

The complaint

Mr B complains about how Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') handled his claim.

What happened

The background details of this case are well known to the parties so I will only summarise these briefly.

Mr B purchased a kitchen from a supplier using a fixed sum loan from BPF. However, he is unhappy with the design of it and the supplier's response to his concerns. He wants the kitchen re-designed completely as a resolution.

Mr B raised a claim with BPF under Section 75 of the Consumer Credit Act 1974 ('Section 75') but it didn't respond. So he complained about it.

BPF apologised for the delays and issued a claim outcome letter not upholding the claim. They also paid him £50 compensation for the delays in responding to the claim.

Our investigator didn't think BPF should do anymore here in respect of Mr B's Section 75 claim. She noted there didn't appear to be any outstanding breach of contract for BPF to remedy.

Mr B disagrees so the matter has been put to me to look at 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.

This service is not a court and my role here is to resolve disputes informally. So while I will have read and considered the submissions of the parties I won't be commenting on all of these. I will focus on those matters I consider central to the dispute.

I am sorry to hear about Mr B's experience with the kitchen. However, it is important to note here that BPF is not the supplier of the kitchen. Its role is as a finance provider – and it is that role which I am considering here. So my focus here in deciding what is fair and reasonable is how it responded to the claim Mr B made to it, and whether in the particular circumstances this was fair and reasonable.

I note here that initially BPF delayed in responding to the Section 75 claim and did not provide promised call backs. It admits fault for this and has apologised. It has also paid Mr B £50 for this and then issued a claim outcome very soon after this. Considering the length of delay here it can be argued that £50 is on the low side and could be increased by a modest amount. But I have also noted that Mr B has said that he doesn't want the £50 as it is insulting and it was paid against his will – he just wants the issue with the kitchen resolved. I also note that regardless of how long the outcome took – as BPF didn't uphold the claim the delays have not had a wider impact here. With all this in mind I am not requiring BPF to do

anything more in respect of the delays and am now moving on to BPF's eventual answer to the Section 75 claim here which is what Mr B wants this service to focus on.

Even though BPF had not provided a claim outcome at the point Mr B complained it has not objected to this service considering the outcome of the claim as part of the complaint. And in the circumstances I consider it fair that we do – as ultimately Mr B's complaint is about BPF's failure to put things right via Section 75, and it initially failed to respond to him for a while. So in agreeing that BPF should have responded sooner it follows that I move on to what a fair response is.

I have gone on to look at what BPF has eventually said about the claim – and whether it's assessment and refusal to uphold this appears to be fair in the circumstances.

Under Section 75 Mr B can hold BPF responsible for a 'like claim' he would have against the supplier for a breach of contract or misrepresentation.

Certain criteria need to be met for Section 75 to apply relating to matters such as the cash price of the goods or services and the relationship of the parties to the transaction. I am happy those are met here so in deciding if BPF's response is fair I have gone on to consider whether there is evidence of a breach of contract or misrepresentation.

From what I can see Mr B's main point about the kitchen is the design of a unit built for appliances where the washer and dryer are stacked. Other key points I consider forming part of his claim to BPF are:

- Boiler unit not level with other units;
- gap in oven/microwave unit;
- dishwasher too big for unit; and
- cornices of two different heights.

I don't think Mr B's claim is about misrepresentation nor do I think there is persuasive evidence of that here – so I have focused on whether the issues constitute a breach of contract.

When considering if there has been a breach of contract I note both the express terms of the contract Mr B agreed with the supplier and any implied terms, such as those by the Consumer Rights Act 2015 which says that goods will be of satisfactory quality, and services will be provided with reasonable '*care and skill*'.

Here, like BPF I note the contract is only for the supply of the kitchen – not the fitting. Mr B employed his own kitchen fitter. I also note that the contract with the supplier specifically states that Mr B or his installer should check that measurements are correct, that cabinets and appliances are the correct specification and that the kitchen can be installed as designed. I think this reasonably puts a greater duty on Mr B here (and any fitter he employs) to carry out a survey and ensure that the design accords with the space and any third party units that need to be housed within this.

I note here the dishwasher and microwave were not provided by the supplier but units Mr B had bought – so I don't consider there to be a clear case for breach of contract in relation to the sizing issues which Mr B has identified. I know Mr B has pointed out that in respect of the dishwasher certain elements of trim mean the dishwasher is too big for the gap and cut-outs are required. But considering the supply only nature of the contract, the many variables with

third party appliances and the responsibilities on Mr B and his fitter I don't think there is a clear case of the kitchen design being carried out without reasonable care and skill.

Furthermore I note that in respect of the boiler unit the contract says the housing will sit lower than other units due to the position of the boiler. So I don't think this is a breach of contract either.

Regarding the stacked appliances this appears to be something covered in the contractual agreement which says that Mr B's fitter is to build a custom unit to store the washer and dryer in a stacked configuration. It seems at one point the supplier indicated this was not something allowed in kitchens – but it appears it has clarified that this is OK as long as the correct supports are used. And I have not seen anything in any regulations or rules from Mr B to persuasively show it can't be done. So allowing Mr B to include this idea as part of the design does not appear to be a mistake by the supplier, while the responsibility for building it properly and with sufficient supports appears to be with Mr B's fitter. So I don't think there is a breach of contract by the supplier in respect of how this unit turned out.

Regarding the cornice heights – the supplier says this is due to Mr B selecting from two different ranges for different sections of the kitchen – and that the supplied cornices are what were ordered. However, even if it could be argued this is a breach of contract BPF has noted that the supplier offered to supply more of one cornice type at no charge to remedy this in any event. So I don't think I can fairly say there is an outstanding breach of contract which BPF would reasonably be expected to remedy here via Section 75.

I note there are also several offers from the supplier which it has described as a goodwill gesture and Mr B has pointed out is likely an admission of liability. However, I don't consider BPF acted incorrectly by not reaching this conclusion as I don't consider the supplier has made any clear admission it did anything wrong. And while I note Mr B has produced a report by another kitchen fitting company pointing out several issues with the kitchen and quoting the price to redo the whole kitchen I don't find this persuasive or sufficiently independent in the circumstances.

Ultimately, in my role resolving disputes informally I don't consider there persuasive evidence showing BPF has acted unfairly in its claim outcome. For completeness I also can't fairly say it has made a mistake in reporting missed payments to credit reference agencies – as despite the ongoing dispute it is not unreasonable to expect Mr B to maintain his payments.

It is also worth noting here that Mr B has refused several goodwill offers by the supplier some of which, at least on the face of it appear generous. However, it seems the matter has escalated to this stage as a complete re-design is sought instead. It is worth noting here that even if I agreed that BPF needed to do something more to remedy matters – taking out the kitchen and redesigning it completely would likely be a disproportionate remedy in the circumstances.

Mr B is likely going to be disappointed by my decision however he does not have to accept it and can pursue his claim in court if he wishes where matters can be considered further. He may wish to consider seeking appropriate legal advice if he wants to go down this route.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 January 2024.

Mark Lancod
Ombudsman