

The complaint

Mr I complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance (“BPF”) has treated him unfairly in relation to a finance agreement he has with it.

What happened

Mr I entered into a loan agreement with BPF to finance a contract for the supply and fit of a kitchen. Mr I contracted separately with a third party I will call “W” for the supply and fit of the kitchen. Mr I is unhappy because BPF released the funds under the loan to W before the installation work had been completed. The payments under the loan then became due, but Mr I did not make them.

As a result of this, Mr I tells us BPF has asked the credit reference agencies to register negative information on his credit file about his repayment history towards his loan. Moreover, he tells us he has made a financial loss due to the presence of this information on his credit file. Mr I wants BPF to:

- remove the negative information from his credit file,
- compensate him for the financial loss he has made (according to him) due to the negative information on his credit file,
- and put the loan account on hold until the kitchen fitting is complete.

BPF’s position is that it was entitled to activate the loan when it did. Specifically, BPF activated the loan only after W confirmed that it had supplied the goods and services it was contracted to provide to Mr I. However, as a gesture of goodwill, BPF said if Mr I clears the arrears and brings the loan repayments up-to-date, it will ask the credit reference agencies to remove the negative information from his credit file. But unless and until he does this BPF will continue to report the negative information.

Dissatisfied, Mr I came to our service.

Once Mr I’s complaint was with us BPF’s provided us with a detailed explanation from W about the reasons why, from W’s perspective the kitchen had not been installed within the timeframe originally anticipated. In essence W puts the blame on Mr I. W’s stance is that it was entitled to tell BPF to activate the loan when it did.

Mr I also provided new information, about his complaint. In particular, he told us BPF had agreed his account would be “frozen” whilst BPF investigated a claim that Mr I has raised with it about the quality of the goods and services supplied under the contract with W. But then BPF had gone back on this agreement.

Later, Mr I pointed out that the contract with BPF says this about when W will be paid.

“We will pay the amount of the loan to the retailer once we approve the loan and receive the signed agreement or when the retailer has supplied or shipped the goods or provided the services to you if this is later.”

Mr I thinks this clause means that BPF made a mistake in releasing the funds to W and activating the loan, even though according to him he was still waiting for two hobs to be installed at this point. Mr I clarified that he had not told BPF prior to the loan being activated that he was waiting for the hobs to be installed.

Mr I also indicated that BPF should have made it clear to him in any event that when it said his account would be “frozen” this meant it would not make collection calls to him. Because he had taken this to mean that it was not going to pursue him for repayments whilst the other complaint was ongoing.

One of our investigators looked into Mr I’s complaint. Our investigator did not recommend that Mr I’s complaint should be upheld.

BPF accepted our investigator’s recommendation, but Mr I did not. In summary, in rejecting our investigator’s recommendation Mr I reiterated his previous stance. He also told us his contract with W did not permit BPF to activate the loan in these circumstances and BPF is bound by the terms of his contract with W. Mr I also made points about his ongoing claim against BPF.

Mr I asked that an ombudsman review his complaint.

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.

First, I’m very aware that I’ve summarised this complaint in far less detail than the parties and I’ve done so using my own words. I’m not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. Rather, I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

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.

Mr I’s main complaint point is that BPF should not have activated the loan because he complains W has not completed the installation. This was his initial complaint. He then added in any event since he has raised a claim against BPF about the quality of the work and the goods supplied by W, BPF ought not to have activated the loan for this reason also. To be clear this claim is not part of this complaint and I’ve not considered it in this decision.

But I don’t agree that BPF has done anything wrong in relation to these complaint points and I’ll explain my reasons for saying this below.

As a starting point the contract that Mr I has with BPF allows it to initiate the contract “*when the retailer has supplied or shipped the goods or provided the services to you*”. BPF and indeed W both say that W told BPF this condition had been met, therefore BPF initiated the loan. Mr I does not dispute that this happened. So on the face of it BPF complied with the contract.

By his own account, Mr I did not tell BPF anything was amiss until after W had notified BPF as above. So in any event Mr I’s notification to BPF came too late. Even if Mr I had told BPF that the goods and services had not been supplied or shipped at the same time W said they had been, this would still not have helped Mr I. I say this because Mr I and W are in dispute about this very point. In other words Mr I’s position is that W has breached their contract, W position is that it has not. Therefore whether the contract has been breached or not, has not been determined yet. BPF is under no obligation to accept that there has been a breach of contract simply on Mr I’s say so. That however is essentially what Mr I is asking BPF to do. I find the correct approach is what BPF actually did namely it looked into Mr I’s claim under

Section 75 of the Consumer Credit Act 1974, that W had breached the contract and BPF is responsible for this.

In any event, if BPF had delayed taking the repayments this may have prejudiced Mr I's position. As it stands Mr I is contractually obliged to make his repayments. So if BPF had not sought to take payments it could have left Mr I facing a big arrears bill in the end, if his claim under Section 75 and any subsequent complaint about this did not succeed.

Nothing I've seen satisfies me that BPF ever agreed to freeze the repayments. Quite the contrary. Moreover, I think BPF has been clear in its communications with Mr I that it is going to keep on asking him to make the repayments and if he does not it will report this to the credit reference agencies, amongst other things. It follows that if Mr I misunderstood what BPF intentions were, I'm satisfied in the circumstances that BPF can't be held responsible for this. Moreover, it follows from what I've said I don't agree that it fair or reasonable that BPF be made to freeze repayments as Mr I requests.

Mr I has not made his repayments as he is required to do under the contract with BPF. In these circumstances, BPF is entitled to report his payment history which includes the missed payments to the credit reference agencies. Therefore I've no proper basis for saying that BPF has acted inappropriately in registering this information.

Further, it follows Mr I's point about making a financial loss due to the negative information on his credit file falls away. Because if BPF has done nothing wrong in registering this information then any loss that flows from this is not something BPF has to compensate Mr I for.

Mr I mentions that BPF is bound by the terms of the contract between him and W. But it is a well-established principle of contract law that a contract cannot (as a general rule) confer rights or impose obligations arising under it on any person except the parties to it. So I'm not persuaded by what Mr I says about this.

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 I to accept or reject my decision before 23 August 2023.

Joyce Gordon
Ombudsman