

The complaint

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

What happened

The circumstances of the complaint are well known so I won't go over everything again in detail but, in summary:

- Ms W purchased a kitchen (supply only) from a supplier I'll call "W" in May 2021 using a fixed sum loan agreement with BPF. She had it fitted it herself the following month. The kitchen cost around £5,600.
- Ms W complained about the quality of the kitchen goods. An independent report was carried out, and it agreed there were issues with the doors. There have been replacement goods sent but there are still issues. W made offers of further replacement; around £1,600 compensation; and a rejection goods.
- Ms W was going to pursue rejection, but I think she couldn't come to an agreement with W about the consequential losses.
- In mid-2023 Ms W referred her complaint to the Financial Ombudsman and obtained a quote from another tradesperson for supply and fitting of affected goods at £3,900.
- BPF had compensated Ms W £250 in recognition of the delays in resolving things. And it said the 3 options given by W were broadly fair.
- Our investigator said BPF should pay Ms W £3,900 for replacement goods (including fitting). BPF said this was disproportionate given the kitchen cost around £5,600. Therefore, the complaint was passed to me to decide.

I contacted BPF to explain the £3,900 recommended by our investigator broadly seemed like a fair way to put things right for Ms W given the evidence I'd seen. I wanted to ask if BPF had any further proposals it wanted to put forward. BPF said it wanted to see a breakdown of the quote to consider it. It wanted to know if it was like for like for example.

BPF said it was willing to offer £2,600. BPF also said it had spoken to W and it wanted to increase its offer to £2,824.83. It said this was to refund the cost of the affected goods (£1,624.83) along with £1,200 for fitting costs. Ms W didn't want to accept this because she says it wouldn't cover the cost of the works she'd been quoted. Unfortunately, the tradesperson that gave Ms W the £3,900 quote was no longer able to carry out the work. Ms W asked for further quotes. She received two quotes for the fitting – one for £1,700 and one for £2,100. And she obtained a quote for the replacement goods for around £2,700.

BPF didn't want to accept the further quotes either. It said W questioned the quotes for the goods and said they weren't like for like because the doors quoted for were 1mm thicker. It said the quote Ms W received was for a more premium range, whereas the W kitchen she had was mid-range. It also said the quotes for the works didn't set out how many days work was required and that it should only take 2 and a half days, which should cost around £750 so the quotes were unreasonable.

We spoke to Ms W about this, and she said the quote for the goods she obtained was for the mid-range. She wanted to reiterate prices had gone up significantly over the last three years so she thinks BPF is being unreasonable.

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 Ms W 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.

Ms W 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 goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods 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.

I don't think it's in dispute that there was a breach of contract in this case. It's clear there was a problem with some of the goods. What's left in dispute is what needs to be done to put things right.

On the one hand, I can, to some extent, understand BPF's concerns that the refund Ms W is asking for is well over half the cost of all the goods she bought and only some of the goods need replacing. W says the goods that were affected totalled around £1,600. Ms W's quote for replacement of those goods is much higher – around £2,700. And the quotes for the actual works do appear significant considering how long W says it would take to carry it out.

But on the other hand, I have to bear in mind there's been a breach of contract. Ms W has been living with a kitchen with issues for nearly three years. Prices are rising at an unprecedented rate in recent times. Ms W has gone to the effort of obtaining various quotes. I think she's doing what she can to come to an acceptable agreement. It seems there's more than a few doors that need replacing. She's offered to give BPF the invoices and evidence of payment for the works. I've given BPF the option to come up with another solution. But I've not been given one that resolves things. It also doesn't seem fair Ms W would be left out of pocket as a result of a breach of contract. As I've said above, I need to resolve things quickly and with minimum formality. And seeing as though the quotes are getting more expensive, I think it's important to be able to draw a line under things soon.

I'll turn first to the offer of rejection. This puts Ms W in the position where she can start again. While I appreciate prices are higher now, she'd be receiving a full refund which I think would broadly offset the higher price of a kitchen because she'd not be paying for the use of the

kitchen she currently has – albeit with the issues. But the problem with that offer is that it would mean she'd have to pay twice to have a kitchen installed, which doesn't seem fair. I think it would have been fairer had the offer of rejection also come with an offer of reimbursement for the fitting costs she paid, or that she'd incur again.

I'll turn next to the offer of compensation. As I said, I can understand how BPF and W has calculated the offers. But based on the evidence I've seen, I don't think it adequately resolves things for Ms W. The offer hasn't taken into account prices have gone up over the last three years. Ms W has tried to obtain various quotes, and while I accept there might be a 1mm difference in the range she chose, I'm satisfied she's been trying to find a mid-range replacement. The nature of kitchens means she can't simply take an exact replacement without going back to W. But due to the issues she's had, I think it's reasonable she wants to go elsewhere. I don't think she's trying to get some sort of betterment, she's simply trying to resolve things.

In all the circumstances, Ms W has obtained quotes ranging from £3,900 to nearly £5,000. And she's shown us the goods, that I think are broadly comparable, cost around £2,700. So, on balance I'm minded to agree with our investigator that BPF should offer Ms W £3,900 for her to have the work carried out. I appreciate the original tradesperson is no longer available, but I think it's in the right ballpark based on the quotes for the actual goods, and the broad cost of fitting. I think this would be dependent on Ms W having the work carried out.

I'm conscious Ms W says she's thinking of moving. It's not clear when, or if that will happen. But I think she should have options to choose from. And she should let us know if she has any further comments and/or which option she wants to take in response to this provisional decision:

Option 1

She can accept W's cash offer of £2,824.83. The complaint is against BPF, who is jointly liable for the breach of contract, so BPF will need to take ownership of this offer.

Option 2

If Ms W wants to have the work done herself, she can do so and claim up to £3,900 from BPF. This represents the lowest of the three quotes she obtained. She'll need to supply evidence of the costs and payments made.

Option 3

If Ms W would prefer to have the kitchen removed, she should let us know in response to this provisional decision. This would involve ending the agreement with nothing further to pay; refunding her everything paid to the agreement including the deposit; adding 8% simple annual interest to that amount from the date each payment was made to the date of settlement; and BPF would need to arrange to remove the kitchen at a time convenient for Ms W. For this option, BPF would also need to refund Ms W the cost of the installation. I'm not going to propose spending time calculating that now because it's not clear Ms W will want to accept that option, and it's complicated. Ms W has shown us the invoice for her original fitting of around £4,700 but I note this includes works which she wouldn't have to pay again. So the actual cost BPF would need to refund would be part of that amount. If Ms W wants to take this option she should let us know in response to this provisional decision so that a definitive amount for fitting can be agreed.

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 Ms W is very upset about what's happened and she's been put to 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 Ms W 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 Ms W 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. BPF did, however, pay £250 for delays in giving its answer to Ms W's claim, and I think that's broadly fair.

BPF said it had nothing further to add. Ms W responded to say she wanted to accept option 1.

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. Seeing as though BPF has nothing further to add and Ms W has said she's willing to accept option 1, I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

BPF should arrange for Ms W to be reimbursed £2,824.83.

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 Ms W to accept or reject my decision before 15 March 2024.

Simon Wingfield
Ombudsman