

## **complaint**

Ms P complains that a central heating boiler she purchased on finance supplied by Hitachi Capital (UK) Plc was not of satisfactory quality. She wants to cancel the agreement, get her payments refunded and be compensated for damage caused by a leak from the boiler.

## **background**

Ms P tells us in July 2018 she bought a new central heating boiler from a retailer I'll refer to as S. This was partly financed through a fixed sum loan from Hitachi linked to the purchase and installation of the boiler. A few days after the boiler had been installed Ms P says she reported various items of damage to her property. In September she noticed a leak to her bathroom tap and called her property management company to repair it. She said it sent a Gas Safe engineer who reported there may be problems with the wiring to the boiler and so she called S. She says S sent an engineer on 3 October 2018, who reported the boiler was not earthed, and repaired that issue. But following this, Ms P says she noticed a leak from the boiler on 4 October 2018. She said S refused to fix this further problem so she arranged with the manufacturer's to send an engineer on 12 October. In the interim period the leak seemed to deteriorate and on 7 October Ms P reports water gushing out of the boiler - even though it wasn't on. She says this has led to her having to replace some carpeting in the area around the boiler.

After a further inspection by the Gas Safe Register, in October, Ms P says it identified several faults with the boiler and fittings. And it had written to S required various defects to be repaired by 9 November. It had also issued a "*danger - do not use*" warning notice. Ms P said she contacted S but did not receive a satisfactory reply. As she had been left without hot water she had the boiler replaced on 9 November.

Hitachi told us there had been no issues with the boiler until Ms P had appointed other contractors to install a shower. It said S had sent an electrician who had found a fuse had been pushed inside - and the boiler would not have worked if this had occurred on installation. It said S had also replaced wiring the other contractor's work had affected. It said Ms P had later refused to allow S access to her property to repair the leak.

I issued a provisional decision on this complaint on 16 April 2019 in which I said it was intention to uphold the complaint. Since then both parties have replied. Hitachi has accepted my provisional decision. Ms P replied clarifying some background issues.

I thank the parties for their responses and given no additional evidence has been provided I see no reason to alter my provisional view. I shall largely repeat this in my final decision which is set out below.

## **my findings**

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

I'm sorry Ms P has experienced so much inconvenience over the installation of a new boiler. I've no doubt she felt this should be a relatively straightforward matter - but unfortunately this has proved not to be the case.

In trying to resolve complaints, we listen to what the parties tell us, and we look to documentary and other evidence to help us reach a decision. This is in line with our fair and reasonable remit. And where evidence is incomplete or unclear - as some of it is here - I'm required to make my decision on the balance of probabilities.

Relevant legislation here includes Section 75 of the Consumer Credit Act 1974. And the Consumer Rights Act 2015. In summary, if there's been breach of contract a consumer will have a "like" claim against the provider of finance as they would against the supplier of the goods and/or services where a fixed sum loan has been used to finance the transaction. This is subject to a number of conditions which seem to be met in this case. And there will be a breach of contract if goods supplied are not of "satisfactory quality" or services are not performed with "reasonable care and skill".

I should also emphasise that Ms P's complaint is about how Hitachi dealt with her claim - so I'm not looking directly at the underlying merits of any claim she might have against S.

It's not in dispute that various faults were found with the boiler and its installation. The argument in this case surrounds who bears responsibility for these faults. Hitachi says the boiler wouldn't have worked for the first couple of months if it had not been installed properly. Ms P points to reports from two Gas Safe engineers who have detailed various faults with the boiler and the way it was installed.

The first report in September by G, a Gas Safe registered engineer, identified electrical faults with the boiler not switching on and off properly. Following this, S sent out an electrician who reported a fuse had been pushed inside the boiler. I've also seen a comprehensive report compiled on behalf of Gas Safe Register - which followed an inspection on 12 October 2018.

This report details several faults and caused the engineer to declare the boiler was a danger and unsafe to use. Amongst the more serious defects noted were:

- *Whilst the boiler was operating satisfactorily the chimney flue was of the wrong length. It was reported as exceeding the manufacturers design maximum by two metres;*
- *Flue supports incorrectly fitted under stress, top bracket securing screw missing;*
- *Condensate pipe installed incorrectly, not fully supported - causing movement;*
- *Electrics unsupported and touching gas pipework;*
- *Chimney / flue terminal appears to be closer than 1500mm to ridge tile vent;*
- *The temporary filling loop had been left connected. The Water Regulations 1999 (England and Wales) requires that the filling loop should be disconnected after use;*
- *Whilst carrying out the inspection a number of issues were identified and listed within the defect section of this report. As a result of these issues the natural gas condensing combination boiler was classified as At Risk in accordance with the current Gas Industry Unsafe Situations Procedure. Permission to turn off the gas supply was declined. A 'Danger Safety Warning Do Not Use' label was attached to the appliance and a 'Danger Do not Use Warning Notice' issued.*

The customer was advised to contact a competent electrician for the following reasons;

- *The electrical cable supplying the gas boiler is not supported;*
- *There is no electrical certificate for the electrical connections made during the installation of the gas boiler.*

I've seen no persuasive evidence to show the above faults arose due to actions by any third party. The evidence points overwhelmingly to the faults occurring at the original installation which - based on the Gas Safe register report - was performed to well below acceptable standards.

There's a conflict in the evidence about if and why it became necessary for Ms P to have the boiler replaced rather than let S rectify the work in accordance with the Gas Safe Register instructions.

The evidence as to why the faults were not repaired by S is contradictory. S told Hitachi Ms P refused to permit access to her property - something Ms P denies. And Ms P has provided an email from 6 November in which she voices her frustration at the lack of urgency in Hitachi dealing with her complaint. It pointed out she'd been without heating for five weeks and that she intended to replace the boiler the following day. Given Hitachi's acceptance of my provisional view I don't need to comment further on this point of difference.

Hitachi was aware of the complaint on 4 October 2018. And it was entitled to take up to eight weeks to respond to Ms P's complaint - as that's the time allowed by the Dispute Resolution Rules (DISP) issued by the Financial Conduct Authority. But I think Hitachi should have realised that leaving Ms P without heating and/or hot water would be unacceptable at any time. And at the particular time of year it was even more urgent that the issue needed to be addressed promptly.

I think in all the circumstances Ms P acted reasonably in having her boiler replaced. The original boiler had been declared unfit to use and there was no immediate sign of works being done. And given the poor quality of the original installation - and especially the numerous defects directly affecting the safety of the boiler's operation - I think Ms P would have every justification to doubt S's ability to rectify the issues.

So I'm upholding her complaint and I think she should be entitled to reject the boiler and end the finance agreement.

Ms P is also seeking compensation for consequential losses she says she incurred. This includes damage to her property and the costs of oil radiators she purchased to provide temporary heating.

For consequential loss to be recoverable it has to relate directly to any breach of contract and it must also be a foreseeable event. I think that damage caused to carpets from the leak meets this criteria.

I am not inclined to award the cost of the radiators or other items of clothing and accessories. Ms P retains the use of the radiators. And personalised items once used - such as clothing and bedding - do not retain any significant monetary value.

I accept Ms P has suffered a significant degree of distress and inconvenience. But this largely results from events before Hitachi became aware of the complaint. And - as I'm dealing only with the way Hitachi dealt with Ms P's complaint - I can only make an award for this aspect based on any failings I attribute to Hitachi alone.

I think if Hitachi had accepted earlier that the boiler was of unsatisfactory quality - as the evidence shows - this would have been significantly reduced the inconvenience caused to Ms P. A replacement boiler could have been obtained more quickly and that would have lessened the discomfort experienced by Ms P.

In summary, I think Ms P should be able to recover her deposit and a proportion of the payments she made, together with the consequential losses I've outlined above. And in addition she should receive an award of compensation for distress and inconvenience but based only on that which I think resulted from Hitachi's actions.

### **my final decision**

For the reasons given above my final decision is I uphold this complaint.

In order to settle the complaint I now require Hitachi Capital (UK) Plc to:

1. End the agreement and refund the deposit of £1228.50;
2. Refund any payments made which were due for any period after 26 September 2018;
3. Subject to proof of payment - refund the cost of replacement carpet (£980) and disposal cost of old carpet (£95);
4. Pay £150 for distress and inconvenience caused;
5. Arrange to have details of the agreement removed from Ms P's credit file.

Simple interests at the rate of 8% per year should be added to items 1 and 2 above from date of payment to date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 13 July 2019.

Stephen D. Ross  
**ombudsman**