

complaint

Mrs H complains that the multi-fuel boiler stove she bought, using her Lloyds TSB Bank plc credit card, is not fit for purpose as its output is insufficient for the size of her house. She brings her complaint under section 75 of the Consumer Credit Act 1974.

background

At the end of November 2011, Mrs H's existing boiler stove broke down beyond repair. She says her husband contacted a supplier who told him it had a boiler stove in stock which would be a suitable replacement. The next day they visited the supplier's showroom, taking with them the technical specification of their existing boiler stove. After comparing this with that of the replacement boiler stove, she says the supplier confirmed it would be a suitable replacement, and so they agreed to buy it.

However, when it was installed, it did not heat their house as well as the previous boiler stove. Mr and Mrs H have since obtained a report from an independent expert which confirms that the output of the replacement boiler stove is insufficient for their house.

The adjudicator did not recommend that this complaint should be upheld. She said that the supplier's recollection of events differed significantly from Mrs H's.

The supplier said that in the initial phone call, it told Mr H that it could not say what a suitable replacement would be for Mrs H's existing stove without first speaking to the manufacturer. It also told him that it had only one boiler stove in stock, and it was being quoted a nine week lead time on all other models.

When Mr and Mrs H came into its showroom next day, they looked at the boiler stove on display and studied the installation and operating instructions. Having done so, they decided that it would be adequate for their needs and bought it. The supplier says that at no time, either during the phone call or during their visit to the showroom, did it tell Mr and Mrs H that the boiler stove it had in stock would be suitable for their needs.

In view of the differing recollections of the conversations between Mr and Mrs H and the supplier, and the absence of any other evidence, the adjudicator said she could not be sure what was discussed. However, she considered that Mr and Mrs H had made an informed decision by comparing the technical details of the two boiler stoves, and not because of any misrepresentation by the supplier.

She also noted that the installation guide clearly explained that prior to purchasing a boiler stove, customers needed to take into account heat loss from the pipe work, and it was also essential that they consulted a qualified heating engineer to establish the output required to heat their home. However, Mr and Mrs H did not consult a heating engineer, or have a survey of their house carried out to establish what boiler stove would be suitable for their house, before they bought the boiler stove. The supplier could not be held responsible for their failure to do this.

Mrs H did not accept the adjudicator's recommendation and asked for her complaint to be reviewed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities - that is what I consider is most likely to have happened, given the available evidence and the wider surrounding circumstances.

I can understand that when their boiler stove broke down at the end of November, Mr and Mrs H wanted to replace it as soon as possible, and that a nine week wait for delivery of a replacement would have been unwelcome. There would, therefore, have been an incentive for them to buy the boiler stove that was immediately available.

On balance, I am not persuaded that the supplier misled them by advising them that the boiler stove it had in stock would be a satisfactory replacement. I consider it is more likely than not that they came to this conclusion themselves, having compared the technical specifications of the old and new boiler stoves. Unfortunately, they did not have their house surveyed by, or take advice from, a qualified heating engineer before they bought the replacement stove boiler.

As I do not consider that the supplier is liable to Mrs H for breach of contract or misrepresentation, there is no basis for me to hold Lloyds TSB liable to Mrs H under section 75.

my final decision

For the reasons I have stated, my final decision is that I do not uphold this complaint.

Lennox Towers
ombudsman