

The complaint

Mr B complains about the way Clydesdale Financial Services Limited trading as Barclays Partner Finance ('Clydesdale') responded to a claim he made under Section 75 of the Consumer Credit Act 1974 ('section 75').

What happened

In January 2021, Mr B ordered a new wet room from a supplier, who I'll call X. The installation of the wet room was included in the price X gave to Mr B. To pay for the cost of the wet room and installation, Mr B took out a fixed sum loan with Clydesdale.

Shortly after the wet room was installed, Mr B raised several concerns with X about the quality of the work. Amongst other things, Mr B told X that some of the wall tiles were cracked, others were coming away from the wall and that a grab handle was loose.

X agreed to inspect the work carried out in Mr B's wet room in July 2021. After X and Mr B exchanged several emails, X agreed to send him a cheque for £500, in respect of the repairs needed to the wall tiles. Mr B didn't accept X's offer and in September 2021, raised a section 75 claim with Clydesdale.

Mr B sent details of his concerns about the wet room to Clydesdale, along with photographs of the work X had carried out. But, despite starting to take repayments towards the fixed sum loan at the end of 2021, Clydesdale didn't respond to Mr B's section 75 claim. In the meantime, Mr B had asked various organisations, along with our service for help.

Clydesdale reviewed Mr B's section 75 claim in March 2022. They said they couldn't look into things further, as Mr B had taken legal action. And in their final response to Mr B's complaint, Clydesdale said they were always due to take the repayments towards the fixed sum loan, whether or not Mr B was satisfied with the wet room. However, Clydesdale acknowledged they had taken too long to respond to Mr B and paid £150 to Mr B for the distress and inconvenience caused.

Mr B wasn't happy with Clydesdale's response. He said he hadn't taken legal action and the other organisations he had contacted, hadn't looked into the work carried out by X. So, Mr B asked to continue with the case he'd brought to us.

One of our investigators looked into Mr B's complaint and after Clydesdale offered to pay Mr B a further £250, she concluded they had treated him fairly. She said Clydesdale hadn't made an error by starting to take the repayments for the fixed sum loan, and that the award for distress and inconvenience caused to Mr B was fair. The investigator didn't make a finding on the quality of the installation work by X.

Mr B didn't accept the investigator's conclusions and said his section 75 claim should be reviewed. He also said X had provided goods of an unsatisfactory standard, so they shouldn't have taken payments towards the fixed sum loan.

The investigator didn't change her conclusions and Mr B's case has been passed to me to

make a decision.

I sent Mr B and Clydesdale my provisional decision on this case, on 1 November 2022. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

Having looked at all the correspondence between Mr B, X, Clydesdale and the investigator, I can see where confusion has arisen about Mr B's section 75 claim. At some points, Mr B has referred to possible legal action and had started a claim with another ombudsman scheme. But, I think Mr B was trying to get help from whoever he could to address his concerns.

I say this because I can see that Mr B didn't actually take any legal action and didn't get any further than registering a case with the other ombudsman scheme. And I've seen where that case was closed by the other scheme without investigation.

Neither Clydesdale nor X have provided any documents to show where Mr B's concerns about the installation have been investigated elsewhere. Overall, I think Mr B is able to bring his complaint to us, about the way Clydesdale have responded to his section 75 claim.

So I've gone on to consider if the other conditions are met, for us to take that complaint forward.

Section 75

This case is about a fixed sum loan Mr B 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 B's case, he says section 75 means he has an equal claim against Clydesdale, because the installation of the wet room by X is of poor quality. So, with what I've said in mind, I agree that Mr B was able to ask Clydesdale to consider if he has a claim under section 75 of the CCA.

The Consumer Rights Act 2015 (CRA)

Under the 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.

Mr B has told us about several problems with the wet room supplied and fitted by X. He says some of the tiles are chipped or cracked, and that others are coming away from the wall. Mr B also says that some of the pipework needs repairing. To support what Mr B says, he's sent us several photographs of the wet room and the areas he says need repair. Mr B has also sent us several videos with commentary where he summarises the faults with the installation.

I have carefully considered the information Mr B has sent to us and I can see that there is damage to some of the tiles and where other tiles have come away from the wall. And on the face of it, I agree that there are repairs needed to the wet room. So, I've thought about the

other evidence available to decide if this means there's been a breach of contract by X.

The notes provided by Mr B show email exchanges he had with X, when he complained about the fitting of the wet room. I can see that X sent an installer to Mr B's house in July 2021 and it was agreed that a repair was needed. This is supported in an email from X to Mr B, where an offer is made of £500, for Mr B to organise a repair.

Neither Clydesdale nor X have provided a copy of the inspection report. But, I think the correspondence between Mr B and X goes some way to show that the supplier agreed that something needed to be done to put matters right in the wet room. Mr B has explained that X didn't arrange a follow up repair, and I think this is consistent with what he's shown us as to X's solution to make an offer to resolve his concerns.

In addition to the photographs, videos and correspondence Mr B has provided, he has also sent us quotes from two different tradespeople, to make the repairs to the wet room. I've thought carefully about the work detailed on those quotes and I think they both address the faults Mr B initially brought to the attention of X in 2021, and then Clydesdale in 2022.

I also think the repair quotes are broadly similar, where they both allow or include the supply of replacement tiles. So, I think the quotes obtained by Mr B support his argument that the repair work is needed in the wet room. And this is further strengthened by the credible and consistent evidence provided by Mr B.

On balance, I think the evidence shows the quality of the wet room installation was not of a standard that a reasonable person would say is satisfactory. I think this means there was a breach of contract by X, which Mr B is able to hold Clydesdale responsible for.

Where there's a breach of contract under a services contract, consumers have certain rights. They may have the right to repeat performance as well as the right to a price reduction. Consumers can also seek other remedies.

Repeat performance should be carried out within a reasonable amount of time and without significant inconvenience caused to the consumer. Consumers can ask for an appropriate price reduction if that doesn't happen, or if the repeat performance is impossible.

I think X had a significant amount of time to put right the problems with the wet room, before Mr B raised his section 75 claim. I also think Mr B has tried to work with X, to organise a repair. But, X hasn't so far come forward with a repair date, despite reviewing the work their installer carried out.

In these circumstances, where I've concluded that Clydesdale need to offer Mr B a remedy, I've looked at the quotes provided by Mr B to put matters right. Having done so, I think the costs are consistent, given the work detailed within each quote.

After considering everything, I think it would be fair for Clydesdale to pay for the repair cost of the wet room. So, I think Clydesdale should pay Mr B £2,918, based on one of the quotes he has provided.

The start of the loan repayments

Mr B says that Clydesdale started to take loan repayments from his bank account, even though he hadn't signed a completion certificate for the work carried out by X. However, Clydesdale say there isn't a requirement for them to obtain a completion certificate before activating the fixed sum loan.

I've considered the terms and conditions of Mr B's fixed sum loan and on the first page under the heading 'Your loan', it says:

"After we have accepted and signed this agreement and you have received the goods or services purchased, we will pay the loan amount to the retailer."

And, under 'Repayments', it says:

"Your first repayment date is one month from the date that we pay the loan to the retailer."

I understand Mr B's argument, in that he didn't think it was fair of Clydesdale to ask him to start paying for the wet room, when he was unhappy with the quality of some of the work. But, the materials had been delivered and the installation had taken place, by the time Clydesdale put Mr B on notice that they had paid the funds to X. Overall, I think the terms and conditions fairly explained when Mr B could have expected to start to make the loan repayments.

Clydesdale have explained that while they were investigating part of Mr B's complaint, they temporarily suspended the loan repayments until March 2022, when they were due to start in December 2021. I think this allowed more time for Mr B to put his concerns to Clydesdale and for Clydesdale to look at when would appropriate to start the repayments.

Having reviewed all the information, I think Clydesdale treated Mr B fairly, when they told him they had paid X for the wet room and when they started to take the repayments due under the loan agreement. So, I don't think Clydesdale needs to take any further action regarding this part of Mr B's complaint.

Distress and inconvenience

The statements for Mr B's fixed sum loan show Clydesdale paid £150 directly to his bank account on 12 May 2022. Clydesdale's final response to Mr B's complaint says that offer was in light of the distress caused, because of their delay to address the section 75 claim. Since Mr B's case has been with our service, Clydesdale offered an additional £250, which has yet to be paid to him.

I don't think Clydesdale dealt fully with Mr B's section 75 claim. He's explained to us that he is disabled and the purpose of buying the wet room from X, was to enhance his independence. So, I agree that not having a wet room of satisfactory quality and the delay by Clydesdale has caused him distress and inconvenience.

That said, I think the majority of Mr B's concerns were caused by X, when he was attempting to get them to put things right. I think Clydesdale are responsible for the delay in giving Mr B an outcome to his section 75 claim. So, it's on that basis where I've considered if Clydesdale's offer is fair and reasonable.

In all the circumstances, I think Clydesdale's total offer of £400 for the distress and inconvenience they have caused to Mr B is fair. So, I don't think Clydesdale should increase the award they've offered and it's now for them, to pay Mr B the remaining £250.

Adverse information

The statements provided by Clydesdale suggest that Mr B has kept up the repayments to the fixed sum loan. So, I'm unaware of any missed payment information about the loan that Clydesdale may have passed to credit reference agencies.

But given the delay around Mr B's section 75 claim and the uncertainty created around paying for work that he thought was of unsatisfactory quality, I think it's fair for Clydesdale to remove any adverse information they may have recorded. I think this should cover the time from when the loan repayments started, to the date of settlement of this complaint.

Both Clydesdale and Mr B responded to the provisional decision and accepted it.

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.

Both parties have accepted my provisional directions about how this complaint should fairly be resolved. So, I see no reason to come to a different conclusion.

Putting things right

Clydesdale Financial Services Limited trading as Barclays Partner Finance should:

1. pay £2,918 for the repairs to the wet room, based on the quotes Mr B has provided;
2. pay the additional £250 to Mr B for the distress and inconvenience caused; and
3. remove any adverse information recorded with credit reference agencies, about the fixed sum loan from inception to the date of settlement of this complaint.

Clydesdale must pay these amounts within 28 days of the date on which we tell them Mr B 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 B, they should provide Mr B 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 B to accept or reject my decision before 14 December 2022.

Sam Wedderburn
Ombudsman