

The complaint

Mr A complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance) ("BPF") activated his loan prematurely.

What happened

In August 2021 Mr A entered into a fixed sum loan agreement with BPF. The loan was to fund his purchase of a kitchen from a third party ("the retailer"). The loan agreement expressly stated that Mr A was paying for the supply and installation of the kitchen. There was a buy now pay later ("BNPL") period of 12 months, during which Mr A could repay the loan without being charged any interest; otherwise, interest would be charged and the loan would be repaid in 48 monthly instalments, beginning at the end of the BNPL period.

The loan agreement said that the amount of the loan would be paid to the retailer "when the retailer has supplied the goods or services to you". Mr A expected the installation to be completed in November 2021. The installation was begun on time, but was not completed until October 2022. (The work was stopped in late 2021 for new parts to be ordered, and the work which had been carried out was done to a poor standard. The parts were delivered in April 2022, but work did not recommence until months later.) Meanwhile, the loan was activated in June 2022, meaning that the BNPL period will end in June 2023. Mr A complains that this was premature, since the service he had paid for had not yet been provided.

Mr A complained to BPF and to the retailer. He complained to the retailer about the poor quality of the work done and the time it took to do it, and he has told our service that he plans to refer that complaint to the Furniture Ombudsman if he is dissatisfied with the retailer's response. At the same time, he complained to BPF that it had started the loan before the installation was completed, and asked for the end of the BNPL period to be put back to the anniversary of completion in October 2023.

BPF did not agree to do that. It said that it had done nothing wrong, and that it could activate the loan once installation had commenced. It also said that once an account has been activated, it can't be put on hold and the dates can't be changed. It offered Mr A £50 as a gesture of good will, which he declined. (BPF also logged his complaint as a claim for compensation under section 75 of the Consumer Credit Act 1974, but Mr A's complaint to our service is only about the activation of the loan.)

Mr A brought this complaint to our service. BPF elaborated on its stance further. It said that as Mr A was in possession of the goods, the loan agreement had been activated correctly. Our investigator agreed with BPF, and so he did not uphold this complaint. Mr A asked for an ombudsman's decision.

I wrote a provisional decision which read as follows.

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 am currently minded to uphold this complaint. I will explain why.

First of all, it is important to be clear what this complaint is about. It is not about how BPF handled a section 75 claim about shoddy or delayed work by the retailer.¹ Mr A is pursuing that issue separately, with the retailer and with another ombudsman service. This complaint is about the administration of the loan; specifically, that BPF activated it before the service he had paid for had been completed. It is about BPF's own actions, not about anything BPF might be vicariously liable for under section 75.

(Even if this was a complaint about BPF's liability under section 75, I do not think it would be sensible for me to consider that issue here, because there is, or is expected to be, a claim before another ombudsman service about what the retailer did. Under our rules, I don't have to consider the merits of a complaint if I think it would be more suitable for it to be dealt with by another ombudsman service. So I am currently minded to decline to consider BPF's liability for what the retailer did, and to just focus on BPF's administration of the loan. To do otherwise might result in Mr A being compensated twice for the same breach of contract.)

As I have said, Mr A's contract with the retailer was for the retailer to supply the kitchen and to install it, and this term was repeated in the loan agreement with BPF. In a table headed "Key features of the credit product" was the following entry:

The proposed credit will be linked to the supply of specific goods or the provision of a service. Description of goods/services/land (as applicable).	Kitchen: Supply & Installation (These are the specific goods or services which your loan relates to.)
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In the same table, it said (emphasis added):

"We will pay the amount of the loan to the retailer once we approve the loan and receive the signed agreement or when the retailer *has supplied* the goods or services to you, if this is later."

I think the use of the past tense here indicates that the retailer has not only supplied the goods, but has also supplied the service too – the installation – and that the service has been completed. To read it as meaning that the installation has been supplied when it has begun but is still in progress would put considerable strain on the language. I can find no other clause in the agreement which suggests that the loan amount would be paid to the retailer any earlier than that.

To be clear, I don't think this is the same things as saying that the installation must be completed *satisfactorily*. A debtor's remedy for a botched installation would be to sue the retailer for breach of contract, or to bring a claim against BPF under section 75; meanwhile, BPF would still be entitled to release the funds to the retailer in accordance with this clause. But in this case, it is not simply a matter of the retailer completing the installation to a poor standard. It is that the retailer's workmen left the work incomplete in late 2021 while they obtained new parts, with a view to returning later to finish the job, which they eventually did nearly a year later. So I don't think that the service had been provided until 20 October 2022.

BPF must have known that the installation had not been completed in 2021, because otherwise it would have released the funds then, instead of waiting until June. It is not clear

¹ Section 75 makes BPF jointly liable with the retailer for any breach of contract by the retailer in connection with the goods or services Mr A purchased with credit provided by BPF.

what (if anything) happened in June that made BPF decide to release the funds then. But I have seen an email from the retailer to Mr A dated 5 July 2022 which confirms that, as far as the retailer was concerned, the installation was still incomplete.

So for now I am not persuaded that BPF was entitled to release of the funds when it did. I think it was an error by BPF. If more evidence is provided about why and how the funds were released in June, I may yet change my mind (and reject this complaint). But based on the evidence currently before me, I do not think it was done in accordance with the terms of the loan agreement.

If I uphold this complaint on that basis, then I will require BPF to extend the end of the BNPL period to 20 October 2023 or, if that is impossible, to unwind the agreement, to remove all trace of it from Mr A's credit file, and to offer him a new loan on precisely the same terms, except that the BNPL period is to end on 20 October 2023.

I also propose to award Mr A £100 for his trouble. That is considerably less than he would like, but I think that most of his inconvenience has been caused to him by the retailer rather than by BPF, and so that would be best dealt with by the Furniture Ombudsman.

Responses to my provisional decision

BPF accepted that the loan should not have been activated when it was. However, it said that it was not possible to change the end of the BMPL date, and if it unwound the agreement and tried to set up a new loan in its place, it could not guarantee that Mr A would be accepted for a new loan. Instead, it suggested that it credit £1,200 to Mr A's account, being the equivalent to just over six monthly payments. That would mean that by the end of the BNPL period in June 2023, the amount Mr A would have to repay without incurring interest would be the same as (or a little less than) what he would have had to pay in October 2023 if the BNPL period had been extended until then.

Mr A accepted that solution, and I think it is fair, and so I will require BPF to do that instead.

My final decision

My decision is that I uphold this complaint. I order Clydesdale Financial Services Limited (trading as Barclays Partner Finance) to:

- Credit Mr A's account with £1,200, and
- Pay Mr A £100 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 April 2023.

Richard Wood
Ombudsman