

complaint

Mr S complains about the way in which Clydesdale Financial Services Limited (trading as Barclays Partner Finance) ("BPF") handled his Section 75 claim.

background

In February 2017 Mr S entered into a credit agreement with BPF to finance some new windows. The total amount initially payable under the agreement was £9,694.06 over a period of 60 months with monthly repayments of £100.77. The amount payable changed when Mr S decided to pay a higher deposit but in any event the agreement was never taken up and no payments have been made by Mr S.

The windows were installed by a third party in May 2017. Mr S wasn't happy with the installation. He refused to sign it off and made a complaint. The supplier/installer produced a rectification sheet which included removing some of the frames and re-plastering.

Mr S says he hasn't been able to get the supplier/installer to return since June 2017. Because the agreement was never taken up, the supplier/installer hasn't been paid by BPF. It started pursuing Mr S directly for payment.

Mr S contacted BPF in September 2017 and a Section 75 claim was logged. BPF says it found it difficult to make contact with Mr S. It took the view that the supplier/.installer should be allowed the opportunity to rectify the installation. In March 2018 BPF issued a letter to Mr S rejecting his Section 75 claim. Mr S wasn't happy with BPF's response and complained to this service.

Our investigator upheld the complaint. He said there was no dispute that the windows weren't of satisfactory quality. He was satisfied that remedial works had been unsuccessful and said that Mr S should be allowed to reject the windows. The investigator said that BPF should refund the balance of the deposit (£686.78) and arrange for the windows to be removed and collected, refund the costs of removing and refitting the shutters, refund the costs of any remedial work and pay compensation.

Initially BPF didn't agree. It said that because Mr S hadn't taken up the credit agreement there was no Section 75 liability. Subsequently BPF agreed that it did have Section 75 liability. But it disagreed with the investigator's suggested redress and felt that the supplier/installer should be allowed the opportunity to complete the remedial works.

my findings

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

In certain circumstances, Section 75 gives a customer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or a misrepresentation by the supplier. In order to uphold Mr S's complaint against BPF, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that BPF's response to the claim under section 75 wasn't fair or reasonable.

It might be helpful for me to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party may have under

Section 75. Rather, in deciding what's a fair and reasonable way to resolve Mr S's complaint I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same conclusion as, for example, a court might reach if Mr S pursued a claim for breach of contract.

Has there been a breach of contract?

The relevant law says that goods must be of satisfactory quality and fit for purpose at the point of supply, and that services must be performed with reasonable skill and care. If this isn't the case, then a breach of contract can be said to have occurred.

I've looked at the available evidence to determine whether the windows were fit for purpose and/or installed with reasonable skill and care. I've had regard to the comments made by both parties and I've looked at the rectification report. The supplier has said that the items requiring rectification are minor and says it hasn't been able to carry out these works because Mr S wouldn't sign the rectification sheet and wouldn't allow it back on site. The report says that some of the windows have been fitted with dummy vents rather than actual vents and that there is damage to some of the frames and boards.

Under the Consumer Rights Act 2015 a business is allowed one opportunity to rectify any faults. It's clear from the rectification report that there are faults. The supplier says it hasn't been allowed the opportunity to put things right.

I've reviewed some of the emails between Mr S and the supplier. These cover the months of June, July and August 2017. Mr S has highlighted a number of issues with the windows. I can't see that the supplier made any attempt to rectify the faults during this time. It was many months before rectification was offered, by which time Mr S had lost faith in the supplier. Based on what I've read I'm not persuaded that the supplier was willing to rectify the faults.

I don't agree with the suppliers comments that the faults are minor. I've got concerns that the dummy vents mean that the property isn't properly ventilated, which could lead to damp issues. The rectification report says that some frames need to be removed. I would class any rectification which involves removing newly installed windows as major.

Based on what I've seen, I don't think the windows have been installed with reasonable skill and care. There are also faults identified with the windows themselves. I think there was reasonable opportunity for the supplier to rectify the faults in June, July and August 2017 but it failed to do so. The relationship between Mr S and the supplier has now broken down so I don't think it should be given the chance to put things right now.

What should the remedy be?

Where breach of contract is established under section 75, I'd expect the finance provider to take steps to put things right as if the breach hadn't occurred.

In this case, I think Mr S should be allowed to reject the windows. He's paid a deposit to the supplier, part of which was paid on a third party credit card and which has already been refunded. BPF should refund the balance of the deposit.

Mr S hasn't made any payments under the agreement so there are no payments to refund. If the agreement has been registered on Mr S's credit file, it should be removed.

BPF must liaise with the supplier to arrange the removal and collection of the windows. This should be arranged at the same time as Mr S arranges for his new windows to be installed so that he's not left without any windows.

If any remedial or cosmetic work is required as a result of removing the old windows, and provided that these are separately itemised by the new installer, BPF should refund these.

Mr S has shutters which will need to be removed as part of the process of removing the old windows and fitting the new ones. BPF should cover the costs of removing and refitting the shutters, provided that these costs are separately itemised by the new installer.

I recognise that having the old windows removed is going to cause some physical inconvenience to Mr S. I'm able to ask BPF to compensate Mr S for this because it's directly linked to the remedy I'm asking it to apply. I think BPF should pay compensation of £500 for the inconvenience that removing the windows will cause.

my final decision

My final decision is that I uphold the complaint. Clydesdale Financial Services Limited must:

- Allow rejection of the windows
- Refund the balance of the deposit (£686.78) together with simple interest of 8% from the date of payment to the date of settlement
- Remove the agreement from Mr S's credit file
- Liaise with the supplier to arrange the removal and collection of the old windows
- Pay for any remedial work necessary as a result of removing the old windows
- Pay for the removal and refitting of the shutters
- Pay compensation of £500 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 March 2020.

Emma Davy
ombudsman