

complaint

Mr F complains about the fitting of a boiler that he financed through an agreement with Hitachi Capital (UK) Plc (“Hitachi”).

background

Mr F signed a fixed sum loan agreement with Hitachi in December 2018 for a boiler to be supplied and fitted by a company I’ll call “F”. The total payable under the agreement was a little more than £3,400.

The following table contains a brief history of events:

date	problem	action
9 January 2018	boiler fitted	F fit the wrong model. The model fitted requires a header tank which Mr F is charged for.
11 January 2018	the gas cooker isn’t working	rectified by F
13 January 2018	the header tank leaks as a pipe hasn’t been tightened	there’s damage to ceilings Mr F says it will cost about £500 to rectify
14 January 2018	the boiler isn’t working and F find a blockage in pipes leading to the header tank	Mr F says they didn’t flush the system as they’d been contracted to do
17 January 2018	a third party company inspect the fault that is still present.	they replace the water pump and explain that the system should have been flushed
19 January 2018	a further error code and Mr F has to contact the boiler manufacturers to attend as F won’t.	the manufacturers note that the NEST system isn’t working and F promise to attend
13 April 2018	F fix the NEST system	

Mr F wasn’t able to resolve matters with F so he made a complaint to Hitachi, the providers of the credit. He said he wanted to be reimbursed for:

1. the difference in cost between the boiler fitted and the one he agreed to (£250);
2. a new water tank, sealed system and expansion vessel that had been recommended to resolve the difference in functionality between the two boilers (£485);
3. damage to decoration as a result of a leak (about £500);
4. loss of three days wages (£450);
5. a takeaway meal he’d ordered as he had no gas (£32)

He also wanted the boiler reinstalled so that he could benefit from the manufacturer’s warranty as he said it was clear, as a power flush hadn’t been completed this was in breach of the terms. And he also wanted Hitachi to consider compensating him for the distress and inconvenience he’d been caused.

Hitachi agreed to points 1, 2 and to refund £350 in respect of lost wages. They also offered Mr F a further £105 to compensate him for the distress and inconvenience he’d experienced.

But Mr F was disappointed with their offer and he therefore referred his complaint to this service and our investigator provided his view. He thought that Mr F had provided evidence of damage to the ceilings in two rooms and to the landing. He thought there was evidence that the blocked pipe that had led to this damage had been caused by the system not being flushed. So he thought it was fair for Hitachi to reimburse the cost of redecoration if Mr F provided three quotations.

He didn't think Hitachi should refund Mr F's claim for a takeaway meal as he noted it would have been possible for him to eat cold food but he did think Hitachi should increase their offer of compensation to £200 as it was clear Mr F had been inconvenienced by not having heating for much of January.

Hitachi said a power flush wasn't offered with the boiler quotation so they didn't think they should be held responsible for the damage to the ceilings in Mr F's house. So they asked for a final decision by an ombudsman.

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 agree with the investigator's opinion. I know that will disappoint Hitachi so please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or whole, with a fixed sum loan, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier. So that's the basis upon which Mr F has made a claim to Hitachi.

But when considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint but I don't have to reach the same view as, for example, a court might reach if Mr F made a claim through them for breach of contract or misrepresentation.

Here it's clear there has been a breach of contract. I'm persuaded that the boiler has not been fitted to a satisfactory standard and that the wrong boiler has been fitted. I don't think this is in dispute.

There are several other areas that are still contested so I'll consider each in turn.

remedial work

Two third-party suppliers have explained that in their view the system hadn't been flushed before the boiler was fitted.

Our investigator referred to comments by a third party gas company that they believed the problem that led to the leak in the header tank was because the system hadn't been flushed.

I can also see that the safety engineer who subsequently inspected the work had the same comments.

I've looked at the email exchanges Mr F had with the company and I've not seen evidence of any fault before the boiler was fitted so, on balance, I think it's highly likely that the leak and the subsequent decorative damage was caused by F failing to flush the system.

Hitachi have suggested that a power flush wasn't included in the quotation for work. I disagree. I've read the quotation and under the section entitled "*what's included*" it lists a chemical flush and a water test to clarify the flush is effective.

So I think it would be fair for Hitachi to refund the cost of redecorating. Since the investigator completed his investigation Mr F has provided some quotes for that work. I'm satisfied that it can be completed for £600 so I'll be asking Hitachi to pay that directly to Mr F.

the takeaway

I'm not persuaded Hitachi should refund Mr F for the cost of his hot food. I think it would have been feasible to obtain cold food and I can see that he wasn't without a cooker for long.

the compensation

I don't think £105 compensation was enough given the inconvenience Mr F experienced. For instance, he was without a cooker for a day; without heating for about three weeks and had to coordinate rectification works. In the circumstances I think £200 is more reasonable and I'm therefore asking Hitachi to pay that.

loss of earnings

I think sufficient recompense has been suggested. I say that because the third day Mr F is claiming for was not a full day. He's explained that when he returned home to deal with issues the boiler had already been fitted so I don't think he would have needed to stay at the property for too long. So I think Hitachi have been fair when providing £350 here.

the system flush and the warranty

I'm persuaded that a flush didn't take place and, as I've explained, I'm also persuaded that it should have done.

I'm not convinced by the evidence Mr F has provided that his warranty would necessarily be invalidated. The warranty says that to get "*full benefits of the guarantee*" the installer will need to have complied with the installation manual. It goes on to explain that if any failure is caused by water contamination the visit from the engineer will become chargeable. Whilst I accept the chance of contaminated water is higher if the system isn't flushed I also think that

any contamination to the water *after* the boiler was fitted would potentially cause the guarantee to be challenged.

So I don't think it's clear enough that the failed flush would cause the guarantee to fail on its own.

And, regardless of that, I've considered the redress that I'm not suggesting as a whole and in comparison with the £3,400 paid for the boiler I think it's reasonable and any further compensation would be disproportionate.

my final decision

For the reasons I've given above I uphold this complaint and tell Hitachi Capital (UK) Plc to pay Mr F:

1. £250 in respect of the difference in boiler prices;
2. £485 for a new water tank, sealed system and expansion vessel;
3. £600 to refurbish damage to Mr F's interior decoration;
4. £350 in respect of loss of income;
5. £200 to compensate him for the distress and inconvenience he's experienced;

Hitachi should also remove any adverse reports they may have made to Mr F's credit file in relation to this issue. They can deduct any refunds they've already made to Mr F in respect of points 1 to 5 above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 July 2020.

Phil McMahon
ombudsman