

The complaint

Mr G has complained about a kitchen installation he paid for using a fixed sum loan with Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF).

What happened

Mr G entered into a five-year fixed sum loan agreement with BPF in July 2021 to pay for a kitchen and installation. The supply and fit cost £25,310.89 and he made an advance payment of £1,297.03.

I'm not going to cover off all the issues in detail because both parties are aware of the circumstances. But in summary, Mr G was unhappy with the quality of the kitchen, and he says it wasn't installed with reasonable care and skill. Mr G says the supplier had to return numerous times to try to remedy issues, and the kitchen is still not to satisfaction. The issues Mr G has complained about include:

- Excessive movement and damage on the cupboard housing the washing machine.
- General alignment issues.
- Units not closing correctly.
- Replacement units not of the same colour.
- Marks and chips on the units.
- Incorrect hinges used.
- Excessive force needed to open certain units.
- Extractor rattling.
- Paint wearing off units and worktop colour fading.
- Tap won't always return to housing.
- Ceiling damage during the installation.
- Incorrect installation of the wine cooler.

Mr G complained to the supplier and the card issuer used when making the advance payment. He also complained to BPF in February 2022. Around this time the supplier came to inspect the property. It put forward a proposal of work, but I understand Mr G wasn't happy with this as things were missing.

BPF instructed an independent report but it didn't go ahead. The supplier made various offers to resolve things. The most up-to-date offer was for a £5,000 price reduction with the warranty on the kitchen units and worktops to remain. But warranty on the decorative products such as doors, decors, cornice, plinth, pelmet to be void.

The supplier had also offered two other options. The first of which was to arrange an independent report. And the other was to allow Mr G to reject the kitchen. He'd be allowed to use his own removers and the supplier offered to cover the cost up to £350.

Mr G wasn't happy with any of the offers. He requested a bigger price reduction. BPF thought the supplier's offers were fair.

Our investigator looked into things. She thought that, based on the evidence she had, that the offer I set out above in relation to the price reduction was fair. But that BPF should also pay Mr G £300 compensation. BPF agreed, but Mr G didn't. He said he didn't want to accept rejection. He said he had a perfectly good kitchen before. And he reiterated the price reduction wasn't acceptable. He said he'd had over 18 deliveries, 50 agents of the supplier visit him and he's been put to a lot of distress and inconvenience. He said the compensation offered doesn't match his effort and lack of facilities.

I issued a provisional decision that said:

I also want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr G and BPF that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr G paid for the kitchen using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

I take into account the relevant law. So, in this case, section 75 of the Consumer Credit Act 1974 makes BPF responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

It's important to note that I'm not considering a complaint against the supplier. I'm considering a complaint against BPF. So I have to consider BPF's obligations as a provider of financial services – in this case its liability for breach of contract or misrepresentation under section 75.

It's also important to note that compensation for distress and inconvenience caused by the supplier is limited with this type of complaint. I appreciate Mr G is very upset about what's happened and he's been put to inconvenience with having various return visits. But I have to consider what BPF can be held liable for – which is the like claim Mr G would have in court against the supplier for breach of contract or misrepresentation. Courts do consider what's known as general damages. But damages aren't generally recoverable for distress or inconvenience. Awards in building cases where there's been a breach of contract which caused the claimant physical distress or discomfort can be made, but they tend to be modest. While I appreciate Mr G is unhappy he's been living with a kitchen with issues, I don't think the nature of the issues have caused significant physical inconvenience or discomfort. I therefore don't have the grounds to direct BPF to pay significant compensation for this.

We don't have an independent report available to review. But I've considered the submissions from Mr G and BPF. Mr G has supplied some photos of examples of things wrong with the kitchen. The supplier has acknowledged things have gone wrong. And I understand there's also been various attempts to remedy issues. So I think there's enough

to demonstrate there's been a breach of contract because the installation wasn't carried out with reasonable skill and care, or the goods are not of satisfactory quality.

Where rights under a services contract aren't met, the CRA sets out that depending on the circumstances consumers can request, amongst other things, either repeat performance or a price reduction. Mr G has said there's been various attempts at repeat performance, but the kitchen still isn't to his satisfaction. Given how long things have taken I think it fair a price reduction was explored.

BPF via the supplier, has offered a £5,000 price reduction. The total cost of the kitchen and fitting, less the appliances come to around £20,000. So the price reduction on offer is around 25% of the kitchen and fitting.

I can understand why Mr G is unhappy that if he were to take the price reduction then he'd still have a kitchen he wasn't happy with. Given the number of attempts already made I'm not confident that directing BPF to arrange a further repeat performance attempt will resolve things. I'm also conscious that Mr G might not be able to simply get another company in to remedy things to his satisfaction for this particular make and model. Mr G has indicated he wants a substantially higher price reduction. But I've got no evidence to support what the cost would be to put things right. Again, I need to think about BPF's liability for the breach of contract. Mr G hasn't provided evidence for me to say the price reduction he's requesting is fairer than the price reduction that BPF, via the supplier, is offering. While I appreciate Mr G has provided photos and his account of what's happened, there's not a foundation for me to direct BPF to increase the price reduction.

What I also have to bear in mind is that Mr G has broadly been given a different offer of a full refund (not including appliances) so that he can, in effect, start again. And he's also been offered a sum so that he could arrange the kitchen to be removed using his own contractor. I appreciate he'd have the inconvenience of having to purchase a new kitchen, but he'd be able to draw a line under things with the current supplier and not have to run the risk of further repairs that don't work or living with a kitchen he's not happy with.

With the option of removing the kitchen, I don't think Mr G should be left out of pocket. I find the offer of £350 for the removal to be broadly fair. But I don't think it fair he should have to pay twice for works in relation to plumbing, gas and electrics for instance. I would imagine, however, that the risk of that happening will be tempered by the fact Mr G wants to keep the appliances.

So, as the respondent, and taking account of its liability under section 75, BPF needs to take ownership of the offers. I think Mr G should have the option to keep the kitchen with a £5,000 price reduction along with the warranties that the supplier has offered. Or he should have the option of a full refund for the kitchen and fitting so he can start again.

For the second option, as Mr G doesn't want the supplier to remove the kitchen, I think it fair he's given £350 for the cost of removal. I appreciate he's very unhappy with the inconvenience caused, but I'm mindful he'd not be asked to pay for any use of the kitchen for the last year and a half. As I've said, I think he should be reimbursed for any reasonable costs he incurs he's effectively already paid for, should there be any. This would be in relation to gas, electric or plumbing. He'd have to provide details of the works and evidence of the costs. And I'm minded saying these costs should be capped at £500.

BPF has agreed to pay £300 compensation. I've thought about how it handled things generally. Given the complaint was raised in February 2022, I think it took longer than it ought to have for Mr G's claim to be fully answered by BPF – over six months. But I'm mindful that it referred the complaint to the supplier. It tried to organise an independent

report for Mr G. Mr G was liaising with the supplier. And Mr G had also referred his complaint to the Financial Ombudsman to consider as well.

Moreover, I can't hold BPF responsible for the supplier's customer service. I think BPF has tried to take steps to resolve things for Mr G. It's not been the sole cause of significant delays. I've explained above what BPF can fairly be held liable for with regards to compensation in relation to the breach of contract. I've also explained that no deduction has been made for the use Mr G's had of the kitchen. In the round, I find the £300 compensation it's agreed to be broadly fair. And I think this should be paid if Mr G takes up either option.

Therefore, I'm proposing BPF carries out one of the following depending on Mr G's response:

- 1. - Arrange the price reduction of £5,000 and confirm with the supplier it will honour the warranties it agreed to as set out above.*
- Pay Mr G £300.

or

- 2. - End the agreement and remove all record of it from Mr G's credit file.*
- Pay Mr G £350 so he can arrange for the kitchen (not appliances) to be removed.
- Arrange for the supplier to collect the kitchen within 28 days of it being removed.
- Reimburse Mr G the reasonable cost (up to £500) for any works required for a new kitchen that he's already paid for in relation to gas, electric or plumbing – subject to a description of the works and evidence of the cost having been paid.
- Pay Mr G £300

Mr G should let us know in response to this provisional decision which option he wants to take. Option 2 is on the basis that Mr G hasn't made payment towards the agreement. If that's not right he should let us know. I should highlight Mr G doesn't have to accept either option and that he's also free to pursue the complaint by other means, such as through the courts.

Mr G responded to say he'd done some research for the range of kitchen he'd bought and that he's found the units develop a multitude of faults over time. He says his concern is that without a warranty on certain parts he'd be left with a poor kitchen. And he thinks the price reduction doesn't take into account any risk he has with the units going forward. Mr G said he had two potential solutions:

1. A further price reduction to cover the complete loss of warranty.
2. Reinstate the warranty with the condition that he can't claim for any of the current concerns he'd outlined. But if new concerns arise, he should be able to claim under warranty.

We put Mr G's response to BPF but it said it was willing to accept the recommendations made under the provisional 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.

I want to thank the parties for their responses to my provisional decision. I've already set out in that decision why I don't have the evidence to justify a larger price reduction. I've not seen that the price reduction of £5,000 isn't sufficient, even with only the warranty on the kitchen units and worktops to remain.

I also want to highlight that this was an offer from BPF, via the supplier. I've set out above why I broadly think it's a fair offer based on the limited evidence I have. And why I've not got the grounds to direct BPF to do more. I'm also mindful that Mr G has the offer to, to a large extent, start again. So if he has concerns with the product he bought and the future issues that might arrive which won't be covered under warranty, he does have the option to have the kitchen removed and receive a refund. Had neither party put forward any suggestions, this is what I likely would have recommended as a way to resolve things.

If Mr G were to accept the first option, he's free to contact the supplier about issues that haven't already been highlighted. But the complaint I'm considering is against BPF and its liability under section 75. So I'd not be able to make a direction in relation into what the supplier itself has to offer within its warranty under this decision. That would be up to its own discretion. Moreover, as with point 1, I don't have the evidence to know if a £5,000 price reduction is over and above what it would cost to remedy any issues Mr G has had or may have in the future. So I'm not going to direct BPF to arrange a change in the warranty offer.

Mr G hasn't told us he's paid anything towards the agreement. And as I said in the provisional decision, he's still free to pursue the complaint by other means if he doesn't wish to accept either option. Therefore, having considered the responses, I'm not minded to depart from the conclusions I reached in my provisional decision. Although for the avoidance of doubt, with option 2, I've said the agreement should only be ended once Mr G has paid for the items he'd keep.

Putting things right

To put things right, BPF should carry out one of the following depending on Mr G's response:

1. - Arrange the price reduction of £5,000 and confirm with the supplier it will honour the warranties for the units and worktops.
- Pay Mr G £300.
or
2. - End the agreement and remove all record of it from Mr G's credit file (once Mr G has paid for the items he's keeping).
- Pay Mr G £350 so he can arrange for the kitchen (not appliances) to be removed.
- Arrange for the supplier to collect the kitchen within 28 days of it being removed.
- Reimburse Mr G the reasonable cost (up to £500) for any works required for a new kitchen that he's already paid for in relation to gas, electric or plumbing – subject to a description of the works and evidence of the cost having been paid.
- Pay Mr G £300

My final decision

My final decision is that I uphold this complaint and direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 June 2023.

Simon Wingfield
Ombudsman