

Complaint

Mr K has complained that he was mis-sold a fixed sum loan by Green Hut Energy Ltd. The loan was provided under the Green Deal scheme to finance the installation of a boiler in his home.

Background

Mr K has said that he is disabled and is on a fixed income. In 2017, he was considering replacing his existing boiler and carried out some research into whether he could obtain this free of charge due to his circumstances. Ultimately, he entered an agreement with Green Hut for them to provide and install a replacement gas boiler in his property. The boiler was to be financed via the Green Deal scheme.

The Green Deal scheme was originally a government backed initiative intended to remove the upfront cost to consumers of installing energy efficiency measures into their homes. It did this by allowing Green Deal Providers to enter finance agreements with consumers to pay for the measures, which were then repaid via the consumer's electricity bill. The finance agreement was part of what was known as the Green Deal Plan.

Although government funding for the scheme stopped in 2015, Green Deal finance is still available through some private companies. And the overall mechanism behind the scheme remains the same.

A significant key principle of the Green Deal scheme is that the amount of finance that can be provided for the improvement measures is limited to the estimated energy bill savings that are likely to be achieved by these measures. This limitation is partly constructed so as to apply to the estimated savings, versus repayments, made in the first year of the agreement.

This principle is known as the "golden rule" and it forms part of the legislative provisions governing Green Deal Plans. Regulation 30 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012 ("the Framework") states:

"The first year instalments must not exceed the estimated first year savings"

As a Green Deal Plan remains with the property, and so is not dependent on the usage of energy by the specific occupant at the time of the assessment, the total amount of finance that can be provided is based on the savings that can typically be achieved by a property of the type a consumer has. As such, the relevant figure is obtained via an appropriately completed Energy Performance Certificate ("EPC").

An EPC is an assessment of the energy use of a typical household of the type a customer has, taking into account the features of the building and existing energy measures.

It is the responsibility of the Green Deal Provider to ensure that the golden rule is satisfied and that the consumer has received a proper explanation of the savings and other elements of the Plan. The Green Deal Provider in this case is Green Hut.

In April 2017, the EPC produced on Mr K's property indicated that it might benefit from a number of measures. These included various insulations, solar panels, and the replacement of the existing boiler. The estimated savings set out on the EPC are broken down, but are based on the cumulative impact of all of the recommended measures being installed. The figure given for the estimated saving from a replacement boiler was £109 per year.

Neither the April 2017 EPC, nor a further EPC carried out after the new boiler was installed, noted there being any secondary source of heating beyond the boiler and radiator system. However, Mr K has said that, at the time of the initial assessment, he had recently had a log burner fitted in his property and that he had specifically pointed this out to the assessor. Mr K has provided some supporting evidence of this, including an invoice, a photo and a certificate. I will return to this evidence in due course.

Under the Green Deal Plan entered in June 2017, the total debt, including interest and charges, that Mr K owed to Green Hut for the installation of the boiler was over £4,000. The repayment Mr K had to make for the first year of the agreement was £335.80. And the estimated first year savings were £338.39. So, the first year savings were £2.59 greater than the annual repayments.

Based on these figures, the golden rule was satisfied and the replacement boiler would come at no additional cost to Mr K.

Mr K began to raise concerns with Green Hut soon after his boiler was replaced. Mr K has made various allegations in relation to the process he went through when entering the agreement in June 2017. He has said that he was not made fully aware of the nature of the agreement, including that he was taking out a loan. He has said that when he gave his consent by signing the electronic device Green Hut's sales representative presented him, the device was blank and he thought he was merely consenting to the installation.

One of Mr K's other concerns is that the failure to take into account the presence of the log burner meant the estimated savings were overestimated. Mr K says that had he been aware installing the new boiler would come at a cost to him, he would never have agreed to it.

Green Hut have refuted these allegations. They maintain that Mr K was fully aware of the nature of the agreement, and that he accessed the documents on numerous occasions. They have also said that the EPC assessors are independent and neither these, nor Green Hut's own sales agents, identified the presence of a log burner. Green Hut has said that either the log burner was not there or Mr K deliberately hid it.

Mr K referred his complaint to this service. Our investigator wasn't satisfied Mr K was aware he was entering a loan, and given his circumstances she didn't think he would have done so had he been made appropriately aware. The investigator didn't think Green Hut has explained the details of the credit agreement clearly and fairly. She also considered Mr K's log burner should have been taken into account when the Green Deal Plan was created, and that if it had been the golden rule was unlikely to have been met. Overall, she thought Mr K's complaint should be upheld.

The investigator didn't think it was possible to remove the new boiler and replace it with the previous one. But that Green Hut should unwind the credit agreement, refund any payments made adding 8% simple interest, and pay Mr K £150 in compensation for the trouble and upset caused to him.

Mr K agreed, but Green Hut did not. Green Hut said that various inspections had not noted there being a log burner present and that, even if there was, the impact of this would have been minimal. They also said that Mr K had accessed the electronic document on numerous occasions and was made fully aware of its nature.

Green Hut has since provided a draft EPC produced to show what impact the presence secondary heating consisting of "room heaters, wood logs" would have on the assessment. The estimated annual savings from a replacement boiler shown on this report is £94.

As Green Hut did not agree with the investigator's recommendation, this case has been passed to me for a final decision.

My findings

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

The golden rule means that any finance provided under the Green Deal scheme is limited by the amount of savings that the relevant measure being installed is likely to achieve. In some cases, customers may desire to install measures that will cost more than the savings likely to be achieved. In such cases, the Green Deal finance can only pay for a proportion of the measure and the customer will need to make up the shortfall.

The loan agreement entered between Mr K and Green Hut provided finance for the full cost of the boiler and its installation though. This means that the amount provided under the loan was limited by the savings that were estimated to be achieved by the installation of the replacement boiler.

Mr K has said that he had a log burner in his property at the time of the assessment and prior to entering the Green Deal plan. If so, the impact of this is something Green Hut should have taken into account when considering the savings a new boiler might lead to. It is therefore necessary for me to consider whether it is more likely than not that the log burner was present at the time of the installation, and whether Mr K was likely to have hidden this from the assessors.

Green Hut have disputed the presence of the log burner. But I am persuaded by the evidence Mr K has provided. Significant for me is the completion certificate. This has been signed by Mr K's local authority building control department ("LABC") on 22 March 2017. It states it is:

"to certify that the work in connection with the installation of a multi fuel stove and chimney liner... has been inspected and found to be in compliance with the relevant requirements of Schedule 1 of the Building Regulations".

Green Hut have contended that this:

"is NOT an installation certificate, it is merely an inspection that took place to find out how viable it is to have a log burner installed".

They have said that the relevant certificate would need to have been supplied from "HETAS".

HETAS are a body that do certify many installations of log burners. The certification they carry out demonstrates that the installation complies with the relevant Building Regulations. However, the responsibility for ensuring such compliance ultimately falls to the relevant LABC. If a consumer requests inspection and certification, the LABC will ensure the requirements of the Building Regulations 2010 have been complied with. So I don't agree that the certification was something that could only be provided by HETAS.

Part J of Schedule 1 to the Building Regulations 2010 relates to the installation of a log burner, and I am satisfied the certificate issued to Mr K on 22 March 2017 was issued by his LABC following the installation of his log burner. This was prior to the Green Deal being entered, so I consider the presence of the log burner should have been taken into account when considering the potential savings that could be made.

Green Hut has also suggested that Mr K may have concealed the log burner. I am unsure why the log burner was not recorded by the inspectors, etc. Photos of the interior of Mr K's property were taken. So it is apparent the inspectors visited the property and considered the existing appliances, etc.

However, having considered the photo supplied by Mr K of his log burner, it appears to be positioned within the chimney breast of his property and is surrounded by a mantel, etc. I think that any attempt to hide this would have been obvious. And I am not persuaded by any argument that it is most likely Mr K would have considered the potential scenario of concealing a newly installed log burner, so as to inflate the potential savings of a new boiler, in the hope that he would have able to successfully complain about the sale of this boiler via what is a complex scheme.

Taking everything into account, I consider Mr K's log burner was most likely present at the time the Green Deal Plan was entered and, as such, should have been taken into account when Green Hut calculated the estimated saving of having the boiler replaced.

Had this happened, I don't think Mr K's Green Deal Plan would have met the golden rule. I'll explain why.

Mr K has said that, because he uses the log burner in the evenings, he only turns on his central heating once each day, rather than twice. He considers this cuts his energy needs by half. I am not overly convinced that this is the case; his log burner is unlikely to fully heat his entire house and to my knowledge it is not used to heat his water, etc. Mr K would also need to pay for the wood he burns.

However, the presence of a log burner would clearly lead to a reduction in the energy being used by the boiler, and therefore a reduction in the saving achieved by replacing the boiler. Green Hut itself has not disputed this, though it has said that the difference would be minimal.

The draft EPC Green Hut have provided confirms the existence of a log burner would lead to a difference in the estimated saving; £94 per year rather than the £109 indicated on the April 2017 EPC, a difference of £15.

Due to differences in how the calculations for the different documents are reached, exactly the same difference may not have been carried through to the Green Deal Plan. However, the difference between the annual cost of the Green Deal Plan and the first year estimated saving used on that Plan, gave a minimal margin of error. A difference of only £2.60 would mean that the annual cost was higher than the estimated first year saving. And I am satisfied that the presence of a log burner would most likely lead to a much greater difference than that.

This means that the failure to take into account the presence of a log burner meant the Green Deal Plan didn't meet the golden rule.

As result of this, I consider Green Hut did not accurately explain the cost of the Plan to Mr K. I also consider that, had Mr K been made aware that the replacement of his boiler would come at a cost to him, he would not have agreed to enter this agreement. Mr K raised this issue as soon as it became apparent the amount saved would not cover his costs, and this was clearly an issue for him given the fixed nature of his income.

I also consider that the impact of this on Mr K has caused him distress and inconvenience that he otherwise would not have experienced.

Taking all of the circumstances into account, I consider Mr K's complaint should be upheld.

Like the investigator though, I am conscious that the redress she recommended will leave Mr K with a new boiler that he will not need to pay for. But I also agree with the investigator that it is not feasible to put the parties back in exactly the position they would have been in.

The actual boiler removed from Mr K's property is unlikely to still be available. Which means to put Mr K back in the position he would otherwise have been in, Green Hut would have to purchase a replacement of the same standard and condition as the original, and then pay for this to be installed in Mr K's property. I do not consider this to be practical.

However, whilst I note that these events have caused Mr K trouble and upset, I feel that this will be offset by the benefit he receives as a result of having this new boiler. So I do not consider an additional award to reflect his distress and inconvenience is appropriate.

My final decision

My final decision is that I uphold this complaint. Green Hut Energy Ltd should:

1. Cancel the credit agreement and write off any outstanding loan balance.
2. Remove any record of Green Deal finance from Mr K's credit file.
3. Refund any instalments paid with 8% simple interest from the date of payment to the date of settlement.

If Mr K accepts this decision, Green Hut should make full settlement promptly and no later than 28 days after Mr K's acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 9 April 2020.

Sam Thomas
Ombudsman