

The complaint

Ms R complains about a decision by Clydesdale Financial Services Limited, trading as Barclays Partner Finance (“BPF”) not to uphold a claim she made to them under section 75 of the Consumer Credit Act 1974 (“section 75”).

What happened

I issued my provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

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.

I agree with the investigator’s view of this complaint but not the redress that the investigator proposed. I know that will disappoint BPF so please let me explain.

Where the information I’ve got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or in whole, with a fixed sum loan it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there’s either a breach of contract or misrepresentation by the supplier.

I’m not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what’s a fair way to resolve the complaint, but I don’t have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

I think there has been a breach of contract here as I’m persuaded all the goods Ms R ordered haven’t been delivered. I say that because:

- I think it’s unlikely Ms R would contact the administrators for the supplier of her furniture if she had been in receipt of the goods, and I also think it unlikely she would escalate her complaint to this service if the goods she was claiming for were already in her possession.*

- *The administrator explained to us that it was very likely Ms R didn't receive her goods. They explained that other customers had similar problems and that the supplier was running behind on orders when it went into administration.*
- *Whilst I understand BPF would like proof the items weren't delivered I don't think it's possible for Ms R to prove non-delivery. In those circumstances, I'd expect BPF to be able to prove delivery.*

BPF are concerned that Ms R didn't originally complain about some items she's now saying are missing from the order. BPF say that Ms R raised her initial claim with them in May 2019 and she's explained that at that time she was still expecting delivery of some items that were bespoke. I think that's a plausible argument and it's supported by the letter she was sent by the administrators in February 2020 when they said the supplier had intended to fulfil all orders but that it was now no longer possible to do so.

Putting things right

Our investigator suggested BPF should provide a refund for all the items Ms R has not received less anything they've already refunded. But as Ms R paid for the goods though a fixed sum loan which attracted interest, that would leave her still having to pay interest on the goods she hadn't received.

So, instead, BPF should calculate how much, including interest, Ms R paid towards her agreement for the goods she didn't receive and refund that amount to her.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Clydesdale Financial Services Limited to calculate how much, including interest, Ms R paid towards her agreement for the goods she didn't receive and refund that amount to her.

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.

Ms R didn't have any additional information she wanted to add and BPF accepted my decision, setting out the calculation of the refund they would provide. They explained that the agreement was interest free and that there would therefore be no need to refund any interest.

Putting things right

As both parties accepted my provisional decision that now becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Clydesdale Financial Services Limited to calculate how much, including interest, Ms R paid towards her agreement for the goods she didn't receive and refund that amount to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 25 July 2022.

Phillip McMahon
Ombudsman