

## **The complaint**

Mr A complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") has unfairly handled his claim under section 75 of The Consumer Credit Act 1974 ("section 75") in respect of replacement windows and doors which weren't of satisfactory quality.

## **What happened**

In December 2014 Mr A entered into a fixed sum loan for £3,225 for the supply and installation of windows and doors to his property. The loan was for around 50% of the total cost of the contract.

The doors and windows were installed in or around June 2015 by the retailer and a 10-year guarantee was provided. Unfortunately, both the retailer and guarantee company later went into liquidation.

In March 2019 Mr A made a claim under section 75 to BPF because there was an issue with one of the windows and the works had also caused a problem with part of the roof. BPF agreed to pay Mr A compensation that would cover the costs of the repairs and the claim was closed.

In December 2022 Mr A made a further section 75 claim to BPF in respect of all of the replacement windows and doors which had been fitted as he said they were faulty and were causing his home to become damp. Mr A also provided a report from a third-party company that said due to the poor quality of the window frames together with problems caused by the way the doors had been installed, everything would need to be replaced.

BPF accepted that the windows and doors weren't of satisfactory quality and so agreed Mr A's claim for redress. However, BPF said that as the doors and windows were around seven years old and replacing them with new (which would include a new 10-year guarantee) would be placing Mr A in a better position, it didn't agree a full refund was reasonable. It said that due to the amount of time that had passed and, in line with section 23 of the Consumer Rights Act 2015, it was fair for it to make a deduction from the reimbursement to Mr A.

BPF said that the windows and doors had originally cost £6,449 and it would be reasonable to deduct from that amount the £1000 already paid to Mr A in respect of his claim in 2019 which left £5,449. As the windows had been supplied with a 10-year guarantee then BPF said the total of £5,449 should be divided by 10 making £544 per year. BPF said it accepted Mr A had first experienced an issue in 2019 and so it was reasonable to make a deduction for use for the period 2015 (when they were fitted) to 2019 (when there was a fault discovered), that is four years. BPF said it would therefore deduct a total of £2,179.60 from the refund leaving £3,500 (rounded up) to be paid as settlement to Mr A.

Mr A disagreed with BPF'S approach as he said this would not cover the cost of replacing the doors and windows particularly due to the increases for materials and labour. He complained to BPF about its handling of his section 75 claim. BPF didn't uphold his complaint and said its approach and decision had been fair and reasonable.

Mr A made a complaint to this service and provided a quote that set out the cost of the work would be £9,850. Our investigator recommended that Mr A's complaint should be upheld. He said that BPF had accepted that the windows and doors which had been supplied and fitted weren't of satisfactory quality. He said it was therefore fair for BPF to now cover the cost of supplying and installing new ones as the originals could not be repaired. Our investigator said BPF should pay Mr A total amount of £9,850 for him to then arrange the replacements.

BPF disagreed with our investigator's view. It said that in accordance with section 23(3) and (4) of the Consumer Rights Act 2015, Mr A's request for the windows and doors to be replaced with new was disproportionate and unreasonable when compared to the cost of being given a refund. It said that the offer to refund Mr A £3,500 was fair when looking at the circumstances.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

The general effect of section 75 of the Consumer Credit Act 1974 is that if a consumer has paid for goods or services with a credit agreement, such as a fixed sum loan, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider which here was BPF.

My role was to decide whether BPF had acted fairly and reasonably in its response to Mr A's claim under section 75. BPF said although it was satisfied that there had been a breach of contract, the remedy of replacing all the windows and doors was disproportionate to the cost of allowing Mr A to reject the goods and receive a refund. It also said it was entitled to make a deduction from any refund for the use Mr A had been able to make from the windows and doors in the period he had had them. Mr A said that it was unfair if BPF didn't fund the renewal costs of the windows and doors particularly since the cost of replacing them was now far higher than when they had been originally installed.

Mr A wasn't seeking repair but replacement. He said that the purpose of the remedy was to put him back in the position he would have been in had the breach not occurred and so replacement was fair. But, although I appreciated this would be of disappointment to Mr A, I disagreed with his view.

I didn't think I could reasonably disregard the age of the windows and doors here as they had all been fitted in 2015, so some seven years before Mr A's section 75 claim. I agreed that since problems had developed in or around 2022, then these doors and windows weren't as durable as would reasonably be expected and so wouldn't be considered as being of satisfactory quality. This also wasn't disputed by BPF. The issue was therefore whether BPF's settlement offer to Mr A had been fair.

While Mr A wanted BPF to pay the cost of supplying and installing new windows and doors, I didn't think that was a proportionate outcome. These windows and doors weren't new, and had there been no breach of contract, Mr A would have had seven-year-old windows and doors fitted to his property and three years remaining on a guarantee. I agreed with BPF that if it paid for new windows and doors to be installed then Mr A would be placed in a better position when taking into account the enhancement brand-new fittings would have to his property. I appreciated Mr A not having the full cost of renewing the doors and windows reimbursed to him would cause him inconvenience, but I didn't think it was reasonable for the additional cost of having that work undertaken be passed to BPF.

So, I agreed with BPF's view that it being liable for the cost of replacing the windows and doors wasn't a proportionate remedy for this breach of contract. And I agreed that the

approach it took had been in line with the Consumer Rights Act. I thought the appropriate remedy was for Mr A to be entitled to reject the goods and to be refunded the cost. However, I disagreed with the calculation used by BPF to work out a fair settlement for Mr A.

BPF had said that it was fair to deduct use of the windows and doors from the refund and had calculated a value for that using the 10-year guarantee period. In its calculation it had taken into account the compensation paid for an earlier claim by Mr A. BPF had also backdated Mr A's use to 2019 rather than 2022 because that was when the first issue with one of the windows had arisen.

I had looked at Mr A's first section 75 claim and the redress that had been offered. The first claim wasn't only about the window but also about repairs that were required to part of the roof. The cost of repairing the window had in fact been around £250 with the remainder being for fixing the roof. While I didn't think this was a failed repair to the window as such, since the issue now was that the window frames weren't sufficiently reinforced to cope with the triple glazing, I thought it was linked because of the quality problem. So, I didn't think BPF's decision to deduct £1,000 from the cost of the original supply and installation of the doors and windows had been fair.

I also thought that although Mr A had had the use of the doors and windows, that BPF's calculation using the 10 years as the life span of goods was unreasonable. However, I agreed that BPF using 2015 to 2019 rather than 2015 to 2022 for the deduction for use had been fair given the issues that had arisen. Mr A had set out the impact the faulty doors and windows had had on his family and their health and although BPF had only a duty to Mr A, as he was the party to the finance agreement, and not his family, I'd seen it had been a stressful time for him.

Looking at the expected life span of replacement doors and windows, I thought that a period of 20 years was reasonable before they would be expected to fail and need renewal rather than 10. So, I thought it would be fairer to deduct £270 per year for the 2015 to 2019 period.

This would make a new calculation of:

$$4 \times £270 = £1,080$$

$$£6,449 - £1,080 = £5,369$$

I therefore thought that a fair and reasonable redress for Mr A's section 75 claim was for BPF to reimburse him £5,369 plus interest. So, I didn't think BPF had handled Mr A's section 75 claim fairly and I was intending to partially uphold his complaint.

### **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.

Neither party to this complaint has asked me to reconsider any part of my provisional decision. I have, however, still reviewed the evidence and the conclusions that I reached. And having done so, I'm still satisfied that my decision was fair and reasonable.

For the reasons given, I think that requiring BPF to cover the full cost of renewing the doors and windows would have been a disproportionate remedy for Mr A and so would have been unfair. And I also think that BPF, although acting reasonably in allowing Mr A to reject the windows and doors and deducting an amount for use from that reimbursement applied the wrong calculation as set out above.

I think a fair resolution for Mr A's complaint is to partially uphold it and ask BPF to refund the original cost of the doors and windows less an amount for use.

### **Putting things right**

So, for the reasons set out above, I'm partially upholding Mr A's complaint in that I am asking BPF to refund him £5,369 plus interest.

### **My final decision**

For the reasons given, I'm partially upholding Mr A's complaint in that I agree BPF hadn't dealt fairly with his section 75 claim, but I disagree that the redress he had been seeking was fair.

I'm asking Clydesdale Financial Services Limited trading as Barclays Partner Finance to pay Mr A £5,369 plus annual interest at the rate of 8% simple from the date of payment until the date of settlement.

*If Clydesdale Financial Services Limited trading as Barclays Partner Finance considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr A how much they've taken off. They should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 June 2024.

Jocelyn Griffith  
**Ombudsman**