

## **The complaint**

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

## **What happened**

In July 2022 Mr R entered into a contract with a kitchen supplier for a kitchen (supply only) to be paid for using a fixed sum loan agreement with BPF. The kitchen cost around £11,500 and Mr R paid a deposit of around £1,700. Mr R was due to pay back the agreement over five years with monthly payments of around £160.

The events are well known to the parties, so I'm not going to go over everything again here. But in summary, Mr R says the goods were due to be delivered in August 2022. He said some items were missing or faulty and there were failed deliveries. He also says the kitchen units didn't fit properly. So over the next few months he complained to the supplier about the issues. Mr R says he informed BPF of his claim towards the end of October 2022.

The supplier made an offer to Mr R in January 2023 which he wasn't happy with. He made a counteroffer. Mr R says he stopped paying towards the fixed sum loan agreement in January 2023 to try to force BPF to respond.

In February 2023 the supplier put three options to Mr R to resolve matters.

The first option was for the supplier to collect the kitchen and issue a full refund along with cancellation of the fixed sum loan agreement. It would cover the cost of the kitchen removal at £250. It would consider additional costs for work tops to be removed and gas and electric to be capped – if quotes are provided. It would allow Mr R 45 days to keep the kitchen to source an alternative.

The second option was to provide replacement goods which it detailed. It would provide a 20% discount totalling £2,314. And it would pay Mr R £500 to go towards installation costs.

The third option was an allowance of £5,500 which would enable Mr R to keep the kitchen, but the warranty would cease.

Mr R wasn't happy with the offers. He gave another counteroffer. He said he'd accept £9,000 along with replacement of the faulty units. He requested adverse information was cleared on his credit file along with confirmation. He said he'd drop other claims as well as the warranty.

The second option Mr R gave was for the supplier to remove the goods. He requested £500 per day storage costs from the date of delivery to the date of removal. He requested £15,000 compensation. Along with compensation for storing his worktops while sourcing a replacement kitchen. And he requested adverse information to be removed from his credit file along with confirmation.

BPF thought the offers made by the supplier was fair. And the complaint was referred to the Financial Ombudsman to consider.

One of our investigators looked into things and thought the supplier's offers were broadly fair. Mr R didn't agree. He was unhappy BPF didn't come back with an offer to resolve things within the time it should have done. Mr R said he doesn't agree a 50% reduction was reasonable. He said he was unhappy there'd been no mention of the threats from BPF about his failure to pay. He said he'd accept a 75% cost reduction and his credit file corrected.

BPF confirmed if Mr R wanted to accept the supplier's third option, the supplier would either refund £5,500 to the credit agreement, or it would refund Mr R his deposit and the rest to the credit agreement. It also said it would remove all record of the credit agreement from his credit file if he chose the first option.

Mr R didn't accept the offer. He highlighted the distress and inconvenience caused, and that there'd been a breach of contract. He wanted to highlight that the supplier was continuing to mis-sell goods. He also supplied audio and video evidence that he says supports this allegation. To summarise Mr R requests damages for the cost on installation; worktops; storage; reinstallation; and any damages to goods or his house; along with compensation and adverse information removed from his credit file.

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 R 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. I also want to explain that I'm only going to consider the evidence that relates to Mr R's complaint, and the sale of the original kitchen.*

*Mr R 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 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 R 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 R would have in court against the supplier for breach of contract or misrepresentation. Courts do consider what's known as general damages. But damages in breach of contract cases 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. Moreover, while I appreciate Mr R is unhappy he's been living with a kitchen with issues, I don't think the nature of the issues have caused physical inconvenience or discomfort. I therefore don't have the grounds to direct BPF to pay the compensation for this that I think Mr R is looking for.*

*We don't have an independent report available to review. But I've considered the submissions from Mr R and BPF. It doesn't seem to be in dispute that things have gone wrong with the goods. And I've seen a report from the supplier with photos of what Mr R says is wrong. While not a comprehensive independent report, I can see some issues with the finish on certain items, and some gaps. So I think there's enough to demonstrate there's been a breach of contract because the goods weren't of satisfactory quality or as described.*

*Where rights under a goods contract aren't met, like our investigator pointed out, the CRA sets out that depending on circumstances consumers can elect to reject the goods; have them repaired/replaced; or seek a price reduction.*

*BPF, via the supplier has put some offers to Mr R. He's got various options, which I think are broadly fair. But I'm going to propose some slight amendments to them.*

#### *Option 1*

*The first option was for the supplier to collect the kitchen and issue a full refund along with cancellation of the fixed sum loan agreement. It would cover the cost of the kitchen removal at £250. It would consider additional costs for work tops to be removed and gas and electric to be capped – if quotes are provided. It would allow Mr R 45 days to keep the kitchen to source an alternative.*

*I think this outcome is broadly fair and in line with allowing Mr R to reject the goods as per one of the options in the CRA. However, rather than saying BPF should consider additional costs, I think this should be crystalised so as to avoid a dispute down the line. BPF should cover the cost to have the worktop removed (if separate to the kitchen removal). And it should cover the cost of the gas and electric capping if required. This would be on receipt of evidence of the cost, and that it's been paid by Mr R. And I think these extra costs should be capped at £500.*

*However, in addition to that, I think if Mr R were to take this option he'd be left with the cost of having to reinstall the new kitchen. So he'd in effect be paying twice to install a kitchen. That's not fair if it's as a result of a breach of contract. We asked Mr R about the cost of installing the original kitchen and he indicated it was around £4,000. So providing he supplies evidence of the cost, with a breakdown of works along with the evidence of it being paid I'm minded to say he should get the installation part of the cost back too so he's put back in a fair position where he can effectively start again.*

*Given the initial installation, the removal, and any further installation is dealt with by Mr R I'm not proposing to direct BPF to award any other additional costs.*

*For completeness, I questioned why the kitchen was installed if there were issues with it. But it seems like some of the issues (such as the gaps) only came to light when it was installed. Mr R has said this was as a result of it being designed incorrectly by the supplier. I appreciate this was a goods only contract – but unless I'm shown otherwise, I will accept that as part of what he paid for, the supplier was to make sure the kitchen fitted properly. If that's not right – BPF should let me know with evidence in response to this provisional decision.*

*In this scenario, I'm not intending to recommend any deduction for the use Mr R has had of the kitchen, albeit with the issues he's complained about. I think this seems fair in the round.*

## Option 2

*The second option was to provide replacement goods which the supplier detailed. The supplier would provide a 20% discount totalling £2,314. And it would pay Mr R £500 to go towards installation costs.*

*I think this is fair in the circumstances and in line with a repair remedy under the CRA. For the avoidance of doubt, I propose BPF needs to take ownership of this. In addition to providing replacement goods, I think BPF should arrange with the supplier to supply filler panels for the gaps. I think this seems like the most straight-forward way to resolve any gaps.*

*With regards to the credit file. If Mr R was to take up this option, given there was a breach of contract, I'd propose BPF remove any adverse information from Mr R's credit file once he's brought the agreement back up to date.*

## Option 3

*The third option was an allowance of £5,500 which would enable Mr R to keep the kitchen, but the warranty would cease.*

*I also think this seems broadly fair but, again, BPF should take ownership of this. I appreciate Mr R wants a higher deduction. But he's not shown us any evidence why a higher deduction is fairer than £5,500. There's nothing like an independent report that says the remedy would cost more than this. So I'm not proposing to make any changes to this. But as above, If Mr R was to take up this option, given there was a breach of contract, I'd propose BPF remove any adverse information from Mr R's credit file once he's brought the agreement back up to date.*

*I've finally thought about how BPF handled things generally. I acknowledge BPF was requesting payment from Mr R which he's unhappy about. But I have to bear in mind the repayment of the BPF credit agreement is a separate matter to BPF's handling of a claim under section 75. So I'm not going to direct it to compensate Mr R for seeking payment. But I appreciate Mr R was only ceasing payments due to the issues he had with the goods.*

*Moreover, as I explained before, I can't hold BPF liable for the ongoing customer service from the supplier. And I'm limited in what can be recommended for damages under a breach of contract for non-pecuniary losses. I'm conscious it looks like BPF was trying to sort things out with the supplier. And that BPF isn't a kitchen supplier. But given it was put on notice of the complaint in October 2022, it wasn't until February 2023 it gave its answer. I think it could've handled things sooner. And had it done so, Mr R would've been given an answer sooner and things might've been resolved for him already. So I'm also proposing BPF pay him £250 for the way things were handled.*

Mr R has come back to say he is willing to proceed with option 3 if his credit file is corrected. BPF responded and added some comments to what I'd proposed under options 1 and 2.

## **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 hasn't responded with any comments on what I'd proposed for option 3. Seeing as though Mr R has accepted this option, I see no reason to depart from what I set out in my

provisional decision.

### **Putting things right**

Clydesdale Financial Services Limited trading as Barclays Partner Finance should arrange an allowance of £5,500 as set out in my provisional decision (with the warranty to cease).

If Mr R accepts this decision, he should liaise with BPF to discuss how the allowance should be paid. He may wish to use part of this to clear the arrears.

BPF should also remove any adverse information from Mr R's credit file once he's brought the agreement back up to date.

### **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 in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 October 2023.

Simon Wingfield  
**Ombudsman**