DRN-3878312

The complaint

Ms S complains that Vanquis Bank Limited ("VBL") refused to meet her claim under Section 75 of the Consumer Credit Act 1974 ("Section 75"). She also complains that it took too long to deal with matters and acted incorrectly in relation to interest on her account.

What happened

In 2019 Ms S used her credit card account to pay, in part, for a kitchen. The contract was made with a kitchen supplier who I will call "W". The contract with W was signed by Ms S's husband alone. But the kitchen was for their marital home which they share. The contract was for the supply of goods only. The goods supplied included kitchen worktops, but under the terms of the contract Ms S and her husband had to provide and check all measurements including for the worktops. W took no responsibility if wrong measurements had been provided. Ms S and her husband were also to arrange for the installation of the kitchen.

Ms S's position is that, at first, W supplied the wrong colour worktops. W agreed to send replacements and did so four further times. But according to Ms S the replacement worktops were either the wrong size and/or damaged on each occasion and she never accepted them.

Ultimately, according to Ms S, she never received the worktops she'd paid for. Therefore, she wanted to return the last set of worktops she received, which are the only ones she has now, and be reimbursed. W did not agree to this. As a result Ms S turned to VBL for a refund instead.

For all of these reasons Ms S indicates that W has breached its contract with her. Under Section 75 Ms S considers she can hold VBL equally liable with W for this breach of contract.

Further, in Ms S's opinion VBL did not deal with her claim and her complaint quickly enough. She considers she has had to pay more interest because VBL "*dragged out*" the matter.

Moreover, Ms S explains that at some points VBL froze interest on her account. But then twice reversed that decision and added the interest without warning. This in turn she tells us took her over her credit limit for the account which then adversely impacted her credit rating.

In addition, Ms S suggests that VBL charged her too much interest, in any event. Added to which at first it did not explain how it had calculated the interest despite the fact that she asked it to, more than once. And Ms S is unhappy that at first, VBL asked her to pay all of the accrued interest (around £400) in one go.

VBL accepted that under Section 75, if there had been a misrepresentation or a breach of contract in relation to the contract with W, which Ms S could hold W to account for, then in principle, she could bring a like claim against it. Therefore it investigated, but it concluded that there has been no breach of contract and therefore Ms S had no valid claim under Section 75.

Moreover, VBL did not agree that it had taken too long to deal with this matter, rather it suggested any delays had been down to Ms S.

VBL did not agree it had not told Ms S about what it was going to do with the interest on her account, neither did it agree that it had charged too much interest. That said, it realised that when it added back the interest to Ms S's account this meant she had a minimum payment

of £400 which she might struggle to pay. On this basis, once Ms S raised this issue, it agreed to adjust her minimum payments to make them more affordable.

Dissatisfied, Ms S complained to our service.

One of our investigators looked into Ms S's complaint. Our investigator did not recommend Ms S's complaint should be upheld.

VBL accepted this recommendation, Ms S did not. In summary, Ms S repeated her previous stance and asked that an ombudsman take a fresh look at her complaint.

I looked afresh at Ms S's complaint, and I issued a provisional decision. In summary, I did not uphold her complaint, but my reasons were not exactly the same as the reasons our investigator had relied on. That being so, I thought it appropriate, to explain my reasoning to Ms S and VBL and give them both an opportunity to comment before I issued my next decision. Here is what I said in the provisional decision about what I'd 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.*

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Ms S and VBL disagree about most of the aspects of this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Ms S complains about worktops that she suggests were not as described and not of satisfactory quality. This was, she suggests, a breach of contract and she wanted to be reimbursed by VBL.

VBL had two options open to it to get her money back. It could have looked at a claim under Section 75 against itself or carried out a chargeback against W.

How VBL responded when Ms S complained about the contract it provided the finance for

Ms S relies on the rights she considers that she has under Section 75. Ms S is correct to suggest that because she used her credit card to pay W she may have the protection provided by this provision.

The general effect of Section 75 is that if Ms S has a claim for misrepresentation or breach of contract against the supplier she can also bring a like claim against VBL provided certain conditions are met.

I think it's important 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 might have under Section 75. Rather, in deciding what's a fair way to resolve Ms S's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Ms S pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts and operates differently from them.

It follows that if I found that there had been a breach of contract as Ms S suggests I would find it fair and reasonable that VBL take responsibility for this.

One of the qualifying conditions to bring a successful claim under Section 75 is that there must be a very particular relationship in place between Ms S, VBL and W. This relationship is known as a debtor-creditor-supplier relationship. For this relationship to exist, Ms S would need to be the debtor, VBL the creditor and W the supplier. On the face of it, this relationship is not in place because it was Ms S's husband not Ms S who contracted with W based on the written contract for the supply of the goods. Therefore it looks like, at first glance, that Ms S's husband is the sole debtor here. That said, I'm satisfied that in fact, the realities probably are, that Ms S and her husband living together as they do in their marital home, share expenses in some way which suits them and that one operates as the agent for the other for the purposes of making contracts in relation to their joint home. On that basis I am satisfied that Ms S was a contracting party in relation to the contract with W. It follows that there is a valid debtor-creditor-supplier relationship in this instance for the purposes of a claim under Section 75.

What is less persuasive is whether there was any breach of contract here. I don't appear to have all of the correspondence between Ms S and W. But based on the information I've got Ms S first complained that the worktops were the wrong colour. W did not agree it suggested she'd got what she'd ordered. But nonetheless it sent replacements. It seems that Ms S thought these were the wrong size. However, the contract made it clear that Ms S was responsible for providing the measurements for the worktops. And it seems that the worktops were the size she ordered. Subsequently Ms S complained about the quality of the replacement worktops. The photos she sent seem to show that some of the worktops were damaged, but I can't tell when the damage was done or which of the various replacements the photos are of.

The difficulty is two-fold for Ms S. First if she got what she paid for first time round and rejected the worktops then the contract was not breached by W that's according to contract law and according to the terms of the contract. Therefore it would not matter if the subsequent worktops sent as goodwill gestures were the wrong size or not (although whether the worktops were not the size specified in the contract has not been demonstrated by Ms S either).

In the alternative, even if the replacement worktops were sent by W because it accepted there had been a breach of contract re the colour, which I've seen no proof of, then there is a further issue. Ms S would have to show the worktops sent did not meet the specifications set out in the contract. Or she would have to show the replacement worktops did not meet the right quality standard. In particular, any worktops sent to remedy a breach of contract had to meet the standard the law (the Consumer Rights Act 2015) says they should reach, that is they had to be of satisfactory quality.

On balance, I find that there was no breach of contract I've not seen anything about the colour of the worktops that were first delivered (such as original labels which I could compare to what was ordered in the contract), that persuades me that the worktops were the wrong colour. Moreover, it seems that the worktops that were sent first were in line with the measurements in the contract in any event. So it seems that Ms S rejected the first work tops, but she was not entitled to because there was no breach.

Even if I accepted there had been a breach of contract in relation to the colour of the worktops and or the measurement, which I don't, she'd have to show the replacements were not of the right quality. I say this as this seems to be the only remaining issue by the time she got the final delivery. I can't tell based on what I've got if the replacements were of satisfactory quality or not when they were supplied.

That said, VBL's reasons for rejecting the claim don't really seem to fully stack up. Ms S complained about the colour of the worktops, then the measurements, then the quality. VBL

merely points out that the contract suggests that Ms S had to check the order to make sure it was correct. Specifically it quotes this term of the contract

"Please also check that all products listed on the order summary are the correct model and specification. This is your responsibility even if we are Installing your products or have attended your premises prior to your order being placed ... We will not give refunds for, replace or allow you to reject Bespoke Products which have been supplied to you in accordance with the measurements, plans, specifications, choices and details you supplied to us".

What VBL seems to be saying is that if the Ms S ordered one colour for the worktops, but worktops of a different colour arrived she would be obliged to accept it based on this contractual term. But that is not what the law says and that is not what the contract term says either. Rather the term is saying Ms S can't complain if what is in the contract is not what she wanted. That said, this does not mean I can uphold this complaint because as I have already said, I am satisfied the worktops that were in the contract were the ones that were delivered.

VBL also suggests that it does not accept the worktops were damaged when supplied because of what the delivery note that came with the final delivery says. I have set out the relevant clause below. I think this part of its argument has more merit.

"*Customer, I confirm that all products other than those marked as 'to follow' have been received in good condition*",

I think most reasonable people when they receive a bulky delivery do not insist that the delivery person waits while they unpack the delivery and inspect it minutely. However Ms S tells us she had many problems with the worktops arriving damaged. If that were so I think it follows that Ms S and her husband would have taken a cautious approach about signing anything to do with the quality of the worktops. Ms S suggests that neither she nor her husband signed the delivery note she says a workman did. But I have seen a copy of the note and her husband appears to have both signed it and printed his name. That supports VBL's position that the last set of worktops did not arrive damaged. And it leads me to find that the last set of worktops were not damaged at the point of supply. This is another reason why I would not uphold this complaint.

However, as I have already said the first problem for Ms S is that she has not demonstrated that she was entitled to reject the first delivery because the worktops were the wrong colour. And the second problem is she has not demonstrated the worktops were not the size she ordered or that the worktops arrived damaged in any event.

For all of these reasons, even though I am not persuaded by all of VBL's reasoning, I don't agree that I've any proper basis for saying it must put things right, because I don't find there was a breach of contract.

Chargeback

As Ms S paid in part for the goods using her credit card and wanted a refund, I've thought about whether VBL dealt with her request fairly. The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules.

In certain circumstances the process provides a way for VBL to ask for a payment Ms S made to be refunded. Those circumstances include, but are not limited to, where goods or services aren't supplied or as described/misrepresented by the company Ms S paid. A chargeback doesn't guarantee a refund there are a number of hurdles to overcome to reach that result. For instance Ms S had to demonstrate that a valid chargeback reason existed moreover W's bank could have put forward a defence to any chargeback claim. Moreover, there are deadlines that must be met to raise a chargeback claim.

It does not appear that VBL ever considered a chargeback. Above I have found that the contract was properly performed when the first worktop delivery was made. In that scenario there is a case for saying VBL could not have carried out a chargeback because there would have been no valid chargeback reason and or the chargeback would have been out of time in any event.

But even if accept Ms S's stance, which I don't, that the contract was breached, and all the replacements were attempts to remedy the breach this gets Ms S no further. In that scenario the clock started ticking for the chargeback deadline from November 2020 under the relevant rules. On that basis her chargeback would have been in time. But even this does not help Ms S. I say this because I've looked at whether on balance it made any difference that VBL did not take the chargeback route. I don't think it did make any difference. It seems clear that W would have put up a defence – namely that [there was no initial breach or that] Ms S ultimately received what she contracted for because any breach had been remedied. And I've seen nothing that persuades me Ms S would have been able to overcome this defence. Added to this Ms S had not returned the worktops this might also have acted as a bar to a successful chargeback.

For all of these individual reasons I don't have any proper basis for saying VBL's failure to raise a chargeback caused Ms S to experience a loss.

timelines

Ms S complains about the length of time it took VBL to deal with this matter. She suggests it did not act in good faith in so far as, in her opinion, it was to VBL's advantage to drag its heels so it could charge her more interest. But according to VBL's records, which I've no reason to doubt on this point, the delays were caused because Ms S did not provide the required information in a timely manner. I'm also satisfied that the information it asked her for was reasonably required to process her claim. It follows I don't uphold this part of her complaint.

Interest

Ms S complains about the interest charged. I need to clear up one initial point before I go into the rest of her complaint point. Ms S seems to think that VBL was obliged to freeze the interest payments just because she was in a contractual dispute with W, but it wasn't. Ms S's agreement with VBL is that it will provide credit and she'll make repayments and if she does not pay off the credit used for the purchases in full within a certain timeframe she will pay interest. Based on the information I have, that agreement between Ms S and VBL was not impacted by Ms S's dispute with W.

That said, VBL decided to freeze interest but once it found that there was no valid claim under Section 75 it added it back to Ms S's account. There was nothing to stop it doing this and adding this all at once. I've seen the contact between Ms S and VBL and I don't agree this is something it did without warning. Rather it told her this could happen if it did not uphold her complaint.

This may have led to negative information going on her credit file which in turn may have impacted negatively on her credit rating. But since I don't find that VBL was in the wrong for treating the interest in the way it did, it follows I've no valid reason to say it ought not to have asked the credit reference agencies to register negative information on Ms S's credit file because of this, even if this did impact adversely on her credit rating.

Ms S was entitled to expect that VBL would tell her how it calculated the interest, and it did do that albeit more slowly than she would have liked. Moreover, VBL has provided more up to date detailed calculations to show why it charged what it charged. Ms S suggests VBL charged her too much without explaining why according her VBL's detailed calculations are incorrect. We have sent Ms S, VBL's "workings out". If Ms S wants to send in information to

show why these are incorrect we'll look at this and ask VBL to comment and explain. It is not our role though to do the calculations for her or VBL.

For all of these individual reasons I don't uphold this complaint point.

In summary, for all of the separate reasons I have set out above I have no fair or reasonable grounds I find to ask VBL to take any further action."

My provisional decision was as follows.

"My provisional decision

My provisional decision is that I don't intend to uphold this complaint."

I invited both Ms S and VBL to respond to my provisional decision. As far as I am aware we have received no response from Ms S. VBL responded to say it had no further points to add.

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.

I've received no further new information or comments arguing against the reasoning in the provisional decision. It follows, in this final decision, I've reached the same conclusions for the same reasons I did in the provisional decision.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 31 January 2023.

Joyce Gordon
Ombudsman