less efficient than one that's working well. And Mr and Mrs M have told us they've 'benefitted from cheaper bills' since the system was fixed. So any compensation I award should reflect the fact that Mr and Mrs M have probably had to pay more for electricity and gas.

Similarly, compensating Mr M for Business A's failure to do everything it was supposed to do isn't straightforward either. Neither Creation nor Mr M can tell me how Business A worked out the contract price – in other words, I don't know what cost what. And Creation says it can't get this information from Business A.

Finally, it's clear the service delivered by Business A and its subcontractors was very poor. When deciding how much to award to in a case like this, I'm considering the liability of the finance provider for a 'like claim' against the supplier for breach of contract. So I think it's relevant to consider what a court might award against Business A in similar circumstances – and compensation for stress and inconvenience is limited with this type of contract.

However, the system was installed in 2014. That problems persist must be deeply frustrating for Mr and Mrs M. And they've had to do a lot themselves to make sure the other problems were fixed. It's clear from Mrs M's emails to Business A and Creation, and more recently, to us, that the cumulative impact of the various problems – which, among other things, affected their hot water and heating – was significant. It's worth noting that Mr and Mrs M's daughter and their grandson, who was born prematurely, live with them, which must have made the situation worse. So in the specific circumstances of this case I think some modest compensation is appropriate.

Instead of trying to calculate an estimate for each of the above, I've decided to take a more practical approach. I think Creation should pay Mr M an additional £1,800 to compensate him for:

- any extra he's had to pay for electricity and gas;
- the extra he's paid and will have to pay to have the boiler serviced (a quick online search shows that an annual boiler service costs between £70 and £100 and Mr M will have to pay for 7 of the 9 that were included in the contract price);
- the extra he'll have to pay for an 'efficiency check';
- the distress and inconvenience caused by Business A's breaches of contract,

So, provisionally, I think Creation should:

- refund the £198 Mr M paid Business B to fix the problem with the heating;
- refund the £400 Mr M paid to repair the damage caused by the leak;

- add simple interest at 8% per year on both of these from the date he made each payment until the date he receives the refund;
- pay Mr M £500 so that he can pay for a power flush; and,
- pay Mr M an additional £1,800 for the reasons I've explained above.

I appreciate that Mr and Mrs M have asked me to tell Creation to pay the monthly sum they've paid Business B for its ongoing support. However, ongoing support of this sort wasn't part of the contract and I'm not persuaded it was necessary as a result of any breach of contract.

**my provisional decision**

For the reasons I've explained, I think Creation Consumer Finance Ltd should pay Mr M the compensation I've described above.

So unless the comments and evidence I receive by 30 July 2020 change my mind, that's what I will tell it to do in my final decision.

Christopher Reeves  
**ombudsman**