

The complaint

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

Mrs B has been represented at times but, to keep things simple, I'll refer to Mrs B throughout.

What happened

The circumstances of the complaint are well known to the parties, and the events span a few years so I'm intending to summarise the main points rather than set everything out again in detail. In October 2020 Mrs B entered into a fixed sum loan agreement with BPF for the supply and fit of a kitchen from a supplier I'll call "W". The cash price was around £17,000 and Mrs B paid a deposit of around £1,700. The agreement was due to be paid back over 7 years with repayments of around £185. W arranged for fitters to install the kitchen. Mrs B also needed to have some electric and gas works completed by the fitters, which wasn't paid for under the fixed sum loan. But Mrs B says she was reassured they were competent fitters because they would have been professionally vetted by W.

I understand the installation began around November 2020 and a certificate of completion was signed the following month. But over the next few months Mrs B contacted W regarding missing items and several issues with the installation. W visited Mrs B various times, remedial works were carried out, but Mrs B remained unhappy. From what I've seen, Mrs B contacted BPF in August 2021 to put in a claim under section 75 of the Consumer Credit Act 1974. She subsequently complained.

There was further correspondence and resolution attempts between the parties and, from what I've seen, BPF sent its first final response letter on 7 March 2022 and in summary, said:

- There was no timescale for it to provide its customers with a resolution under section 75.
- It had been corresponding with W and it said it was happy with the installation.
- BPF suggested an independent report was due to be carried out at no cost to Mrs B. Forms were sent out in November 2021 and BPF had been trying to arrange the inspection. It apologised for the timescales and said it was unable to influence things.
- It also highlighted Mrs B should not stop making repayments.

An independent report was carried out in June 2022. BPF said due to Christmas, Covid-19 and short staffing there were delays in getting it arranged. The report, in summary, said:

- There were several issues that required attention.
- It couldn't establish when the damage to the French door trim and keys issue occurred.
- The wall boarding trim and skirting adjacent to the French doors required rectifying because the finish was unprofessional.
- Carpet/vinyl door trim needed to be secured correctly to the subfloor.
- The island worksurface could have been extended but it was to plan. There was an issue from incorporation of a washing machine under the worktop which required an internal extension to the construction.
- Part P electrical certification and a gas safe certificate were required because alterations to supplies had been undertaken.
- The interior of the sink carcass required reworking to gain access to the water supply stopcock.
- Cut out sections within the boiler housing and gable profiles required core sealing.
- The extraction hood and splash-back didn't marry up. The vent was not fitted professionally and the electric supply to the unit required securing.
- One wall fascia required replacement.
- Kick boarding beneath the larder wasn't to plan and a support leg failure beneath the sink unit required attention.
- Legs to base carcasses supported upon medium fibreboard scraps wasn't appropriate.
- Damage to external brickwork required making good.

I understand offers were made in September 2022. BPF sent another final response letter in October 2022 saying in summary that Mrs B had received an offer from W which it thought was fair and reasonable. And it asked her to contact W to discuss it. I understand the offer was for remedying the faults with £1,500 compensation; £3,000 compensation; or removal of the kitchen and cancellation of the agreement.

Mrs B asked the Financial Ombudsman to investigate originally in May 2022. Our investigator issued an assessment upholding the complaint. She felt there was sufficient evidence the kitchen hadn't been installed with reasonable care and skill and noted that Mrs B now wanted to reject it, which was one of the offers on the table. She said her starting point was that the contract was for the supply and fit of the kitchen, but supplementary works such as for the gas and electrics specifically weren't part of the contract that BPF funded. She didn't think BPF could be held responsible for the supplementary works that were carried out. And she noted the damage to the external wall happened during plumbing work so didn't think it should be covered. In order to resolve things, our investigator said BPF should:

- End the finance agreement and refund the deposit.
- Refund everything paid with 8% simple interest from the date of each payment to the date of settlement.
- Cover the cost to remove the kitchen.
- Cover the cost to any reasonable modifications required to the flooring to accommodate a new kitchen.
- Remove any adverse information about the agreement from Mrs B's credit file.

Mrs B didn't agree because, in summary:

- It didn't take into account the damage to the external wall caused when the hot tap was put in.

- It didn't leave any scope for repairs to the internal walls which she wouldn't know the full extent of until internal cladding was removed.
- It didn't cover the gas or electric safety checks which were integral. She said W or BPF must be responsible for recommending suitably qualified tradespersons.
- It didn't include compensation.

BPF broadly accepted it but said that W would want to remove the kitchen. As things weren't resolved the complaint was passed to me to decide.

I asked our investigator to write out to the parties with some comments on the remedy. In summary, I said:

- If the damage to the external wall was caused during the kitchen installation it might be fair for BPF to cover the cost of repair. The damage wasn't significant but needed addressing. It looked like some brick had come away, so I thought a basic masonry repair would remedy things, which seemed like a minor job. I proposed BPF cover the cost of repair upon receipt of evidence.
- I'd not been supplied evidence of damage to the internal walls, so I didn't have the grounds to make directions for that.
- It's important the gas and electrics are safe and wanted to clarify BPF did not fund this work.
- Distress and inconvenience weren't generally recoverable under breach of contract claims.
- I could consider how the claim was handled and I wanted to highlight it had taken a long time to get things resolved, so I wanted to see if BPF wanted to consider awarding compensation.
- If there were problems with the removal of the kitchen Mrs B should be able to raise a separate complaint off the back of that.

BPF said it would be willing to offer £200 compensation in relation to the claim. Mrs B said, in summary:

- The external wall repair was a minor job and she'd be happy to get a quote from the new installer.
- She'd supplied photos of damage to the internal walls to W and BPF. She wanted to highlight as long as she wasn't out of pocket, she'd be happy to proceed, and wanted to know if a further complaint could be raised if damage is found upon removal of the kitchen.
- No gas or electric certificates were supplied. She had concerns about the gas and electrics, and this was a fundamental part of the complaint. She said it was implied at all points that the tradespeople were suitably qualified. If W or BPF had done proper checks this wouldn't have been an issue. She shouldn't have to pay to have this done again. She said W and BPF had said to her on several occasions they would chase the original fitter to get the certification she was entitled to.
- BPF and W had offered compensation which she'd always rejected.
- BPF delayed the claim significantly so significant compensation should be awarded.
- She'd want to make sure any removal of the kitchen by W was done at a convenient time and wanted to have the right to complain if things didn't go to plan.
- The house was built in 2006 so she was very surprised a new fuse box was required.
- BPF and W funded, as part of the agreement, a professional pre survey which should have confirmed all electrical, gas and water requirements. As it turned out, it was partway through the installation that she was told a new fusebox was required which didn't leave her much scope to sort it out herself with her own tradesperson. She felt like she had no option but to use W's installers or the installation would have stopped.

- W and BPF had left her with a potentially unsafe property and have tried to hide behind contract law.

I issued a provisional decision that said:

I 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 Mrs B 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 first want to set out that I realise there were several final response letters sent. And our service officially started investigating the complaint in April 2023. But I'm mindful we received a referral from Mrs B in May 2022. So while I appreciate the complaint spans a long time, I'm going to propose I consider matters as a whole, and that we have the power to do so. If either party objects to that they should let me know why in response to this provisional decision.

Mrs B 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 (CCA) 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 I'm not considering a complaint against W. 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.

Aspects of the complaint are broadly resolved. Mrs B is able to reject the kitchen and receive a refund. BPF has agreed to cover reasonable costs in modifying the floor to fit a new kitchen. The main things left in dispute are the damage to the external wall; potential damage to the internal walls; the gas and electrical certification; potential problems from the removal of the kitchen; and compensation.

Potential damage to the internal walls and from the removal of the kitchen

It's not straight-forward for me to practicably direct BPF to put things right where I'm not sure what, if anything, is involved. I've not been supplied sufficient evidence that W's fitters damaged the internal walls when installing the kitchen. And of course, I hope nothing goes wrong with removal of the kitchen. I think the fairest way to draw a line under these parts of the complaint in this decision is to say that Mrs B should be able to bring another complaint if it's established W's fitters/removal team caused damage or do cause damage to Mrs B's property once the kitchen is removed. If anyone objects to this or has another solution, they should let me know in response to this provisional decision.

External wall damage and gas and electric certification

The contract sets out that a "Professional Pre-fit survey to confirm plans, all measurements, wall alignment and electric, water and gas supply requirements" is included within the installation costs. But the contract also sets out supplementary works including "Any changes to your plumbing, electrical & gas systems" (including the work) isn't included and that supplementary work between Mrs B and the contractor she appointed would not be covered.

I understand Mrs B paid the installer separately for the gas and electric work.

Mrs B says a professional pre-fit survey to confirm the gas and electric requirements should have been carried out. I think the results of the pre-fit survey are likely what is set out in the contract because it sets out on the plan where the water supplies, gas supplies, electrical sockets and appliance switches will be placed – the gas and electric requirements. So I've not seen enough to say one wasn't carried out. But I take Mrs B's point that the survey wasn't done properly because, for the electric at least, she was only told she'd need a new fusebox after the start of the installation.

The problem I have is that I need to consider BPF's responsibility under section 75. And, to do that, I need to think about what it funded under the contract. Mrs B paid an installer separately for gas and electric works. This means she entered into a separate contract for that work. And I therefore don't find I have the grounds to say that BPF is responsible for any problems as a result of the work paid for separately.

Moreover, I need to consider what caused the loss here. The loss has arisen as a result of the tradesperson failing to give Mrs B the certification required as part of the electric and gas work she paid for under a separate contract. The loss hasn't arisen as a result of a problem with the pre-fit survey.

Mrs B may be able to make a claim direct against W for example if she thinks it didn't carry out sufficient due diligence when recommending tradespersons. And of course, she may be able to claim from the tradesperson direct. But I'm not persuaded there's grounds to say BPF is responsible for what went wrong here. There's nothing stopping Mrs B from taking W or the installer to court if she wishes. But she may wish to take legal advice on that if she's unsure.

All that being said, I'm very concerned about the situation. I'm sympathetic that the problem has arisen through no fault of Mrs B. And it must be very frustrating and worrying for her not to have the certification she should have been given. The gas and electric certification is important and is there to make sure the property meets the standards required by law. If I was in Mrs B's shoes, I wouldn't want to leave it. Mrs B has indicated BPF had previously told her it would support her in getting the electrics checked after she narrowly avoided an electrical fire in the dishwasher. She said the potential fire didn't short the new fuseboard. So if BPF is able to help in any way it should let me know in response to this provisional decision. If BPF were to help obtain the relevant certification for Mrs B that would be helpful. Otherwise, Mrs B has had a quote for the works and costs involved that would enable her to obtain certification that come to around £1,000. Given all the problems Mrs B has had, and the serious nature of the issue, if BPF were willing to assist in the cost, it should let me know in response to this provisional decision.

Similarly, after initially thinking BPF should arrange to cover the cost of the repair to the external wall, after reflecting on what I've said above, I think the work that caused the damage was as a result of plumbing work which Mrs B paid separately. This is in line with the findings reached by our investigator. So I don't think there are the grounds to direct BPF to cover the cost of repair for the same reasons as for the certification issue. Fortunately, this repair should be relatively straight-forward. BPF didn't respond to my initial thoughts it should cover the cost of repair. If it's willing to do that, it should let me know in response to this provisional decision.

Compensation

It's important to note that compensation for distress and inconvenience caused by the supplier is limited with this type of complaint. I appreciate Mrs B is very upset about what's happened and she's been put to significant inconvenience with having various visits and inspections over a long time. But I have to consider what BPF can be held liable for – which is the like claim Mrs B would have in court against W 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 Mrs B is unhappy she'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 compensation for this.

I can, however, consider how BPF handled the claim generally. BPF has said there was no set timescale for dealing with a resolution under section 75. But the Financial Conduct Authority (FCA) set out guidance in 2021 titled: "Cancellations and refunds; helping consumers with rights and routes to refunds" that says We expect credit and debit card providers to handle section 75 and chargeback claims in a reasonable timescale, and remind firms of their obligations to treat customers fairly. If there are delays in processing claims, firms should clearly explain the reason for the delay. While it refers to debit and credit card providers, I think the guidance is relevant for financial service providers handling these sorts of claims generally.

BPF was contacted about the claim in August 2021. There were some significant delays in getting an independent report. I appreciate BPF might've been relying on the independent experts, but it could have taken other steps to arrange a different inspection when the delays became significant. I appreciate BPF isn't a kitchen installer, and it was, to a large extent, reliant on W to move things forward but it has a liability for dealing with the claim. I think it could have done more to help Mrs B resolve things sooner than it did. It shouldn't have taken Mrs B years to get to this stage. BPF has offered £200. In the circumstances, I think this should be increased to £500. I think this is a fairer reflection of the way things have been handled and the distress and inconvenience caused to Mrs B. I do, however, need to take into account Mrs B won't be paying anything for the use she's had of the kitchen, albeit with the issues she's complained about. I think that has to be noted because I think it goes towards offsetting some of the problems and issues she's had.

I appreciate Mrs B might think it unfair and that she's being penalised through firms 'hiding' behind contract law. But I can only make directions to BPF when I have the power to do so. If I make directions without the grounds to do so, they might not be enforceable.

Therefore, in order to resolve the complaint, I'm intending to direct BPF to:

1. End the agreement with nothing further to pay.
2. Refund Mrs B everything paid towards the agreement including the deposit.

3. *Interest should be added to the above amount, at a rate of 8% per year simple from the date each payment was made to the date of settlement.*
4. *Arrange to remove the kitchen at a time convenient to Mrs B.*
5. *Cover the cost to any reasonable modifications required to the flooring to accommodate a new kitchen, upon receipt of evidence.*
6. *Remove any adverse information about the agreement from Mrs B's credit file.*
7. *Pay Mrs B £500 compensation.*

** If BPF considers it is required to deduct tax from my interest award it should provide Mrs B a certificate of tax deduction so she may claim a refund from HMRC, if appropriate.*

BPF responded to say it agreed with remedy set out in the provisional decision and that in terms of costs it usually looks for three quotes.

Mrs B responded to say in summary:

- She wanted to know whether any additional complaint for damage to her walls could be referred straight back to the Financial Ombudsman. She didn't want to wait a long time for that to be resolved.
- She wanted to make sure whoever comes to remove the kitchen is done to her preferred timescale, during school holidays when she is at home. She's also requested whoever comes to remove the kitchen is a qualified electrician and gas engineer. She does not want to leave the kitchen unsafe. She also wanted to know what would happen if W doesn't turn up on the day to remove the kitchen. She won't be able to delay the new kitchen being fitted without additional costs. She wanted to know if those costs would be covered by W or BPF since they are insisting on using their own removal team.

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'd like to thank the parties for their responses. I appreciate why Mrs B has put forward her questions. She's understandably concerned given how long things have taken to be resolved and taking into account the problems she's had. But I'm sure she'll appreciate there's only so much I can do through setting out the remedy in this decision. I can't cover off every eventuality for what might happen in the future. I'm sure all parties hope the removal will be carried out as agreed, and a further complaint won't be required.

However, as I said in my provisional decision, Mrs B should be able to raise a separate complaint if it's established W's fitters caused damage to her internal walls during the installation. Or if there are problems as a result of the removal. BPF hasn't disagreed with this suggestion from my provisional decision. Mrs B will be able to take any potential complaint up with W direct. Or she can raise a complaint with BPF. The rules for our service say BPF would need to have an opportunity to put things right before a complaint can be referred to the Financial Ombudsman.

I'm not aware that a kitchen removal needs to be done by a tradesperson that is gas and electric certified, so I don't have the grounds to direct that. But I'd expect any tradesperson to be suitably qualified to remove the kitchen.

With regards to the timescale for removing the kitchen, I've set out it must be a time convenient for Mrs B. Mrs B says she's worried she may not be able to arrange it during the Easter holidays, and so it might have to be carried out during the summer holidays. I hope Mrs B manages to arrange something soon, so that she can move on. While I've said the kitchen should be removed at a convenient time for Mrs B I don't think it would be fair on BPF to say that this offer should be open indefinitely. So I'd add that, unless BPF or W is happy to allow longer, Mrs B will have up to six months to arrange the removal from the date of acceptance of this final decision (if that's what she wants to do). I think that's fair. She'll need to arrange the removal directly with BPF or W.

Finally with regards to BPF's comments about receiving three quotes for the flooring modifications, I think this is fair unless there's a good reason why that's not possible – such as the particular flooring only being available from one merchant. Again, it's hard for me to cover off all the eventualities here, and I need to be able to draw a line under this complaint. I don't know enough about the current costs involved to put on a cap on it for example. I hope the parties are pragmatic in resolving this, and that the flooring quote Mrs B obtains from the fitter she's going to use to install the new kitchen is acceptable for BPF – as long as it's reasonable. While I hope it's not needed, like with other potential problems relating to the removal, I think the fairest way to leave this is that Mrs B could raise a further complaint if she thinks she's being treated unfairly.

Putting things right

To resolve the complaint BPF should:

1. End the agreement with nothing further to pay.
2. Refund Mrs B everything paid towards the agreement including the deposit.
3. Interest should be added to the above amount, at a rate of 8% per year simple from the date each payment was made to the date of settlement.
4. Arrange to remove the kitchen at a time convenient for Mrs B. Unless BPF or W agrees a longer period, this should be done within six months of acceptance of this final decision.
5. Cover the cost to any reasonable modifications required to the flooring to accommodate a new kitchen, upon receipt of evidence.
6. Remove any adverse information about the agreement from Mrs B's credit file.
7. Pay Mrs B £500 compensation.

* If BPF considers it is required to deduct tax from my interest award it should provide Mrs B a certificate of tax deduction so she may claim a refund from HMRC, if appropriate.

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 Mrs B to accept or reject my decision before 11 March 2024.

Simon Wingfield
Ombudsman