

complaint

Mr N has complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, has continued to chase him for repayment of a fixed-sum loan when he believes it was cancelled within the initial 14-day period.

background

Mr N bought a new boiler in January 2014. This was fitted at the end of January and Mr N signed the fixed-sum loan agreement with Barclays Partner Finance (BPF), as well as a note confirming the installation was satisfactory and that BPF could pay the supplier.

As the boiler then stopped working, Mr N's partner, Miss W, phoned BPF the next morning, before BPF had received any paperwork from the supplier. She told BPF that the boiler was not working and asked them not to pay out any money to the supplier. BPF told Miss W that she needed to speak to the supplier but did confirm they wouldn't pay out any money.

BPF paid the supplier and asked Mr N to meet the monthly payments after being told by the supplier that problems had been sorted. He complained to them that the boiler was never satisfactory and that BPF had not followed their instructions to not pay the supplier. BPF believed that the boiler was satisfactory but did pay him £100 for the way they dealt with his complaint. Mr N sent the cheque back to BPF.

Mr N brought his complaint to the ombudsman service. During the investigation Mr N moved house and ended up selling the boiler for scrap as he felt that he could not sell the property without a working boiler. Our adjudicator did not feel that there was enough evidence to show that the boiler had not performed as Mr N was led to expect or that the supplier had breached the contract. She also told Mr N that she thought he had signed the credit agreement and therefore could not uphold his complaint. She confirmed that BPF's offer of £100 was reasonable.

Mr N and Miss W made additional submissions and asked an ombudsman to consider their complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating upfront that I don't disagree with our adjudicator that there is a lack of evidence to show whether the boiler was working properly or not – particularly since it no longer exists.

That said I don't believe this is the main aspect of Mr N's complaint. He is particularly upset that BPF did not follow his instructions when Miss W phoned them immediately after the boiler was installed.

I have listened to this telephone call between Miss W and a member of BPF's staff and there's no room for doubt about what Miss W wanted to achieve. As she said: *"as long as I know you won't give them any money"*. At that stage BPF had not properly set up the

account as they'd not received the completed paperwork from the supplier and asked her to go back to the supplier, which I know she did.

Mr N's concern is that despite this call, BPF still set up the agreement. In fact Miss W highlighted the possibility in the phone conversation on 1 February that the supplier could still forward the signed paperwork and say everything was fine. I don't know exactly what happened next but I believe BPF set up the agreement because they received the signed paperwork and confirmation from the supplier that any outstanding issues had been resolved. I can find no evidence to show that BPF contacted Mr N to check that he was now happy. If they had done this, I am sure the problems that then occurred could have been resolved.

As I have already stated, there is limited evidence to help me conclude definitively what the condition of the boiler was. I don't doubt Mr N's strength of feeling that it was unsatisfactory but on balance I can't make that conclusion. That said I am satisfied that BPF's service to Mr N was inadequate and believe they should have called Mr N to confirm his views.

On balance as BPF did not make this call, I believe they should give Mr N £250 to compensate for their service and the inconvenience that resulted.

Although I can't conclude whether Mr N was misled about how the boiler would perform, I have looked at another aspect where I believe misrepresentation did take place in this case.

Mr N has undertaken his own investigation into resolving this case. Additional information has shown that he believed that the government grant – provided with this boiler – would move with him when he and Miss W moved house. The facts here are clear and I am satisfied that this is not the case. There is evidence to show that the suppliers did know that Mr N was planning on moving house and I can see no reason why someone would install a new boiler unless they believed there was some payback. I believe that the availability of the grant was misrepresented to Mr N and I am satisfied this was a key aspect leading Mr N to purchase the boiler. I conclude that I can hold BPF liable for this.

I have already confirmed this aspect to BPF and Mr N. BPF is willing to pay back the deposit Mr N paid, along with 8% simple interest, and write off the account balance. I also expect them to amend Mr N's credit record to show that he never entered this agreement.

I know from Mr N that he is happy about this outcome but doesn't consider that to be the full story. He is very concerned about BPF's treatment of him and how they chased him for a debt which he feels he never signed for. Unfortunately this was a consequence of BPF's service error and I believe the compensation of £250 already awarded covers this too.

I know that Mr N feels that BPF should be penalised for their actions but that is not our role. And although he feels that he has been harassed about non-payment of the agreement, I don't agree. I have reviewed the evidence and I believe it's fair that BPF ask him to make payments, by sending letters and making phone calls.

my final decision

For the reasons stated above, my final decision is to uphold Mr N's complaint. I instruct Clydesdale Financial Services Limited, trading as Barclays Partner Finance to:

- cancel Mr N's fixed-sum loan agreement and write off all money due under the agreement;
- repay Mr N's £4,850 deposit, along with 8% simple interest from the date of payment to the date of settlement;
- amend Mr N's credit record to show that he never entered this agreement in January 2014; and
- pay Mr N £250 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N to accept or reject my decision before 18 May 2015.

Sandra Quinn
ombudsman