

The complaint

Mr M has complained about the support he received from Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) when he was in financial hardship.

When I refer to what Mr M and BPF have said or did it should also be taken to include things said or done on their behalf.

What happened

In September 2017, Mr M entered into a conditional sale agreement with BPF to acquire a used car first registered in July 2014. The cash price of the car was around £16,270. The total amount payable was approximately £23,334. Mr M made an advance payment of around £500. There were 59 monthly payments due, each around £378, followed by a final payment of around £527.

In 2018, Mr M missed some payments and accrued arrears, but he brought the account up to date by February 2020. From February 2020 Mr M made no payments towards his finance agreement.

On 23 March 2020, the UK Government announced that UK would enter a lockdown due to the Covid-19 pandemic.

In May 2020, BPF sent Mr M a Notice of Default (NOD) as at the time, his account was around £756 in arrears.

Mr M made no more payment towards the agreement and in May 2021, he raised a complaint with BPF. He felt that he was discriminated against by them due to his accent, and he felt that he should've been entitled to a payment deferral, as he had been impacted by the Covid-19 pandemic, so he feels that BPF should have given him support available under the Financial Conduct Authority's (FCA) Covid-19 guidance.

In June 2021, BPF responded to his complaint. In this correspondence they said that following a review of his account they do not believe that there was any discrimination by them as, they said, they have attempted to arrange a payment plan with Mr M for the arrears, however they did not receive a response from him by the deadline noted on the letters. They said the arrears, at the time of the correspondence, were at around £5,671, which they said resulted in recoveries being notified and potential repossession of the car. They explained that to prevent this, Mr M would need to pay his entire balance. Alternatively, they said he could contact their collections team to discuss all his options in more depth.

Mr M was unhappy with BPF's response, so he brought his complaint to this service. He said that he has offered to make up the arrears by paying around £756 each month (equivalent of two monthly payments).

BPF, in their submissions to this service, said they don't accept Mr M's offer of around £756 a month, and they said that he had three options:

1. Mr M to pay full arrears amount within six months.
2. Voluntary Termination (VT) – BPF said Mr M can return the car back to them as he has paid half of the total amount payable under the finance agreement. They said if Mr M chooses this option the car will be taken to an auction house to be sold. Whilst at the auction house the car will be inspected against the British Vehicle Rental and Leasing Association Guidelines (BVRLA) to determine if it has excessive wear and tear or damaged, based on the age and mileage of the car. Any damage outside general wear and tear will be payable by Mr M following the sale of the car.
3. Voluntary Surrender (VS) – BPF said that if Mr M doesn't take the two options above, and once they serve another NOD and a Termination Notice, he will have the option to VS the car. They said this involves, at that time, Mr M agreeing for them to collect the car so that it can be sold at an auction house. After the car is sold Mr M will then be liable for the full outstanding balance on the finance agreement less the net sale proceeds which will be used to reduce the outstanding amount due. But BPF said that under this option he will not be liable for any additional charges such as court costs, however if Mr M chooses to do nothing, the car will be repossessed and he will be liable for the full remaining balance on the account and additional charges such as court costs.

Our investigator didn't think that BPF need to take any further action regarding Mr M's finance agreement. He said that he hasn't seen any evidence that BPF ever received a request for a payment holiday under the FCA's Covid-19 guidance. But he said that BPF were still required to follow guidance for customers in financial difficulties that could be found in the FCA's – Consumer Credit Sourcebook (CONC), and specifically CONC 7, on "Arrears, default and recovery (including repossession)". Taking that into consideration, he thought BPF treated Mr M fairly whilst he was in financial difficulty, as on a few occasions they tried to come to a payment arrangement with Mr M.

Mr M disagreed with the investigator. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 11 August 2022. In the provisional decision I said:

"What I've provisionally 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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties 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. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr M acquired the car under a conditional sale agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.

In summary, Mr M's main complaint point is that he was not treated fairly by BPF when he found himself in financial hardship due to the Covid-19 pandemic. He feels that he was discriminated against by them due to his accent, and he feels that he should've been entitled to a payment deferral.

So, I've taken the above into consideration and I've considered whether BPF have done enough to support Mr M, when he told them that he was experiencing financial hardship. When doing so, I've also thought about the relevant rules and guidance at the time. The rules and guidance mentioned below refer to 'customers' and 'consumers', and I will be using these words interchangeably, but in this decision the words are to have the same meaning.

On 24 April 2020 the FCA published additional guidance which came into effect on 27 April 2020 – "Motor finance agreements and coronavirus: temporary guidance for firms". This guidance introduced temporary measures for consumers whose finances had been impacted by Covid-19, and it builds on Principle 6: "A firm must pay due regard to the interests of its customers and treat them fairly". In relation to the payment deferrals, the guidance states the following: "Where a customer is already experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for three months unless the firm determines (acting reasonably) that it's obviously not in the customer's interests to do so".

This guidance was further updated by the FCA in July 2020, and later in September 2020. Both updates build on the previous guidance that was issued, and stipulate that payment deferrals can be granted for a total period of six months. It is also important to note that within the mentioned guidance it states that: "There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer's interests. Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support".

I've considered that in March 2020, when Mr M started to be in financial difficulty and didn't make his payments, the above mentioned FCA guidance on Covid-19 had not yet been published or in force. I've also taken into consideration that Mr M never did ask BPF at the time, or in the proceeding few months following, for a payment deferral. And I've considered that before the additional Covid-19 guidance was in force, there was other guidance such as the FCA – Consumer Credit Sourcebook (CONC), and in particular CONC 7, titled "Arrears, default and recovery (including repossession)", which say that firms should treat consumers in default or in arrears difficulties with forbearance and due consideration. Treating consumers with forbearance would include such things as considering suspending, reducing, waiving, or cancelling any further interest or charges, allowing deferment of payment of arrears, and accepting token payments for a reasonable time period. And from what I've seen, it looks like BPF was trying to help Mr M, by treating him with forbearance and due consideration. I say this because when Mr M had previous difficulties making payments towards the finance agreement, they offered to set up payment arrangements and allowed him to make overpayments to make up the arrears. But I've gone on to consider whether they should've done more when he made contact in September 2020 and told them more about his situation.

I understand that in September 2020 Mr M never asked BPF for a payment deferral, and I can see from the contact notes provided by them that from March 2020 onwards BPF did try to contact Mr M without success. So, I think at the time it was reasonable that when he

missed two payments, they sent him arrears letter notifications and an NOD in May 2020. But I also considered that Mr M did make them aware that he was impacted by Covid-19 in September 2020, and considering his payment were up to date in February 2020, and I think most likely the FCA Covid-19 guidance was intended for customers in situations like the one Mr M found himself in. So, I think it would've been in the spirit of the FCA Covid-19 guidance for BPF to offer Mr M the payment deferral and backdate it to March 2020; the date he was impacted and missed his payment.

Overall, I think BPF should give Mr M the benefit of the payment deferral as per the FCA Covid-19 guidance. I think this should be applied for six months from March 2020 to August 2020. Also, BPF should remove the adverse information recorded on Mr M's credit file during this period. I'm aware that Mr M's financial difficulties lasted longer than six months and that he hasn't made any payments towards the finance agreement since February 2020, so I know that a large number of arrears have accrued. It is only fair that Mr M is responsible for those. So, I'm not asking BPF to drastically change the options that were available to him when they gave our service their submission – those being that:

- 1. Mr M pays full arrears within six months.*

But, as I think Mr M should've been given a six-month payment deferral, I think it is reasonable that the arrears should only be classed as missed payments from September 2020 onwards. And, considering that in this scenario Mr M's arrears would be less, naturally BPF would be able to offer more generous terms than those above, if it now wanted.

- 2. Voluntary Termination (VT) – Mr M can return the car back to BPF as he has paid half of the total amount payable under the finance agreement.*

I know Mr M has mentioned that currently the car has some damage on it, so I think it would be reasonable for BPF to give Mr M 30 days after the final decision is issued to get the car fixed, provided he accepts the final decision. Mr M could choose not to fix the damage, but he has to remember that if he chooses the VT option, the car should be taken to an auction house to be sold, and it will be fair and reasonable for BPF to have the car inspected and charge Mr M for any excessive wear and tear or damage, based on the age and mileage of the car.

It is important to note that under this option the proceeds of the sale would remain with BPF, and are not returned to the Mr M. At the same time, Mr M is not liable for any shortfall BPF believes it's suffered from the sale. Nor is Mr M entitled to any sums the car achieves over and above the expected sale value.

Also, under this option it is only fair, as Mr M had possession and use of the car, that he will owe the arrears and any other sums, such as monthly payments due before termination. If Mr M can't afford to pay that straightaway, then I'd expect BPF to offer a suitable repayment plan for him.

- 3. Voluntary Surrender (VS) – if Mr M doesn't take the two options above, BPF will be able to serve another NOD and a Termination Notice, at which point Mr M will have the option to VS the car.*

I think what BPF proposed in their submissions it is reasonable – that being that, as long as Mr M agrees for them to collect the car, it can be sold at an auction house. After the car is sold, Mr M would then be liable for the full outstanding balance on the finance agreement, less the net sale proceeds which will be used to reduce the outstanding amount due. But BPF said that under this option he will not be liable for any additional

charges, such as court costs. However, if Mr M chooses to do nothing, the car will be repossessed and he will be liable for the full remaining balance on the account and additional charges, such as court costs. Just as above, I think if Mr M can't afford to pay that straightaway, then I'd expect BPF to offer a suitable repayment plan for him.

I thought about what should happen if Mr M doesn't accept one of the above options, or if he decides to give the car back. Meaning that if BPF grant him the six months deferral, this could end up him having a default on his credit file registered at a later date, so in effect will put Mr M in a worse position. So, I think if Mr M doesn't agree to one of the options above, this would mean that most likely he still would've defaulted, but at a later date, once the six months' payment deferral runs its course. I say this, because he has not made any payments towards the finance agreement since February 2020. The six-months payment deferral I'm proposing, would've ended in August 2020 and, most likely, two months later, in late September early October, BPF would've registered a default on his credit file. So, I think if Mr M doesn't accept one of the above options, it would be fair to leave the default on his credit file as it is now.

Also, Mr M said that BPF discriminated against him when deciding not to uphold his complaint due to his race. So, I think it is important for me to explain that it's not my role to say whether BPF have breached the Equality Act 2010 (2010 Act). This is because that is a matter for the courts to decide, not for our service. I've taken the 2010 Act into account when deciding this complaint, as it is relevant law, but I've ultimately decided this complaint based on what is fair and reasonable considering the circumstances of this case. If Mr M thinks that BPF breached the 2010 Act, then he will need to go to court. I know that Mr M feels that his complaint has not been upheld by BPF because he feels they have treated him differently/unfairly when compared to other customers. But I think most likely their decision was based on the information he provided BPF at the time and the contact they had with him. So, I've not been given any evidence to show that their actions have been unfair in that way.

My provisional decision

My provisional decision is that Clydesdale Financial Services Limited trading as Barclays Partner Finance should:

- Allow Mr M to keep the car, if he brings the account back up to date by paying all arrears within the six months, or allow him to voluntarily terminate, or voluntarily surrender, the car.*
- Treat the missed payments from March 2020 to August 2020 as a six-months payment deferral, and remove the adverse information from Mr M's credit file for those months. If Mr M terminates the agreement or surrenders the car, I think it is reasonable, in the circumstances of this complaint, that BPF should register the default on his credit file with the date of May 2020.*

If Mr M is unable to pay all the arrears and bring the agreement back up-to-date within six months of acceptance of a final decision, or come to another sustainable arrangement with BPF, and provided that BPF start recovery proceedings, I would expect it to liaise with Mr M about the outstanding balance and come to an arrangement with him to sustainably repay the debt.

BPF should also remember that unless Mr M hands the car back voluntarily, they would need a court order to repossess the car, as he paid over a third towards the finance agreement."

I asked both parties to provide me with any additional comments or information they would like me to consider by 25 August 2022.

Mr M responded and said that he has nothing further to add.

BPF responded, and I will address their points below.

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.

Following my provisional decision, BPF responded and said that Mr M has not made any payments towards the account since February 2020 or shown any indication of willingness to pay. So, they said that they feel that he should bring the account up to date within 28 days if he wishes to keep the car. They said that the arrears, as of 24 August 2022, were around £10,964. They also said that if Mr M would like to VT the car, they would require him to let them know within 28 days too. And they reminded our service that if he wishes to VT, he may be liable for additional charges i.e. wear and tear and collection fees, as per the terms and conditions of the agreement.

I've taken the above into consideration, but I don't think it would be fair or reasonable to ask Mr M to bring the account up to date within 28 days instead of the six months previously offered by BPF. I understand that BPF have said that Mr M has not made any payments towards the account since February 2020 or shown any indication of willingness to pay, but as I mentioned in my provisional decision, I considered that Mr M did make BPF aware that he was impacted by Covid-19 in September 2020, and considering his payments were up to date in February 2020, I think it would've been in the spirit of the FCA Covid-19 guidance for BPF to offer Mr M a payment deferral and backdate it to March 2020. So, I think had this been done by BPF, his next payment would've only been due after August 2020. And even though Mr M's financial difficulties lasted longer than six months, he would've been in a better position, as a smaller number of arrears would've accrued had he been given the payment deferral.

I've also taken into consideration that the relationship most likely would've been less broken down between the parties, had Mr M been given the payment deferral at the earlier time. I say this because Mr M was very unhappy he was not offered a payment deferral, so I think had he been offered one, it's most likely he would've been more inclined and motivated to work with BPF to come to an agreement. Also, I don't agree with BPF that he didn't show any indication of willingness to pay, because Mr M had offered to make up the arrears by paying around £756 each month (equivalent of two monthly payments). But BPF, in their submissions to this service, said they didn't accept Mr M's offer of around £756 a month, and that is when they said that one of his options was to pay full arrears amount within six months. So, I don't think it would be fair and reasonable to now retract this offer, taking all of the circumstances into account, as well as taking into account that 28 days is a very short period for Mr M to now make arrangements to make up for such a significant deficit to be paid back.

Regarding treating the missed payments from March 2020 to August 2020 as a six-months payment deferral, BPF said that they agree to update Mr M's credit file. But they said that if Mr M terminates the agreement, they feel that the default should be recorded in November 2020. So, I've considered this, and I think, had Mr M been given the payment deferral, his next payment would've been due in September 2020. And, if he was unable to make his payments by the time BPF would have sent him the arrears and default letters at that time, I

think most likely they would've applied a default a couple of months after that. So, I don't think BPF's proposal to apply the default in November 2020 is unreasonable.

Overall, I still think it is fair and reasonable that Mr M's complaint is resolved as per the details mentioned in my provisional decision. The only difference being that if Mr M doesn't accept one of the options mentioned in my provisional decision and the agreement ends up being terminated, BPF's proposal to apply the default in November 2020 is not unreasonable.

My final decision

For the reasons given above, and in my provisional decision, I require Clydesdale Financial Services Limited trading as Barclays Partner Finance to:

- Allow Mr M to keep the car, if he brings the account back up to date by paying all arrears within the six months, or allow him to voluntarily terminate, or voluntarily surrender, the car.
- Treat the missed payments from March 2020 to August 2020 as a six-months payment deferral, and to remove the adverse information from Mr M's credit file for those months. If Mr M terminates the agreement or surrenders the car, I don't think it is unreasonable for BPF to register the default on his credit file with the date of November 2020.

If Mr M is unable to pay all the arrears and bring the agreement back up-to-date within six months of acceptance of this final decision, or come to another sustainable arrangement with BPF, and provided that BPF start the recovery proceedings, I would expect them to liaise with Mr M about the outstanding balance, and to come to an arrangement with him to sustainably repay the debt.

BPF should also remember that unless Mr M hands the car back voluntarily, they would need a court order to repossess the car, as he paid over a third towards the finance agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 September 2022.

Mike Kozbial
Ombudsman