

complaint

Mr M complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF"), mishandled his claim under Section 75 of the Consumer Credit Act 1974 ("S75"), for issues with a fitted kitchen that had been purchased via a fixed sum loan.

background

In August 2018 Mr M decided to purchase a new kitchen from a retailer, and it was also agreed that the retailer would arrange for it to be fitted. Mr M paid a deposit and arranged a fixed sum loan with BPF for the balance.

The work to fit the kitchen started in November 2018, but Mr M raised complaints about the wrong hob being supplied and fitted; the utility sink not being fitted square; holes inside the cupboards where the fitter had made a mistake about which side the doors should be hung; blemishes on the worktops, missing back panels in the cupboards under the sinks; gaps between the worktop and the panels; doors not in alignment and the overhang on the worktop being too short meaning water dripped off it on to the units.

Mr M was also unhappy at the length of time taken to fit the kitchen, that his family had to cope without a kitchen sink for several weeks and that the fitter had to come back several times to refit the work tops. This also meant Mr M had to arrange for a plumber to attend to remove and refit taps. Mr M's back doors were also damaged during a delivery of units.

Mr M complained to the kitchen retailer, and to BPF, seeking compensation for the distress and inconvenience caused over the time it had taken for the kitchen to be fitted and for the kitchen to be put right. He also wanted the hob to be changed to the one he said he'd ordered and for his deposit to be reimbursed.

BPF opened a claim, under S75, for Mr M in February 2019. BPF liaised with the retailer over the hob and the other issues raised by Mr M, and the retailer made Mr M an offer of £1550 in full and final settlement of his complaint in August 2019.

In September 2019 Mr M made a complaint about the kitchen to the Furniture Ombudsman and BPF said that as two complaints couldn't be open at the same it would close its one until an outcome was reached with the Financial Ombudsman. However, BPF offered Mr M £150 as compensation for the distress and inconvenience of having to make a complaint as it said it was accepted there were issues with the kitchen.

Mr M was unhappy at the response of BPF and so complained to this service. This service started to investigate, during which the Furniture Ombudsman concluded its investigation and issued its decision on Mr M's complaint. The Furniture Ombudsman issued a detailed response to the matters raised and concluded that the offer by the retailer was fair and reasonable in all the circumstances. BPF said in light of the findings of the Furniture Ombudsman it would now close the S75 claim made by Mr M.

Mr M was unhappy at the decision reached by the Furniture Ombudsman, he disagreed with the findings and said that no site visit had taken place. He said it would cost considerably more than the offer from the retailer to fix the issues with the kitchen. The retailer re-visited Mr M's home to inspect the kitchen and said that it wasn't prepared to do more and that its offer was fair.

Our investigator upheld Mr M's complaint about BPF and his S75 claim. She said that she didn't think BPF's decision that the retailer's offer adequately resolved Mr M's complaint was fair.

Our investigator said that she was unaware of the guidelines used by the Furniture Ombudsman when considering a complaint from a consumer, but the issue for this service was whether there had been a breach of contract. She said there was an implied term that goods would be fitted with reasonable care and skill and the consumer can expect goods to be free from minor defects. Looking at the evidence, and the comments from the Furniture Ombudsman, there were gaps and minor blemishes present and this wasn't something that this service would expect to see.

Our investigator thought that it had been reasonable for BPF to await the outcome of the Furniture Ombudsman's decision, but it hadn't done enough to fulfil its obligations under S75. She said it needed to do more to remedy this and this could be by either:

- Giving the retailer one more opportunity to attend Mr M's home and put things right
- Offer more in the way of a price reduction on the kitchen to reflect the number of times the retailer had attempted to rectify issues
- Paying Mr M the amount needed to put things right via a third-party contractor.

BPF disagreed with the view reached by our investigator. It said the Furniture Ombudsman was considered an independent expert in this area, and its ruling should carry more weight than that given to it by the investigator. It also said that this service had acknowledged the expertise of the Furniture Ombudsman in another case.

As the parties were unable to agree the complaint was passed to me and I issued a provisional decision along the following lines.

I'd seen that a large amount of evidence has been provided by Mr M in respect of his complaint. This included photographs and a report from a third-party company setting out what, in their opinion, required to be redone and the cost of that work. I'd also seen that the issues raised by Mr M with this service were the ones that were raised with Furniture Ombudsman.

Mr M made a claim under S75 to BPF for compensation and for the kitchen to be put right. My role wasn't to decide BPF's liability under S75 but, instead, to consider whether BPF had acted fairly when dealing with Mr M's complaint. I also couldn't look at allegations of poor service by the retailer or its employees, complaints about that would have to be made to the retailer.

S75 says that, in certain circumstances, the borrower under a credit agreement (Mr M) has an equal right to claim against the credit provider (BPF), if there has been either a breach of contract or misrepresentation by the supplier of goods and services.

For a credit provider to be held liable under S75 certain provisions must be fulfilled. These are:

- The total value of the goods or services purchased is not less than £100 and does not exceed £30,000 and

- An unbroken debtor-creditor-supplier chain to the transaction exists, and
- There is a clear breach of contract or misrepresentation by the supplier.

Here I thought it was agreed that the first two conditions had been met. And Mr M was clearly dissatisfied with the quality of the kitchen that had been fitted and had raised a number of issues such as blemishes on the worktop and holes wrongly drilled when the doors were fitted to the units. He had provided photos to show the areas he was unhappy about.

Mr M complained to the Furniture Ombudsman while his claim under S75 was being investigated by BPF. BPF had relied on the Furniture Ombudsman's view of the quality of the kitchen when deciding what action it was required to take in regard to Mr M's claim.

Mr M was unhappy at the view reached by the Furniture Ombudsman and felt it hadn't fully looked at the issues he raised, nor did it conduct an independent inspection of the kitchen. I'd seen that the Furniture Ombudsman was satisfied that some of the aspects of the kitchen were not as would reasonably be expected, but it also found that the compensation, already offered by the retailer, was fair and reasonable in the circumstances.

As the Furniture Ombudsman is recognised as an alternative dispute resolution organisation, I didn't think I could reasonably dismiss the view it had reached. Nor did I think that it would be appropriate and fair for me to act as an appellant jurisdiction for consumers unhappy with outcomes from that organisation, unless there was a particular reason why, such as evidence had come to light that wasn't available before. The views of the Furniture Ombudsman become legally binding on the business if accepted by the consumer. Here, everything was considered by the Furniture Ombudsman, and its approach to issues such as compensation for having to take time off work was the same as this service.

As we would be assessing the same evidence as the Furniture Ombudsman, I thought it was reasonable to take into account that the Furniture Ombudsman had already conducted an assessment of the evidence provided by Mr M and reached an impartial and objective view. And I couldn't see any reason to go against what the Furniture Ombudsman had said.

The Furniture Ombudsman found that there were areas where the kitchen installation had not been up to the expected standard. This meant that there was a breach of the contract, as there would be an implied term that the kitchen would be fitted with reasonable care and skill, and the goods supplied were of satisfactory quality. However, this had also been accepted by the retailer who had offered Mr M compensation to reflect the impact of this breach.

As there had been a breach of contract then Mr M's claim under S75 was allowed and I'd seen that BPF had accepted that. It credited back to Mr M £150 for the distress and inconvenience of having to make the complaint but had not offered anything further in light of the view of the Furniture Ombudsman that the compensation, already offered by the retailer, was fair.

I'd seen that the retailer paid Mr M the compensation it had offered and which the Furniture

Ombudsman found to be a fair redress. BPF has said that this is evidence Mr M accepted the outcome and was therefore bound by the Furniture Ombudsman's findings. Mr M said he cashed the cheque as he was concerned this service might not uphold his complaint. I could understand why Mr M had acted as he had, and I couldn't see that he had signed anything to say he agreed to be bound by the Furniture Ombudsman's decision so I didn't think this action would have in itself prohibited this service looking at Mr M's complaint.

However, although I appreciated that this would be of disappointment to Mr M, I wasn't intending to uphold his complaint. I thought BPF had acted fairly in dealing with his claim under S75. It had recognised there was a breach of contract and provided compensation for the distress caused to Mr M in having to bring his complaint. It had also relied on the view of a recognised alternative dispute resolution organisation, which had assessed what would be a fair settlement for the breach in contract and found that the offer of compensation by the retailer was fair and reasonable. The Furniture Ombudsman has already assessed the evidence and given an objective view and I didn't think I had a reason to re-assess that.

BPF has agreed with my provisional decision but Mr M says he is disappointed that I have issued a different decision to that of the investigator. He also says no independent specialist third party company has inspected the kitchen other than the report he arranged.

Mr M says the compensation provided has been inadequate to reflect the distress and time off work he had to take in sorting out the various issues that arose with the kitchen.

My findings

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

I appreciate that my provisional decision is a disappointment to Mr M particularly as it's a different outcome to that recommended by the investigator. But my role is to look again at the complaint and reach a fair and objective decision. Here, I don't think I can reasonably ignore the view that was already provided by the Furniture Ombudsman. That alternative dispute resolution service has looked at all the same evidence that I have been provided with when reaching its conclusions. It has looked at the same issues that we would and considered what would be a fair remedy for the breach of contract.

Mr M is concerned that no third-party specialist has independently inspected his kitchen, but that isn't something this service would arrange. What we would do, and what the Furniture Ombudsman also did, is look at the evidence provided by the parties. I've seen that Mr M had arranged for an inspection and that this report was included in his evidence.

Mr M says that the compensation he has received is inadequate for all the stress and effort he had to put into dealing with the issues that arose when the kitchen was being fitted. However, as explained above, I am not looking at the actions of the retailer but how BPF dealt with Mr M's claim under S75. So, although I do understand this has been a difficult time for Mr M, the issues he would like addressed by compensation aren't ones that I can hold BPF responsible for.

So, looking again at this complaint I haven't changed my view as I think BPF handled his complaint fairly. It accepted there had been a breach of contract and compensated Mr M for having to bring his complaint. It also considered the view of the Furniture Ombudsman and

found that that service's view regarding the compensation offered by the retailer was fair to be a reasonable and fair outcome. For the reasons given above, I'm not upholding Mr M's complaint.

my final decision

As set out above I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 March 2021.

Jocelyn Griffith
ombudsman