

The complaint

Mr H complains about how Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") responded when he asked it to help him claim a refund for goods he ordered.

What happened

Mr H purchased a phone from a third party retailer using a point of sale loan provided by BPF. The retailer is a limited company that I will refer to as "A". Mr H tells us that he never received the phone. Mr H considers this to be a breach of contract. He considers he is therefore entitled to a full refund. Moreover, due to the type of credit Mr H used to purchase the phone he thinks he is entitled to bring a like claim for breach of contract against BPF as he could against the retailer. Therefore Mr H complained to BPF.

Mr H spoke to BPF by phone and told it he'd be cancelling his direct debits and would not ask for the direct debits to be reinstated until he received the phone. Mr H says BPF told him this would be fine but now says it has no record of the call.

Subsequently BPF defaulted Mr H's account without notice. Mr H complained to BPF about this. In particular, he asked it to provide proof of sending him a notice of default and proof that he received it, but it was unable to do this. Instead it closed the complaint without telling him. Mr H says if BPF provide him with a notice of default he will start making repayments to the loan even though he does not have the phone the loan is paying for.

BPF's stance is that when Mr H first complained to BPF it told Mr H to contact A. Mr H declined to contact A, so BPF contacted the retailer instead. It told BPF that the phone Mr H had ordered had been collected in store. Having heard what A had to say BPF did not agree that this was a matter where Mr H had a like claim for breach of contract against it as he did against the retailer. This was because there had been no breach of contract in its opinion.

Further, BPF does not accept it told Mr H it was ok for him to cancel his direct debits as he indicates. Rather it expected Mr H to make repayments to his loan in line with his contractual obligations and it told him this. When he did not it told him he was in arrears and ultimately when he was at least three months in arrears it sent a notice of default by post. When Mr H did not comply with the notice it defaulted the account. BPF does not agree that it did not deal with Mr H's complaint correctly in that it closed his complaint without telling him.

Dissatisfied, Mr H complained to our service.

Once Mr H brought his complaint to us he told us that members of BPF's staff had told him previously that some of the mail it had sent to him had been returned to it. The mail that had been returned did or might have included the notice of default. Further, these same members of staff told him that they would note this down in the internal notes they made of their conversations with him.

Further, Mr H found the receipt he'd been given by A. It said the phone had been collected in store. However, Mr H explained when he went to collect the phone it was not there because it had already been collected. Mr H had assumed at the time this meant the phone was going to be delivered to him as had the shop assistant, and therefore he was surprised when no delivery was made.

Subsequently Mr H told us he had applied for mortgages and been rejected due to the default information that BPF had asked the credit reference agencies to register on his credit file. Moreover, Mr H explained that this whole episode had caused him so much anxiety he had to see his GP about it.

One of our investigators looked into Mr H's complaint. Our investigator did not recommend that Mr H's complaint be upheld.

BPF accepted our investigator's recommendation, Mr H did not. In summary Mr H repeated his previous stance. Mr H also indicated he'd never defaulted on finance before and had not on this occasion either. Mr H told us he had contacted his neighbours to see if any of them had received his mail, by mistake, during the relevant time. One neighbour had received Mr H's mail and this neighbour returned the mail to sender. Specifically, here is what Mr H told us about this.

"I have found one man who says he received some of my post from the last few months and he "returned them all to sender" whenever he would go to the post box. He claims to have photographed some of these however has yet to send them to me. So I am awaiting. Hopefully one of them will be from BPF."

After this, Mr H sent us photos that the neighbour sent him of unopened envelopes containing letters addressed to Mr H. On the front of each letter the neighbour had written (amongst other things), "wrong address".

Mr H requested 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. Here relevant law includes but is not limited to section 75 ("section 75") and section 88 ("section 88") of the Consumer Credit Act 1974 and the Consumer Rights Act 2015.

Due to the type of finance Mr H used to purchase the phone, under section 75 if he has a claim for breach of contract against A he has a like claim against BPF. Further, the law also provides that in general if the goods are not delivered into his physical possession and within the timescale the law prescribes then this would be a breach of contract. And further I would expect BPF to take responsibility for such a breach of contract. It seems both parties agree about this.

However, Mr H and BPF disagree about almost every other key 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.

As I have already mentioned Mr H's stance is that he went to A's shop to pick up the phone but was told it had already been collected. He assumed therefore that this meant that the

phone would be delivered to him. BPF has told us about the collection procedures that A uses for in store collections. There is no need for me to describe those procedures in full here. I am mindful that this decision will be published.

However, the procedures were gone through previously with Mr H at the earlier stage of this complaint with this service, so he knows these details. If the procedures are followed it means only someone with access to Mr H's email would have been able to collect the phone. I see no reason why the procedures would not have been followed. I therefore find it likely that someone with access to Mr H's email collected the phone. Moreover, based on the information on the file, I am satisfied that in store collection was the only contractually agreed method of delivery. In the circumstances I don't agree that the contract has been breached.

Furthermore, BPF's noted in its internal records that Mr H told it that he had not been to A's store. I see no reason why this record would be inaccurate. This inconsistency has impacted adversely on the weight I have given to what Mr H tells us about the collection from the store.

It follows from what I've said above that I am satisfied that I have no fair or reasonable basis to say that BPF must do anything further in relation to this part of Mr H's complaint as I don't uphold it.

Mr H indicates that BPF has no proper basis for defaulting his account or for asking the credit reference agencies to register the default and the arrears on his credit file. As far as I am aware Mr H did not specifically mention the arrears information as part of his complaint, but I think it is implicit from what he has said that he is complaining about this too. Mr H takes this position for a number of reasons. Which I set out below.

Further it appears that Mr H wants BPF to ask the credit reference agencies to remove the default and arrears information it asked them to register on his credit file. If I was satisfied that BPF had acted unfairly in relation to the arrears on Mr H's account and in relation to the default, I would ask BPF to arrange for the default and the arrears information to be removed.

Mr H tells us he told BPF he would cancel his direct debits and would not ask for them to be reinstated until he received the phone, and it agreed he could do this. Only for BPF to say afterwards it could not find the call where this was agreed. BPF's stance is that this was never agreed. I note that BPF's position is also it does have the relevant call recording and it has sent the recording to us.

When I consider all the information I have available to me I don't agree that in that call BPF agreed to the cancellation of the direct debits as Mr H describes. Rather it seems that the parties were talking at cross purposes for some of the conversation. But BPF did not agree Mr H could stop making his repayments, the BPF employee on the phone even talks about not having the power to make such a decision. Neither have I seen anything that supports the assertion that BPF denied having a copy of this call recording.

Moreover, in addition to the phone call I mention above I think during the relevant period BPF made it sufficiently clear in its communications with Mr H, that unless Mr H made payments in line with his contractual obligations BPF would take action to recover the arrears. In other words, I find that whilst Mr H may have concluded that he did not have to make repayments, in the circumstances, nothing BPF said or did reasonably gave this impression.

Mr H is correct to say that BPF as the creditor had to notify him as the debtor in accordance with section 88 before BPF could become entitled, by reason of any breach by Mr H of the regulated agreement to default the agreement.

Mr H says he received no such notification. Mr H has a very particular definition of notification he says in this context it means unless BPF can show both proof of postage of

the notice and proof of receipt by him of the notice, then the notice of default is not valid. But I don't agree that is required. BPF's internal notes show it did comply with all legal obligations around sending Mr H the notice. I say this because its internal records which document that the notice was posted and posted to Mr H's correct postal address are enough for these purposes. I don't agree proof of postage and receipt such as stipulated by Mr H are required.

I take on board that Mr H also adds that it is likely that any notice sent by BPF was misdelivered. Moreover, Mr H also tells us BPF told him that mail it sent to him had been returned undelivered. He says he was told this in phone calls with members of BPF's staff. In addition, Mr H relies on the information which was provided to him by his neighbour to substantiate his position about the misdelivery of the mail.

BPF tells us it sent the letters about arrears and the notice of default by the normal post. Typically I'd expect mail sent in this manner to be delivered. I've listened to all the relevant call recordings I've got access to between Mr H and BPF. I also looked at BPF's internal records. I have seen nothing in those which show that at any one point or repeatedly, BPF's staff told Mr H that his mail had been misdelivered. I think if such conversations had taken place, on balance, they would have been recorded. Especially since it seems Mr H indicates he had these conversations with more than one person. So I am not persuaded that Mr H was told by BPF's staff that some of his mail had been returned to it.

I've thought about the information provided by Mr H's neighbour. We have no further details for this neighbour other than his address which appears to be commercial premises. So without these details I cannot ask the neighbour directly the further questions about this mail that I might like to. This has impacted on the weight I feel able to place on the evidence from Mr H's neighbour.

Moreover, the letters in the photos appear to have no postmarks on them so I've no way of telling if this misdelivery of mail happened at the relevant time or not. Even if I did accept that some of Mr H's mail was misdelivered, which I do not, it does not follow that most likely all the letters from BPF about arrears and the notice of default also went astray.

For all of these reasons I am not persuaded it is more likely than not that Mr H did not receive information about the arrears and the notice due to the postal errors made by Royal Mail. In any event, even if I did find that Royal Mail most likely misdelivered all of the relevant mail, I could not fairly or reasonably hold BPF to account for this in these circumstances.

Further, if I found that Mr H had not been sent the information about the arrears and the notice of default by BPF I'd still not say BPF would have to ask the credit reference agencies to remove the default from Mr H's credit file. This is because Mr H ought reasonably to have known he had entered into an agreement under which he had to make repayments to BPF. He did not make those repayments. He had no agreement that he did not have to make those repayments. Therefore in the circumstances I think BPF did enough so that he ought reasonably to have known the account was in default.

For all of these reasons I am satisfied that BPF acted fairly in relation to defaulting the account and asking the credit reference agencies to register information about the arrears and the default notice on Mr H's credit file. It follows I am not going to ask BPF to arrange for this information to be removed from Mr H's credit file and cancel the default.

Mr H has suggested that if BPF issues a new notice of default he'll start making his repayments. I think this would be pointless. BPF has already registered a default. So what I think he is asking for in reality, as I have already said, is for BPF to cancel the default and ask the credit reference agencies to remove the default and arrears information from his credit file. And then send him a new notice of default, presumably via a postal method he finds acceptable. But BPF has no obligation to do any of this for the reasons I set out above.

Mr H has told us about the rejection of his mortgage applications. Lenders refuse to lend for a number of reasons, no one piece of information is likely to be the sole cause of the rejection. That said a default on a credit file is most likely going to be one of the factors a lender takes into account. Mr H cannot pinpoint these rejections to the registration of the default or demonstrate it played a substantial role in the decisions to reject his applications. And even if he could, it would not assist him here because I have found BPF does not have to cancel the default and ask the credit reference agencies to remove the default from Mr H's credit file as it had not acted unfairly by registering the default.

Mr H initially complained that BPF closed his complaint about the arrears and the default without telling him. This point was never seemingly the main thrust of his complaint. Moreover as the complaint progressed it appeared Mr H no longer wished to pursue it. But in case I am mistaken about this I have looked at the issue. I don't find that BPF did not treat Mr H appropriately BPF's records indicate it told him its stance. I see no reason why those records would be inaccurate on this point.

My final decision

My final decision is that I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 April 2023.

Joyce Gordon
Ombudsman