

The complaint

Mrs M has complained that Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) is holding her liable for a fixed sum loan that was used to buy a phone she says she didn't receive.

What happened

Mrs M entered into a fixed sum loan agreement with BPF in November 2022 to buy a new phone from a supplier I'll call "S". The phone cost around £1,200 and was due to be paid back over two years. Mrs M says the phone wasn't inside the package she collected. In summary, S said:

- The phone was delivered to a drop off point on 15 December 2022.
- Mrs M contacted it the same day to say it wasn't at the drop off point.
- Mrs M called back the same day to say she'd picked it up.
- The phone had a clean path showing no signs of damage to the box.
- Checks were carried out at the warehouse. It stands over all warehouse checks.
- Mrs M took the package home and said the box was empty.
- It asked for photos and a police report.
- It waited two weeks and Mrs M didn't supply the necessary information, so the investigation was closed.
- Mrs M supplied photos of the packaging in February 2023 and didn't report signs of tampering.
- The pickup behaviour was strange, and that Mrs M didn't let it know about not being able to collect the package initially. If she had done it could have checked the CCTV.

Mrs M said:

- She received a notification the order was ready to collect from a pickup point. When she went to collect it she was told it hadn't been delivered. She spoke to S the same day and it told her the order had been delivered so she went back to pick it up on 15 December 2022.
- She reported the issue to the police on 16 December 2022 and sent requested photos to S the same day.
- She got the crime report stamped by the police as per S's request and sent this to S.
- She asked for a replacement phone.
- She supplied supporting information to BPF in January and February 2023.
- She's sent the supporting information to S three times.

Mrs M put in a claim and a complaint with BPF. In summary, BPF said:

- The claim wasn't upheld based on S having carried out a review and saying Mrs M wasn't eligible for a replacement or refund.
- Details of S's investigation are restricted so it couldn't supply any further information.
- It would forward Mrs M's concerns to S.

Mrs M wasn't happy with the rejection of the claim or how her complaint was dealt with, so she asked the Financial Ombudsman to consider her complaint.

Our investigator said, in summary:

- He's looked at how BPF handled a claim under section 75 of the Consumer Credit Act 1974.
- It's difficult to prove whether an item has been received or not.
- Mrs M had said the outer packaging didn't look like it'd been tampered with so, on balance, she received it in the same condition it was in when it was posted from the warehouse.
- The weight of the package was 440g which seemed in line with what he'd expect for a phone.
- He didn't think BPF acted unfairly in declining the claim.

Mrs M didn't agree. In summary, she said our investigator hadn't considered that the courier could have taken the device. She reiterated she was initially told at the pickup point the parcel wasn't there which wasn't true. As things weren't resolved, the complaint was passed to me to decide.

I reviewed the file and felt like more information would be helpful. I arranged for our investigator to contact BPF to say, in summary:

- Was there any evidence that S could supply to determine exactly when Mrs M was notified the order was ready; when she contacted S to say it wasn't there; and when it was collected.
- I noted S's timeline didn't match up to what we'd seen from Mrs M. Mrs M was very responsive and supplied S information it asked for promptly. Whereas S said she took two weeks to respond which is why it closed its investigation. This wasn't right so I asked for further comments on this.
- Had there been any other instances of customers alleging goods weren't received through this drop off point, or this courier?
- Did S contact the courier as part of its investigation?
- Could S explain what a clean path showing no signs of damage meant?
- Could S explain a bit more about what checks were carried out at the warehouse?
- Could S share information about what happened to the phone? And was there any evidence Mrs M still had it?
- Could S or BPF give us any more details about having Mrs M as a customer? Was this the first phone she'd bought in this way for example.
- Was there any evidence Mrs M said the package hadn't been tampered with?

BPF responded to say it contacted S who told it the case was over a year old and it was closed from its perspective. The decision was final, so there'd be no further response.

I issued a provisional decision that said:

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to resolve complaints quickly and with minimum formality. I want to assure Mrs M and BPF that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mrs M bought the phone using a regulated fixed sum loan agreement and our service is able to consider complaints relating to these sorts of agreements.

I take into account the relevant law. So, in this case, section 75 of the Consumer Credit Act 1974 makes BPF responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

There are implied terms under the Consumer Rights Act 2015 (CRA) that unless agreed otherwise the contract included a term that the trader must deliver the goods to the consumer. And that, unless the consumer arranges their own carrier, the goods remain at the trader's risk until they come into the physical possession of the consumer or someone identified by the consumer to take possession. Consumers can treat contracts at an end if goods aren't delivered.

Based on the evidence submitted, I'm never going to know exactly what happened to the phone. So where the evidence is incomplete, I base my decision on the balance of probabilities.

I think Mrs M's account of what happened seems consistent and credible. She acted in the way I'd have expected someone to act when finding out an expensive item wasn't in the package. She contacted S straight away. She went to the police to get a crime report. She returned to the police to get her report stamped on S's request. She sent photos to S promptly. And she's been responsive to requests from all parties from what I've seen.

BPF also acted fairly by speaking to S. I'm of course mindful that BPF isn't the supplier here, and that it's reliant on S's willingness to share information with it.

The problem in this case, from what I can see is that some of S's responses don't quite tally up with what Mrs M has shown us. What's key is that S seems to say Mrs M was slow providing evidence and that it closed its investigation as a result of that, but that's not backed up from what I've seen. It looks like she was very quick to respond, and she didn't take two weeks as S has said. Mrs M said she sent the same information to S several times. S also said if she'd called in time it could have checked the pickup point CCTV. Based on what I've seen I think it had the opportunity to do that. It hasn't shown us Mrs M didn't contact it when she first thought the parcel wasn't there. It hasn't explained whether it's received any other complaints of a similar nature. It's not shared any history of Mrs M as a customer, nor where it's said she gave it details of the condition of the packaging, or where it asked her for that information. It's also decided not to share any information about what actually happened to the phone.

As already mentioned, I'm not looking at a complaint against S, I'm considering how BPF handled the claim. But I think there were a few inconsistencies that BPF could have looked into with S. It's not inconceivable to think the phone could have been removed, if not at the warehouse, then at some point during the delivery process. I've not been supplied supporting evidence of why that's not possible. If there was further evidence, it may have shown something that either supported Mrs M's claims, or ultimately found inconsistencies in what she said. I also think it would have been prudent to have retained supporting information given there was a dispute raised. So I think there's been an opportunity missed.

All things considered, based on the evidence I've been supplied, I'm intending to reach the conclusion that, on balance, Mrs M didn't receive the phone. So I think it's fair the contract is treated as at an end, and she's reimbursed anything paid for under the agreement.

I'm not intending to award any compensation on top of this. Ultimately the main cause of the issue here is the alleged thief.

BPF responded to say it had nothing further to add. Mrs M responded to say she was happy with the decision and had nothing further 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 thank the parties for their responses. Seeing as though neither party had anything further to add I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

To resolve the complaint Clydesdale Financial Services Limited trading as Barclays Partner Finance should:

- End the agreement with nothing further to pay.
- Refund Mrs M anything paid towards the agreement before the claim was declined with 8% simple annual interest added from the date BPF declined the claim to the date of settlement. For any payments made after the claim outcome, these should be refunded with 8% simple annual interest added from the date of each payment to the date of settlement*.
- Remove the agreement and any associated entries from Mrs M's credit file.

*If BPF considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs M how much tax it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 January 2024.

Simon Wingfield

Ombudsman