

## The complaint

Mr D complains about the outcome of a claim he made under Section 75 of The Consumer Credit Act 1974 ("section 75") to Clydesdale Financial Services Limited trading as Barclays Partner Finance.

## What happened

In June 2019, Mr D took out a fixed sum loan agreement with Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BFP") to finance the purchase of a kitchen with a company I'll call 'W'.

Our service has previously investigated a separate complaint made by Mr D against BPF in respect of a breach of contract claim. In that complaint, Mr D accepted the recommendation made by our investigator for a refund of the cost of the worktops and taps under W's contract. However, Mr D remains unhappy about the kitchen and in particular W's admission that they didn't design it correctly. Mr D says there was a design flaw with the cupboards which led to W not fitting them correctly.

BPF sent Mr D a final response letter saying they either needed a report showing the remaining issues with the kitchen or that Mr D should send them photos of every outstanding issue with clear labels from close up to a reasonable distance. Mr D said he had already sent in photos of the problems with the cupboard design and W's attempts to provide a solution.

Our investigator looked into what happened and felt the fairest way to resolve the complaint was for Mr D to agree to an independent report showing the problems with the kitchen and their likely cause as well as the most appropriate way to remedy them. Mr D didn't agree and said the contract had clearly been breached and as such the contract was void taking into account relevant consumer protection legislation.

As agreement couldn't be reached, Mr D's complaint has been passed to me for a decision.

I issued my provisional decision on this complaint on 15 September 2023, in which I said the following and which forms part of my final decision:

*'In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is section 75 which subject to certain criteria, gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. I'm satisfied that the necessary criteria for a section 75 claim to be made by Mr D was met.*

*This complaint has been slightly complicated in that, from what I can see, Mr D's concern has always been that there was a flaw in the kitchen design by W and that this cuts across both complaints he has referred to us.*

*We have already looked at a separate complaint against BPF by Mr D in which, as I've mentioned above, he accepted a remedy in respect of the worktop and the taps. As my decision relates to another complaint, I won't be issuing a decision on what was previously considered and accepted by Mr D. So, I won't be commenting on the breach of contract about the worktops or the taps and BPF's handling of Mr D's claim about this including the remedy to this that Mr D accepted. If Mr D wasn't happy with that remedy, he had the option of asking for an ombudsman's decision on that. However, he chose not to do this.*

*The complaint I am looking at is one where it seems Mr D and our investigator have been at odds over what the complaint is. Our investigator focussed on the breach of contract being a contention that there were still faults from the kitchen installation that needs considering and possibly repairing whereas Mr D says that the breach has been established, and as such, what remains is consideration of an appropriate remedy to what is now a dispute about the validity of the contract.*

*As Mr D bought goods and services under a sales contract, the Consumer Rights Act ("CRA") is relevant here. The CRA implies into a contract such as this a term that the contract will be performed with 'reasonable care and skill'. What is considered reasonable care and skill is not focused on the results achieved but the manner in which the service was carried out.*

*I consider that Mr D's complaint about the design of the kitchen being flawed is one where it can said, if shown, that the contract wasn't performed with reasonable care and skill. And, as such, Mr D would be entitled to an appropriate remedy under this legislation.*

*However, as it stands, I simply do not have enough persuasive evidence to show that the kitchen was poorly designed and, if it was, to what extent. For me to consider whether Mr D is entitled to a remedy, and what a fair and reasonable remedy might be, I would need more than the photos of the issues that Mr D has sent to us which he says were caused by W.*

*These don't in my view show an issue with the kitchen design as these are fairly close-up photos of certain items that, if shown to be faulty or poorly installed, could be items that are potentially straightforward to repair or replace.*

*If I had evidence from, say, a kitchen specialist or a kitchen installation specialist that sets out that the kitchen has been poorly designed and why, and what would be needed to remedy this, then I would potentially be able to make a direction to BPF on what I would feel was fair and reasonable. That could, depending on the evidence, be cancellation or rescission of the contract. It might be that I would feel that repairing or replacing the items was appropriate. But, as it stands, I don't have enough evidence to show me what would be a fair and reasonable remedy.*

*So, at this stage, I don't agree that the contract should be treated as void as Mr D says. And it follows that I don't currently find that BPF handled his section 75 claim unfairly, which is essentially what this complaint is about.*

*My provisional decision*

*I do not uphold this complaint'.*

*I asked Mr D and BPF to send me any further comments or evidence.*

*BPF replied saying they accepted my findings. Mr D replied saying, in summary, that BPF accepted there was a design flaw with the kitchen as did W but offered impractical solutions rather than agreeing to a redesign as is his right in law.*

### **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'd like to thank both parties for their responses to my provisional decision.

I've considered Mr D's further comments and the evidence that he's sent. However, I go back to what I said in my provisional decision. I simply don't have enough evidence as to how and why the kitchen should be redesigned. That isn't to say that I think the kitchen definitely shouldn't be redesigned. But I'm afraid without compelling evidence from a specialist on why this should happen, and the practicality of how, I'm still not inclined to say that BPF has handled Mr D's Section 75 claim on this particular issue unreasonably.

### **My final decision**

For the reasons set out above, and in my provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 November 2023.

Daniel Picken  
**Ombudsman**