

The complaint

Mr A complains about a fixed sum loan he took out with Clydesdale Financial Services Limited trading as Barclays Partner Finance, to pay for a new kitchen.

What happened

In December 2018, Mr A agreed to a design with a supplier, who I'll call X, for a new kitchen in his home. To pay for the kitchen and its installation, Mr A took out a fixed sum loan with Clydesdale. As part of the terms of the loan, Mr A had the option to repay what he had borrowed within 12 months and avoid paying any interest.

The kitchen was installed in early 2019, which meant the interest free period of loan began. But, Mr A was unhappy that it didn't fit the footprint of the his previous kitchen. He complained to X about a section of floor and wall, where he said needed repairs, due to a mistake with X's measurements and plans.

X didn't offer to pay for the repairs, so Mr A contacted Clydesdale to make a claim under section 75 of the Consumer Credit Act 1974 (section 75). Clydesdale responded to Mr A to say they would pass his concerns back to X, but wouldn't be upholding his section 75 claim.

By December 2019, Mr A says he became concerned about his interest free period ending. So, the following month, he deducted what he thought would be the cost of the repairs from the outstanding balance and paid a lump sum to Clydesdale. Because Mr A didn't settle the full balance of his loan within 12 months, Clydesdale wrote to him to say they would start to apply interest in January 2020.

Mr A complained further to Clydesdale, because neither them nor X had repaired the damage to his home. Mr A also complained because Clydesdale started to send arrears notices to him, for the interest added after the initial 12 month interest free period.

In their final response to Mr A, Clydesdale again reiterated that they had passed his concerns to X. But because of a delay in responding, they paid £50 to Mr A. By June 2020, Mr A says he saw that Clydesdale had placed a default on his credit file and that they continued to send him notices of arrears. So, he brought his complaint to us.

One of our investigators looked into Mr A's case and found that Clydesdale hadn't treated him fairly. After some discussion, Clydesdale accepted that repairs were needed to the kitchen and offered to pay for the work, based on a quote Mr A had provided.

The investigator also asked Clydesdale to refund the interest and charges applied to Mr A's fixed sum loan. He concluded that had Clydesdale looked at Mr A's section 75 claim sooner, it's likely he would have paid the full balance of the loan, before any interest was added. The investigator found that the resulting pursuit of Mr A and the information recorded on his credit file had caused him distress and inconvenience. So, the investigator asked Clydesdale to remove any adverse information from Mr A's credit file and to pay him £500.

Clydesdale didn't accept the investigator's findings and said that Mr A chose not to pay the

full balance of his fixed sum loan. So, they said Mr A had accepted that interest would be applied. The investigator didn't change his conclusions and Mr A's complaint has now been referred to me to make a decision.

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.

Section 75

This case is about a fixed sum loan that Mr A took out with Clydesdale, which is a regulated financial product. As such, we are able to consider complaints about it.

The relevant piece of legislation is section 75 of the Consumer Credit Act 1974. This provides protection for consumers for goods and services bought using credit. Under section 75, subject to certain criteria, consumers who use a fixed sum loan to pay for goods and services, have an equal claim against the finance provider, for any breach of contract or misrepresentation by the supplier.

In Mr A's case, he says section 75 means he has an equal claim against Clydesdale, because the installation of the kitchen by X is of poor quality. So, with what I've said in mind, I agree that Mr A was able to ask Clydesdale to consider if he has a claim under section 75.

During our service's investigation, Clydesdale considered several reports, documents and repair quotes about the installation of the kitchen. Subsequently, in April 2022, Clydesdale accepted Mr A's section 75 claim and offered to pay for the repairs, based on the quotes he had provided.

On the face of it, I think Clydesdale's offer to pay for the repairs to the kitchen, means they have now treated Mr A's section 75 claim fairly. However, it remains that Clydesdale disagreed with the part of the investigator's conclusions about the outstanding balance of the fixed sum loan. So, I've considered that part of Mr A's complaint further.

The end of the interest free period.

The first page of the terms and conditions for Mr A's fixed sum loan says:

"If you repay your loan within 12 months we will not charge you interest but we will charge you a settlement fee of £25.

If you do not repay your loan within 12 months, you will pay us interest at the rate stated in the agreement. The interest rate is fixed so will not change over the life of the loan."

Having thought about the terms and conditions Mr A agreed to, I think Clydesdale were entitled to apply interest to the outstanding balance, if the loan wasn't fully repaid within 12 months. But, I've thought about the reasons why Mr A chose to pay the majority, but not all of the loan balance in January 2020. I've also thought about Clydesdale's eventual response to Mr A's section 75 claim, to see if that means it was fair for Clydesdale to hold Mr A responsible for the interest added to the balance of the fixed sum loan.

I can see from the correspondence between Mr A and X, that he raised his concerns about the quality of the installation around the time X had completed their work. X didn't offer to inspect and review the repairs Mr A said were needed, so he contacted Clydesdale to raise

a section 75 claim.

Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality, fit for their intended purpose and as described. It says traders must perform the service with reasonable care and skill. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

I've carefully considered what the CRA says here and I think there was an onus on X and Clydesdale, to have at least looked at the damage Mr A says was caused during the installation. That way, they could have offered a repair, or given their reasons why they didn't think they were responsible. Mr A didn't receive any offer of an inspection from X or Clydesdale, which at the time denied him of a possible remedy.

I can see that Mr A was in regular contact with Clydesdale about his concerns up until January 2020, when the interest free period was coming to an end. Mr A calculated the cost of the repair himself and underpaid the balance of the fixed sum loan by £1,360.

In hindsight, I think this caused more difficulties, than if Mr A had just paid the full balance and continued with his section 75 claim. But, I also think it gave Clydesdale an opportunity to pause their intention to charge interest and to fairly investigate Mr A's concerns.

Clydesdale eventually upheld Mr A's section 75 claim in April 2022 and offered to pay for the repairs to the kitchen. This was after looking at an independent inspection, a report from X and the two quotes provided by Mr A. Having considered everything, I'm persuaded Clydesdale would have reached a similar outcome, had they treated Mr A's section 75 claim fairly, when he first raised the matter with them in March 2019.

Mr A has told us that had Clydesdale given him their eventual outcome to his section 75 claim at some point in 2019, he would have repaid the total amount owed to the fixed sum loan. So, I've considered that further to decide if Clydesdale should remove the interest and charges applied to the balance of the loan.

I've seen evidence that Mr A had the funds available, to repay the full amount of the fixed sum loan in January 2020. I'm also persuaded that it was Mr A's intention to take advantage of the interest free period offered by Clydesdale, as an incentive to finance the purchase of the kitchen and its installation.

So, on balance, I think Mr A would have paid the full balance of his fixed sum loan, had Clydesdale given him their outcome to his section 75 claim sooner. Had he done so, I don't think Clydesdale would then have applied interest to the balance of the loan.

In all the circumstances, I think it's fair that Clydesdale now removes the interest and charges from the balance of the loan. This should mean that Mr A owes Clydesdale the amount by which he underpaid the loan in January 2020.

Clydesdale are still due to pay Mr A for the repairs to the kitchen, based on the quotes he provided. So, I think it's fair and simpler for Clydesdale to deduct what Mr A underpaid by, from the amount needed for the repairs and settle the fixed sum loan accordingly. I should add that Clydesdale will need to consider that Mr A obtained the repair quotes in April 2022, some seven months prior to this decision. And Mr A should be aware that Clydesdale are able to charge a £25 settlement fee, when the loan is fully repaid.

Adverse information

Mr A has told us about the impact the missed payment information had on his credit file. He says Clydesdale have recorded adverse information when the balance of the fixed sum loan was in dispute.

I've found that Mr A had the ability to repay the fixed sum loan balance in full, in January 2020. And I'm persuaded he would have taken that action, had Clydesdale considered and reached an outcome on his section 75 claim sooner.

So, I think it's fair for Clydesdale to arrange to remove the adverse information about the fixed sum loan, that they have recorded with credit reference agencies. Furthermore, for completeness, I think it's fair and reasonable for Clydesdale to confirm to Mr A that the adverse information has been removed and the loan account settled.

Distress and inconvenience

The statements for Mr A's fixed sum loan account show that interest was applied to the outstanding balance in January 2020. In the following months, while the balance of the loan was in dispute, Clydesdale recorded adverse information about the account with credit reference agencies. I can see that Mr A was pursued for the outstanding balance by Clydesdale and later, a debt collection agent.

The adverse information has been present on the details held about Mr A, with credit reference agencies for over two years. So, I can see how being chased for repayments and the thought of a negative impact on his credit file caused Mr A worry and distress. Mr A has also told us about the circumstance around his poor health and the impact of Clydesdale's actions on him. Additionally, Mr A says he's suffered inconvenience by having to live with a kitchen that needed repairs.

Clydesdale accepted Mr A's section 75 claim and made an offer to pay for the repairs in April 2022. I've concluded that had Clydesdale reached this outcome around the time Mr A made the section 75 claim, it's likely the loan would have been repaid within the twelve month interest free period. So, I think it follows that in not reaching their outcome until much later, Clydesdale have caused Mr A distress and inconvenience.

Having considered everything, I think it's fair for Clydesdale to pay Mr A total of £500 for the distress and inconvenience caused, due to the delay in looking at his section 75 claim. I can see that Clydesdale have already paid Mr A £50 in April 2020. So, I think it's fair if Clydesdale chooses to put that towards the total payment.

Putting things right

To settle this complaint Clydesdale should:

1. refund all interest and charges applied to Mr A's fixed sum loan;
2. remove any adverse information about the fixed sum loan, recorded with credit reference agencies;
3. deduct the outstanding amount due to the fixed sum loan (£1,360) and the £25 settlement fee, from the £5,226 cost of the repairs to the kitchen, based on the quotes provided by Mr A. Then pay Mr A the remainder;
4. settle the fixed sum loan and confirm that Mr A doesn't owe any further repayments to Clydesdale; and

5. pay a total of £500 to Mr A for the distress and inconvenience caused.

Clydesdale must pay these amounts within 28 days of the date on which we tell them Mr A accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Clydesdale deducts tax from any interest they pay to Mr A, they should provide Mr A with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Clydesdale Financial Services Limited trading as Barclays Partner Finance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before XX December 2022.

Sam Wedderburn
Ombudsman