

The complaint

Miss C complains about Clydesdale Financial Services Limited trading as Barclays Partner Finance's ("BPF") refusal to give her the refund she has requested.

Miss C also complains about a default she says BPF has put on her credit file. In addition, Miss C is unhappy about BPF's customer service.

Miss C is represented in her complaint by someone I will refer to as "Mr S". But, for ease of reading where Mr S has put forward submissions on behalf of Miss C I have written this decision as if Miss C did this herself.

What happened

I set out the background to Miss C's complaint in my first decision, which was a provisional decision. But I will set out the background again here so that all relevant information can be found in this one document.

In 2011 Miss C was, we are told, a long-term tenant of a property owned by Mr S. Miss C tells us that she and Mr S came to an agreement that if Miss C arranged for building works to be done on the property that Miss C rented then Mr S would reduce Miss C's rent by £100 per month. A limited company who I will call "S" was engaged to carry out the works - to supply and fit brand-new windows and doors. According to Miss C she found S and instructed it to do the work.

The contract for the works was paid for using a fixed sum loan taken out by Miss C with BPF. The loan was for a term of 131 months. The cash price of the windows and doors was £4,400, Miss C borrowed £4,400. The total amount payable under the loan once the cost of credit was added to the capital was £11,350.80.

Miss C's position is that within weeks of the supply and installation she was complaining about the work. It seems her initial complaint was about the patio doors which she considered to be dangerous.

Miss C contacted S. But they were not able to agree a way forward. S's position was it hadn't done anything wrong, and any problems there may have been were being caused by high winds not a manufacturing fault. Therefore, Miss C got in touch with BPF instead.

However, Miss C was unable to reach an agreement with BPF about what (if anything) should be done, to put things right. It appears she stopped making payments to BPF in late 2013 (according to her) and she left the country to live overseas also in late 2013, and, as result, she ended her tenancy.

According to Miss C, work was done on the windows and doors by two separate third parties in 2014 and 2017. Miss C suggests this work was necessary to put right faults with the original installation and the quality of the windows and doors. This additional work cost £2,113.84 and £1,975.46. It appears that Mr S paid for this work, as when the work was done, Miss C was no longer in the country nor his tenant and he was and remains the owner of the rental property. Mr S did this work, he suggests, to mitigate his loss.

In or around May 2017, the loan was sold to a third party, a limited company that I shall call "H". H pursued Miss C for the debt, it appears it also asked the credit reference agencies to register a default on Miss C's credit file. However, Miss C objected to this and she tells us H has written off the remainder of the debt (£7,980.18) and arranged for the default to be removed. From what Miss C tells us and also based on a letter from H to Miss C, which we have seen, H removed the default from her credit file in July 2019. But she suggests not only did H register a default but so did BPF. Both defaults she also suggests unfairly prevented her from getting further credit on the terms she would have got but for the default.

Further, Miss C is highly dissatisfied with the customer service she has received from BPF. Her stance is that it put forward a succession of unsubstantiated reasons for not dealing properly with her complaint. She also indicated she had had experts' reports prepared at the times the faults became apparent but BPF had lost these, on at least two separate occasions. However, she suggest that in its final response to her dated October 2019, BPF finally accepted it was in the wrong and upheld her complaint. That said she suggests the redress it has offered and paid (which I set out below) does not go far enough. She tells us the property needed further work, which Mr S again paid for to put things right.

Miss C relies on, amongst other grounds, on the rights she believes she has under Section 75 of the Consumer Credit Act 1974 ("Section 75").

BPF did say in its final response that it was upholding Miss C's complaint. But its letter was contradictory because on the other hand it said it was making a goodwill payment in relation to some of the claim. A goodwill gesture is a gesture a business makes when it does not accept it is responsible but agrees to make a payment anyway, without accepting liability. In addition, in its contact with us after Miss C complained to us, it made it clear that the offer in its final response was all a goodwill gesture. Further, BPF did mention that it did not have evidence to support the merits of the claim (such as an experts report, I will mention these points again later). BPF indicated it had no record of ever receiving the experts' reports. Accordingly, BPF was only prepared to pay the following:

- £2,113.84 in payment of the invoice from a firm I will call "N" dated February 2014.
- £1,975.46 in payment of the invoice from a firm I will call "D" dated September 2017.
- £500 gesture of goodwill to Miss C.
- £400 gesture of goodwill to Mr S. It made this offer even though Mr S is not an eligible complainant in relation to this complaint.

Dissatisfied with this response from BPF Miss C came to our service.

Once the complaint was with us BPF indicated to us it did not agree that it had any responsibility for putting things right in any event, despite the payments it had already made. It said this because it did not agree that Section 75 applied to this complaint. Its reasoning was that:

"However, it seems clear to us that a purchase of windows and doors would be for the benefit of the owner of the property, not for a temporary tenant. As such items are permanent fixtures the goods would belong to the owner of the property and this is backed up by the fact that Miss C did not take the windows and doors out of the property when she ended her tenancy.

Mr S has consistently described himself as the landlord of Miss C and there has never been any suggestion that she owned or partly owned the property. The finance is definitely in the name of Miss C and therefore we are confident that, on the balance of probabilities, there is no debtor-supplier-creditor link for this complaint."

When the complaint was with us, Mr S told us he had lost rent as a result of what he saw as the breach of contract by S for which he and Miss C held BPF responsible. He indicated he had lost out on several months' worth of rent. He indicated he would be looking to BPF to compensate him for this lost rent. He also suggested if BPF did not compensate him then he would look to Miss C to compensate him for this lost rent.

Further Miss C expressed dissatisfaction with BPF's stance she was of the opinion that BPF had upheld her complaint and that the only issue therefore was the amount of redress that was appropriate here.

However, BPF's position was not what Miss C thought it was. It did not agree that Miss C had demonstrated that the windows and doors were not of satisfactory quality and were not installed with reasonable skill and care. BPF's rejection was based on the following points. In short, it reiterated its view about there being no valid debtor-creditor-supplier relationship. It also mentioned inconsistencies in the account of events it had been given. BPF also suggested by paying for the two sets of repairs it had merely made a goodwill gesture, as I have already mentioned. Moreover, whilst not accepting liability, it indicated, that in any event, it had seen nothing to suggest that the final work in 2017 had not put right anything that may have been wrong with the installation of the original windows and doors and their quality. Nonetheless, it had paid for the work done in 2014 and 2017. And now because all the original windows and doors have been removed and replaced it can't check if it was responsible for anything that went wrong. BPF does not agree it should be asked to anything further.

In addition, BPF pointed out it was Mr S, and not its customer Miss C, who says that they have lost out on rent. It does not agree it has any responsibility to cover losses made by Mr S. Moreover, it also pointed out even if Mr S has indicated that he will try to recover his losses from Miss C, Miss C has still not experienced any actual loss. In any event, Mr S would need to establish in a court of law that any such loss had been caused by something Miss C is responsible for and he has not done that. It did not agree to pay compensation "*in anticipation of legal action that [Mr S] may or may not take and may or may not be able to prove*".

Finally, BPF, queried the default. As far as it was aware the only current default in relation to the loan debt on Miss C's credit file had already been removed by H. On that basis it wanted to know what default it was being asked to remove.

I issued a provisional decision and in that decision I said the following and reached the following conclusions:

"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. I haven't. 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.

Before I go further into the details of this complaint I need to make one preliminary point clear, there is only one eligible complainant in this complaint and that is Miss C. I think I need to underline this because at times there has been confusion about this point on both

sides. Mr S has talked about this complaint sometimes as if he were a party to it, when he is not under the rules that govern this service and which I must follow. Mr S has called himself a co-complainant which again he is not, although I accept he may feel like he is. Equally, BPF has made a payment to Mr S in his own right, as if he were its customer in relation to this complaint. BPF is entitled to do this, if it wants to, but that does not make Mr S an eligible complainant in this complaint.

Miss C and BPF disagree about a number of issues. 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.

Miss C used a fixed sum loan to purchase the windows and the doors. A fixed sum loan is a form of restricted credit. These loans are regulated loans and there are various rules and protections about how they operate, including those set out in the Consumer Credit Act 1974. In particular, Miss C's loan is covered by the provisions of Section 75. The general effect of Section 75 is that if Miss C has a claim for misrepresentation or breach of contract against the supplier (here that is S) she can also bring [a like] claim against BPF provided certain conditions are met.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Miss C's complaint, I have to take account of relevant law. Since Section 75 is relevant law I've thought about it when looking at her complaint. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Miss C pursued a claim in court for misrepresentation or breach of contract. This service is an informal alternative to the courts.

who made the contract with S?

One of the conditions that needs to be met to bring a claim under Section 75 is that there needs to be a valid debtor-creditor-supplier arrangement in place. I have already summarised why BPF tells us that there is no such relationship in place. But I think the ownership of the property is not the point here. Neither is it relevant that ultimately the property benefitted from the contract with S.

I accept there are some inconsistencies in Miss C's account. Mr S told us he discussed the work with Miss C before it went ahead. However, BPF's notes, and I don't think these are likely to be incorrect, show that at one point Mr S told it he knew nothing about the works. But I think this is neither here nor there. I say this because the fundamental question here is who did S contract with? I've not seen a copy of the contract with S. But only Miss C took out the loan to fund the contract. And I have seen a purchase order from S and that only has Miss C's name on it. Further, in the circumstances, I accept Miss C's stance that she was the one who went ahead and found and dealt with S. I also think it likely that if S had taken action to recover money under the contract it would have taken this action against Miss C alone. I also find it likely that Mr S did allow Miss C to pay less rent given that she had paid for the contract with S. I don't think he would have done this if he was also contracting with S and therefore on the hook too to pay S for the contract. So, on balance and for all of these reasons, I am satisfied that there is a valid debtor-creditor-supplier relationship here.

did something go wrong with the installation or with the goods that BPF ought to take responsibility for?

Where a consumer enters into a contract with a business for the supply of goods and services, relevant consumer law provides that the work must be done with reasonable skill and care and the goods must be of satisfactory quality.

Miss C seems to think that BPF accepted that the installation works, and the quality of the windows and doors did not meet this standard. I can understand why she thinks this as in its final response letter BPF did say it upheld her complaint. But what it has said to us since then makes it clear it does not accept this point. Rather, for example, it has talked about how it paid compensation without any evidence, such as an expert's report.

Therefore, in order to say BPF is responsible for putting things right I first have to decide if, on balance, I think that the works and or the goods did not reach the required standard.

Both Miss C and BPF appear to agree that at first, Miss C complained only about the fact that the doors opened outwards and were getting caught in the strong winds at the premises and this was causing damage to the panes of glass and the hinges. Then the problems that were complained about seemed to increase over time to involve condensation in the windows and the lack of damp proofing that caused damp.

It appears that Miss C did have experts' reports done at the time. I have not been provided with copies of those contemporaneous reports. It would have been helpful to see these. It still would be. However, at the moment, based on the information I do have, I don't find I have sufficient information about the nature of the problems and their likely cause to be able to say that BPF is responsible for all of this. However, please might Miss C send copies of these reports to me, if she wishes to, so I can look at this point further.

That said, it does appear that the doors coming off their hinges and some of the glass panes getting damaged was due to the door opening outwards (I note that the new doors open inwards). I also see from the internal notes that BPF have provided us with, and I see no reason why these would be inaccurate, that Miss C suggested that when she first complained she had asked S if it was OK for the doors to open outwards and it said it was. I find it likely Miss C did ask S this, and S did reply that this was fine. I also find it likely that the wind was strong and catching the doors and making them crash against the walls in turn causing the damage Miss C originally complained about (damage to the hinges and window panes), it follows then that the doors were not of satisfactory quality as they were not fit for the purpose for which they were supplied. And or that the work was not done to a professional standard as the doors were placed in such a way that they were bound to be damaged. On that limited point I find it is both fair and reasonable that BPF take responsibility for putting things right. [Which it appears it has already done by paying for the work set out in the invoices from N and D].

Even though I accept that there were quality issues with the doors and or the installation, which BPF should be responsible for, that does not mean that BPF both has to pay for the repair to the doors and give Miss C all her money back too, I say this because it would be fair and reasonable to give BPF one chance to repair. Only if this repair was unsuccessful would I then say it is fair and reasonable for BPF to have to do something further. I can see that two sets of work were carried out after S supplied and installed the doors. But the difficulty for Miss C is, at the moment, I have nothing that persuades me that the repair work did not work. All I have is two invoices. No experts' reports to show what issues the further work was meant to put right and whether that work was successful or not. I do find it hard to understand why two sets of works, which together cost almost as much as the original contract did not remedy the problem with the doors. If Miss C has anything to show that the work done by N and D did not sort out the issues with the doors please can she provide it. But at the moment, I find I have no proper basis for saying BPF need pay anything further.

I have seen a suggestion that maybe BPF could send someone around now to do an expert's report. But I can't see the point of that, the original doors are no longer there so I don't see how any expert could give an opinion now on their quality or about the appropriateness of the installation. But as I have already said, I do think any reports that were done at the time would potentially at least, shed light on this point. On that basis, I'd like to see those reports.

there is no loss that I can compensate Miss C for

Further, even if I did think that the repairs did not work, which I do not, I only have the power to ask BPF to compensate Miss C for her loss. And she has made none. I've come to this conclusion because this is what Mr S has told us and I see no reason why what he has said would be incorrect. He says:

"When reviewing your offer in line with the losses caused by [S] it deems me personally out of pocket when considering the amounts, I have paid out. The £3700.00, paid via rental reduction towards the original BPF loan, £2113.84, [N] repairs, £1975.46, for the [repairs by D] and a further £3100.00, for replacement windows. The amounts total £10889.30, deducting your offer of £4989.30, leaves me out of pocket by some £5900.00."

Going by Mr S's reckoning the only person who has made a loss is him. And whilst I can sympathise with him being out of pocket I have no power to make BPF compensate him. Miss C may well have paid out £3,7000 to BPF in loan repayments but she got that all back from Mr S via her rent reduction.

Mr S has asked that BPF pay Miss C for rent he says he lost. But I cannot fairly say that the loss flowed from the breach. As I have mentioned above, I am satisfied that the breach of contract in relation to the patio doors was remedied by the repairs. And in any event this is Mr S's loss not Miss C's. It follows I have no proper basis to order BPF to make a payment to Miss C to cover these losses.

the default

Under the terms of the agreement with BPF, it was entitled to default the loan in the circumstances that it did. The agreement specifically sets out this can happen if Miss C stops making payments and she tells us she did stop making payments even though the contract was still in place.

I see no reason why BPF should not be able to rely on the terms of the agreement that Miss C entered into freely with it. Miss C may think she was entitled to stop paying BPF because she was dissatisfied with the doors and felt it had breached its contract with her. But her remedy for the breach was repair in the first instance, and refund if that did not work. Instead she made the decision to stop paying BPF. That was her choice to make. But for all these reasons I don't agree that BPF was in the wrong to default the loan. Lenders are obliged to give accurate information to the credit reference agencies. So, if BPF registered the default I don't agree it acted incorrectly.

distress and inconvenience

There has been an incredible amount of to and fro on this complaint and it has lasted for years. But I don't think this is entirely due to BPF. For example, I can see at one point BPF took down the wrong details for Mr S and would not speak to him about the complaint. That is its fault. But all Mr S needed to do was to get Miss C to contact BPF to let it know *again* that he was her representative; for some reason this did not happen straightaway. Two years passed apparently before Miss C sent in the authorisation.

That said I do appreciate that this complaint has been very long-running and why Miss C expected better of BPF and I think a payment for distress and inconvenience is appropriate. But Miss C has already had that.

Miss C has expressed some consternation that BPF chose to raise the argument about the debtor-creditor-supplier relationship late in the day. And she has asked us to think about whether the compensation she has had already is enough in the light of the delay she thinks this caused together with how long this complaint has been going on. Ideally BPF

would have marshalled its arguments right from the get-go. But it is perfectly entitled to raise new defences to the complaint points. I can't punish it for that. In any event I have no power to punish a business.

In all of the circumstances, I think the £500 it has already offered and paid is sufficient."

For all of these reasons I concluded that I did not intend to uphold Miss C's complaint.

I invited Miss C and BPF to respond to my provisional decision should they wish to do so. As far as I am aware BPF has not responded to my provisional decision. Miss C responded in great detail.

In short, Miss C expressed dissatisfaction with the provisional decision. She repeated her previous stance. In particular, she suggested again that BPF had accepted that the windows were not of satisfactory quality specifically she said.

"At no time since their letter of response in October 2019, has there been any suggestion or argument the windows were not faulty on the contrary they accepted this point on several occasions."

Regarding the default Miss C said.

"Referring to the Default, please explain if it was placed on record correctly then why did the Firm remove it has satisfied in 2017???"

"Surely if they believed with any conviction, they were right to record a breach with the Credit Reference agencies then it would be there view the default should remain to present date."

Miss C indicated she thought the payment for distress and inconvenience related to an earlier complaint not this one.

In addition, Miss C let us know that Mr S has decided to take legal action against her under the lease she had with him.

Overall Miss C thought I had sided with BPF and made its case for it. Miss C made points about the loan application and how this had led to Mr S having no rights under that loan and caused him detriment. She explained why she thought this was unfair.

Also, Miss C asked for further time to provide more information to support her complaint. She was given the more time that she initially asked for. The deadline passed but ultimately Miss C did not send in the further information on which she wanted to rely within the time she was given.

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 thank Miss C for her response to the provisional decision.

As I have already mentioned Miss C responded to the provisional decision in great detail. Many of the points she had already made before I issued the provisional decision and I had already thought about them and dealt with the relevant issues. As I mentioned in the provisional decision and I repeat again here, 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. I haven't. 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. However, I do appreciate and regret that this approach may disappoint Miss C.

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.

The crux of this complaint is whether or not the doors and windows supplied and installed by S were fitted to the correct standard and whether they had quality issues that BPF ought fairly or reasonably be expected to take responsibility for. Miss C suggests that this is not at issue because she suggests that BPF has never argued this point. But she is mistaken. BPF has indicated this is a point that it contests. Although as I have already mentioned its final response letter was confusing in certain areas. It told us that it made the payments in its final response as a goodwill gesture. Moreover, it suggests that it is not persuaded that there is any evidence to show that the further work that Miss C wants compensation for was necessary due to anything that it should have to take responsibility for. It also suggests that by making the payments to Miss C it has done enough. By pointing this out I am not taking sides, I am merely setting out BPF's position as I set out Miss C's position too.

Throughout the complaint Miss C has told us she has relevant contemporaneous experts reports and images. But all I have seen so far, are two invoices for work done by N and D. These by themselves are not experts reports and are not enough by themselves to establish what went wrong and who is responsible for it. Moreover, N and D, are not impartial in so far as they carried out and were paid for the remedial work.

In the provisional decision for the reasons I set out in it and have repeated above, I made a finding that the doors were not of satisfactory quality as they were, most likely, not fit for the purpose for which they were supplied. And or that the work was not done to a professional standard as the doors were placed in such a way that they were bound to be damaged. I still find that on that limited point, it is both fair and reasonable that BPF take responsibility for putting things right, which it appears it has already done by paying for the remedial work done by N and D.

But as to the additional work that Miss C says is necessary for example to replace windows, I have nothing to show that the installation by S and or the quality goods it supplied fell so short that Miss C had to pay for more work and replacements to put things right. The mere fact that Mr S has paid for additional work does not demonstrate that the original work and products did not meet the required standards. It follows, that in the circumstances, based on the information I have available to me I do not find that I have any fair or reasonable basis for ordering BPF to pay for the further work and goods that Miss C is claiming for.

It also follows that as I have found that that BPF does not need to make any further payments in relation to this remaining part of Miss C's claim about the quality of the installation and the goods, I have no proper basis to ask it to pay for any of the losses that she says flow from what went wrong. Neither do I have any proper basis for saying BPF must refund the repayments she made towards the loan.

In any event, Miss C has not demonstrated she made any actual loss. Miss C disagrees with this finding I realise that, she invites me to consider what responsibilities she had under her tenancy agreement. Specifically, she has said *"the suggestion.... that Miss C has incurred no losses is utter nonsense, her losses will be based on the amount of work needed to put the landlord's property back to the condition it was prior to the window installation supported by the invoices and reports held and originally sent to the Firm."* However, Miss C is talking about a potential future loss that she potentially may incur if Mr S's legal action against her is successful, she has not experienced any actual loss. Moreover, it seems the only money she has paid out was for the loan repayments. I have already mentioned, I'm satisfied that Mr S paid her back (via the rent reduction) for all the money she paid out for the loan.

It is not disputed that BPF did ask the credit reference agencies to remove the registration of the default. It appears it did this at the time it sold the debt. Typically, when a business sells a debt it asks the credit reference agencies to remove the registration of the default, and the new debt owner registers the default instead. This is so there are not two defaults for the same debt, which would be unfair to the debtor. I find in the circumstances that it is likely that this is what happened here. Moreover, the internal notes I have seen show BPF did not think it was in the wrong in registering the default and was not prepared to ask for its removal when it owned the debt. On this basis I am not persuaded by Miss C's stance that BPF asked for the default to be removed because on reflection it decided it could not justify this action.

Miss C has made points about how the loan was set up. Amongst other things she has pointed out that the loan was set up in such a way that this has prevented Mr S from having rights in relation to the loan. This has caused him detriment she suggests and this seems to be her main concern. But she is the only eligible complainant here. I have no power to look at Mr S's losses. This is not because I am choosing not to look at this point it is because I do not have the power to do so.

I recognise Miss C suggests the payment she has received for distress and inconvenience is for a separate complaint. However, I think that is not correct. BPF appears to have made the payment as a goodwill gesture, in relation to all the complaints she has raised about the contract with S that was funded by finance provided by it. In any event, in the circumstances, I think the payment she has already received is sufficient. Given her strength of feeling though I appreciate she is unlikely to agree. Miss C has mentioned in particular that BPF took stances about the merits of her complaint and her right to bring the complaint that she disagrees with but BPF is entitled to make these decisions and I can't tell it to behave otherwise.

I have not been persuaded by Miss C's response to the provisional decision. It follows I have reached the same conclusions for the same reasons as I set out in my provisional decision and in this decision.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 23 September 2021.

Joyce Gordon
Ombudsman