

## **complaint**

Mrs R complains that Hitachi Capital (UK) Plc will not meet her claim in respect of services which she paid for using a connected credit agreement.

## **background**

Mrs R took out a 'point of sale' loan from Hitachi to pay for the supply and installation of replacement bathrooms in her home. The type of loan she took is covered by Section 75 of the Consumer Credit Act 1974, under which (in certain circumstances) the consumer has an equal right to claim against the supplier of credit as against the merchant, where there is a misrepresentation or breach of contract.

Mrs R says that the fitting of the bathrooms was not carried out to the time scale or standard provided for in the contract, and that mistakes made by the fitters caused her to need a new boiler and also damaged decorations to the room below. She would like:

- her loan agreement with Hitachi to be cancelled;
- a refund of the total cost of fitting;
- compensation; and
- to be able to negotiate a new price with the merchant, after deduction of her losses.

Hitachi was not willing to meet Mrs R's claim and said that the merchant was willing to resolve any remaining issues but had been prevented from doing so because Mrs R would not allow them access.

As the problem remained unresolved, Mrs R brought her complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator was not persuaded that the fitting had resulted in irreparable damage to Mrs R's boiler.

She also did not consider that Mrs R had given the merchant a reasonable chance to put right any remaining problems. Overall, the adjudicator did not recommend that the complaint should be upheld.

Mrs R did not agree and I have summarised the main further points she made:

- There are two interlinked parts to her complaint; the first is that she did not receive the qualified, reliable service advertised by the merchant.
- The second part of the complaint is that the fitters caused a flood, which meant she had to pay to replace her boiler and repair the WC, have her electricity box checked and have the ceiling and tiling repaired.
- She also anticipates needing to have the utility room redecorated and is getting an estimate for that, as well as an estimate for putting right the isolator switch which had been tiled in.
- The original start date was put back over two weeks, and she would not have used this merchant in the first place if she had known this would happen.

- The fitter seemed to be in dispute with the merchant, and this affected his manner and approach to the work. He was also not a qualified electrician.
- There were also issues with the wrong items being delivered and this caused ongoing delay of over three weeks from the original end date.
- She has found it difficult and uncomfortable having workmen in her home who resented being there, and is not willing to allow the fitter back.
- Almost as soon as the contractors finished, she found the utility room had flooded. She called her own plumber who had no option but to take action and she agreed that he could enlarge the hole in the ceiling to cap off the water.
- During a phone call, the merchant told her she could go ahead and replace her boiler using her own plumber and it would pay. But when the merchant's representative made an inspection, he said there was no reason the existing boiler could not be switched on. She refused to try that, as she had been advised against it by her own contractor who had told her it was not safe and she should buy a new one.
- After the last visit of the merchant's representative, she decided that she would no longer allow anyone from that company to visit her home again. She received a letter from the merchant asking to visit again, but did not reply to it.

Mrs R also provided a statement from her own plumber and photographs in support of her complaint.

The Furniture Ombudsman provided us with a copy of the independent expert report it had commissioned, and of its Adjudication of Mrs R's complaint against the merchant.

### **my findings**

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

Mrs R brought her complaint about Hitachi to this service at the same time as she brought a complaint to the Furniture Ombudsman about the merchant. She felt it was appropriate for the complaints to run in parallel so that this service could first order the cancellation of the credit agreement with Hitachi and the Furniture Ombudsman could then assess a suitable reduction in the overall amount the merchant should receive.

But the agreement between Mrs R and Hitachi was not a leasing or hire agreement. So problems with the goods or service would not give Mrs R a right to cancel the agreement with Hitachi.

Because of the type of loan involved, Section 75 applies. That gives Mrs R the same right to claim against Hitachi as she has against the merchant. The merchant is not covered by this service and so I cannot make any separate directions in relation to the merchant, or compel it to re-negotiate the contract price.

Hitachi is only liable to Mrs R under Section 75 if there was a misrepresentation or breach of contract by the merchant. Mrs R's claim is of breach of contract, in that she says fitting was delayed and then not carried out to the expert standard she was entitled to receive under the contract. She says that mistakes were made in the fitting, including one that created a leak which caused (amongst other things) irreparable damage to her boiler.

Looking first at the merchant's delay in starting and finishing the work, I am not persuaded that this was such as to constitute a material breach of the contract.

Some of the electrical work was carried out by a separate qualified electrician, but Mrs R says the main fitter was not a qualified electrician or qualified plumber. She therefore considers he was unqualified – whereas the merchant's advertisement said work would be carried out by qualified people.

From what I have seen, the contract did not specify that the bathroom fitter would possess plumbing and/or electrical qualifications and I am not satisfied that there was any breach of contract in that regard.

I move now to the matters relating to the quality of the fitting.

Some of the issues identified by Mrs R as faults appear to me to relate to differences in opinion between the merchant and Mrs R's own plumber – for example, the use of flexi-connectors.

It's clear that Mrs R had decided to use her own contractors to carry out various items of work, including removal and replacement of the existing boiler, prior to bringing this claim.

Mrs R says her boiler was irreparably damaged by the leak, but the merchant says this was not apparent when it visited to look at what had happened – and that Mrs R refused to switch the boiler on. Mrs R says she had been told it would not be safe to switch it on. The independent expert commissioned by the Furniture Ombudsman has also provided evidence in that regard.

Whilst I note Mrs R's view that her own plumber's account of events should be preferred, as he attended at the time, overall I find that the evidence does not support Mrs R's claim for a new boiler.

I'm satisfied that the merchant had confirmed that it was willing to put right any remaining issues, and Mrs R agrees that it has been in touch with her to try to arrange a further visit. I appreciate that Mrs R has made the decision not to allow anyone connected with the merchant into her house – and she is of course entitled to decide who may enter her home.

But that also means she cannot now claim that the merchant has breached the contract, since it has shown itself willing to put things right but has been prevented by Mrs R from doing so.

The merchant has also confirmed that the wet room floor, which Mrs R has said she is worried may leak, is covered by a five-year guarantee.

Taking everything into account, I am not persuaded that there was a breach of contract by the merchant. It follows that Hitachi has no liability under Section 75.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 13 June 2016.

Jane Hingston  
**ombudsman**