

complaint

Mrs C complains that an electrical appliance she acquired under a hire purchase agreement financed by Temple Finance Limited (Temple) was of unsatisfactory quality.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 30 June 2016 - a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mrs C's complaint should be upheld and what Temple should do to put matters right. I then invited both parties to provide further submissions before I reconsidered the complaint.

Temple responded to say it would arrange an appointment for an engineer to attend Mrs C's house to modify the appliance. But it said:

- it did not think it was reasonable that Mrs C should not have to pay the weekly payments for the period of time she refused to use the appliance or register for modification and she should pay regardless of whether she used it or not;
- Mrs C had caused delay in refusing to arrange the modification herself and so it was not reasonable to expect Temple to pay for that delay, as once I had indicated in my provisional decision that repair was an acceptable remedy it had been able to arrange that within a fortnight; and
- the basis for the £50 award for inconvenience was unclear, but that if I was minded to make that award then it should be deducted from arrears accrued on other agreements for other products that Mrs C had with it.

Mrs C responded in the strongest of terms to say she rejected my provisional decision. She said that:

- she would never use the appliance again – modified or not – and that it was grossly unfair to expect her to do so;
- she did not want a stranger in her house to modify the appliance and she had no faith that the engineer would restore the appliance to a satisfactory quality; and
- before she had stopped using the appliance the plug had become hot to touch/was overheating and this was a further factor that made her feel it was not safe to use.

my findings

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

In my provisional decision, I explained why I thought the appliance was of unsatisfactory quality at the point of sale and why I felt repair was appropriate in this particular case.

I acknowledge everything Mrs C has told us about her personal circumstances and why it is that she feels so strongly about rejecting the appliance and why she does not want anyone to come into her home to fix the product.

I am sorry to disappoint Mrs C, but I still think repair is reasonable in these circumstances. The manufacturer has a team of trained engineers at hand to modify the appliance and I have no reason to think that the modification will not restore the appliance to a satisfactory quality. Nor do I have any reason to think that the work will not be carried out in a professional way and to a professional standard.

I acknowledge what Mrs C has said about the plug overheating and she will no doubt have an opportunity to raise her concern about this with the engineer. Should the modification fail to address any other concerns that Mrs C has about the quality of the appliance, then it remains open to her to revisit her complaint – the outcome of which would of course be dependent on the information available at that time.

I do not agree with Temple that Mrs C has added to the delay here by not registering directly with the manufacturer to have the appliance modified. This is because information from the manufacturer suggested a waiting time for the modification of up to eleven months from the date of registration. So even if Mrs C had registered to have the modification carried out in February 2016, I think it likely that she would still be waiting for that to happen and perhaps for many months to come. Had Temple taken a more proactive approach to Mrs C's complaint, then it could have arranged for the modification to have taken place a few weeks after Mrs C had first complained to it - as it had now managed to do.

I acknowledge Mrs C's comments that the award is insufficient and Temple's comments that it is not reasonable to write off the arrears. But having spoken with Mrs C, and as I said in my provisional decision, I can understand, given Mrs C's particular anxieties, why she has been reluctant to use the unmodified appliance - even though she has been assured by the manufacturer it is quite safe to do so if the safety precautions are followed. This has left her without the use of the appliance for around five months which has been of inconvenience to her.

Having carefully considered the circumstances here and the amount of arrears that have accrued, I think an award £50 - in addition to writing off the arrears – accurately reflects the level of inconvenience caused to Mrs C. I do not agree with Temple that £50 should be deducted from arrears accrued on other agreements she has with it. Those agreements are outside of this complaint and I do not know enough about them or Mrs C's reasons for not paying them.

A provisional appointment has been arranged for the modification to take place. If this is inconvenient for Mrs C then Temple should provide her with an alternative date two weeks from when, if she chooses to, Mrs C has accepted this decision. And if Mrs C is nervous about the engineer being in her home when the work is carried out, two weeks will allow her an opportunity to arrange for someone else to be present.

I know Mrs C will remain unhappy with my decision. I simply leave it to her to decide whether she wishes to accept or reject my decision. Or she can choose to pursue the matter in court as she has indicated she is prepared to do.

my final decision

My final decision is that I uphold this complaint. To settle this complaint, Temple Finance Limited should:

1. arrange for the modification of Mrs C's electrical appliance to be completed within two weeks of Mrs C accepting the final decision;

2. refund any payments made on this agreement between 15 February and the date of modification. Or if payments have not been made during this period write off any arrears that have accrued in this time; and
3. pay Mrs C £50 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 15 August 2016.

Siobhan Kelly
ombudsman

Provisional Decision

complaint

Mrs C complains that an electrical appliance she acquired under a hire purchase agreement financed by Temple Finance Limited (Temple) was of unsatisfactory quality.

background

Mrs C acquired the appliance in November 2014. In November 2015, the manufacturer announced a corrective campaign to remedy possible safety and quality issues with the appliance. In February 2016, Mrs C was sent a product safety notice which invited her to register so that an engineer could be sent to modify the appliance.

Mrs C did not arrange for an engineer to attend. Instead, she contacted Temple to tell it she did not want the appliance as it was a fire risk. She wanted Temple to refund her all of the money she had paid or replace the appliance.

Temple responded to tell Mrs C the appliance was safe to use provided she took certain precautions. It advised her to contact the manufacturer to arrange an appointment for the appliance to be modified. It said as the appliance was safe to use whilst awaiting modification - it wouldn't uphold her complaint.

Mrs C asked us to look at her complaint. Our adjudicator didn't think the appliance was of satisfactory quality. She recommended that Temple end the agreement and refund Mrs C all of her payments under the agreement with interest to be added to the refunded amount.

Temple did not agree. In summary, it said the advice issued for use whilst waiting modification was nothing more than what was already recommended in the manual or government advice. It felt that waiting for modification with continued use in line with the safety precautions was therefore not unreasonable. Temple asked for an ombudsman's decision.

Having carefully considered all of the information and evidence, I'm intending to depart from the view reached by our adjudicator. My reasons for this are detailed below.

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.

The safety notice in respect of this appliance said a potential safety and quality concern had been identified which in some rare cases presented a risk of fire. It said an action plan was in place to update the appliances to higher safety and quality standards - which in essence involved a modification to the appliance.

In addition, a published alert notice, which Temple said was based on information from the manufacturer, described the risk level for the appliance as 'serious', the risk type as 'fire' and said the appliance did not comply with the requirements of the low voltage directive.

The issue for me to decide here is whether this appliance was of satisfactory quality at the point of sale. Mrs C's appliance is one which has potential serious safety and quality concerns. It is the manufacturer who has this concern over the quality of its product. And the fact that the appliance requires modification indicates to me that there is a manufacturing – and therefore point of sale - issue that needs to be addressed. The risk is of fire. And although it is said to be rare and can be negated by following safety precautions – the fact remains that this is an appliance in respect of which there is a safety and quality concern.

Having carefully considered the information available to me, I am satisfied that, on balance, the appliance was not of satisfactory quality at the point of sale.

Mrs C wants to reject the appliance. She did not register to have the modification carried out. She said, and I accept, that she has not used the appliance since she became aware of the safety issue. She has told me of her specific concerns about using the unmodified appliance and also that she would not feel safe to use the modified appliance.

I have some sympathy with Mrs C's position. I can understand, given her particular anxieties, why she has been reluctant to use the unmodified appliance - even though she has been assured by the manufacturer it is quite safe to do so if the safety precautions are followed. But I have no reason to think that the modification will not restore the appliance to a satisfactory quality.

Information from the manufacturer suggested a waiting time for the modification of up to eleven months from the date of registration. I don't think it is fair to expect Mrs C to wait this amount of time. So I asked Temple whether the modification of Mrs C's machine could be carried out sooner. It has confirmed the modification can be completed in around two weeks. In light of this, I think modification is a reasonable remedy in this particular case.

I think Temple should therefore arrange for the modification to be completed as it has said it would. I also think Mrs C should not have to make any payments towards the finance agreement for the period of time she has not used the appliance. So here I think Temple should write off any arrears accrued from the date of Mrs C's first complaint to Temple until the date the modification takes place.

I think Temple could have done more to facilitate the modification when Mrs C first complained to it. Had it done so, the matter could have been resolved some months ago. I think this merits an additional award for the inconvenience Mrs C has been caused.

my provisional decision

Subject to any further submissions I receive, my provisional decision is that I uphold this complaint. I intend to instruct Temple Finance Limited to:

4. arrange for the modification of Mrs C's electrical appliance to be completed within two weeks of the final decision;
5. refund any payments made on this agreement between 15 February and the date of modification. Or if payments have not been made during this period write off any arrears that have accrued in this time.
6. pay Mrs C £50 for the inconvenience caused.

I now invite both parties to respond by 14 July 2016, after which time I will reconsider the complaint.

Siobhan Kelly
ombudsman