

The complaint

Mrs T complains Clydesdale Financial Services Limited trading as Barclays Partner Finance (“BPF”) handled a claim she brought under section 75 of the Consumer Credit Act 1974 (“CCA”) poorly.

What happened

The background to this complaint, and my provisional findings on it, are set out in my provisional decision, which is appended to and forms a part of this final decision. It’s therefore not necessary for me to go into detail here, but in very brief summary:

- Mrs T ordered a kitchen from a company, “W”, financed by a point of sale loan with BPF.
- A significant number of parts of the kitchen were delivered in a damaged or defective state. Mrs T contacted W and replacements parts were arranged, but the first batches of replacement parts also arrived damaged. Mrs T informed W she was rejecting the kitchen under the Consumer Rights Act 2015 (“CRA”). She raised a claim with BPF under section 75 of the CCA at about the same time, seeking the same outcome.
- Both W and BPF insisted from May 2023 to late August 2023 that the legal position was that Mrs T needed to accept further replacements before she could reject the kitchen under the CRA. It was eventually accepted that Mrs T could reject the kitchen after BPF appreciated that W had cancelled a delivery of replacement items back in May 2023. In July 2023, BPF offered Mrs T £150 compensation in respect of service failings which had occurred up to that point.

In my provisional decision I made the following key findings:

- Mrs T had been entitled to reject the kitchen from 4 May 2023, and had done so as of 7 or 8 May 2023. It had been agreed between W and Mrs T, that W would replace the damaged and defective parts. Under the CRA, a “replacement” had taken place when W delivered the first batch of replacement parts. When it turned out these were also damaged, Mrs T had been entitled to reject the kitchen under the CRA, which she did.
- BPF had been of the view that Mrs T needed to wait for all the parts to be replaced before she could reject the kitchen. It told her this repeatedly, which wasn’t correct. It also told Mrs T that its legal responsibility was only to make sure she received repaired or replacement parts, which was also not correct.
- While W had provided conflicting information to BPF, and this had been a cause of delays in resolving matters for Mrs T, a more important cause had been BPF’s mistaken belief that Mrs T was obliged to continue accepting replacement items. I thought the claim could reasonably have been honoured in May 2023, but it had taken nearly a further four months for rejection of the kitchen to be agreed. In the

meantime, Mrs T had been living with the not insignificant inconvenience of having numerous defective kitchen parts stored in her home, and the way the claim had been handled had caused her considerable wasted time, annoyance, and frustration.

- I considered the £150 compensation already offered to Mrs T wasn't sufficient to reflect the non-financial impact of BPF's claims handling, and said I was minded to award a further £200 compensation in respect of this.

I asked both parties to the complaint to provide any further submissions for me to consider by 12 June 2024.

BPF responded to say that it accepted an error had been made when dealing with Mrs T's claim and agreed to pay the additional £200 compensation. It said it had addressed a shortfall in its understanding since dealing with Mrs T's claim, and was confident this would avoid similar scenarios occurring in the future.

Mrs T said she was pleased to see that I'd considered additional compensation was due, and to receive confirmation that her rights hadn't been upheld. She expressed scepticism that BPF would change its policies to avoid similar situations with other customers. She also noted that she had been unable to order a new kitchen until the contract with W and BPF had ended, and that inflation had meant prices had increased in the meantime. She asked that an award be considered to reflect the increase in costs.

The case has now been returned to me to review once more.

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 thank both parties to the complaint for their submissions following my provisional decision. I note that neither party has disagreed with my provisional findings on BPF's claims handling and the errors made during that process. If they do disagree, they haven't made this explicit or explained why. In light of this, and on further review of the evidence I considered when making my provisional decision, I see no reason to depart from those findings, which remain as explained in my appended provisional decision.

Mrs T has asked that additional redress be considered to reflect the increase in the cost of sourcing a new kitchen between October 2022 when she ordered from W, and late August/early September 2023, when the contract was brought to an end. Mrs T notes that inflation between these two dates was significant.

I've thought carefully about this, and I think Mrs T would have an uphill battle quantifying a financial loss suffered (in terms of needing to pay more for a kitchen) as a result of the delays in BPF honouring her section 75 claim. It would need to be shown that any increase in price was because of the delays having caused prices to have increased by a specific amount by the time the claim had been settled, and not for other reasons such as a different supplier happening to charge different amounts for similar products. I agree that – overall – inflation has been significant over the last few years. However, between May 2023 (when BPF ought to have honoured the claim) and September 2023, it's unclear to me whether

there was much (if any) inflation in the prices of the items which would make up a kitchen.¹

Taking this into account, I don't think it would be reasonable to make an additional award in respect of an increase in the price of the new kitchen. It follows that my directions to BPF will remain as they were in my provisional decision.

My final decision

For the reasons explained above, and in my appended provisional decision, I uphold Mrs T's complaint and direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to pay her an additional £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 11 July 2024.

Will Culley
Ombudsman

¹ *Consumer Price Inflation, UK: May 2023 to September 2023 series*, Office of National Statistics. Furniture and household goods appeared to show slight deflation between these months overall. Kitchen units and appliances are included in the basket of goods which make up this category (see Annex A of the CPI basket of goods and services 2023).

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I'm minded to reach slightly different conclusions to our investigator, and so I need to give the parties to the complaint an opportunity to comment before I make my decision final.

I'll look at any more comments and evidence that I get by 12 June 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mrs T complains Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") handled a claim she brought under section 75 of the Consumer Credit Act 1974 ("CCA") poorly.

Mrs T has occasionally been represented in her complaint by her husband, Mr T. When I refer to things said or done by Mrs T then this should be taken to include things said or done by Mr T as well, unless otherwise specified.

What happened

Mrs T ordered a kitchen from a supplier I'll call "W", on a supply-only basis. It was not inexpensive, costing more than £28,000. Mrs T funded this price through partial payments by credit card (since refunded) and a £25,204.20 interest free loan from BPF. The loan was arranged by, and paid to, W.

The kitchen was delivered on 20 April 2023. It is now common ground that various component parts of the kitchen were damaged or defective, and this had become apparent by 23 April 2023 when Mrs T removed the packaging.

Concerns were expressed to W the same day. Reassurances were given and replacement items were promised. Multiple replacement items were ordered by W, and it appears these had different delivery times. Some replacement items were delivered on 4 May 2023, and these were also discovered to be damaged when Mrs T opened them on 6 May 2023.

On either 7 or 8 May 2023 Mrs T wrote to W reporting that there were problems with the replacements she had received also, and that she was now moving to reject the kitchen under the Consumer Rights Act 2015 ("CRA"). She raised a section 75 claim with BPF on either 9 May 2023 or 11 May 2023, seeking the same outcome.

What then followed was a considerable amount of correspondence. W and BPF had agreed, by 29 August 2023, to accept Mrs T's rejection of the kitchen. So to this extent, her section 75 claim has been resolved. However, Mrs T remains very unhappy with the manner in which BPF handled her claim. I understand she feels BPF provided poor service overall, appeared to favour W's evidence over her own, and forced her to repeat herself multiple times.

At the time of writing, our case file had reached over 500 pages, which is rather large given the straightforward nature of the underlying issues. Rather than give a detailed account of everything that happened, and bearing in mind the informal nature of the Financial Ombudsman Service, it has been necessary for me to summarise events. This isn't because I don't consider specific emails or calls important, but because I don't think it's

necessary to comment specifically on them to arrive at a set of findings which is fair and reasonable.

After Mrs T had asserted that she was rejecting the kitchen, W did not react positively. It informed her that it wasn't accepting her rejection because "internal processes must be followed". W said it was going to speak to Trading Standards – because it felt that it had already offered Mrs T a fair remedy by replacing the damaged and defective items, and it considered she hadn't given it a fair opportunity to do this.

BPF and Mrs T were in regular communication early on in the claim. BPF's case handler was communicating with W also. It's apparent BPF was getting conflicting accounts of events from both sides. By 30 May 2023 W had adopted a position it maintained until August 2023, which was that it was not prepared to accept a rejection of the kitchen and it wanted to be given what it considered to be a fair chance to replace the damaged or defective items as had been originally agreed to by Mrs T. It claimed to have adopted this position after seeking advice from Trading Standards.

By 15 June 2023 BPF were aware of W's position and asked Mrs T for her comments on this. She responded reasserting that she wanted to reject the kitchen. On 3 July 2023 Mrs T advised BPF that she'd received a refund from a credit card company, and asked for an update on the claim. It appears W wrote to BPF at around the same time, arguing that Mrs T was unreasonably preventing it from replacing the damaged items, and had acted in a way which was inconsistent with rejection of the goods.

BPF told Mrs T on 4 July 2023 that it was escalating things internally with W, but that it had been told she had agreed to receive more replacements on 11 May 2023. It asked for Mrs T to comment. Mrs T replied to explain that damaged or defective replacements had been received on 4 and 11 May 2023. She said a Mr M at W had then cancelled a third replacement delivery.

BPF said it would send on Mrs T's comments to W. It questioned the claim raised with her credit card company, stating she was only meant to use one alternative dispute resolution method. It appears Mrs T and the case handler at BPF spoke on 6 July 2023 and it was at this point that Mrs T complained about how matters were being handled. On this call, and in a follow-up email, BPF informed Mrs T that legally she needed to let W deliver more replacements before she could reject the kitchen. Mrs T thought this was absurd and noted that she considered W had accepted the contract had come to an end because it had cancelled the last replacement delivery.

On 17 July 2023 BPF sent a final response to Mrs T in relation to her complaint. It said the section 75 claim was still ongoing but apologised for instances of poor service, such as failing to answer questions asked by Mrs T. It sent Mrs T £150 compensation in respect of this. Mrs T contacted the Financial Ombudsman Service the same day to confirm she wanted us to consider her complaint.

It wasn't until 5 September 2023 that we were able to assign an investigator to Mrs T's case, and in the meantime her communication with W and BPF continued. She involved her MP, who wrote to BPF on 26 July 2023. She also made Subject Access Requests of both W and BPF.

On 30 July 2023 Mrs T sent BPF a detailed email which, among other things, contained evidence obtained from W, that W had been responsible for the cancellation of the last replacement order. It also contained evidence that the reason the order had been cancelled was because the replacement items were inspected prior to despatch and *also* found to be defective or damaged. There was more to-and-fro between Mrs T and BPF, and it appears

BPF maintained its previous position, which was that Mrs T needed to accept further replacements. On 14 August 2023 BPF asked Mrs T how she was aware the last replacements were not delivered was because they were damaged, and Mrs T replied noting that she had already provided that information by email and phone, but repeated it again.

BPF wrote to us on 29 August 2023 to say that rejection of the kitchen had been agreed and Mrs T had accepted this. It also wrote to her MP on 5 September 2023 to say the same, adding that the loan funds would be returned and the loan cancelled. In the letter to the MP, BPF essentially accepted Mrs T's account of events. It wrote to Mrs T on 10 September 2023 to confirm the outcome of the section 75 claim was that rejection of the goods had been agreed.

Mrs T remained unhappy, questioning why BPF had written to her MP and then not told her about the outcome for another five days, and why it had given her MP a much better explanation than the one it had given her. BPF apologised for the impersonal nature of the communication it had sent to Mrs T, and explained that W had been telling them she had not given them a chance to deliver the replacement items, and it had taken them a while to understand that W had been the ones who had cancelled the replacements.

In the meantime, one of our investigators had begun looking into the case. After carrying out an investigation he issued an assessment on 17 January 2024. In this he acknowledged that BPF's handling of the section 75 claim could have been better, but ultimately he didn't think compensation in addition to the £150 already paid was warranted. He noted that Mrs T had needed to put in time and effort, but that delays in reaching the right outcome had been caused by W providing inconsistent and misleading information. It wouldn't be fair to hold BPF responsible for that. He added that he couldn't ask BPF to provide compensation for stress and inconvenience caused by W's failings.

Mrs T didn't accept our investigator's assessment. She considered she'd been given incorrect information by BPF throughout, for example about the CRA. She said she'd been completely ignored when trying to exercise her right to reject the defective goods and BPF's handling of the matter had essentially made it look like they were taking sides and not believing her, and she'd unnecessarily had to go to great lengths to persuade them.

After considering Mrs T's further comments, our investigator's view was unchanged. He noted that BPF's responsiveness during the process of the claim hadn't been unreasonable, and that section 75 claims could be complicated and this could explain BPF asking for the same information multiple times. He remained of the view that W providing incorrect information had been a major factor in how long it had taken for rejection of the kitchen to be accepted.

No agreement could be reached, and so the case has now been passed to me to decide.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide provisionally what's fair and reasonable in the circumstances of this complaint.

Section 75 of the CCA allows consumers who have purchased goods using certain forms of credit, to hold their lender jointly liable for any breach of contract or misrepresentation on the part of the supplier of the goods or services, subject to certain criteria being met.

Before going on to consider BPF's claims handling, I think it's necessary to answer a question which lies at the heart of Mrs T's claim against W, and therefore her claim against BPF under section 75 of the CCA. That is the question of whether or not Mrs T was obliged

to continue accepting deliveries of replacement items, rather than being able to reject the kitchen as a whole. W and BPF maintained, for many months, that this was what Mrs T had to accept.

The answer to the question can be found in the CRA. The CRA makes it an implied term of contracts for the supply of goods, that the goods supplied will be “satisfactory quality”. The CRA provides a package of remedies to consumers who have purchased goods which are not satisfactory quality. These include the right to reject the goods for a refund and treat the contract as being at an end, the right to replacement or repairs, or the right to a price reduction, depending on the particular circumstances.

At the time Mrs T first expressed her concerns to W about the goods being damaged on delivery (which meant they were not satisfactory quality and W was therefore in breach of contract), she would have been entitled to reject all the goods and treat the contract as being at an end. This is known as the “short term right to reject”. It appears she was persuaded by W to accept replacement items instead at this point, which is permissible under the CRA. However, she would have maintained her right to reject the goods if the replacements were also not satisfactory quality.

It appears W and BPF considered that, until all the defective or damaged items had been replaced, Mrs T was unable to exercise her right to reject the goods. In other words, the process of replacement was still ongoing, and their view was that Mrs T needed to wait for that process to complete. Having considered the wording of the CRA carefully, I don't think that is correct. The relevant part of the CRA says the following:

“(6) There has been a repair or replacement for the purposes of subsection (5)(a) if—

(a) the consumer has requested or agreed to repair or replacement of the goods (whether in relation to one fault or more than one), and

(b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement.”

W delivered goods to Mrs T, in response to her agreement to accept replacement items, on 4 May 2023. As far as the CRA is concerned, it appears a replacement had taken place as of that date. It's not been disputed that, when these items were inspected, they were also damaged or defective, so it seems to me that Mrs T was able to insist on rejection of the kitchen from this point.

I can understand what seems to have been W's view – which was that it didn't feel this was particularly reasonable, and that if it had been allowed a bit more time, it could have resolved Mrs T's concerns with the goods. It seems W's strategy in this situation was to try to negotiate, and that's not something it was prohibited from doing. However, I think Mrs T was entitled to insist on rejection at this point as a result of W's breach of contract. I think she had, in essence, rejected the goods as of 7 or 8 May 2023.

Due to section 75 of the CCA, Mrs T was able to hold BPF jointly liable for W's breach of contract. That brings me to BPF's claims handling.

I think it's understandable that BPF – faced with a claim relating to a £28,000 kitchen – wanted to investigate the claim to check that it was valid. That, naturally, involved communicating with the parties involved, and it was receiving different accounts of events from W and Mrs T. It spent some time passing comments from either party to the other but ultimately it appears that it favoured W's position, and insisted that Mrs T needed to continue accepting replacements and that this was the legal position. That appears to have been

wrong for the reasons I've already explained. BPF also told Mrs T, at least twice, that its legal obligation was only to ensure Mrs T received repairs or replacements. This was also wrong, as its responsibilities were not limited to only these narrow remedies.

After Mrs T complained, BPF sent her £150 compensation on 17 July 2023. It's a little unclear what specifically this was for, as the person responding to the complaint referred only to Mrs T not receiving answers to questions she'd asked early in the claims process, and not being given "honesty and respect". Based on Mrs T's correspondence with us, I understand she considers this compensation was sufficient to reflect the impact of any poor service she'd received up to that point. However, she argues that the impact went on beyond this point due to continued poor claims handling. She's referred to, among other things, having to live for months among damaged and defective kitchen parts stacked up in her house, and not being able to invite guests around.

Having looked over the history of BPF's communications with Mrs T, overall I do not think there was much wrong with the frequency of these, or the tone used. I wouldn't necessarily expect a case handler at a financial business to be in a position to reply to emails straight away, for example. On the other hand, there were some instances of poor service, such as changes in case handlers not being communicated and the same information being asked for multiple times. I got the impression that BPF's staff were well-meaning and wanted to try to find a resolution, but were mistaken about what Mrs T was entitled to under the CRA and were more inclined to accept W's position. Given Mrs T was clear about what she thought her rights were and how she was exercising them, I can understand how she would have found BPF's stance very frustrating, especially while she had a house full of faulty items.

BPF has argued that section 75 claims can take time to resolve, and this is true. Claims can be complicated. This claim, however, was not very complicated in my view. From early on in the claim process, BPF were aware that there had been a delivery of damaged or defective items, that at least one delivery of replacements had also contained damaged or defective items, and that Mrs T was asserting her right to reject the goods. The claim could reasonably have been honoured at that point. While I partially accept that W providing misleading information contributed to delays, I think a more important factor was BPF's mistaken belief that Mrs T was obliged to continue accepting replacement items.

I would attribute the majority of the delays between early May 2023 and September 2023 therefore, to BPF's poor claims handling. This has caused Mrs T considerable wasted time, annoyance and frustration. She's had to live with the inconvenience of storing numerous faulty kitchen parts at her home.

Mrs T has expressed a desire to see BPF face sanctions to ensure they treat customers fairly in future. That isn't a power that I have, but I am able to award compensation for the non-financial impact Mrs T has experienced as a result of BPF's claims handling. I don't think £150 is sufficient to reflect this, and I am inclined to award a further £200.

My provisional decision

For the reasons explained above, I am currently minded to uphold Mrs T's complaint and direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to pay her an additional £200 compensation.

I now invite both parties to the complaint to provide any further submissions they would like me to consider, by 12 June 2024.

Will Culley

Ombudsman