

The complaint

Mr C complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) refused to cancel his agreement with it.

What happened

On 15 November 2022, Mr C entered into a finance agreement with BPF. It was to help pay for the supply and fit of a kitchen. He spoke to BPF the following day to ask more about his right to withdraw from the agreement. He was advised the 14 day withdrawal period related to the finance only - not the kitchen - and he'd still be liable for the full value of the product if he withdrew from it.

On 26 November 2022, Mr C called BPF to cancel the finance in line with the right to withdraw as set out in the contract. It was explained that the retailer hadn't agreed to the cancellation, so he may have to pay them by alternative means. The call handler accepted his request and completed a 'right to withdraw template'. But BPF didn't cancel the agreement, so Mr C complained. It began taking payments on 20 February 2023.

BPF looked into his complaint. It acknowledged that he'd asked for the agreement to be cancelled and that during the call he'd made, the advisor had sent an email confirming his wish. But while BPF was waiting for a response from the retailer, it received an instruction from them to activate the loan as the goods had been delivered. It said the loan was correctly activated on 23 December 2022 and apologised to Mr C for misinformation he'd received about the cancellation. BPF rejected Mr C's complaint.

As he didn't agree, Mr C referred his complaint to us. One of our investigators looked into it. He noted the finance agreement allowed Mr C to withdraw from it within 14 days without giving a reason, and he'd acknowledged that doing so wouldn't cancel the purchase. Our investigator said Mr C had requested the contract be cancelled in time, and the loan hadn't been activated when he did so. Our investigator said BPF should have cancelled the agreement when Mr C requested it. He asked BPF to put things right for Mr C.

Mr C accepted what our investigator said, but BPF didn't. In summary it said the agreement said the borrower must make alternative arrangements with the retailer if they wish to cancel, but Mr C hadn't done so. It said the retailer had accepted his order on the basis that he paid for it in full via the finance agreement and he accepted delivery of the kitchen. It recognised that its staff may have provided incorrect advice regarding the cancellation and offered £200 compensation for that. It said cancelling the agreement now would break Mr C's agreement with the retailer and leave him liable to legal action by them.

As there was no agreement, the complaint has been passed to me for a final 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.

The contract says he could withdraw from the agreement within 14 days of signing it. There is no dispute that Mr C asked BPF to cancel the agreement on 26 November 2022. At that point, the loan hadn't been activated and it was just 11 days after he'd signed the agreement.

But BPF didn't process Mr C's withdrawal. Instead, it wrote to the retailer to see if they were happy for the finance to be cancelled. While it waited, a month or so later, the retailer asked BPF to activate the loan and it did, even though it knew Mr C had wanted to withdraw from it.

BPF says it didn't cancel the loan because he hadn't reached an agreement with the retailer. It points to its terms and conditions that say, *"withdrawing from the agreement does not cancel your purchase. You will need to make separate arrangements with the retailer to pay for the goods or have another way to repay us if we have already paid the loan amount to the retailer."*

At the time he asked to withdraw from the agreement, Mr C's loan hadn't been activated, so no money had been paid to the retailer. The agreement doesn't say that Mr C needed to tell BPF what alternative arrangements he is making for payment for the goods; in fact it says he doesn't even need to give a reason.

BPF has said the retailer had accepted his order on the basis that he paid for it in full via the finance agreement. But I don't think that's right. I say this because the credit agreement shows the amount of credit as £5,672.87 and the cash price of the goods was £11,876.93. So it's evident that the retailer may have anticipated around half the balance being paid by the loan, but certainly not the whole amount. But in any event, the sale contract is between the retailer and Mr C. There was a separate agreement between BPF and Mr C for the finance. I've seen nothing to suggest the retailer is party to that agreement other than they introduced Mr C to BPF.

I've seen no fair reason for BPF to have refused to allow Mr C to withdraw from the agreement he had with it. Clearly, he would still be liable to the retailer for the price of the goods he'd ordered, but that was between the retailer and Mr C. I've seen nothing to suggest Mr C doesn't want to pay for his kitchen, but it's clear he didn't want to do so with a loan from BPF. I've seen nothing which obliges him to. I think BPF ought to have allowed Mr C to withdraw from the agreement when he asked to do so.

Putting things right

Where we find a business has made a mistake, we aim to put the consumer in the position they'd be in if the mistake hadn't happened. I've thought carefully about how best to achieve this for Mr C in this case.

I think BPF ought to have cancelled the finance agreement when Mr C asked it to. That would have left him with a liability to the retailer and BPF wouldn't appear on his credit file for the purpose of this agreement. Had BPF not made the mistake of paying the supplier, the retailer would have chased Mr C for the money due and/or refused to supply and fit the goods until it was received.

So to put Mr C in the position he would be in if the mistake hadn't happened, BPF should:

- Cancel the loan and refund any repayments Mr C has made to it.
- Remove any information from Mr C's credit file regarding this loan.
- Pay Mr C £200 for the distress and inconvenience he's incurred as a result of BPF failing to allow him to withdraw from the contract.

It's for BPF to decide if it wishes to recover from the retailer the money it paid in error. If it does so, Mr C should be aware that he is still liable to pay the retailer for the goods and services he's received from them.

My final decision

My final decision is that I uphold this complaint. Clydesdale Financial Services Limited trading as Barclays Partner Finance should put matters right for Mr C as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 August 2023.

Richard Hale
Ombudsman