

## **The complaint**

Mr V complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") has treated him unfairly in relation to a finance agreement taken out in his name.

## **What happened**

I set out below a summary of Mr V's version of events and also a summary of BPF's version of those same events

### *Mr V's version of events*

Mr V complains that he is being held to account for a finance agreement that he did not take out. Rather, his former wife applied for the loan in his name without his knowledge. The finance agreement was used to purchase an item of furniture which is still in his home.

Mr V adds that he never signed the finance agreement. The payments for the finance agreement came out of a joint account, that he held jointly with his former wife. However, Mr V did not know about these payments. When Mr V and his wife split up the payments stopped, and arrears built up and BPF contacted him about this, it was only at this point that Mr V found out about the agreement.

Mr V complains that in late 2022, BPF agreed to put the account on hold, but it then did not keep to this and instead defaulted the account. Mr V objected to this and BPF apologised and said it would immediately remove the default, but it did not. In the meantime Mr V wanted to take out finance with a third party supplier. Mr V believes he ended up paying more for this finance than he should have done simply due to the default.

Mr V wanted the default removed from his credit file. But BPF told him it would only do this if he cleared the arrears all in one go. Therefore, Mr V felt obliged to clear the arrears which he did under protest. But paying the arrears caused Mr V to experience financial difficulties.

Further, Mr V explained he has not received the level of customer service he is entitled to expect from BPF, and he gave several examples of this in addition to the ones I've already mentioned. Amongst other things, Mr V talked about BPF not following things up when it said it would and not calling him back when promised.

Mr V considers he should have had to pay nothing towards the finance agreement. In addition he wants

- to be fully compensated for the extra costs with the third-party credit agreement.
- £250 per hour for all the time he spent dealing with BPF.
- an apology.

### *BPF's version of events*

BPF says Mr V took out a fixed sum loan with it in October 2020 to buy an item of furniture. The total amount of credit provided was £2,456.

The loan was taken out in store by Mr V, and he supplied his driving licence to prove his identity. Repayments were made from Mr V's joint account.

Mr V began to contact BPF in January 2022 about the finance agreement and about payments to it. However, it was not until April 2023 that Mr V said that he had not taken out the agreement, and he had not known it had been taken out in his name and he wanted this investigated. BPF considers Mr V's memory about applying for the loan is not accurate. BPF said this because not only did he not complain about this straightaway, but in October 2023 Mr V told BPF he had applied for the finance but was declined for it, as far as he was aware.

BPF did not agree it was likely that Mr V's former wife applied for the finance without his permission. It followed it did not think it had done anything wrong in chasing Mr V for the arrears.

That said, BPF agreed it had told Mr V in late 2022 it would put a temporary hold on his account and had not done so. BPF also agreed this was not the level of customer service Mr V was entitled to expect. However, at this point it had not defaulted Mr V's account, but it had asked the credit reference agencies to register late payment markers on his credit file. But it had not explained this to Mr V at the time.

However, BPF did default Mr V's account in January 2023 because Mr V had not paid his arrears. Again BPF did not agree it had done anything wrong by defaulting the account. But when it spoke to Mr V in May 2023, it had had a change of heart about this point. As a result, it agreed to ask the credit reference agencies to remove the default from Mr V's credit file and mark the debt as settled. However, that did not go far enough for Mr V, so in addition BPF also agreed to pay Mr V £650. Mr V asked that the £650 be paid by cheque. Mr V agreed that if BPF did all of this, then this would bring an end to his complaint.

In addition to the £650 cheque which was on its way at the time (Mr V has now confirmed he's received the cheque), BPF has given Mr V the following redress for any distress and inconvenience caused by its poor service:

- A payment of £50.00 on 13 December 2022.
- A payment of £50.00 on 18 April 2023.
- A payment of £68.22 on 12 May 2023.
- A payment of £75.00 on 15 May 2023.
- An account balance credit £614.06 on 12 May 2023.

Therefore, by BPF's reckoning Mr V has received redress totaling £1,507.28.

BPF thought it had done enough and therefore it was not prepared to do anything further.

*What happened once Mr V's complaint was with us*

Dissatisfied with BPF's response Mr V complained to our service.

Once Mr V's complaint was with us both Mr V and BPF provided further information. I've summarised what they said below.

Mr V told us about a call he had with BPF. I'll call this the "arrears call". Mr V had many misgivings about the arrears call. These misgivings included that the person to whom he spoke told him they were a manager when there were not. That person said BPF would only ask the credit reference agencies to remove the default if Mr V first paid the arrears. Mr V considers BPF put him under undue pressure to pay off the arrears by saying this. That payment then tipped Mr V into financial difficulties which BPF ought to have known would happen.

In any event, Mr V repeated that the default should not have been registered in the first place because Mr V had asked for the account to be put on hold and this had been agreed.

Moreover, BPF had not treated the complaint as a complaint about a disputed transaction when it should have done. Mr V saw this as being yet another customer service failing on

the part of BPF.

Mr V also repeated his earlier stance.

BPF saw the arrears call very differently to Mr V. Specifically, BPF told us Mr V had insisted on paying the arrears. It had told him not to do this if he was in financial difficulty. But it had been important to Mr V that the arrears should be paid so that the default could be removed so BPF had taken a payment of £545 to pay off the arrears. But later BPF thought the better of this and the £650 includes a refund of the £545. To date BPF have asked the credit reference agencies to mark the loan as settled and waived the balance. Moreover, BPF is no longer pursuing Mr V for the loan. BPF said its employee did not describe themselves as a manager in the arrears call.

Our investigator did not recommend upholding Mr V's complaint. He explained that BPF had already made a fair offer and paid the redress therefore there was nothing further he could fairly ask BPF to do to settle the complaint.

BPF accepted our investigator's recommendation, but Mr V didn't. In short Mr V rejected our investigator's recommendation for the following reasons. Mr V reiterated his previous stance. Mr V underlined that from his perspective it is vitally important that we should listen to the recording of the arrears call.

Mr V asked that an ombudsman review his complaint.

### **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.

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. Rather, 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.

I recognise that Mr V wanted me to listen to the recording of the arrears call rather than rely on the summary of that call that BPF provided. However, the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers or businesses, nor do we take instructions either from consumers or businesses or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It follows that it is up to us to determine what evidence we need or review in order to investigate a complaint. So although I've noted what Mr V has said about that arrears call I don't think I need to insist on being provided with a recording of the call in order to reach a fair and reasonable outcome.

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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

*Why BPF did not act incorrectly by pursuing Mr V for the debt*

Mr V tells us he did not enter into the agreement. And I would not find it fair and reasonable to say BPF can pursue Mr V for finance he knew nothing about, did not enter into or did not give authority (whether express or seeming) for someone to enter into for him. So I've looked closely at this point.

I note Mr V does not dispute that his driving licence was used to prove his identity. The licence includes a photograph and Mr V's details so I think it is unlikely that if Mr V's ex wife had tried to use it without Mr V being present that the application would have gone ahead. I can't discount that Mr V's former wife might have taken someone to the store to impersonate him, but I find that far-fetched in the circumstances. I think the more prosaic scenario is also the more likely scenario that is that Mr V was present.

Moreover, the payments came out of an account that Mr V held jointly, therefore I think if those payments were something he knew nothing about he might have queried this sooner.

Further, BPF's notes which I've no reason to doubt on this point show that at first and for many months Mr V did not say that he had not entered into the agreement, I think that would have been the first thing he would have said if this was not his agreement.

In addition, I am persuaded that Mr V did tell BPF he had applied for the finance but was refused. To an extent I think Mr V has provided contradictory recollections about who applied for the finance agreement. That in turn has had an adverse impact on the weight I've felt able to place on Mr V's version of events.

For all these reasons, I find BPF has done nothing wrong in pursuing Mr V for the debt under this agreement.

#### *Financial difficulties*

Mr V indicates that paying the arrears caused him financial difficulties. If Mr V was in financial difficulties and couldn't meet his liabilities under the agreement then BPF should have dealt with him with forbearance and due consideration. Mr V lays great emphasis on what he sees as BPF going back on its word and pursuing him for the debt even when it had agreed to put the account on hold. BPF agrees it did this. But I think this point is something of a red herring. I say this because I would not expect a business to take a payment that a debtor just could not afford to make regardless of whether it had put the account temporarily on hold or not. It's accepting a payment that Mr V could not afford that is the problem here I think.

That said BPF has already done what I'd expect it to do; it has acknowledged its mistake, refunded the money and paid Mr V compensation for distress and inconvenience.

Mr V indicates that he accepted BPF's offer of settlement under duress. But duress does not mean being in a weak bargaining position or being in financial difficulties. Nor does it mean having to choose between two or more unattractive options. Neither does it mean a business explaining that it is not going to remove a default that it considers it has the right to have registered unless the arrears are paid. Duress means being forced – typically by physical threats or some other form of undue pressure - to agree to something against one's will. Nothing BPF did equated to this, as far as I can tell.

Moreover, there were a lot of things going on in the background in Mr V's life during this time according to the information I've seen. It seems that it was important to Mr V to not have a default on his credit file at this time. So I think on balance Mr V would have paid off the arrears regardless.

It follows I don't agree that I've any proper basis to uphold this part of Mr V's complaint.

#### *The default and the third party finance*

I've also thought about whether BPF was in the wrong for asking the credit reference agencies to register the default when it knew Mr V had asked it to put the account on hold and it had agreed.

The whole putting the account on hold agreement was based on very shifting sands though. I say this because I can see from BPF's notes, which I find are likely to be accurate, Mr V kept on asking for the hold to be extended on the basis there was going to be a court settlement after a hearing on an unrelated matter that would free up some cash to pay off the finance. But each month the date of the hearing seemed to change and so Mr V asked for further extensions. This went on for months. A temporary hold to allow a very specific event to occur on a very specific date was one thing. A temporary hold that was predicated on a hearing whose date kept on changing was a very different matter. In the circumstances, given that the arrears were building up, Mr V seemed to have no immediate prospect of paying off the arrears and the date of the hearing kept on changing, I think it was reasonable for BPF to ask the credit reference agencies to register the default.

What I've said above means that even if Mr V had to pay more for his finance with the third party due to the default that is not something that BPF has to compensate Mr V for. In any event, even if I did agree that BPF should not have gone ahead with the default (which I don't), I've no way of telling from the information I've got if Mr V did have to pay more for his finance with the third party due to the default on his credit file. It follows that I've no proper basis for saying BPF has to compensate him for this.

#### *Distress and inconvenience*

BPF and Mr V both agree that at times BPF did not give Mr V the level of customer service he was entitled to expect.

That said, I don't think BPF acted incorrectly in not treating Mr V's complaint as a disputed transaction straightaway, given the information Mr V provided.

I've not seen anything that suggests Mr V ought to be paid £250 per hour for his time spent on the complaint, I can't see why this would be an appropriate yardstick.

Moreover, BPF has already awarded much more compensation than I would have asked it to do.

It follows I have no proper basis to say BPF must take further action here.

For completeness I'll add an observation, Mr V has the sofa, he has had substantial compensation from BPF and has ended up paying much less for the sofa than I he originally contracted to pay.

For all of these reasons I find that I've no proper basis for saying that BPF has to do anything further to settle the complaint.

#### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 29 November 2023.

Joyce Gordon  
**Ombudsman**