

## The complaint

Mr R complains Clydesdale Financial Services Limited trading as Barclays Partner Finance has not met its obligations in regard to fixed sum loan agreement taken to fund a kitchen installation.

## What happened

In July 2022 Mr R entered into a Fixed Sum Loan Agreement with Clydesdale to finance the purchase of a supply only kitchen from a company I'll call 'Firm W'. Mr R wanted a new kitchen but to follow the same layout/floorplan as his previous kitchen. In August 2022 the kitchen was delivered and Mr R's installers started to install it. Within a short period of time it became apparent there was a litany of issues with the goods supplied in that the design plan wasn't a true reflection of the kitchen space the kitchen was to be installed into. And thus the units and equipment supplied didn't fit properly, leading to problems such as units sticking out a distance further than they should, a door not being able to open properly, a boiler not being properly accommodated, electric sockets not being properly considered, an oven being too low and various other issues with the quality of the goods supplied. So Mr R contacted Firm W and it offered in an email of August 2022 to take steps to rectify the matter as it noted that the Surveyor had incorrectly measured the kitchen "*making the whole kitchen out*". It also noted that some of the issues were only resolvable by doing a "*redesign*". Firm W then said to Mr R that it was happy to supply some further units and pay for some works but didn't feel the kitchen needed a redesign. So Mr R took his complaint to Clydesdale. Clydesdale echoed Firm W's position stating the offer was fair. So Mr R brought his complaint to this service.

Our Investigator considered the matter and felt that Clydesdale hadn't done enough. Our Investigator found that Clydesdale should unwind the whole matter and pay for Mr R's consequential losses. Mr R accepted this assessment. Clydesdale then pointed to a number of issues with the assessment but nevertheless then offered an enhanced new offer to Mr R via this service. Mr R rejected the Clydesdale offer. As the parties still disagreed then this dispute came to me to decide.

In May 2024 I issued a provisional decision upholding Mr R's complaint. Mr R accepted my decision. Clydesdale has chosen not to respond within the timescale set out.

## 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.

As neither party has chosen to dispute my findings in my provisional decision I see no persuasive reason to deviate from the rationale and findings therein. As a consequence it is my decision that this complaint is upheld and I direct Clydesdale to put the matter right as I've set out. I now repeat my findings from my provisional decision save for minor adjustments to reflect this being my final decision and a couple of comments at the end of my decision to cover off Mr R's comments.

Mr R wanted a new kitchen mirroring the layout of the kitchen he had previously, which I've seen as he's supplied photographs of it. Mr R has what Clydesdale and Firm W refer to as a 'supply only' contract because Mr R says Firm W couldn't provide fitters in line with the timeline he wanted for the kitchen installation. The process that took place here in essence was an initial discussion between Firm W and Mr R where Firm W go through a sales process which includes it a providing a survey service followed by a design of the kitchen based upon the kitchen space in Mr R's home. The plans for the design process go to Mr R for confirmation of the measurements and units to be provided and he is required to check those plans. Once he's confirmed the plans Firm W says it supplies those kitchen goods (units, appliances etc) based on the plans confirmed and that's where its responsibility ends and the onus for the installation of those goods sits with Mr R's installers. Firm W's position is essentially that Mr R got what was in the plans, but as a gesture of goodwill it his happy to provide some units and appliances in an attempt to make good the kitchen along with a payment to cover the various costs of installing those items and a gesture to represent his getting items which didn't comply with what was originally agreed but cannot be provided due to the circumstances of the kitchen design.

Mr R has said "(Firm W) *are not only in breach of contract but have also mis-sold this kitchen to us. We now realise that (Firm W's) Designer's had deliberately taken the boiler and electrical sockets off the plans, changed the doorways, changed measurements, all to make and show us a kitchen that fitted perfectly to get a sale. (Firm W) has never acknowledged the designer's mistakes and errors.*"

In essence what Mr R is saying is that Firm W misrepresented to him from the beginning of the sales process what it could provide him for his kitchen space and that had he known what he was to get was significantly different from the original plan (and what the offer on the table from Firm W/Clydesdale would make it now) then he wouldn't have agreed to make the purchase or take the finance to fund it. Mr R makes this clear as he says he was "mis-sold" and indeed makes allegations of deliberate actions by Firm W to secure the sale knowing that the kitchen being sold couldn't fit his kitchen space as per the plans provided.

I've considered the original plans from Mr R's first discussions with Firm W and I can see the boiler is indicated and the door is indicated as swinging into the kitchen. In the final contract plan the boiler is missing and the door swings out away from the kitchen space. In the final contract the plans are particularly detailed. Mr R refers to these as CAD drawings, meaning computer aided design drawings. It seems likely from what I can see that such computer software was used to create these drawings. And such software commonly has the dimensions of items such as kitchen units and appliances incorporated into the software in order to minimise errors by the designer. But it is of note that the removal of the boiler and the changing of the door swing creates extra space in Mr R's kitchen area which isn't particularly spacious to my mind, there certainly isn't a surfeit of space to work with. It seems likely that had the boiler and door-swing been shown correctly on the CAD drawing the software would have prevented the kitchen being planned as the floorplan of Mr R's previous kitchen as he required due to the combination of the kitchen space available, the size and dimensions of the units and appliances to be installed and the particular circumstances of the kitchen space such as sockets, outflows, boiler etc. Mr R is correct in his observation that Firm W have not properly addressed this. I should also add that it hasn't provided any comments from any members of staff in relation to what was said to Mr R during the original sales process. I think its likely he was told that Firm W could replicate the floorplan/layout required and I think this was a false statement of fact. And the CAD drawings and the removal of key aspects of Mr R's kitchen space from the final drawings support this.

I've considered Clydesdale/Firm W's offer. I note the following from Clydesdale's email to this service of February 2024. Its offer includes the following comments: it "*will also provide £50 as a good will gesture for accepting a smaller unit*", "*Units 8 & 9 (Kitchen Door)*" – (Firm

W) to supply both of these units in flatpack so that Mr R's installer can cut them down at the back and reduce the depth, Wren do not manufacture shallower unit", (Firm W) "are happy to offer £100 for Mr R to have this socket moved to the left by an electrician".

Mr R was buying a new kitchen of a specific design wanting it to follow the floorplan of his original kitchen. Clearly buying whole units to be installed as per their normal installation requirements is significantly different to buying new units which need to be "cut down" from their normal specifications. And the fact that Firm W are noting that they need to be cut down is further evidence that what Mr R wanted couldn't be provided.

I've also considered the email from Firm W dated August 2022. I note it demonstrates to me significant failings with the design done by Firm W prior to Mr R agreeing to the contract. It states the following:

*"Surveyor incorrectly measured the kitchen putting all units out, making the whole kitchen out. This issue looks to only be resolvable through a redesign."*

*"Surveyor missed electrical points near fridge/freezer so the points are half covered. This issue looks to only be resolvable through a redesign."*

*"If it doesn't go far enough (the offer made) I can contact the showroom and ask them to contact you for a redesign of your kitchen space and resolve the issues from scratch"*

I've also considered the independent report commissioned by Mr R on the matter and I note some of its observations:

*"The boiler in Tall Tower (11) is showing as missing on (Firm W)'s final plan dated 17 July 2022, but was showing on the original plan dated 10 May 2022, due to this designer error and the boiler being taken off the plans, the boiler runs into the next tower (12) causing the boiler not to be central and hard to service and is in my opinion a health and safety issue."*

*"Tall Tower (11) due to the boiler being in that tall tower, there is no practical way that the ironing board will fit in that unit as plan."*

*"Due to designer error, electrical sockets are missing of the plan, so the F/F tall tower overhangs the electrical sockets which I believe were advised to stay in position and these are now half covered."*

*"This tall tower also overhangs, and the door is showing as incorrect on the plans dated 17 July 2022 changed by the designer to show the unit fitted, it is the wrong way round on the plans which also will not open fully and clashes into the unit but was showing the correct way round on the original plan dated 10 May 2022."*

*"Many damaged, missing and incorrect items sent:*

*Corner Base Unit (1)-Corner posts (1) on Corner Base a total of 3 where sent and received damaged. Inside L/FI Door on corner base at the top is badly chipped and will eventually delaminate, also halfway down the door is chipped.*

*2 Drawer Flob Base (6)-The top drawer R/FI side, the glass side panel at the top is chipped and sharp. The bottom drawer L/FI side, the glass side panel near the top has a small chip. 2 Drawer + 1 Internal Drawer Base (3) The top drawer is unstable.*

*Tall Tower (8) The top door is delaminating at the bottom of the door.*

*Fridge/Freezer Tall Tower (14) The top door is delaminating at the top of the door.*

*Grey Internal Shelves-There are various shelves that have chips and scratches on them.*

*Plinths-There are chips on some of the plinths these have not been fitted."*

Having considered this independent report it is clear the goods provided which are supposed to be new are not free from minor defects as would be expected under the Consumer Rights Act 2015 (CRA for short). So I'm satisfied that the offer from Clydesdale currently on the table is not only unfair due to it not covering these independently found issues with the

goods supplied, it also doesn't address Mr R's fundamental argument that he was misrepresented into a purchase on the basis that Firm W would provide a kitchen based on his original floorplan which it couldn't fulfil. In essence it made a false statement of fact which he relied upon to his detriment. If Firm W had been factual in its representations to Mr R from the start I think it likely that Firm W and Mr R would never have got to the point of actually signing a contract as Firm W would have made clear it couldn't provide what he wanted. So all of Firm W's arguments about how he signed for these (unsatisfactory quality) goods fall away.

It is also clear from Firm W's offer that the kitchen units provided with this kitchen are not the depth required by the plan Firm W created for this kitchen space. Furthermore it is also clear that the offer requires Mr R to accept a number of changes from what the original plan in the contract set out which clearly is significantly different from the original illustrations and the plan in the contract and even more different to what he actually wanted. As a consequence it is clear to me that the offer currently available is not fair.

I've also considered the contract Mr R signed on 16 July 2022. It is of note that this is a substantial document running to 29 pages including plans for the kitchen across pages 3 to 8 and a substantial amount of technical detail about the goods to be supplied. I note that it includes a point on page 9 which states that on the 10 May Mr R agreed to the following term:

*"The customer confirms that any visual imagery is for illustrative purposes only. All customers should refer to their annotated plan, invoice and showroom samples for actual cabinets and products."*

However as I've described had the kitchen not been misrepresented to him from the start he'd never have had the opportunity to sign that document as he should have been informed that the kitchen design he chose couldn't meet the specifications of the kitchen space he had and the requirements therein. So although Firm W has repeatedly pointed to Mr R signing the contract here I'm satisfied that if Firm W hadn't misrepresented this kitchen to him through the discussions Mr R had with Firm W's representatives (outside of the visual imagery referred to) that it would not have got to the point of signing this contract and thus that term doesn't make a difference.

Firm W has made the argument that such a redesign is a substantial inconvenience to the various parties including Mr R and that its offer is fair. I disagree. The parties wouldn't be where they are had it not been for the representations made by Firm W from the beginning. It has repeatedly sought to rely on the requirement in the contract for Mr R to be responsible for the contract he signed and the specifications therein. But has chosen never to address the surveying flaws that are so evident here that its own employees make clear that starting again is a fair solution to the matter. Firm W points to having made substantial representations on the matter and having made an offer. However Firm W doesn't have the obligations here, Clydesdale does, such as considering such a claim fairly. And I'm satisfied Clydesdale's position is not fair. I'm satisfied that Mr R was misrepresented into this contract, that the goods delivered were of unsatisfactory quality and that the offer on the table doesn't fairly resolve this matter. Accordingly I it is my decision Clydesdale should remedy the matter in the following manner.

In response to my provisional decision Mr R has commented about the costs of removing the kitchen. My redress makes clear that Clydesdale is to bear the costs of removing the kitchen. I appreciate that this has been distressing for Mr R but in this situation Clydesdale is only responsible for financial losses suffered directly from the breach or misrepresentation flowing from Firm W. It is not responsible for broader issues like the customer service

provided by Firm W or the inconvenience therein. And Mr R's loss of use of the monies spent is remedied by the award of interest as I've described.

### **Putting things right**

- End the agreement with nothing further to pay for Mr R
- Refund all payments made, including the deposit, along with 8% simple interest from the date of each payment to the date of settlement
- Remove the kitchen Firm W supplied at no cost to Mr R

And also to:

- Refund the cost of the Mr R's installer, plumber, and electrician for the days on-site
- Refund the cost of the additional products purchased from other retailers that is the worktops and windowsills which cost £2644 (this is assuming Mr R hasn't returned them to the retailer already and obtained a refund or been able to sell them on)
- Pay 8% simple interest from the date of each above payment was made (that is payments to those tradespeople and product providers) to the date of settlement.

I only direct Clydesdale to refund the costs described (installer, plumber, and electrician) for which Mr R can provide evidence such as invoices or order confirmations.

### **My final decision**

It is my decision that this complaint about Clydesdale Financial Services Limited, trading as Barclays Partner Finance, should be upheld and resolved as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 July 2024.

Rod Glyn-Thomas  
**Ombudsman**