

## The complaint

Mrs B says Clydesdale Financial Services Limited – trading as Barclays Partner Finance ('BPF') – has unfairly declined her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

## What happened

In 2018, Mrs B purchased a kitchen from a company that I'll call 'W'. W designed and supplied the kitchen but it didn't instal it. In total, it cost £6,917.71. Mrs B paid a deposit of £691.76 and borrowed £6,225.95 from BPF to pay the rest.

I don't think it's necessary or helpful to repeat here the long and complicated history of Mrs B's claim(s) against W and, later, BPF. Suffice it to say, there have been a number of problems with the kitchen and several parts have been repaired or replaced and remedial work has been necessary. However, problems persist.

Mrs B initially contacted BPF to make a claim under section 75 of the CCA in June 2020. Since then, BPF, W and Mrs B have all taken steps to try to fix the problems. As problems persist, however, I wrote to Mrs B in January 2023 to request an independent inspection. I asked that the inspector:

- identify any and all outstanding issues;
- determine, to the extent possible, whether those issues are the result of problems with the initial or subsequent design, the goods supplied, or the installation (and/or the remedial work that's been done); and,
- determine whether those issues can be rectified and, if they can, the cost of rectifying them.

Mrs B sent us a copy of the report on 23 February 2023. We sent it to BPF the next day and BPF shared the report with W. BPF sent us its comments (which incorporated W's comments) on 16 March 2023.

I issued my provisional decision on 3 May 2023. It included the following provisional findings:

*First, I think it's important I explain why BPF is involved – after all, it isn't a party to the underlying contract. Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider (BPF) is legally answerable for any misrepresentation or breach of contract by the supplier (W). That's the limit of its liability. So while Mrs B is clearly very unhappy with W, unless the alleged conduct is a breach of an express or implied term of the contract, BPF isn't liable.*

*Sections 9 and 49 of the Consumer Rights Act 2015 ('CRA') are also relevant. Section 9 says any goods supplied must be of satisfactory quality – that is, they must 'meet the standard that a reasonable person would consider satisfactory'. And section 9(3) says:*

*'The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—*

- (a) fitness for all the purposes for which goods of that kind are usually supplied;*
- (b) appearance and finish;*
- (c) freedom from minor defects;*
- (d) safety;*
- (e) durability.'*

*Section 49 says any service provided must be performed with reasonable care and skill. Reasonable care and skill isn't defined in the CRA. However, it is often held to mean the degree of care and skill to be expected of someone who provides those services of ordinary competence and experience.*

*Second, I want to clarify the scope of this decision.*

*Mrs B has sent me evidence of a medical condition that she was diagnosed with recently – and she has, more recently, told us about other symptoms she's developed. She's also told me about injuries her sons have sustained as a result of the condition of the kitchen, and the impact it's had on the family's mental health. Mrs B has made it clear that she will pursue a separate personal injury claim (if necessary). I'll therefore say no more on this subject.*

*Mrs B is also very unhappy that a report by someone from W, who came to her home to inspect the kitchen in September 2020, has the word 'Covid' written by hand in the space where she was supposed to sign. As I've explained above, BPF is legally answerable for any breach of contract by W – but that's the limit of its liability and the scope of this decision. What's alleged here is not a breach of contract – so it's not something I need to consider.*

*Likewise, if Mrs B is unhappy with BPF's response to a subject access request ('SAR'), she'll need to make a separate complaint.*

#### *Current and/or ongoing problems*

*On page 3 of his report, the inspector identified 11 unresolved problems with the kitchen. I think the problems fit into three broad categories:*

- The finish on the doors, drawers and other surfaces, and damage to some surfaces*
- The discoloration of certain surfaces and the colour mismatch between original and replacement parts*
- A smell to the rear of the kitchen – although I'll consider this under the heading 'Fridge and freezer'*

*During the inspection, another issue was identified by the inspector – he said the area around the hob doesn't comply with Gas Safe regulations.*

*Given its seriousness, I shall consider this last point first.*

#### *Non-compliance with Gas Safe regulations*

*On page 5 of his report, the inspector says that there should be nothing fixed above the hob for 760mm. And within 150mm on both sides, there should be nothing fixed up to a height of 460mm. (This is known as the 'hot zone'.)*

*The inspector includes a diagram (numbered '1') to illustrate this point (although the measurements are illegible on the copy I've received). And he includes two photos of the hob – one is numbered '2', the other is unnumbered – with the words:*

*'1b Distance between extractor and wall cabinet*

*Estimated at 50mm*

*See 1a cabinet within red zone'*

*He says nothing more on this point until page 19, when he says:*

*'In my opinion, an examination of the Gas Safe standards, show the space around the hob and extractor does not meet regulations and requires investigation and alteration in order to make (sic) codes of practice.'*

*I don't think the report is as clear as it could be on this point.*

*First, it provides only one measurement, when I would expect to see at least two – the height of the wall cabinet and the distance between the hob and a line drawn directly down from the wall cabinet.*

*Second, the measurement provided (50mm) is different to what I understood was the same measurement provided by Mrs B in an email dated 13 February 2023. Mrs B told us the distance between the extractor fan hood and the wall cabinet was 150mm.*

*I emailed Mrs B to ask her to explain the discrepancy.*

*Helpfully, Mrs B replied to say:*

- the height of the wall cabinet – which is the distance between the work surface and the bottom of the cabinet – is less than 460mm; and,*
- she remeasured the distance between the extractor fan hood and the wall cabinet and it is 110mm.*

*She said that as a result:*

- the bottom corners of the wall cabinets on either side are in the 'hot zone' and contravene Gas Safe regulations; and*
- the extractor fan doesn't work 'properly' and doesn't remove heat, steam and fumes effectively.*

*Mrs B said she thought the '50mm' the inspector refers to in his report is the space that's needed at the back of a hob if it's fitted into a worktop. As she has a standalone oven and hob, it's not a relevant consideration in this case but she thinks it was included to fully explain the 'hot zone'.*

*I disagree. While the inspector does say there needs to be a 50mm gap at the back of a hob if it's fitted into a worktop, separately and next to a close-up photo of the gap between the extractor fan hood and the wall cabinet, which has been highlighted with a red pen, and under the words, 'distance between extractor and wall cabinet', the inspector has typed the words, 'Estimated at 50mm'. It's clear to me that this is a measurement that the inspector has taken and, in context, I don't see how it can be anything other than the distance between the extractor fan hood and the wall cabinet.*

*However, as Mrs B says it's actually 110mm, I'll assume it's 110mm for the purpose of this decision. And I'll proceed on the basis that the bottom of the corners of the wall cabinets are*

*in the 'hot zone' in any event.*

*Since the report, Mrs B has raised two related points.*

*First, she told us she's worried that if the area around the hob doesn't comply with Gas Safe regulations, it may affect her home and contents insurance.*

*Second, she told us about a problem she's recently had with her oven. Mrs B says that on 9 March 2023, the oven started to smoke and there was a strong chemical smell, and the circuit breakers for the kitchen tripped. Mrs B called a third party, which disconnected the oven. Mrs B has sent us photos which seem to show mould on the wiring. And she says the engineer who repaired the oven told her that moisture was accumulating in the oven because the extractor fan isn't working. Unfortunately, the brief report (or 'job card') that the third party supplied simply says: 'Faulty oven causing [RCD – residual current device] to trip. All wiring to oven is fine. Trips once oven turns on', and I haven't seen a report that confirms the cause the of the faulty oven.*

*I asked that the inspector determine, to the extent possible, whether any issues he identified were the result of problems with the initial or subsequent design, the goods supplied, or the installation. Here, he says:*

*'Design/fitting error – the supplied plan shows a 112mm gap each side of extractor to the wall cabinets.'*

*On W's final design, the height of the wall cabinet is 425mm and the distance between the extractor fan hood and the wall cabinets is 112mm – which would seem to place the corners of the cabinets in the 'hot zone'. Mrs B told us that W's 'compliance' team rejected a number of early designs for other reasons but didn't mention this.*

*In response to the inspector's report, W says Mrs B provided her own extractor fan hood – and says it was for Mrs B or her installer to ensure that any appliance she supplied separately fit into the kitchen design. And it refers me to page 18 of the contract, which says:*

*'Our designers and surveyors are not technical experts and you and your installer should have checked that all measurements are correct...You or your installer should have checked that the kitchen can be installed as designed.*

*...*

*You need to ensure that you or your fitter have the necessary skills to install a kitchen. You or they must be qualified to work with gas and electric...[W] will not accept any liabilities for any issues caused during the installation by you or your installer, this includes any costs that are a result of deviations from the kitchen plan we provide with your contract.'*

*Relying on this disclaimer, W says: 'If the extractor [fan] hood has been installed against Gas Safe regulations, [W] would highly recommend [Mrs B] reach out to the installer she contracted with and paid to install her kitchen.'*

*BPF says it agrees with W – and asks for clarity on the installer's liability in this instance.*

*In reply, Mrs B says the measurements of the appliances she supplied separately (specifically, the oven and extractor fan hood) precisely match the corresponding measurements on W's final design. And she says it's because of W's design that the corner of the wall cabinets are in the 'hot zone'.*

*Here, I agree with Mrs B. The design itself seems to be flawed – and I don't understand the*

*point W makes (and that BPF adopts) as there's nothing to indicate that the wall cabinets are in the 'hot zone' because the oven and/or extractor fan hood are larger than they are in the final design.*

*I'm also not persuaded that W's disclaimer absolves it of any responsibility.*

*W offers a kitchen design service and, in this case, the design was ostensibly reviewed by someone from a 'compliance' team. Section 49 of the CRA makes it clear that any service provided must be performed with 'reasonable care and skill'. Neither W nor BPF has acknowledged the apparent flaw with the design or argued that it actually complies with Gas Safe regulations – which is surely a basic requirement of any kitchen design. What's more, the disclaimer says W doesn't accept liability for 'any costs that are a result of deviations from the kitchen plan we provide with your contract'. But here, there was no deviation from the kitchen plan.*

*Based on what I've seen so far, I think W's failure to ensure that its kitchen design complied with Gas Safe regulations was a breach of contract for which BPF is legally answerable. And I'm therefore currently minded to tell it to pay Mrs B the cost of rectifying the problem. However, I've seen insufficient evidence to conclude that the distance between the extractor fan hood and the wall cabinets has impaired the effectiveness of the extractor fan or otherwise caused the problems with the oven.*

*I appreciate that W thinks the installer is liable, and BPF essentially makes the same point by asking me to clarify the installer's liability in this case.*

*The Gas Safe register website makes it clear that a gas hob will only be compliant with the regulations if it's installed by a competent Gas Safe registered engineer. And I accept that, by simply following W's design, the installer may have breached the contract he or she entered into with Mrs B – by also failing to exercise 'reasonable care and skill' – and/or been negligent. However, I'm not persuaded that the breach of contract by W was superseded by the subsequent negligence of the installer. To conclude that W isn't liable, I'd need to be satisfied that there was a break in the chain of causation. Such an inquiry is fact sensitive. But when, as here, there are potentially two parties at fault, the courts have held that the conduct of one party must 'obliterate' the wrongdoing of the other for there to be a break in the chain of causation, and if the causes are concurrent, it's unlikely that the chain will be broken. See *Flanagan v Greenbanks Ltd (t/a Lazenby Insulation)* [2013] EWCA 1702. Here, I think W's breach of contract remains an effective cause of the loss, and therefore the chain of causation was not broken.*

### *Fridge and freezer*

*Mrs B has raised a number of concerns about the fridge and the freezer, which are integrated. I understand the fridge was replaced under warranty by the manufacturer in 2020. However, because it had leaked, the tower unit in which it sat (and which was supplied by W) was damaged. Specifically, Mrs B says the broken fridge had 'rusted into' the unit, which had taken on water and consequently 'bowed in the middle'. She says there was a noticeable smell – and when the broken fridge was removed, the plaster behind it had damp patches. When the fridge was replaced, the new fridge was put into the wet, bowed tower unit. Mrs B says 'the engineer' refused her request to just leave the fridge so that she could replace the tower unit first. (On the evidence before me, it's not clear if W delivered the replacement fridge or if it was the manufacturer.)*

*W subsequently replaced the tower unit. However, Mrs B says that by this point, the replacement fridge had sat in the old unit for quite some time. And she says the new fridge is now leaking water, has rusted at the bottom, and the fridge shelves are often covered in*

water. Mrs B says the replacement unit is now 'blown' too. She says the plasterwork has never been inspected or repaired – although she doesn't know what state it's in because it can't be seen. Again, Mrs B says there's a noticeable smell – and food doesn't last as long as it ought to in the fridge.

In his report, the inspector includes three photos of the fridge (photos 15-17), two photos of the freezer (photos 19 and 21) and one of the freezer unit door (photo 14).

The inspector says the freezer unit door is 'twisted and warped' (photo 14).

Alongside photo 15, he says:

*'As a result of water damage there is corrosion to the hinge. The wooden shelf that the fridge sits on has badly stained and the covering to the edge of the chipboard shelf is beginning to delaminate and separate.'*

Photos 16 and 17 supposedly show that the 'gasket around the fridge is not forming a consistent seal and is leaving marks' and that a 'side seal gasket is missing'.

Next to photo 19, the inspector writes: 'Freezer frosting up at time of inspection.' Finally, photo 21 supposedly shows that the 'trim gasket sags' and 'requires securing'.

And on page 18 of his report, the inspector says:

*'Homeowners have identified a smell in the kitchen located to the rear of the inbuilt fridge and freezer unit.'*

*Due to the in-built nature of these units, with the kickboard being wedged in position, the height, angle and accessibility at the top of the units mean the inspection and testing are impossible.'*

*I note [that the ombudsman service's investigator] cannot guarantee that removal by others of the appliances will not invalidate any warranty. The inspector is not equipped or willing to undertake such a task.'*

*Therefore, I would recommend that the only way of determining the cause of the smell to the rear would be to remove both the fridge and freezer in order to facilitate an inspection. Furthermore, if damp was found to be present further investigations to the rear of other cabinets may be required in order to assess how it's spread.'*

In response to the inspector's report, W says:

- it replaced the tower unit – but it says Mrs B chose not to instal the replacement unit and instead used it to extend her kitchen;
- the poor quality of photo 16 doesn't clearly show any issue with the seal – but Mrs B still holds a warranty on the fridge which can either be repaired or replaced;
- it isn't clear why the side seal gasket is now missing – this wasn't identified as an issue when W did a home inspection in September 2020 and Mrs B didn't include it when she sent our service photos of the outstanding issues;
- it isn't unusual for a freezer to create frost, especially after 4 years – and it isn't clear if the inspector is saying this is a problem, but if there is a problem, it hasn't been reported to W (or BPF) until now; and,
- as W didn't instal the kitchen, if the trim gasket needs to be re-secured, Mrs B should speak to her installer.

*In reply, Mrs B says she did replace the fridge tower unit with the unit that W supplied in November 2020. The additional tower unit that can be seen in a photo, and which W mistakenly thinks was the replacement unit, was in fact a larder provided by W in lieu of a refund for the worktops that Mrs B paid for but which she didn't order. W recently sent me an email that confirms that this is exactly what happened. It's therefore very disappointing that it made the allegation it did.*

*Mrs B also says the manufacturer says the fridge is now out of warranty.*

*I've carefully considered the inspector's report and the comments of all parties.*

*It's clear to me that Mrs B is especially concerned about the smell in the kitchen – what's causing it and the impact it has had or may have on her health and the health of her family.*

*It is therefore regrettable that the inspector's report adds nothing to Mrs B's testimony. He doesn't even say that he thinks there is a smell – instead, he says: 'Homeowners have identified a smell...'.*

*I made it clear what I needed from the inspector and why. And Mrs B chose the inspector. It was entirely right for our investigator to say she couldn't and wouldn't guarantee that removing the fridge and freezer wouldn't invalidate any warranty. But it's clear that this was needed to determine the cause of the smell – and the inspector didn't do it.*

*When a consumer makes a claim under section 75 of the CCA, she must provide evidence to show that there has been a breach of contract by the supplier for which the lender is legally answerable. And my role is to decide whether I think it was fair for the lender to decline the claim based on the evidence supplied.*

*Here, there is insufficient evidence to determine the cause of any smell, let alone attribute it to a breach of contract by W. It was therefore not unreasonable for BPF to decline Mrs B's section 75 claim on this point.*

*Likewise, although Mrs B says the replacement fridge is now leaking, the inspector's report doesn't say this. It mentions water damage – but that isn't sufficient for me to conclude that there's a problem with the fridge, or that the goods supplied by W were not of satisfactory quality.*

*On the other issues the inspector identified with the fridge and freezer:*

- It's not clear from the photos, or the inspector's comments, how much or why the freezer trim gasket sags, and why the gasket around the fridge is not forming a consistent seal. This could be because of wear, damage, the installation, or the quality of the appliances. I'm therefore not currently minded to tell BPF to pay Mrs B the cost of replacing and/or re-securing the gaskets. In any event, I understand they're cheap and easy to replace.*
- Similarly, on their own, the bare statements that the 'side seal gasket [is] missing', 'freezer frosting up at time of inspection', and freezer unit door 'twisted and warped', do not say who, if anyone, is at fault – and I must therefore again conclude that it wasn't unfair for BPF to decline Mrs B's section 75 claim on these points.*

*The finish on the doors, drawers and other surfaces, and damage to some surfaces*

*The inspector says that the 'wrap' on some of doors, drawers and surfaces is 'delaminating'. Specifically, he says the following surfaces are delaminating:*

- An island end (photo 7)
- An island door (photo 10)
- The door below the sink (photo 11)
- Another island door (photo 12)
- The cutlery drawer (photo 22)

He notes that the wrap on the cutlery drawer has totally de-bonded (or 'failed') – and this is clear from the photo he includes. In his concluding comments on page 19, he says: 'How badly these other door units might be affected and how many might be affected is impossible to assess.'

In response to the inspector's report, W says:

- Mrs B didn't raise any concerns about the island end when she contacted our service, so this appears to be a new concern – and it says 'it is evident from [photo 7] this décor end has sustained some sort of physical damage';
- the poor quality of photo 10 doesn't show delamination of the island door – and this, again, appears to be a new concern;
- there is only one door under the sink on the island – so photo 11 shows the same door as photo 10;
- the poor quality of photo 12 doesn't show delamination of the other island door; and it is quite clear from photo 22 that the wrap on the drawer has come away – but it says Mrs B's kitchen is covered by a 20-year warranty, so she can pursue a claim under her warranty free of charge.

In reply, Mrs B says W is wrong about the warranty: according to her contract, the kitchen carcasses have a 25-year warranty but the doors are only covered for 10 years. And she disagrees with W's comments about the quality of the photos.

First, I agree with W that photos 10 and 11 show the same door – which means that there are two island doors that are reportedly delaminating, as well as an island end and the cutlery drawer.

And it is clear from photo 22 – and accepted by W and BPF – that the wrap on the cutlery door has totally de-bonded.

However, despite looking at photos 7, 10, 11 and 12 very carefully, I cannot see that the island end and the two island doors are delaminating or to what extent. But likewise, I can't see any 'physical damage' either. (W may wish to clarify this point and highlight the damage on the photo so that BPF can share this with me when it replies to my provisional decision.) That said, on balance, I'm satisfied that the island end and the two island doors are delaminating. I say this because the inspector is clear that they are – and I see no reason to doubt him. What's more, one of the photos Mrs B sent us initially – and which we shared with BPF – was of the island end and it clearly shows that the wrap is 'bubbling'.

I wouldn't expect the wrap on any door or surface to delaminate so soon. I'm therefore not persuaded that the two island doors, the island end and the cutlery drawer supplied by W were of satisfactory quality. This is a breach of contract for which BPF is legally answerable.

The inspector also identified several surfaces that are damaged. I shall address each below:

- The inspector says the dishwasher door has been damaged by 'the clips mounted either side'. As this is clearly the result of poor installation, I need say no more on this



point.

- Similarly, the inspector says the kickboard under the fridge and freezer is stuck in place when it should be removable. He says this is a 'fitting error' on page 19 of his report. Mrs B disagrees. She says the kickboards have 'blown' because of the water that's leaked from the fridge and freezer. Mrs B says it's a fire risk as they don't have access to an electrical appliance that's leaking water, and it's prevented them from assessing the water damage and potentially identifying the cause of the smell. While I accept that that's a possibility, I don't think I've seen sufficient evidence to depart from the conclusion of the inspector that this was a 'fitting error'.
- According to the inspector's report, photo 9 shows the 'removal of blue paint finish from the top edge of base unit door'. He doesn't say more. To my eyes it looks more like damage than delamination. In the absence of a clearer photo or further comment from the inspector, I've seen insufficient evidence that the door is not of satisfactory quality.
- Similarly, photo 13 seems to show a very small mark in the very corner of a door. As the inspector says he is 'unable to establish whether delaminating or damage at this stage', I've again seen insufficient evidence that the door is not of satisfactory quality.
- The inspector says some trim is separating and needs to be 're-fixed in position'. Again, the inspector doesn't say more. I don't know where or why the trim is separating. Consequently, I cannot say that W is at fault.
- Photos 23 and 24 are, according to the inspector, examples of 'surface abrasions' that are 'localised and appear to be in similar areas in most cupboards'. I've looked at photo 23 very carefully. Regrettably, I cannot see any abrasion. Photo 24 is clearer and shows some minor surface damage in the very corner of the cupboard. W says Mrs B mentioned this issue when it inspected the kitchen in September 2020. The subsequent report, which includes two photos of what appears to be the same surface abrasion that's shown in photo 24, says: 'Customer advising over time through cleaning the back panel has become marked.' Mrs B vehemently denies that she said this. Respectfully, I don't think it matters either way. I say this because I've only seen one example of a very small surface abrasion at the back of a kitchen cupboard. This simply isn't enough for me to conclude that any of the units are defective in a way that amounts to a breach of contract by W.
- The inspector says a tall unit door is 'slightly warped' (photo 25) and the door to the unit that houses the boiler is 'twisted and warped in two places' (photo 34). There are several reasons why a door may warp, including excessive heat or humidity in the home, the way the door was stored before it was installed, the installation and the quality of the door itself. Again, the inspector doesn't say who, if anyone, is at fault – and I'm therefore unable to say it is W.

#### The discoloration of certain surfaces and the colour mismatch between parts

In his report, the inspector includes a number of photos that purportedly show a colour mismatch between different parts of the same kitchen unit, or discoloration of certain surfaces:

- Photo 20 reportedly shows a 'shadow edge' on the inside of the door, where it touches the carcass when it's closed. The inspector says it's a 'typical example of many doors' and the cause is 'unknown'.
- Photo 26 reportedly shows that the colour of the door is slightly different to the side panel of the base unit.
- According to the inspector's report, photo 27 – which is a photo of a wall unit – is a 'great example of three differing colours'. In full, the inspector says: 'Despite the limitations of the camera and the photograph shows [sic] the difference in colour between the door, the light pelmet and the custom end panel.'

- Photo 29 reportedly shows that the colour of the two doors on a tall unit are slightly different.
- Photo 33 reportedly shows that the colour of the cornice on the side of a wall unit is slightly different to the colour of the cornice on the front of the unit.
- Photo 49 is actually 4 photos. '1' and '3' are the same and show a wall unit. '2' seems to show a base unit door and '4' shows an open cupboard that seems to abut a washing machine or tumble dryer. The inspector says photo '1' is 'another example of three different components all of different shades of the same colour'.

*These photos are apparently examples of the problem rather than the extent of it.*

*Regrettably, the inspector's report on this issue isn't particularly helpful.*

*First, the poor quality of the photos means that, despite studying them very carefully, I cannot see what they reportedly show.*

*Second, I'm confused by the inspector's comments. He initially says he can't 'substantiate' Mrs B's claim that the doors are 'yellowing' over time, but he goes on to say (in the same sentence) that the variation of colour has 'probably' occurred over time 'due to the instability of the paint finish to the doors or other environmental factors which is affecting the paint'. At first blush, it would appear he's agreeing with Mrs B. However, he then says that 'unless the components are all manufactured by the same company there will always inevitably [sic] be some variation of the colour of the doors' compared to the other components. He continues:*

*'In my opinion the homeowner has been misled and over promised that colours would match between components. I do not believe the components themselves are defective in colour, they just were not well matched.'* (My emphasis.)

*This statement is unequivocal and I can't reconcile it with his earlier comment. He then says that 'environmental factors, such as sunlight, levels of cleaning and aging' will 'affect the appearance of doors and components causing them to appear mismatched even if from the same manufacturer'. But two paragraphs earlier, he says: 'Paint finish should be stable and able to withstand environmental factors and the vigour of normal cleaning in a domestic situation'.*

*In response to the report, W says it initially replaced some panels in November 2020 (for free, under warranty) and then replaced all panels in March 2021 'to ensure that they matched in colour', after a complaint from Mrs B that the replacement panels didn't match. It also included a copy of a call note from 24 March 2021 that says: 'Call to [Mrs B] to confirm the fitter was there and had completed most of the white and it looked very good. She was happy with the product...' For photos 20, 29, 33 and 49, it says the poor quality of the photos means it can't see if there is a colour difference. And for photo 26 – which it says is 'Décor panel number 8' – it says Mrs B complained that the panel had a 'yellow tinge' when it inspected the kitchen in September 2020, and it replaced the panel in November 2020. Likewise, it says photo 27 shows unit 16, and it says it replaced these panels in March 2021 when Mrs B complained about the colour mismatch.*

*In reply, Mrs B makes it clear that she thinks the units (or parts thereof) are discolouring. I think it's worth reiterating my role here: I must decide whether I think it was fair for BPF to decline Mrs B's section 75 claim on this point based on the available evidence.*

*Here, I'm told there is a colour mismatch but I can't see it myself, which means I'm also unable to assess the degree of any mismatch: I don't know if it's significant, and may therefore justify a finding that the goods are not of satisfactory quality, or negligible, which would not justify such a finding.*

*And, although I can't be sure, on balance, I think the inspector's conclusion is that the components themselves are not defective, 'they are just not well matched'. On this basis, even if I were to conclude that there is a noticeable mismatch, Mrs B chose to instal and therefore accept the replacement panels despite the mismatch. As she'd earlier rejected one set of end panels because of a colour mismatch, she clearly knew she could.*

*All things considered, I've seen insufficient evidence that the panels supplied were not of satisfactory quality because of a colour mismatch or because they've subsequently discoloured. It follows that I do not think it was unfair for BPF to decline Mrs B's section 75 claim on this point.*

#### *All other matters*

*In his report, the inspector includes two photos ('Photo 28') that show gaps between the units and the wall tiles 'as a result of the panels and cabinets being replaced'. He says remedial grouting is required. Likewise, photo 30 shows a wall that's been re-painted by the 'homeowners' after a panel or cabinet has been removed. The inspector recommends that 'a professional be commissioned to ensure a consistent finish'.*

*I understand parts of the kitchen were replaced for free under warranty. Separately, the parties have, at various stages, made and accepted offers to resolve problems and complaints. I don't know if W agreed to pay the cost of 'making good', or if it's covered under the warranty. But I haven't seen any evidence that BPF is responsible for this, either directly or because it's legally answerable for a breach of contract by W.*

#### *What does BPF need to do to put things right?*

*Above, I've explained why, provisionally, I think:*

- W's failure to ensure that its kitchen design complied with Gas Safe regulations was a breach of contract for which BPF is legally answerable; and*
- the two island doors, the island end and the cutlery drawer supplied by W were not of satisfactory quality.*

*I've thought carefully about what I think BPF should do to put things right.*

*First, I think it should pay the cost of altering the kitchen so that it complies with Gas Safe regulations. I should like to make a money award to bring some finality to this complaint. I would therefore ask that all parties tell me how much they think it will cost to complete this work – and send me any supporting evidence they have. For example, Mrs B may wish to obtain and send me some quotes from local tradespeople.*

*Second, Mrs B could make a claim under her warranty for W to replace, for free, the island doors, the island end and the cutlery drawer. It's clear she doesn't want to do this. An alternative to replacement is compensation. Here, I think BPF should simply refund the cost of the four items. I think this strikes the right balance: it reflects the fact that Mrs B could simply make a claim on her warranty, but still recognises that the goods supplied are not of satisfactory quality.*

*I appreciate that Mrs B wants to reject the kitchen completely and wants BPF to refund the full cost of the kitchen – including the costs she incurred installing it, and the cost of any items she purchased from other suppliers. She also wants interest and compensation. In the circumstances, I think this would be wholly disproportionate given my provisional findings.*

*Finally, I requested an independent inspection. Given the history of this case, I was and remain of the opinion that this was necessary in order to bring matters to a conclusion. As the inspection identified problems that I think BPF needs to pay to remedy, I think it should also pay the cost of the inspection (£420).*

I sent both parties an email on 2 June 2023 to explain what I was minded to tell BPF to do as a result of the responses I received to my request that both parties tell me how much they think it will cost to alter the kitchen so that it complies with Gas Safe regulations. My email said:

*When I issued my provisional decision, I asked both parties to tell me how much they think it will cost to alter the kitchen so that it complies with Gas Safe regulations.*

*I've now received a response from both parties.*

*Mrs B says it would be 'completely unacceptable' for me to award a sum of money so that she could pay someone else to alter the kitchen.*

*To do this, she says [W] would need to supply parts that match her current kitchen. Mrs B says she's contacted other suppliers and they all say any parts they supply wouldn't match. So she says I would need to instruct [W] to alter the kitchen using its own parts.*

*Mrs B says she visited a [W] store and was told it has discontinued the style of kitchen she purchased. She says she then called a different store and was told the same thing – although they offered her an alternative that's similar. Mrs B says this would not be acceptable. Mrs B says she then visited another [W] store. A salesperson made some suggestions – specifically, she suggested Mrs B replace the cupboards either side of the extractor fan hood with smaller cupboards, and then potentially add a larder at the end of the kitchen to make up for lost cupboard space. From what Mrs B says, it's not clear if the smaller cupboards the salesperson recommended would match her current kitchen. However, while at the store, Mrs B spoke to someone from [W]'s complaints department on the phone. The complaint handler said [W] had ordered some replacement parts for Mrs B's kitchen and would visit the property to inspect the area around the hob and the extractor fan hood. Mrs B says she explained to the complaint handler that she hadn't agreed to this and wouldn't allow it. She also explained that [W] had ordered the wrong parts. After this phone call, the salesperson told Mrs B that she couldn't do any more to help.*

*BPF hasn't said how much it thinks it would cost either. It has simply repeated its point that it thinks it was for Mrs B to ensure – with her installer – that any guidelines and/or specifications were met. And it says Mrs B accepted the plan 'prior to contracting'.*

*First, I think Mrs B has misunderstood my role and my powers. My role is to consider a complaint about BPF and the way it has handled her claim under section 75 of the Consumer Credit Act 1974 ('CCA'). I cannot instruct [W] – which is not a party to this complaint – to do anything. And I will only tell BPF to take such steps – or pay such sums – as I think are strictly necessary to remedy the breach of contract by [W] for which BPF is legally answerable. For the reasons I explained in my provisional decision, I think BPF needs to pay the cost of altering the kitchen so that it complies with Gas Safe regulations. The salesperson's suggestion that Mrs B replace the two cupboards either side of the extractor fan hood seems sensible. Similarly, Mrs B may be able to pay someone to alter or move the existing cupboards or units. I'm therefore satisfied that a money award is a fair and practical remedy in this case. And, importantly, it will bring some finality to this complaint.*

*As neither party has told me how much it thinks it will cost to alter the kitchen, I must, necessarily, paint with a broad brush. Mrs B has previously provided an invoice from the*

*company that fitted the kitchen. In total, she paid £2,300. This included tiling, and appears to include VAT. She has also provided a quote from the same company for some remedial works dated 16 November 2020. The quote was for £1,170 plus VAT. This quote went up to £1,435 in January 2021 when more work was added. These quotes seem to me to be a good starting point. Removing and replacing two cupboards, or altering or moving the existing cupboards or units, would seem to be less work than that quoted for in November 2020. That said, if Mrs B needs to replace the cupboards, she'll have to buy two new cupboards. According to the contract, the 'list price' of the cupboards either side of the extractor fan hood was £354, although Mrs B paid £176.98. Taking all of this into account, and in the absence of any evidence that indicates the likely cost involved, I'm minded to tell BPF to simply pay Mrs B £1,000 so that she can pay for the alterations. To be clear, if this is what I tell BPF to do in my final decision, and Mrs B accepts it, it will be the end of the matter – and it will not be revisited by myself or anyone else at this service regardless of the actual cost of the work.*

I invited both parties to send me any further comments and evidence they wanted me to consider by 9 June 2023.

### **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.

#### BPF's response to my provisional decision and subsequent email

BPF accepted my provisional findings that it should:

- refund the cost of the island doors, the island end, and the cutlery door; and
- refund the cost of the inspection.

But, as I've explained above, it disagreed with my provisional finding that it should pay the cost of altering the kitchen so that it complies with Gas Safe regulations. However, it has since accepted my revised provisional finding that it should pay Mrs B £1,000 so that she can pay for the alterations.

#### Mrs B's response to my provisional decision and subsequent email

In my email, which I've included in full above, I summarised and addressed some of the points Mrs B made in response to my provisional decision. Mrs B also made the following points:

- She mentions some of the problems she says she's had with this kitchen – and she says she doesn't think I've upheld her rights under the Consumer Rights Act 2015 ('CRA').
- Mrs B says that every time she has work done to fix a problem, she has to get three quotes, take time off work, and fight W to pay the costs involved. She's explained that she's self-employed – as is Mr B – and they don't get paid when they don't work. Mrs B says she's spoken to a solicitor who has questioned whether the kitchen is fit for purpose.
- She has asked the inspector to clarify aspects of his report.
- Mrs B says the 'plinth' under the kitchen was 'bending outwards', so she removed it as it was 'sodden with water' – and she has sent me photos of the plaster behind the fridge.

- She says she contacted the manufacturer of the fridge to ask it to replace the fridge – which she says is rusted inside and leaking. However, the manufacturer says it is no longer under warranty.
- Mrs B refers me to the inspector's comments about the freezer unit door being 'twisted and warped', corrosion to the fridge, and delamination of the fridge unit, and she asks: should these not be dealt with?
- She repeats her objections to W's allegation that she used a replacement unit to extend her kitchen.
- Mrs B acknowledges that the inspector didn't 'clarify' the smell in the kitchen. But she says he mentioned water damage, twisted and warped doors, etc. and 'questioned if a further inspection was necessary and asked that the Ombudsman issue further instructions as to this'. Mrs B says she's provided photos of this damage but I didn't address this at all.
- Mrs B says the fixing clips that damaged the dishwasher door were provided by W. And she says the door has already been replaced once 'due to delamination yet it has done it again'.
- She says there is 'much discoloration of our kitchen' – and she's provided lots of photos to show this. Mrs B says I've ignored our investigator's report.
- Mrs B says they fitted the replacements parts as they appeared to match – but they have since discoloured. And she says I need to take into account fitting costs for these items.
- She has provided more photos, which she says shows the 'discoloration, bubbling, delamination' of certain surfaces, 'bowing doors', and water damage.

The inspector wrote separately:

- He says he writes at the 'bequest of [Mrs B]', 'whose frustration [he] share[s], relating to some of [my] responses' to his report.
- The inspector says I have made my decision without 'actually visiting the premises and witnessing the issues' for myself – and 'it had not occurred to [him] that anyone could, or would, make decisions without visiting the site'. And he says he would be 'more than happy to meet up with [me] at the property' to go through the issues one by one so that I can make a decision that 'better meets the facts of the case'.
- He says the issues are in plain sight and includes a list of problems.

Mrs B has also made further submissions:

- Recently, Mrs B noticed some water around the fridge so she called the provider of her home insurance policy. A surveyor came to inspect the fridge and Mrs B has sent me a copy of the one-page form he completed. He has circled 'yes' to indicate 'internal damage' and 'no' to indicate that there isn't 'contents damage'. Next to the words, 'cause of damage', he's written: 'Natural breakdown of materials (failed rubber seal)'. The form doesn't say anything else. However, Mrs B says the surveyor 'commented on the volume of water inside the fridge' and apparently told her 'the fan on the fridge is not kicking in'. And Mrs B has sent me four close-up photos of the fridge – and an excerpt that's apparently from the surveyor's report. She says she cannot send me the full report 'due to GDPR'.
- In response to my email, Mrs B repeated and reiterated a number of points she's made previously. She stresses that it's her legal right to have the same amount of cupboard space whatever the alterations and that the existing cupboards can't be altered because it would look 'ridiculous'. Mrs B says she will need new tiles – and the tiles she used initially have been discontinued – and the area will need to be 'made good'. Most recently, Mrs B asked a master carpenter for possible solutions to the problem. He told her she had three options: (1) she could completely remove the

kitchen and replace it with a kitchen from another supplier; (2) she could fit a smaller cupboard either side of the extractor fan hood, add a narrow larder unit, and then repair the rest of the kitchen; or (3) remove the two cupboards either side of the extractor fan hood, fit a fake overmantle/chimney in the space, and then repair the rest of the kitchen. Mrs B has sent me quotes for each option.

- Mrs B has put forward other proposals – all of which involve BPF paying for a significant amount of work to be done that I didn't think it needed to pay for when I made my provisional decision. (Although Mrs B repeatedly refers to W in her correspondence.)
- She now also asks for compensation for 'food lost, days off work, stress, injuries, etc'. And she says she reserves the right to revisit this issue if any further health issues come to light.
- Mrs B says I've ignored 70% of her complaint points, and she says I told her to use a warranty for the fridge/freezer that she cannot.

I've attempted to summarise, above and in my earlier email, the submissions I've received from Mrs B as I want her to know that I've carefully considered all the points she's made and the evidence she's provided. However, she's repeated and reiterated a number of points that she made previously, which I addressed in my provisional decision. So I don't intend to address the same points again – or those that essentially fall away in light of my final decision. Instead, I've tried to concisely explain why the additional comments and evidence I've received since I issued my provisional decision haven't changed my mind.

- As I explained in my provisional decision and my subsequent email: BPF is legally answerable for any misrepresentation or breach of contract by W – that's the limit of its liability; and, my role here is to decide whether I think it was fair for BPF to decline parts of Mrs B's claim based on the evidence she's provided. Mrs B says she wants W to address all the problems that were highlighted by the inspector in his report. But the mere fact that there's a problem doesn't mean BPF has to pay to fix it. I must first be satisfied that the problem was caused by a breach of contract by W for which BPF is legally answerable. And in my provisional decision, and by reference to all the available evidence, including the inspector's report, I explained which problems I thought BPF had to pay to fix and which problems it didn't.
- When I asked for an independent inspection, I made it clear what I needed from the inspector and why – and I think it was clear to all that I wouldn't inspect the kitchen myself. In his recent email, the inspector includes a list of problems but he doesn't identify the cause of those problems, or expand upon the comments he made in his report. For example, on the list of problems he mentions: 'Delaminating/chipped dishwasher door'. He doesn't say more. But in his report, he refers to 'damage to dishwasher door', which he says was 'caused by the clips mounted either side'. His report included two photos of the 'damage' to the door and two photos of the clips that caused the damage. His report doesn't mention anything about delamination – and the photos don't show any delamination. Based on the inspector's report, I provisionally concluded that the damage was caused by poor installation. He hasn't said anything in his email to change my mind. Similarly, in my provisional decision, I carefully analysed what the inspector said about the colour mismatch – and I highlighted some apparent inconsistencies in his report. In his email, the inspector says a camera 'cannot pick up nuances in colour or in scale' and explains that some organisations – he specifically mentions the National House Building Council ('NHBC') – don't accept photos as evidence because they can be manipulated. On the list of problems, he mentions: 'Discoloration of doors and panels' and 'Different colour/style materials etc. throughout kitchen'. But, again, he doesn't say more. He doesn't try to explain the apparent inconsistencies in his report. Nor does he say I was wrong when, in my provisional decision, I said: 'although I can't be sure, on

balance, I think the inspector's conclusion is that the components themselves are not defective, "they are just not well matched". In short, the inspector has not said anything in his email that's changed my mind about anything I said in my provisional decision. Likewise, I've looked at the additional photos Mrs B has sent me – but they haven't changed my mind about the likely cause of any colour mismatch.

- To be clear, I didn't say Mrs B should make a claim on her fridge/freezer warranty. Instead, I said I'd seen insufficient evidence to conclude that the goods supplied were not of satisfactory quality. Mrs B has since sent me a one-page form that was completed by a surveyor who has inspected the fridge. This clearly states that there is 'internal damage'. But it says it was caused by a 'natural breakdown of materials (failed rubber seal)'. On its own, this simply isn't enough for me to conclude that the fridge supplied was not of satisfactory quality. I appreciate that Mrs B says the surveyor also told her the fan isn't working – and she has sent me what she says is a section of a report from the insurer, which also says 'the fan is not functioning' – but he didn't mention this on the one-page form he completed at the time. And, again, the evidence supplied is not sufficient for me to conclude that the fridge supplied was not of satisfactory quality.
- In my provisional decision, I explained that Mrs B had made it clear that she didn't want me to consider or comment on any injuries sustained or her current health concerns. She now says she wants me to award compensation for both. At this late stage, I don't think it would be fair or appropriate to allow Mrs B to amend her claim in this way. Nor do I think it would be fair to award any additional compensation for 'lost food' or 'days off work'. First, as I've explained above, I don't think the available evidence is sufficient to conclude that the fridge supplied was not of satisfactory quality – so I don't think BPF needs to compensate Mrs B for any spoiled food. Second, I don't think it was necessary for Mrs B to take time off work to get the information I requested in my provisional decision – or that it would be appropriate, at this late stage, to revisit past efforts to rectify the kitchen to determine whether or not Mrs B needed to take time off work.
- Finally, Mrs B has recently sent me some quotes from a local carpenter. As I don't think BPF needs to pay to fix all the problems with the kitchen, I don't need to consider, or comment on, every item quoted. Suffice it to say, Mrs B says it would be cheapest to remove the cupboard to the right of the extractor fan hood and replace it with the cupboard that's currently on the left, and then add a false overmantle with a fitted extractor fan and a splashback (so that no tiling is needed). The carpenter's quote to build the mantle is £1,450. Mrs B has also sent me one example of an integrated cooker hood, which costs £189, and one example of a splashback, which costs £369.58. She says she'll also need a small tin of paint, which would cost £54. In my email of 2 June 2023, I said that, in the absence of any evidence that indicates the likely cost involved, I was minded to tell BPF to pay Mrs B £1,000. I've carefully considered the new information that Mrs B has provided. I can see that she's chosen brands that are mid- to high-end and more expensive than others. And the quote from the carpenter also seems to be more expensive than I would have expected given the invoice and quotes that I referred to in my earlier email. And it's just one quote. In the circumstances, I still think that £1,000 will likely cover the cost of altering the kitchen to an acceptable standard.
- All things considered, and for the reasons I've given above, in my provisional decision and in my email of 2 June 2023, I think BPF needs to:
  - (1) refund the cost of the island doors, the island end and the cutlery drawer – W has told BPF that the cost of these items is £662.34;
  - (2) refund the cost of the inspection (£420); and,
  - (3) pay Mrs B £1,000 so that she can pay for the kitchen to be altered so that it complies with Gas Safe regulations.



So in total, I think BPF should pay Mrs B £2,082.34.

**My final decision**

For the reasons I've given, I uphold this complaint and direct Clydesdale Financial Services Limited to pay Mrs B £2,082.34.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 18 July 2023.

Christopher Reeves  
**Ombudsman**