

The complaint

Miss M complains about damage caused during the installation of solar panels which were purchased with finance provided by Clydesdale Financial Services Limited (trading as Barclays Partner Finance) ("BPF"), about further damage caused during the remedial work which was subsequently carried out, and about how long BPF took to deal with her claim for compensation for these matters under section 75 of the Consumer Credit Act 1974.

Miss M is represented in this complaint by her mother, Ms M.

What happened

Under section 75, a person who has a claim for breach of contract against the supplier of goods or services which they purchased with a loan may bring a like claim against the lender. But a claim may only be brought under section 75 by someone who is both a party to the contract with the supplier and also a party to the loan agreement.

In December 2014 Miss M took out a ten year fixed sum loan with BPF to finance the purchase of some solar panels for her home; she was living with her mother at the time (but has since moved away). There is a dispute about which of them actually purchased the panels. But it is not in dispute that it was either Miss M or Ms M who bought them.

The panels were supplied and installed by a third party which is no longer trading ("the supplier"). Thanks to two independent inspections of the property, it is no longer in dispute that the installation was botched and that, as a result, damage was caused to the property. This damage included a leak in the roof, causing water ingress which over time caused significant interior damage which will now cost thousands of pounds to repair.

In due course Miss M raised this matter with BPF, the supplier having gone out of business. After the two inspections, BPF accepted responsibility under section 75 and agreed to arrange and pay for the necessary repairs in November 2021, at a cost of nearly £18,000, and also to pay Miss M £250 for her inconvenience. Unfortunately, further damage was caused by BPF's contractors during the remedial work. So Ms M brought this complaint to our service, on behalf of her daughter.

After our service received this complaint, BPF reviewed this case and decided that it was not liable after all, because section 75 did not apply to the purchase of the solar panels. It said this was because it was not clear from the sales paperwork whether it had been Miss M or Ms M who had actually bought the solar panels. It may have been Ms M (who was not BPF's customer) who had bought them, and not (as BPF had until then assumed) her daughter. So BPF withdrew its offer to pay for the repairs, even though it had already paid about £13,000 for repairs by then.¹ The ongoing repair work was stopped.

BPF explained that it had changed its position because Ms M had told BPF's contractor that her daughter had nothing to do with this matter. Since Ms M was not BPF's customer, BPF argued that it has no responsibility to her for any damage done to her home by the supplier.

¹ BPF is not seeking to claw back this money.

In support of its revised position, BPF also pointed out that Miss M no longer lives at the property, and so does not benefit from having the panels. And it said that just because Miss M had been living in the same home at the time of the purchase, this did not mean that she could be said to be a party to the contract to supply and install the solar panels; consequently she had no rights under section 75.

One of our investigators considered this complaint, and decided that section 75 did apply, even if Miss M hadn't bought the panels herself. She based that opinion on the fact that Miss M and her mother had been living in the same household at the time of the purchase, and that they must both have been involved in the purchase, as one of them had bought the panels and the other had taken out a loan with BPF to pay for them. The investigator therefore concluded that the purchase had been "intertwined in their finances as a family living together at the family home and is a matter of joint affairs." She recommended that BPF pay for all of the necessary repairs, and also pay Miss M £750 for her inconvenience (instead of the £250 BPF had offered in 2021).

BPF disagreed with that opinion. It argued that as Miss M does not own the solar panels, nor benefited from them, and was not a party to the contract for sale, she had no rights under section 75. It asked for an ombudsman to review this case.

I wrote a provisional decision which read as follows. (This forms part of my final decision.)

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.

Sales paperwork provided by BPF (and presumably overlooked) clearly shows that it was Ms M who purchased the solar panels, as she is named on the supplier's paperwork as its customer (see pages 11 and 67 of 78). Based on this evidence, I am satisfied that Ms M was the sole party (besides the supplier) to the contract for the sale of the panels. I think that where her daughter was living, at the time and since then, is a red herring. A third party does not become a party to a contract simply because of their living arrangements.

There is also clear evidence that it was Miss M who took out the loan. She is named on the loan agreement as BPF's customer. (I have also seen another loan agreement which names her mother as a BPF customer too, and I asked BPF about that. BPF provided evidence showing that Ms M had applied for a loan but was declined, and Miss M applied for a loan the next day and was accepted. BPF confirmed that Ms M has never had a loan account with it.) So I am satisfied that Miss M took out a loan to finance her mother's purchase.

Section 75 only applies if the borrower under the loan agreement is a party to the contract which was allegedly breached. So it doesn't apply here, because Miss M didn't buy the solar panels. It follows that BPF was correct to decide that it was not liable for the original damage which was caused during the installation.

However, that does not get BPF off the hook for the new damage which was caused by BPF's own contractors during the remedial work. BPF is responsible to Ms M for what its contractors did under ordinary common law principles, independently of section 75.

Unfortunately, as Ms M is not an eligible complainant under our rules, I cannot consider a complaint about that. And although I can consider Miss M's complaint about how BPF handled her section 75 claim, I can only consider how Miss M has personally been affected by what went wrong; I can't consider the impact of the botched remedial work on her mother.

So I am unable to uphold this complaint. But that is not to say that there is nothing Ms M can do about the new damage to her house; she should seek independent legal advice about that if BPF is unwilling to pay for it.

Ms M's response to my provisional decision, and my findings about her response

Ms M denied that she had ever told BPF or its contractors that this matter had nothing to do with her daughter. In support of that denial, she emphasised that it was her daughter's name on the loan agreement, and that her daughter was BPF's customer. I don't think that the outcome of this case turns on this issue, and so I have focused on the rest of the evidence instead.

Ms M explained that the salesman had spoken to both her and her daughter about the panels. As Ms M's credit rating was poor, she had suggested that her daughter take out the loan instead, but the salesman had still put through an application for both of them in turn. Ms M's application had been declined, but Miss M's had succeeded. (Ms M says that both applications were made on the same day, not on different days.)

It is not in dispute that the original loan application was in Ms M's name only – it was not a joint application – and that only after it was declined did her daughter apply for the loan. That suggests to me that Ms M was the supplier's customer; it undermines the case for both mother and daughter intending to make a joint purchase, or Miss M being the supplier's customer all along. However, as there is a dispute about exactly how this came about, I have given less weight to this point than to the following matters.

Ms M said her own name was on the supplier's paperwork only because the salesman had said that it had to be in the energy bill payer's name in order to receive the feed-in tariff ("FIT") payments. But I think that the fact that Ms M was paying the electricity bills (I've seen some of them and they are in her name), and was therefore the only person who was eligible to receive the FIT payments, is compelling evidence that she was the one purchasing the panels, not her daughter.

Ms M said that her daughter still benefits from the panels because she still stays at the house regularly during school holidays (as she works at a school). It is still the family home. However, the fact that Miss M still sometimes stays at the family home does not change the fact that section 75 does not apply in these circumstances. It is not a question of who uses the solar panels, but rather who was a party to the contract to buy them.

Ms M mentioned that she had only signed the completion certificate because the supplier's workmen had finished the installation, not because she was their customer. I accept that the completion certificate could plausibly be signed by somebody other than the customer, even though that shouldn't happen, and so I agree with her that this document has little weight, and I have disregarded it. But Ms M also signed the contract on the day of the sale, and I still think that is convincing evidence of who the purchaser was.

Ms M told me that sometimes she uses "Miss" and sometimes her daughter goes by "Ms," and so the paperwork is ambiguous. However, I am not persuaded by that point, because the paperwork also gives their first names (and they don't have the same first name), so there can be no confusion about who is being referred to. The contract unambiguously identifies Ms M (that is, the complainant's mother) as the purchaser of the solar panels.

Ms M pointed out that the loan agreement in her daughter's name says that the purpose of the loan was to pay for solar panels. That is correct, but it still doesn't mean that her daughter was a party to the contract to buy the panels. It is possible for one person to be the purchasing party under a contract for the sale and installation of goods, and for another

person to pay the purchase price. That payment discharges the purchaser's contractual obligation to pay the purchase price, but it does not mean that the payer becomes a party to the contract.

Miss M's response to my provisional decision, and my findings about it

Meanwhile, Miss M also sent her own response to my provisional decision. She said that she had not only taken out the loan, but she had also bought the panels herself, making her eligible to bring a claim under section 75.

However, I am unable to reconcile that assertion with all the evidence I have described above (especially the contract and the receiving of the FIT payments). On the balance of probabilities, I think it is more likely that she is mistaken because, after eight and a half years, her memory of what happened has become unreliable.

So I remain of the view that Ms M bought the panels, albeit that Miss M paid for them. It follows that only Ms M, not Miss M, had the right to bring a claim for breach of contract against the supplier. And it follows from that that Miss M could not bring a claim for breach of contract against the bank under section 75.

The final decision in Miss M's other case

Ms M has provided me with a copy of a final decision written by another ombudsman in April 2022. That decision was about another complaint Miss M had brought concerning the same solar panels, this time in relation to them having been mis-sold by misleading Miss M into believing that the panels would be self-funding, which they weren't. Miss M had brought a claim against BPF under section 75, and had then complained to our service when BPF had rejected her claim. The ombudsman had upheld that complaint, and had ordered BPF to pay compensation to Miss M. The ombudsman had proceeded on the basis that section 75 had applied to what he described as Miss M's purchase of the solar panels. Ms M now points out that the final decision, once accepted by Miss M, had become legally binding, and yet the applicability of section 75 was now being questioned in this case.

Ombudsmen's final decisions do not set precedents like court judgements do. If a final decision is accepted by a complainant, it becomes binding on the parties to that complaint, but it does not bind another ombudsman in another complaint. However, it is still important for ombudsmen to try to make decisions which are consistent with each other, so I have read my colleague's final decision carefully, to see if it changes my mind, since it is obviously undesirable that we should reach opposite conclusions.

However, as I have said, the other ombudsman dealt with the other case on the basis that he thought it had been Miss M who bought the solar panels, as well as taking out the loan. If that had been true – and in April 2022 nobody had suggested otherwise – then section 75 would indeed have applied to the purchase. But we now know that Miss M didn't buy the panels, her mother did. My colleague didn't know that, or look into it, because BPF had not challenged it, so it had not been a live issue between the parties. This is all he wrote about that issue in his final decision:

“As Miss M paid for the system with a fixed sum loan agreement, Clydesdale agrees that section 75 applies to this transaction. This means that Miss M could claim against Clydesdale, the creditor, for any misrepresentation or breach of contract by [the supplier] in the same way she could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.”

I'm sure that if my colleague's attention had been drawn to Ms M's name on the supplier's contract, he would have concluded that in fact section 75 did not apply after all. But I don't need to speculate about that; it is enough to say that I have reached that conclusion myself.

(That doesn't mean that BPF has been hard done by in that other complaint. That complaint was upheld on the basis that the supplier had misrepresented the financial benefits of the solar panels, and a complaint about misrepresentation can also be upheld under section 140A of the Consumer Credit Act, regardless of whether section 75 applies. The criteria for section 140A applying are broader than for section 75, in that the person who takes out the loan and the person who purchases the goods and services do not have to be the same person, as long as they are relatives – see section 140C(4)(b) and section 19. So the other complaint could, and no doubt would, still have been upheld, just under a different section. The redress would still have been the same.)

I have considered whether the complaint I am dealing with could be upheld under section 140A instead. That section certainly applies to Miss M's contract with BPF. However, that section doesn't deal with breaches of contract, such as a botched installation, which is the issue in this complaint. So I don't think that section assists her in this case.

My final decision

For all of these reasons, I remain of the opinion that BPF was correct when it said that section 75 did not apply in this case. So my decision is that I do not uphold this complaint.

(For the avoidance of doubt, this decision does not affect the final decision which was issued in April 2022 in the linked complaint about misrepresentation.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 7 August 2023. (Her mother may reply for her.)

Richard Wood
Ombudsman