

summary of complaint

Mrs B complains that the kitchen she bought from a retailer – financed by Hitachi Capital (UK) Plc – was not designed with reasonable skill and care.

Mrs B brings her complaint under section 75 of the Consumer Credit Act 1974.

Mrs B's relative, Mr Q represents her in this complaint

our initial conclusions

Our adjudicator did not recommend that the complaint should be upheld. He said that he could not safely conclude that the retailer was to blame for the problems with the kitchen. It followed he considered that Hitachi was not liable to Mrs B under section 75.

Mr Q, on behalf of Mrs B, did not agree with the adjudicator's conclusions. He reiterated Mrs B's previous stance and in particular repeated her suggestion that the unit for the boiler was not fit for purpose.

More recently, Mrs B has also raised new issues, she said that she was unsure of what she has been charged for and that she had tried to return some items to the retailer but it refused to accept them as her complaint was being considered by this service.

The retailer has also contacted us while this case was awaiting a final decision. It has offered to arrange for the items to be collected from Mrs B and to pay her a further £800 as a goodwill gesture. It says Mrs B has declined this offer.

Mr Q has asked that an ombudsman review Mrs B's complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am sorry to disappoint Mrs B but I cannot see any basis to uphold her complaint. I will explain my reasons why.

has there been a breach of contract?

A consumer is entitled to bring a claim against the lender under section 75 for breach of contract or misrepresentation by the retailer. My role here is to decide if there has been a breach of contract.

Mrs B has made extensive submissions about the retailer's actions, attitude and failings. But whilst I appreciate Mrs B is unhappy with the retailer my role is limited to determining whether there is any liability arising against Hitachi for breach of contract in relation to the goods supplied. In other words I cannot hold the retailer to account.

The parties disagree about why things went wrong. So where necessary and/or appropriate, I have reached my decision on the balance of probabilities - in other words, what I consider is most likely to have happened in light of the evidence that is available and the wider surrounding circumstances.

There is no dispute that Mrs B was offered a 'design and supply' service by the retailer. She says there has been a breach of contract because the retailer did not exercise due skill and care in designing the kitchen, She says, as a result, she is now going to have to spend more money to put things right.

It is clear that Mrs B visited the retailer's branch where the kitchen was initially designed by the retailers' representative. It seems the design was based on what Mrs B and her relative told the representative at the time.

The retailer's records show that its representative subsequently visited Mrs B's property on 4 October 2013 and, after consulting with the fitter in the presence of Mrs B's relative, a revised design was prepared allowing a wider unit to accommodate the boiler. I realise that Mrs B says that the changes were not agreed by her or her relative but I take the view that the retailer's representative was unlikely to have carried out the changes without being asked to do so by either her, her relative or the fitter.

Mrs B says she had particular problems with the cabinet which was fitted around the floor standing boiler in her kitchen and also with the length of the breakfast bar being insufficient, leaving a gap and exposed pipes.

I do not doubt that Mrs B has suffered considerably with the faults with the kitchen and I do sympathise with her situation. However, in order for me to rule in her favour, I need to be satisfied that all that has gone wrong was entirely due to design faults rather than with the fitting.

It is clear that substantial alterations were made to the original design in particular to accommodate the boiler. But on balance, based on the information I have available to me I am unable to say whether the problems were the result of the design or the fitting. It follows I cannot fairly hold Hitachi liable for breach of contract in the circumstances.

delivery problems

The retailer has already accepted that there were some delivery delays for which it says it has paid Mrs B £100 in compensation and it says it has supplied some additional units free of charge. I consider that this offer is fair and reasonable and I can see no basis to require Hitachi to pay any further redress.

additional items

Mrs B has recently raised the new issue of unwanted items for which she may have been charged by the retailer. I understand that the retailer has offered to collect the items and to process a refund for the return of the items. These are new matters and I cannot consider them before Hitachi has had a chance to do so. It follows I make no finding about these new matters.

my final decision

My final decision is that I do not uphold this complaint.

Joyce Gordon
ombudsman