

complaint

Mr K's complaint is about the quality of the work when new windows were installed to his property. Finance for the windows was arranged through Clydesdale Financial Services Limited.

background

On 2 October 2016, Mr K signed a finance agreement with Clydesdale for a loan of £1,825, to have windows fitted by a company – S. And on 20 October 2016, Mr K's partner signed a satisfaction notice to confirm that the windows had been delivered and installed. Shortly after, payments for the windows commenced.

Mr K said he contacted Clydesdale to explain that the windows hadn't been installed satisfactorily so he wasn't happy to start making payments. Clydesdale agreed to place a hold on making payments.

S visited Mr K's property three times to do remedial repairs but Mr K was still unhappy with the standard of repair. He contacted Clydesdale again who sent a third party to assess the work that had been carried out. A report put together by the third party confirmed that the windows worked properly, but cosmetically, they were untidy.

Mr K said he no longer wanted S to fix the repairs and put in a claim under section 75 of the Consumer Credit Act 1974 with Clydesdale. A further hold on payments was placed on the account until May 2017 as work was still outstanding. Mr K raised a complaint about the claim and a final response was issued by Clydesdale in February 2017. In its response, Clydesdale offered to cover the cost of the repairs through a company of Mr K's choice and also £100 compensation for the trouble he's been put through.

Our investigator looked into the complaint and agreed that the offer to remedy the situation from Clydesdale was fair in the circumstances. Mr K accepted the investigator's assessment to appoint his own contractor to repair the cosmetic work. Mr K contacted an independent company and received a quote of £3,400 plus VAT in June 2017.

Clydesdale also got a quote from the third party who issued a report previously about the state of repairs. This came out lower (£780 including VAT) than the amount Mr K received. Clydesdale considered the quote alongside its own and because Mr K's was more than the cost of the original loan amount of £1,825, it decided to write the loan off. Clydesdale offered £250 in addition to the £100 offered previously (£350 compensation in total). It also said that Mr K should ask S to pay for the repair of the windows. But as the finance agreement had ended, S didn't agree to pay anything towards the repairs.

Following our initial assessment, Mr K came back to this service as he felt the complaint wasn't resolved by Clydesdale. He thought that Clydesdale:

- Should make the contract null and void; pay the £3,400 for replacing the windows and pay further compensation for the distress caused to him. He felt this would be putting him back to his original position;
- Acted fraudulently by starting the agreement as his partner was forced into signing the satisfaction notice; and
- Should never have told S that the agreement had ended.

A second investigator looked into the complaint and said he didn't think Clydesdale had acted fraudulently. He also said that he thought the offer from Clydesdale to write off the loan was fair. But in his assessment, the investigator asked Clydesdale to include interest on any refunds of payment and offer a further £200 (which would bring it to a total of £550) in compensation for the inconvenience and length of time Mr K had to endure the sub-standard work.

Both Mr K and Clydesdale didn't agree with the investigator's assessment and asked for an ombudsman to make a decision. So the complaint was passed to me.

Mr K said the following:

- Clydesdale should not have contacted S to inform it that the agreement had ended. Had it not done so, S would have agreed to pay for the repairs;
- He was told by a Clydesdale manager in a telephone call that S would cover the cost of repairs and guaranteed this;
- The quote provided by the bank for £780 came from a short visit to his property and the issues weren't looked at properly;
- Clydesdale had an obligation to put him back in the position that he was in; and,
- The further £200 was not a fair amount of compensation for the sleepless nights he's endured.

Clydesdale said:

- It has offered to write off the finance and also offered £350 compensation in total;
- The cost of replacing the windows provided by Mr K was more than the actual loan amount. Mr K's proposal was not financially viable and that's why it decided to write off the loan;
- Mr K had paid the initial deposit and a further two payments for the windows – making the total amount paid to be £227.08. As Mr K has had the benefit of the windows, Clydesdale thought this was fair. It didn't agree that a further 8% interest should be added to each of the payments;
- The offer leaves Mr K with a new set of windows which need only remedial works to be carried out; and,
- It doesn't agree that a further £200 compensation should be made to Mr K.

Since Mr K referred his complaint to us again, Clydesdale offered a further £25 compensation as it listened to the call between Mr K and a manager at Clydesdale. It said the manager incorrectly asked Mr K to send in the quotes and led him to believe that it would cover payment for the repairs. It apologised for this.

I issued my provisional decision on this complaint in November 2017. I said I thought the offer from Clydesdale was fair in the circumstances.

Under section 75 of the 1974 Act, Mr K complained to Clydesdale (as the finance provider) in this case, and about its duty to him as the consumer. As Mr K was unhappy about the quality of the workmanship when the windows were installed and that this would be considered a breach of contract by the supplier – S. A common remedy for a situation such as Mr K's, would be to return the item and refund the consumer. But if the consumer had benefitted from use of the goods, it would be considered fair for the finance provider to keep some of the repayments to reflect this.

There was no dispute in this case about whether section 75 applies. Clydesdale took responsibility for the claim as it's required to do so and made an offer to Mr K. So the issue was that Mr K wasn't happy with the offer.

So I said my decision would only look at whether the offer is fair in the circumstances.

The offer from Clydesdale, as I understood it was as follows:

- Write off the loan amount of £1,825 less the £277.08 that Mr K has already paid; and
- A total compensation amount of £375.

Mr K was right in saying that where there was a breach of contract, we'd usually expect the business to put him back to the position he would have been in, had the windows been installed correctly. And for reasons which are obvious, I said it would be difficult to put back the old windows in replacement of the new ones. And I could see that Clydesdale did agree to pay reasonable costs as a remedy to repair the windows and resolve the outstanding issues. So putting him back in the same position, in this instance, would have meant that Mr K no longer had a loan which he initially agreed to. But Mr K disputed this.

He said Clydesdale ought to pay him for installing a completely new set of windows. He provided a new quote for this but it varied considerably with the quote that Clydesdale obtained. With this in mind and looking at the overall cost viability, Clydesdale wrote off the original loan of £1,825. I thought this was fair in the circumstances. Mr K was clearly dissatisfied with S - the supplier of the windows - and had lost confidence in them. So much so, that even when they came to fix the problems, Mr K wasn't happy and referred to Clydesdale for assistance.

I understood Mr K had been through a difficult period in trying to get this matter resolved. But I took everything into account and thought Clydesdale writing off the loan was the fairest way to resolve this complaint. This would put the matter to an end – leaving Mr K to source new windows from a supplier he was happy with. While he wouldn't have his old windows back, he would have a set of windows which were in working order – although I appreciated, not perfect.

I didn't think Clydesdale needed to refund any payments Mr K had made either – he had the benefit of the windows and in comparison to the amount it agreed to write off, this was fair. And, with regards to the compensation paid, I thought the overall offer to pay £375 was also fair and reasonable.

I noted Mr K thought Clydesdale should not have told S that the agreement had ended. And he said, if it hadn't, S would have agreed to pay for the repairs. I couldn't understand why Mr K was saying he would have wanted S to pay for the repairs. He told us previously that he wanted nothing more to do with S. I took all of this into account and didn't agree that this would have actually made a satisfactory resolution to the complaint as I didn't think Mr K would have wanted to use S anyway.

Clydesdale provided a copy of the call between Mr K and one of their managers. In it, there was nothing that suggested to me that a *guarantee* was provided by the manager that S would do the repairs. But Clydesdale also reviewed this issue and apologised that the communication wasn't correct and paid £25 for the error made.

There was a significant difference between the two quotes. This was because Mr K's quote was to part-repair and part-replace the windows and Clydesdale's one was for remedial

works. The third party report didn't recommend a full replacement but that remedial work was needed to fix the problems.

Overall, I considered everything carefully and thought the offer from Clydesdale was fair and I didn't require it to do anything further.

In response to my provisional decision, both parties replied and further information was provided.

Mr K said:

- We haven't listened to the call where Clydesdale said that S would do the repairs;
- The fact that Clydesdale wrote off the loan meant that they saw merit in the quote he provided and that this was a more accurate description of the works required. On that basis, Clydesdale is liable under the 1974 Act to put him in a position he would've been in.

Clydesdale provided copies of two calls between Mr K and it. Clydesdale said:

- It has actually refunded the two payments and the deposit already to Mr K on 27 June 2017;
- The loan was written off on 3 July 2017;
- Mr K accepted the offer for it to write off the loan and get the repairs done elsewhere in June 2017;
- It provided two call recordings but it doesn't have anything further to provide;
- It's unlikely that there is a call where it would've *guaranteed* that S would do all the repairs;
- Mr K has not paid anything now for the windows and if he has any repairs that are needed, he is free to get these done of his own accord.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided that the offer Clydesdale has made is fair in the circumstances of this complaint.

I appreciate that Mr K believes he should be put in a position he would've been in had the windows been installed satisfactorily. To him, this means that he would be in a position where he has a set of windows which have been fitted and work properly. I understand why he would think this, but I don't agree.

I've already explained in my provisional decision and I re-iterate the point I made in that. Clydesdale is obliged to put right the problems Mr K had with the supplier. It said the windows can be fixed by repair and bearing in mind the difference between the two quotes, it decided the fairest resolution to the issue would be to write off the loan, refund the two payments and the deposit made by Mr K and pay the compensation. I think this is fair and will now allow Mr K to decide whether he wants a new set of windows or repair the existing ones. I agree with Clydesdale this makes business sense as neither party could agree to the cost of repair.

I understand too that Mr K has said there's a call which Clydesdale hasn't provided. But while I appreciate that Mr K feels this is important information, I can't see how this would make a difference on the outcome of this case. He's already told us that he doesn't want S

to do the repairs so even if Clydesdale had guaranteed that S would do the repairs (which I don't have any evidence of), I'm not persuaded this would be the practical solution here.

Overall, I know Mr K will be disappointed, but I think the offer from Clydesdale is reasonable and I don't think it needs to offer anything further.

my final decision

For the reasons explained above, my decision is that the offer made by Clydesdale Financial Services Limited to write off the loan of £1,825, refund the two payments made, refund the deposit and pay £375 compensation is fair in the circumstances of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 April 2018.

**Nimisha Radia
ombudsman**