

complaint

Miss M is unhappy with a boiler she purchased using a loan provided by Hitachi Capital (UK) Plc. She has been represented throughout this complaint but for simplicity's sake, I've only referred to Miss M throughout this decision.

background

In February 2018, Miss M took out a loan with Hitachi which paid for the installation of a new boiler. The boiler was supplied and installed by a separate company which I've referred to as B.

Miss M says she had particular requirements in relation to the performance of the boiler - specifically, in respect of water pressure. She says a representative of B assured her that this particular boiler would meet those requirements. She says she was told that the water pressure in the shower would not be affected by running other water-using appliances at the same time. Shortly after installation, Miss M complained that the performance of the boiler was significantly below the standard she'd been led to expect.

The complaint was looked at by an investigator who upheld it. She concluded that Miss M had entered into this agreement on the basis of an inaccurate statement made by B. Hitachi didn't agree with the investigator's opinion and so the complaint was passed to me.

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 issued a provisional decision on 17 April in which I said:

The relevant law here is the Consumer Credit Act 1974 and the Consumer Rights Act 2015. Section 75 of the Consumer Credit Act 1974 says that, under specific circumstances where a consumer has paid for goods or services on credit, the provider of the credit can be held jointly responsible for any breach of contract or misrepresentation by the supplier of those goods or services. In this case I am satisfied that Miss M contracted with the supplier for the goods and services purchased on credit and has a like claim against Hitachi under s75 for breach of contract or misrepresentation in relation to these.

The Consumer Rights Act 2015 implies a number of terms into this contract. It says (amongst other things) that, if a consumer makes known any particular purpose for which they're buying goods, the contract should be treated as including a term that the goods are reasonably fit for that purpose.

As I understand it, Miss M has bought a working boiler. However, she says that she told the sales representative that the flow of hot water throughout her home would need to support multiple outlets being in use at the same time. She says she was given the assurance that the new boiler would meet this requirement. She told us that the sales representative said:

"You could be having a shower, whilst someone is washing up and the washing machine is on and you won't have a drop in pressure."

However, B's own engineer carried out an inspection of the boiler. In his report, he wrote:

"This is a case of bad advice or wrong information given at the point of sale ... I would not have advised the customer that the combination boiler would do what the [representative] claimed it would ...

[...]

... as the customer is renovating the property ... I would have advised that either a full sized un-vented cylinder to supply the whole property's hot water requirements, or a smaller one was installed to supply just the shower still making use of the efficiency of the combination boiler's ability to supply instantaneous hot water elsewhere ... The customer was not given this option."

Miss M has been consistent in her recollections of the conversations with B's representative throughout this complaint. I've also looked at the paperwork that was completed at the time Miss M came to the agreement with the supplier. Nothing in these documents contradicts what Miss M has had to say. Furthermore, the fact that she raised her concerns so soon after the installation strongly supports the argument she's made about the performance expectations she had for the boiler. Overall, I see no reasonable basis for doubting her when she says that she was given these assurances.

As I understand it, the boiler is not defective. However, the evidence I've seen suggests that Miss M made the supplier of the goods aware of her specific requirements and it assured her the goods would be suited to them. And as the boiler appears to underperform in view of this requirement, I don't think it's fit for its particular purpose. Considering the relevant law (including s75), I think that it's fair and reasonable for Hitachi to do something to put this right.

I proposed two potential ways of working out how Miss M ought to be compensated in the circumstances.

Option 1 was that the boiler be removed, refunded and Miss M would arrange for a suitable alternative that did meet her needs. Under this option, I said that Miss M should be refunded the retail cost of the boiler and an estimate of the costs directly related to the installation, setup and testing of a new boiler which she'd likely to have to pay again to any engineer installing a new one.

But I also said that any settlement would need to have deducted from it costs relating to the relocation of the boiler from that was part of a bigger plan Miss M appeared to have for the renovation of her bathroom. This included the installation of a new flue, upgrading pipework and running utilities to the new boiler location. I recommended that any settlement have deducted from it the a typical cost of a power flush and the installation of smart controls and a new flue – all things which appeared wouldn't require repeating once they installed a new boiler.

I also recommended an award of £500 for distress and inconvenience and said the following regarding such awards in cases like this one:

Allowing Miss M to organise replacement should minimise the inconvenience. And now the re-location work has been carried out, it should be a more straightforward job. But it is inevitable that there will be some disruption. Under a section 75 complaint, I'm only looking at what the finance provider – in this case Hitachi– have done or need to do in response to Miss M's 'like claim' against the supplier. It's therefore relevant to consider what compensation a court might award against the supplier in similar circumstances. Compensation for distress and inconvenience is often limited in this type of contract as with any building work there is an expectation of a level of disruption and inconvenience.

However, I do recognise that having the boiler taken out again is going to cause some level of physical inconvenience and discomfort that wouldn't have happened if things had gone as planned. And this is something I can ask Hitachi to compensate her for, as it's directly linked to the remedy I'm asking them to apply in this complaint.

My provisional award then was:

- retail cost of the boiler (£900)
- estimated cost of the installation of the boiler (£600)
- an award for distress and inconvenience (£500)

From this total (£2,000) I suggested Hitachi retain the cost of a power flush (estimated at £350) and the installation of smart controls (£125).

Option 2 involved Miss M keeping the original boiler but accepting a price reduction, but it was clear from subsequent correspondence that this wasn't a viable option for her.

responses to these provisional findings

Hitachi didn't respond to my provisional findings. Miss M responded in some detail and questioned some of the assumptions regarding costs.

She identified a much more expensive system that she felt would meet her needs and said that she felt Hitachi should pay a third party installer the costs associated with installing such a system. I think this would be disproportionate. Although the price of the contract was £2,995, Miss M hasn't paid that full amount yet. She paid a deposit of £1,497.50, has made (at the time of writing) around five monthly repayments of £32.20 and has had to pay for the boiler to be serviced. Any award of compensation needs to take into account the total amount Miss M has paid under this agreement.

She said that it would be unreasonable to deduct the cost of the smart controls, the flush and the installation of a new flue because each of these things would need to be carried out a second time if a new boiler was installed. Our investigator contacted the business Miss M intends to use to install a new system who confirmed this to be the case – so I won't allow Hitachi to deduct these sums from the total compensation it needs to pay to Miss M.

Miss M also pointed out that in the time since she made this complaint, she's started making monthly repayments on the credit agreement (repayment had been deferred for the first 12 months of the agreement) and felt that these costs should be refunded too. She also said that she'd paid for the boiler to receive an annual service because she was in a position of uncertainty as to whether she'd be keeping the boiler or changing it. She thinks Hitachi

should refund this cost too. Given that she wouldn't have incurred these additional costs but for the breach of contract, I think it's reasonable for Hitachi to compensate her for them.

my final decision

My final decision is that I uphold this complaint. On production of an invoice for the work to replace the boiler, Hitachi Capital (UK) Plc needs to end the finance agreement with nothing further for Miss M to pay. It then needs to pay Miss M:

1. the retail price of the boiler (£900)
2. an estimated cost of the installation of that boiler (£600)
3. cost of the boiler service (£56)
4. all monthly payments made under the finance agreement
5. a sum in recognition of the inconvenience of having to arrange for a second boiler to be installed (£500)

Hitachi Capital (UK) Plc also needs to pay 8% simple interest per year on items 1-4 from the date Miss M paid them until the date it pays a settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 18 August 2019.

James Kimmitt
ombudsman