

## **The complaint**

Mr R complains that Mitsubishi HC Capital UK Plc did not treat him fairly in relation to a complaint he made about heating he bought, financed using a fixed sum loan.

## **What happened**

In December 2020 Mr R purchased some new radiators for his home from a merchant I shall refer to as F, financed using a fixed sum loan with Mitsubishi. He said he believed these were night storage heaters. He said the salesman had come to his home to establish how many were needed, looked at his energy plan, which was a tariff offering cheaper rates for off-peak hours and more expensive rates during peak hours, and was told this was perfect for the product. Mr R said he was happy with the outcome at the time because he works away from home. He said he felt he would be ensuring his family would be warm.

Mr R said he recently contacted his energy supplier about the energy price he was paying. The supplier ran an energy analysis to establish where the energy usage was going and during this process determined that the radiators were not storage heaters as Mr R said he was led to believe. He said the goods he received were not what he paid for, and he was mis-sold. Mr R raised a claim with Mitsubishi under Section 75 of the Consumer Credit Act 1974.

After speaking with F, in its final response Mitsubishi did not uphold Mr R's complaint. Mr R remained unhappy and brought his complaint to this service. Our investigator concluded that the evidence from F didn't appear to contain any untrue statements of fact. And that Mitsubishi hadn't treated Mr R unfairly when it dealt with Mr R's complaint.

Mr R didn't agree and asked for a decision from an ombudsman. He said he was told false information, including that his energy tariff was appropriate. He said the brochures contain false information referring to the goods being storage heaters not radiators. He said the products supplied heat but didn't store heat.

## **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.

I realise this will come as a disappointment to Mr R but having done so I won't be asking Mitsubishi to do anything further.

In deciding what I believe to be fair and reasonable in all the circumstances, I'm required to consider relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time. Section 75 of the Consumer Credit Act 1974 is relevant here. It protects consumers who buy goods and services on credit. It says in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. To be able to uphold Mr R's complaint about Mitsubishi, I must be satisfied there's been a breach of contract or misrepresentation and that Mitsubishi's response to Mr R's claim under Section 75 wasn't fair or reasonable. But I'm not

determining the outcome of Mr R's claim under Section 75 as that is for a court to decide.

Mr R believes this to be a claim based on misrepresentation, in that the goods aren't as described. In this instance misrepresentation means a false statement of fact that induced Mr R to enter the contract.

*Was there a false statement of fact?*

Mr R has said when he bought the heaters he believed they were night storage heaters which he had previously had. He said he was told by F's salesman that his energy plan was perfect for the product he was buying, that his energy tariff was appropriate. He said it was only when he contacted his energy company about the price he was paying that he realised the radiators were not the type he believed they were. He said the brochures contain false information referring to the goods being storage heaters not radiators. He said the products supplied heat but didn't store heat.

Mitsubishi told this service it wasn't present at the point of sale and wasn't an expert in heating systems, so it spoke to F, which provided this response:

- *its heaters are electric and also have a storage capacity by way of its internal core, so are both storage heater and electric radiator.*
- *the way it's heaters work is made clear on its website, brochure and during in-house presentation to avoid any misrepresentation. The brochures and pamphlets he was provided with shows he was given the information.*
- *it makes clear in the sales process that its heaters work differently to the old night storage heaters as they have a more modern technology and material. Differing to the old night storage heaters, F's storage heaters also use daytime electricity to top up to ensure total comfort and control for the customer.*

I've been provided with a photo of the brochures. I can see it says:

- *guarantee certificate - 10-year manufacturer guarantee on F storage radiators*
- *control manual troubleshooting and frequently asked questions*
- *eight reasons to choose F against other German branded storage heaters*

Mr R says said these leaflets advertise the product as a storage radiator – not an electric panel radiator. He said there's a difference between retaining heat and storing heat. He asked if a company can sell a product such as a storage radiator yet the element within the radiator retains heat for a short period; to be precise four minutes. He said if he was told this he would not have bought the product. He said F stated it is not ideal having his tariff but during the presale he said he was encouraged that his tariff was ideal.

Mr R's version of events relies mainly on what he tells us he was told prior to the contract along with some sales brochures. Mr R's main point is that F's salesman told him the radiators were night storage and were appropriate for his energy tariff. He suggests he therefore thought he was buying night storage heaters. He indicates that but for these misrepresentations he wouldn't have entered the contract. Mr R and Mitsubishi disagree about what representations were made prior to the contract. There is no account from the salesman about their recollections from the sale. The written information on the brochure appears to have set out what Mr R has bought.

By their very nature such alleged verbal representations are hard to substantiate although that doesn't mean I have to entirely discount what Mr R has said or automatically prefer the

written evidence. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. When I do this I also look at the consistency of what Mr R has said and whether his behaviour fits with what he says about verbal misrepresentation.

Mr R signed the agreement in November 2019 and the radiators were installed in December/January 2020, but Mr R didn't bring his complaint to the business until December 2022. That would cover three winter or cold periods. In his complaint to this service Mr R said he had night storage heaters prior to the installation of his new radiators, and it appears from what he said he knew what night storage heaters did/how they functioned. So it seems reasonable to assume he would recognise them as a replacement. Mr R hasn't told us how it is he didn't notice sooner if there was a difference between his previous heating and the new installed heating. So it does seem likely that had Mr R been expecting night storage heaters rather than the radiators as described above I think it likely, although I can't say with certainty, he would have noticed sooner that these new radiators operated differently to his previous night storage heaters.

Again if the radiators were not compatible with Mr R's tariff it also seems likely he would've noticed sooner along with the operation of the radiators themselves.

With respect to the brochures Mr R has sent images of I can see that F uses the term 'storage heater' but that doesn't necessarily mean night storage heater. I find the descriptions on the brochures very vague. I've also seen a copy of the invoice. Each new radiator is itemised and referred to only by wattage (e.g. 1900watts) and location (e.g. lounge). The new radiators are not described using any of the words: night, storage, heater or radiator. But after the new radiators I can see the following itemisation:

*Qty 3 Conversion of existing Night Storage to 24-hour supply*  
*Qty 3 Removal and discard of existing Night Storage heater*

These two points combined suggest to me that the new radiators would not be 'night storage'.

Mr R has said that he has since discovered that F was subject to some legal action concerning the 'storage' radiators. This may or may not be the case, but this isn't evidence I can consider when trying to demonstrate what occurred in Mr R's particular discussion with the salesman. My role is to look at the individual circumstances of this complaint without regard to what might have happened to other customers.

I'm not disputing or discounting Mr R's version of events, but I don't think it likely that F made a false statement of fact.

*Did the false statement induce Mr R into the contract?*

Even if I were persuaded that F did make a false statement I would need to be satisfied that that statement induced Mr R into the contract. And I don't believe I would be. I haven't seen any evidence suggesting that Mr R specifically wanted 'night storage' heaters compatible with the tariff he was on. Again I'm not discounting Mr R's verbal testimony, but I also cannot discount the fact he didn't notice the difference in the radiator's operation/usage for quite some time. Mr R hasn't said specifically what it was that F said that persuaded Mr R to enter the contract. I think had Mr R been induced into buying the radiators based on the specific features he said he wanted and was told (being night storage and compatible with his tariff) the incorrect radiators would likely have been something he would've noticed or ought reasonably to have noticed much earlier than he did. And I'm not persuaded in the

circumstances that it was so important to him and the reason why he bought the heating.

I don't think it likely F made a false statement of fact, and I don't think Mitsubishi has acted unfairly in how it handled Mr R's complaint.

I understand Mr R's strength of feeling in this matter and that this is a cause of frustration for him. He will be disappointed with my conclusions. Nothing in this decision prevents him from pursuing the complaint through the courts. Although of course this would come with other costs and risks.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 January 2024.

Maxine Sutton  
**Ombudsman**