

The complaint

Mr G complains Creation Consumer Finance Ltd (“Creation”) hasn’t treated him fairly in connection with a claim he brought under section 75 of the Consumer Credit Act 1974 (“CCA”).

What happened

The background to Mr G’s complaint, and my initial findings on it, can be found in my provisional decision, which is appended to and forms a part of this final decision.

However, to summarise briefly, Mr G had a new combi boiler installed for £2,999 in December 2020, financed in part by a point of sale loan with Creation. The deal included a ten year service plan and an extended warranty from the supplier, “GYL”. Mr G had problems with the boiler delivering hot water only intermittently, which was caused by a part of the boiler getting blocked by debris. He believed this was due to the installation not being carried out properly. Mr G also had problems getting GYL to service the boiler in a timely manner under the service plan, and felt he’d been lied to by GYL’s salesperson about a new boiler stopping noises from his pipes and radiators. GYL went out of business in April 2022.

Mr G approached Creation for assistance, through a claim under section 75 of the CCA. He was unhappy with their response to his claim and made a complaint, which was subsequently referred to the Financial Ombudsman Service. Mr G missed some of his loan repayments due to his dispute with Creation over the claim.

I issued a provisional decision on the complaint on 18 June 2024. The full reasons for that decision are set out in the appended document, but in summary:

- I considered that, although Creation disputed this, the contract financed by Creation’s loan included the boiler and accessories, installation (including a system flush), ten years of annual servicing, and five years of warranty to be supplied by GYL on top of the manufacturer’s ten year warranty.
- On the balance of probabilities, I considered GYL’s installers hadn’t carried out a flush of Mr G’s heating system before installing the new boiler, and this was the cause of the boiler getting blocked with debris and a part becoming damaged to the point it had required replacement at Mr G’s expense. This had been a breach of contract by GYL, for which Creation was jointly liable under section 75, and so Creation should cover the cost – said to be £144 – of replacing the damaged part.
- The heating system had since received a free “power flush” and I was not aware of any debris-related problems having returned since the replacement of the damaged part, so I thought it likely that problems caused by the failure to flush the system prior to installation had now been resolved.
- GYL’s salesperson had indicated to Mr G that having a new boiler installed would resolve problems he was having with noisy pipes and radiators, but it wasn’t possible for me to determine whether this was untrue, because GYL had failed to flush the

system prior to installation. I thought it possible that if the installation had been performed correctly, this might have resolved the problems Mr G was having with noises from his pipes and radiators.

- GYL's liquidation meant that it was unable to honour, contractually, seven of the ten annual services Mr G had paid for as part of the boiler package. It would also be unable to honour the five year warranty extension on top of the manufacturer's ten year warranty. This was a breach of contract for which Creation was liable under section 75.
- While a related third party, "BC", had offered to honour the annual services (although not the extended warranty) as a "gesture of goodwill", I did not think this was an acceptable remedy. I didn't think it was reasonable to expect Mr G to accept a remedy which was entirely reliant on the ongoing goodwill of a company he had no contractual relationship with. It was not clear to me how Mr G would be able to hold BC to account for future failures to honour the contract, and I noted the relationship between Mr G and BC was already strained.
- I considered a reasonable remedy for GYL's breach of contract would be for Mr G to be refunded, on a pro-rata basis, for the servicing and extended warranty elements of the contract. The refunds would represent the value of these parts of the contract which Mr G would no longer receive as GYL could no longer honour them. I calculated these refunds at £700 for the balance of the annual servicing, and £200 for the extended warranty.
- Mr G had missed payments under the loan agreement with Creation. Mr G's obligation to make repayments was separate to his claim over the boiler, and the complaint which had arisen from it. This meant that if Creation had taken any action relating to late or non-payment by Mr G, then it wouldn't be fair and reasonable to require Creation to reverse this.

I invited the parties to the complaint to respond to my provisional decision before 2 July 2024. At the time of writing, only Creation has responded – to say it would accept my provisional decision.

The case has now been returned to me to review once again.

What I've decided – and why

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

Because neither party has put forward any new evidence or arguments for me to consider, I see no reason to depart from the findings I made in my provisional decision. It follows that I will be upholding Mr G's complaint for the reasons set out in that provisional decision.

My final decision

For the reasons summarised above, and explained in full in the appended provisional decision, I uphold Mr G's complaint and direct Creation Consumer Finance Ltd to take the following actions:

- Pay Mr G £144 to cover the cost to him of replacing the plate heat exchanger, upon receipt of acceptable evidence of him having paid this. 8% simple interest per year* should be added to this amount, calculated from the date Mr G incurred the cost, to

the date he is reimbursed.

- Pay Mr G £700 to reflect the remaining value of the ten year service plan which will not be honoured by GYL.
- Pay Mr G £200 to reflect the value of the five year extended warranty which will not be honoured by GYL.

*If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 31 July 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our investigator, so I need to give all parties to the complaint an opportunity to comment before I make my decision final.

I'll look at any more comments and evidence that I get before 2 July 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr G complains Creation Consumer Finance Ltd ("Creation") hasn't treated him fairly in connection with a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA").

Mr G has been represented at times by his partner, "J". When I refer to things said or done by Mr G, this should be taken to include things said or done by J unless otherwise stated.

What happened

It's not necessary to go into large amounts of detail about what happened. Both parties to the complaint are aware of the history. However, to summarise:

- Mr G entered a contract with a company, "GYL", on 15 December 2020, for the supply and installation of a new combi boiler at his home, along with a service plan and extended warranty (described as an "Infinity package").
- The price of the contract was £2,999, of which £2,499 was financed by a 36 month, interest free point of sale loan with Creation. The loan was arranged by, and paid to, GYL.
- The boiler was installed on Christmas Eve 2020. Mr G reported noises from the radiators not long after this, which he felt he'd been led to believe would be eliminated by installing a new boiler.
- Mr G had various problems getting GYL to service the boiler in a timely manner under the service plan, reporting numerous missed appointments, a general lack of communication, and sometimes being told that he didn't have a service plan in place when he did. Mr G was worried that not having the boiler serviced at a particular time would invalidate the warranty.
- As well as problems arranging services, Mr G was concerned by the quality of the services being carried out. He was informed by an engineer from the boiler manufacturer who had attended reports of a fault in February 2023, that GYL had not been servicing the boiler in line with the manufacturer's standards.
- Separate to the issues with servicing, the boiler began to deliver hot water intermittently from December 2021, due to an accumulation of debris on the plate heat exchanger. Mr G did not believe a flush had been carried out on the heating system prior to installation of the boiler, which is what had led to this problem.
- GYL went into liquidation in April 2022. However, a linked company ("BC") continued

to provide services and arranged for a free “power flush” of Mr G’s heating system in summer 2022, in exchange for him taking down a negative online review. By January 2023, the boiler was delivering intermittent hot water again, and the plate heat exchanger needed to be replaced. This was eventually done in July 2023. Mr G says he had to pay a call-out charge of £144 as the repairs were not covered under the manufacturer’s warranty.

- In the meantime, Mr G had raised a claim with Creation under section 75 of the CCA. It sent him a final response on 27 June 2023 in which it said BC had taken over from GYL, and that it thought the problems he was having with the boiler were caused by his existing pipework. It suggested Mr G get a report from an independent engineer if he wanted to prove otherwise.

Mr G was dissatisfied with Creation’s response, and referred the matter to the Financial Ombudsman Service for an independent assessment. He also temporarily stopped making loan repayments. One of our investigators looked into the case and, in his most recent assessment, came to the following conclusions:

- Mr G’s contract with GYL showed he was an “Infinity customer”, which meant he was supposed to receive 10 years of annual servicing. Creation had said this plan would be honoured. However, there had been errors by BC which had led to services being completed late and led to Mr G needing to pay £144 for repairs to the boiler. This was a breach of contract and Creation should reimburse this amount to Mr G.
- Mr G’s obligation to make payments towards the loan was separate to any claim or complaint he had relating to the boiler, so Creation had not acted incorrectly in treating him as being in arrears on the loan.

Neither Creation nor Mr G accepted our investigator’s assessment, and the case has been passed to me to decide.

What I’ve provisionally decided – and why

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

Section 75 of the CCA gives consumers a degree of protection when they pay for goods or services using particular types of credit, such as the point of sale loan Mr G took out with Creation. So long as certain conditions are met, it allows a consumer to claim against their lender in respect of any breach of contract or misrepresentation by the supplier of the goods or services. It’s important to emphasise that section 75 only covers these two specific types of claim. It doesn’t cover, for example, general poor customer service from the supplier.

For the purposes of this case, a misrepresentation would be a false statement of fact made by one person to another, and which causes the person it was made to, to enter a contract they otherwise wouldn’t have. A breach of contract occurs when one party to a contract fails to honour its contractual obligations to the other. These obligations can either be written expressly into the contract, or they may be treated as included (“implied”) by law.

Before continuing, I think it’s worth setting out what GYL had agreed to provide in exchange for the price of £2,999, based on my understanding of the contractual paperwork and emails between Mr G and GYL’s salesman:

- A new combi boiler, including removal of the old boiler and installation of the new one.

- A system flush.
- Accessories – specifically a wireless thermostat and magnetic filter.
- An annual service for ten years, with 2021 being the first service and 2030 being the last.
- A warranty of an extra five years on top of the ten years already provided by the manufacturer.

Creation has said it doesn't think there's enough evidence that GYL had agreed to provide annual servicing, but I think the evidence of this is clear. It is set out in emails, and the contractual paperwork goes on to confirm these pre-contractual discussions in that it describes Mr G as an "Infinity customer".

Mr G's concerns relating to the contract could be summarised as follows:

- He was incorrectly told that having a new boiler would stop his pipes/radiators from being noisy.
- The system flush was not carried out on installation, leading to ongoing problems with parts of the boiler getting blocked with debris and causing intermittent hot water.
- He's received very poor service from GYL (and BC) over the included annual services, which have been carried out late and not in accordance with the manufacturer's standards, leading to potential invalidation of the warranty.

I'll cover each of these points in turn, albeit in a slightly different order.

Installation not carried out properly – leading to ongoing problems

Mr G is sure that GYL failed to carry out the system flush during the installation process. He says the installation ended up being completed on Christmas Eve by a one-man team, and that the installer understandably wanted to get home to be with his family, but that this resulted in some corners being cut. He says that when he asked for evidence that a flush had been completed, he was sent photos of someone else's property.

It doesn't appear to have been denied that the system flush was not carried out, either by GYL or BC (who Mr G was corresponding with later on – and who I understand GYL employed to install the boiler), when confronted with Mr G's claim that the photos of the flushing process were of another customer's property. I think, on the balance of probabilities, that no flush was carried out on installation. This was a breach of contract because the agreement stated that a system flush would be completed.

The purpose of flushing is – as explained by GYL prior to Mr G entering the contract – to remove dirt and debris from the heating system. When the boiler first began experiencing problems about 12 months after installation, it was reported by the manufacturer to be because a part was full of dirt or debris. A "power flush" was then carried out in summer 2022, which I understand is a more intensive cleaning process. However, by January 2023 the boiler was experiencing the same problems, and the manufacturer stated the affected part required replacement, which I understand Mr G paid £144 to have installed.

Creation has suggested that if there are ongoing issues this is more likely to be down to problems with other parts of Mr G's heating system, and has invited him to obtain a report from an expert to determine the cause. I've not been made aware of the problems having

reoccurred since July 2023 when the damaged part was replaced, and without further evidence it seems probable that this replacement has now resolved the issues caused by GYL's failure to carry out a system flush during installation. I think it's more likely than not that the need to replace this part was caused by GYL's breach of contract, and therefore that it would have been fair and reasonable, bearing in mind its obligations under section 75 of the CCA, for Creation to cover the cost of replacing this part.

I think if there are future problems with debris then this will require further investigation before ascribing it to GYL having failed to install the boiler in accordance with the contract.

Incorrect information given before the sale

I've seen an email from GYL's salesman in which, when asked if a new boiler would solve banging or tapping noises coming from Mr G's pipes and radiators, he said:

"Yes...when we do a full system flush this removes debris and air blockages (common issues for noisy radiators)".

I don't think there is enough information for me to be able to conclude this was a false statement of fact because, as I've found above, GYL failed to carry out the system flush during installation. Had it done so, it's possible this may have resolved the problems Mr G was having with noisy pipes and radiators. Ultimately, I'm unable to conclude GYL made a misrepresentation to Mr G on this point.

Problems with the servicing agreement and extended warranty

Mr G's contract with GYL included ten years of annual servicing and a five year warranty on top of the manufacturer's ten year warranty. As I mentioned earlier in this decision, GYL went into liquidation in April 2022, meaning it will no longer be able to honour either of these contractual obligations.

Mr G has had three services completed. One was completed in January 2022, the second in February 2023 and the third in November 2023. All three services appear to have been arranged by BC. For the first service this appears to have been under some form of sub-contracting arrangement with GYL. It's unclear on what contractual basis BC completed the second and third services. It has suggested that it has continued servicing the boiler – and is willing to go on doing so – as a goodwill gesture. I don't think this remedies GYL's breach of contract. I've not seen evidence that BC have stepped into GYL's shoes contractually, and that Mr G would therefore be able to hold them to account for future failures to honour the contract. I don't think it's reasonable to expect Mr G to accept a remedy which appears to be entirely reliant on the goodwill of a party he didn't enter a contract with. I also note that the relationship between Mr G and BC is already strained and there are concerns over whether BC will carry out services to the manufacturer's standards. I note that BC have also not offered to honour the extended warranty.

In light of the above, I think a more reasonable remedy for GYL's breach of contract would be for Mr G to be refunded, on a pro-rata basis, for the servicing element of his contract with GYL. This will allow Mr G to arrange his own annual service each year with a supplier of his choosing, in order to maintain his manufacturer warranty.¹

I've seen no evidence that GYL broke down the price of its contract with Mr G, so the value

¹ I'm aware Mr G is concerned his manufacturer's warranty has been invalidated, but our investigator has recently contacted the manufacturer, who have confirmed the warranty is in place until 2030, with any call-outs relating to debris blocking the system being chargeable.

assigned to the ten years of servicing is unknown. It's therefore been necessary to estimate the value based on the average cost of servicing a boiler in the UK. This appears to be about £100 per service, meaning the ten years of servicing would have had a value of £1,000. Mr G has had three services, so I think it's fair that he should be refunded £700 in respect of the services we will not receive and which he will need to arrange himself.

The extended warranty is more difficult to place a value on. The contract states that this was a warranty provided by GYL itself, and it doesn't make it clear what the warranty would cover. For example, it's unknown whether the warranty would have covered wear and tear (although I would expect this to be unlikely). And I've been unable to find extended warranties on the market which would specifically cover a boiler between 10 and 15 years old, for the purposes of comparison. Given the difficulty in precisely valuing the missing five years, and acknowledging that any solution is going to be imperfect, I think it would be fair to value the "missing" five years by reference to the price of the boiler itself and how long it would be expected to last before requiring replacement.

The model of boiler Mr G had installed can be purchased for around £1,200 new. Given GYL was willing to provide its own extended warranty until the boiler was 15 years old, it seems reasonable to assume that this model could last up to 15 years, meaning the boiler would "cost" £80 per year. Multiplying this by the five years missing from the warranty leads to a figure of £400. Given the uncertainty around what exactly would be covered under the warranty (and therefore how valuable it would be), and other things such as whether Mr G might decide to replace the boiler earlier, or move house, I think it would be fair and reasonable to divide this figure by two to arrive at a final value of £200.

As I've already said, I appreciate this is an imperfect way of valuing the extended warranty, and I'm willing to consider any other solutions the parties to the complaint want to put forward. However, I'm currently minded that Creation, bearing in mind its liabilities under section 75 of the CCA, should pay to Mr G £144 to cover the cost he incurred in repairing the boiler; £700 to account for the fact that GYL will be unable to honour the next seven annual services; and £200 to account for the fact that that GYL will be unable to honour the extended warranty.

Mr G's missed payments

I understand Mr G missed some payments to Creation because he was dissatisfied with how it was handling his claim. Unfortunately, as our investigator noted, the loan repayments are a separate obligation to any section 75 claim Mr G might have, or any complaint relating to that claim. So if Creation has taken any action as a result of the payments being missed or late, then that isn't something it would be fair or reasonable for me to require them to reverse.

Overall conclusions

I don't think Creation dealt fairly with Mr G's claim under section 75 of the CCA. It would have been fair for it to have honoured his claim by reimbursing the costs he incurred in replacing the plate heat exchanger; and providing a pro-rata refund of the ten-year service plan and the extended warranty, neither of which will be provided due to GYL having gone into liquidation.

My provisional decision

For the reasons explained above, I'm currently minded to uphold Mr G's complaint and direct Creation Consumer Finance Ltd to take the following actions:

- Pay Mr G £144 to cover the cost to him of replacing the plate heat exchanger, upon receipt of acceptable evidence of him having paid this. 8% simple interest per year* should be added to this amount, calculated from the date Mr G incurred the cost, to the date he is reimbursed.
- Pay Mr G £700 to reflect the remaining value of the ten year service plan which will not be honoured by GYL.
- Pay Mr G £200 to reflect the value of the five year extended warranty which will not be honoured by GYL.

I now invite both parties to let me have any further submissions they would like me to consider, before 2 July 2024. I will then review the case once more.

*If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Will Culley
Ombudsman