

## The complaint

Mrs M complains about the response of Clydesdale Financial Services Limited trading as Barclays Partner Finance (“BPF”) to her complaint about the claim she made in relation to the quality of her kitchen.

## What happened

Mrs M is represented in her complaint by a firm of solicitors I will call “A”. However, for ease of reading I have referred to all submissions from Mrs M’s representative as being made by Mrs M. And I’ve also referred to all submissions that were made to A as if they were made to Mrs M directly.

In August 2017 Mrs M contracted with a third party retailer for the supply and fit of a kitchen. I will call the third party retailer “W”. Mrs M paid for the kitchen in part using a fixed sum loan supplied by BPF. The cash price of the kitchen was £19,824.94, the total amount of credit provided under the loan was £17,842.44. The kitchen was delivered in January 2018.

Mrs M was initially dissatisfied with the quality of some of the goods supplied and with some of the installation work. Specifically she complained that some of the goods were not of satisfactory quality and some of the work was not done with reasonable skill and care. Mrs M therefore indicated that W had breached its contract with her. Mrs M has given W several opportunities to put things right, but it has not. She has now lost confidence in W’s ability to remedy the breaches of contract and does not want W to return to her home to do any further work.

Due to the type of finance Mrs M used in part to purchase the goods and services Mrs M thinks she has rights under Section 75 of the Consumer Credit Act 1974 (“Section 75”) against BPF to ask it to put things right. Specifically, Mrs M claims that under Section 75 she has a like claim against BPF as against W for breach of contract. Therefore Mrs M complained to BPF. In terms of a remedy Mrs M asked it for a price reduction of £5,000 and for £5,000 for distress and inconvenience (for herself and her husband).

BPF’s stance is that Mrs M first contacted it in March 2018 to express her dissatisfaction with the quality of the kitchen. At this point BPF set up a claim against itself under Section 75. Subsequently, W offered Mrs M a price reduction of £1,300. In May 2019 BPF told Mrs M to contact W directly if she wanted to accept the price reduction. BPF closed the claim under Section 75 and told Mrs M it was doing this. It also paid her £25 for distress and inconvenience.

In August 2020, Mrs M contacted BPF to let it know she was unhappy with the outcome of the claim under Section 75. It set up a complaint about this. In November 2020 BPF contacted Mrs M to tell her W had made a new offer of £3,000. At that point, BPF considered this offer went far enough. BPF issued a final response letter and closed the complaint.

However, despite indicating that its final response was its final word on the matter, thereafter BPF contacted Mrs M telling her that if she got quotes for the repair work that was required it would review these and make a contribution towards the costs. Mrs M provided it with an estimate for the required remedial work. The estimate was provided by a building contractor who estimates the work would cost £1,920. BPF paid Mrs M this entire sum in March 2021.

Dissatisfied with BPF's response Mrs M complained to our service.

Once Mrs M's complaint was with us BPF added that when it paid Mrs M the £1,920 what it should also have done at that point, is issue a new final response letter. This was because the outcome of the complaint changed from not upheld to upheld.

That said, BPF considers that the payment it has made is fair, but it suggested the payment was not enough by itself. In particular BPF said "*that significant delays have been caused by the quotes not being added to the complaint. We would like to offer Mrs M an additional £100 for the distress caused.*" However, it added it did not agree a price reduction of £5,000 and an award for distress and inconvenience of £5,000 was merited.

Mrs M also contacted us to ask for compensation for the time she had taken off work as holiday to deal with the remedial work for the kitchen.

One of our investigators investigated Mrs M's complaint. Our investigator concluded that BPF's offer went far enough and therefore he had no proper basis to ask it to do anything further.

BPF accepted our investigator's recommendation, Mrs M did not. I've summarised Mrs M's response below.

In brief, Mrs M explained why she did not think the offer that is currently available went far enough. Mrs M reiterated she wanted compensation for the time she had taken off work. She told us she could provide information to demonstrate she had taken this time off work if we needed this.

Mrs M did not agree that W's offer was in addition to the £1,920 she'd already been paid by BPF. In any event she did not consider the offer of £3,000 from W amounted to a price reduction.

Moreover Mrs M pointed out that the estimate for the remedial work was not £1,920. Rather the £1,920 is merely an estimate of the remedial work that the building contractor was able to assess at the moment. But the remedial work could potentially cost £7,680 plus VAT. In particular the building contractor had said.

*"At present it is not possible to access the plumbing and electrical installation of the installation due to the nature of the installation.*

*If the kitchen installation should prove to be inadequate, (i.e. out of square, not fitted correctly, distorted etc.)*

*this would necessitate the removal and refitting of the existing worktops, kitchen units and associated electrical appliances.*

*There is no guarantee the existing work surfaces and fitted sink top/ bowl will withstand such a task and may well require to be replaced with new.*

*The cost to carry out these works if it should be necessary,*

*For the sum of: Seven Thousand Six Hundred Eighty Pounds. (£7680.00) Vat to be added @ 20%"*

Therefore if Mrs M accepts the offer of £1,920 in full and final settlement she may find herself substantially out of pocket under the scenario outlined above.

Mrs M further outlined why she believes BPF's actions have caused her considerable distress and inconvenience.

Mrs M asked that an ombudsman review her complaint.

We asked Mrs M to provide information to demonstrate the time she has taken time off work. As far as I am aware we have received no response to this request.

## **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.

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. Rather, 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time

Mrs M and BPF agree that Mrs M is entitled to bring a like claim against BPF as against W for breach of contract. They also agree that under relevant law that includes, but is not limited to, Section 75 and the Consumer Rights Act 2015, there has been a breach of contract in that the installation works carried out by W have not been done with reasonable skill and care. As far as I am aware Mrs M is no longer complaining about the quality of the goods. The estimate provided by Mrs M only relates to the breach of contract in relation to the services and Mrs M's response to the investigator's recommendation only refers to this breach too. Therefore I am focusing on the breach of contract in relation to the installation services provided by W.

The only question that remains then for me to look at, is the question of the remedy for this breach of contract. But I'll add for completeness that had the parties not agreed that Mrs M was entitled to bring a like claim against BPF as against W for breach of contract. I would have found that she was entitled to bring a like claim. And if the parties had not agreed there had been a breach of contract because the installation work had not been done with reasonable skill and care I would have found that there had been such a breach of contract.

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.

Mrs M seeks a price reduction, seemingly she also seeks the cost of repairs, compensation for the time she took off work and an award for distress and inconvenience.

Mrs M had a mixed contract with W, that is one where goods were to be supplied and installed as part of the same contract. This opens up a number of possible remedies for Mrs M for breach of contract but as far as I'm aware Mrs M is not entitled to both a price reduction and a repair if the repair can fully remedy the breach and she is prepared to accept that remedy. As Mrs M asked us to consider the estimate she has for repair work. I've looked at repair specifically. I've focused on the information I've got about the cost of the repair.

The only information I have about the cost of repair is from the building contractor. I have some hesitation about relying on this information as impartial expert evidence simply because the building contractor appears to be anticipating it might be called on to do the remedial work. I'd expect an expert to have no potential financial gain from the work it is appraising.

That said, there is a further difficulty in that the £1,920 it may not be the final figure for the work that is required. I appreciate therefore that Mrs M may be out of pocket if it turns out once the work commences that more work is needed.

However, in the very individual circumstances of this complaint I don't consider it fair or reasonable to say that BPF must be required to pay more. I say this for several reasons which are as follows.

The current larger potential costs are potential costs only, not actual costs. They may never come to pass. It would not be fair and reasonable to bind BPF to paying costs that Mrs M may never incur.

Further, it was open to Mrs M to go ahead with the works and provide an actual figure for the works, but she did not. I might have expected her to have gone ahead with this work not only so she could establish the final cost of the repair work but because she says the kitchen is dangerous as it is. (I do not though the building contractor, makes no mention of the kitchen being in dangerous state which I might have expected it to have done if this was so).

The estimate sets out the likely costs for putting right the faults with the installation that make the kitchen not of satisfactory quality at the current date, therefore I think those are the costs I must fairly and reasonably ask BPF to pay. Since this payment will fully remedy the breach. And since the remedy will fully remedy the breach, I also don't need to consider the other matters Mrs M has mentioned in relation to the offer from W.

For all of these reasons I am satisfied that I have no proper basis for saying that BPF must pay more in relation to this part of Mrs M's complaint.

Mrs M asks for compensation for the time she has taken off work to deal with this matter. We asked her to provide further information to demonstrate this. We have not received this information so I've no proper basis to ask BPF to compensate her for this.

I recognise that this matter has been going on for a number of years now, although based on the information I've got all the participants have played their part in the matter being so long-running. Further, I think BPF has played the lesser part here.

That said, I do accept that is fair and reasonable that Mrs M should receive a payment for distress and inconvenience. Mrs M mentions not only the distress and inconvenience that she experienced due to the breach of contract but also the distress caused to her due to what she sees as poor service from BPF. Although I think BPF was entitled to make decisions about closing her complaints and objecting to us looking at the complaint under our rules.

Mrs M indicates that the award recommended by this service earlier in her complaint was not in line with what she might have got in monetary terms if she had taken court proceedings, and that means this service has made an error. But this service is not a court and operates differently from a court. Mrs M appears to want us to behave like a court. However, I have just explained why that is not what this service is required to do.

I recognise that Mrs M seeks distress and inconvenience of £5,000 but I don't agree that is appropriate in all the circumstances of this individual complaint. Rather I find I've no fair or reasonable basis to ask BPF to pay more for distress and inconvenience than the £25 it has already paid and the £100 it has offered.

### **My final decision**

My final decision is that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") must:

- As it has already done pay Mrs M £1,920 to pay for the remedial work to the kitchen. To be clear I am not saying it has to make this payment again.
- Pay Mrs M £100 for distress and inconvenience in addition to the £25 it has already paid so that she is paid in total £125 for distress and inconvenience.

BPF must pay the £100 within 28 days of the date on which Mrs M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mrs M can reclaim the tax if she is able to.

Mrs M should refer back to BPF if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 April 2023.

Joyce Gordon  
**Ombudsman**