

The complaint

Miss G has complained about the way Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) dealt with a conditional sale agreement that she'd voluntarily terminated.

What happened

In September 2014 Miss G acquired a used car under a conditional sale agreement with BPF. The car was around a year old and had covered around 7,600 miles. The cash price was around £10,000 and was to be repaid over 49 months. Miss G said she agreed to voluntarily terminate the agreement in 2017 and her car was picked up. A couple of months later she says BPF contacted her to let her know she owed around £700. She said this was unexpected and she didn't know what it was for, so she contacted BPF.

Miss G said BPF gave her conflicting information about whether it was for damage charges, or charges from a loss when the car was sold at auction. Miss G said she was seeking information about the balance, but BPF passed the debt on to another firm. Miss G said she thought BPF had applied a default as well.

Miss G said things weren't resolved for a long time and that BPF told her it would write off the debt and remove the default. But she said when she spoke to it again a few weeks later it said that wasn't right, so she complained.

BPF said it wasn't upholding the complaint, and that it can sell the debt to a third party if there are arrears on the account for a certain period. Miss G referred her complaint to the Financial Ombudsman. She said the situation caused her distress and inconvenience. She requested BPF contact the debt recovery company and arrange for it to stop chasing her for money.

In summary, BPF said the terms of the conditional sale agreement set out Miss G was liable for certain costs if she voluntarily terminated the agreement. It said she opted to have the car collected which incurred a cost of £206.40. The car was inspected and noted around £1,150 of repairs that were required. It said the collection agents used the British Vehicle Rental and Leasing Association (BVRLA) guidance when carrying out inspections. BPF said it decided to charge Miss G £550 for the damages which was the shortfall between the sale price at auction and the estimated value of a similar model at that time. BPF said it also applied a £30 valet charge and a £84 transport charge. It said these were reasonably incurred.

BPF apologised its agent didn't notice it had sent a funds/balance advice letter in March 2018, which was sent with a copy of the vehicle appraisal. BPF said its agent offered to remove the default, but it also supplied evidence showing one wasn't registered. It said it reduced the debt by around £30 which left Miss G owing £669.92.

Our investigator looked into things and said, in summary, BPF should reduce the damage charge by £167. He said the photos supplied by BPF weren't all very clear, or available to view in full size. He thought the damage element of the charge should be reduced to £383 but he thought the charges for collecting the car; transporting it to the auction; and valeting it,

were reasonable. Our investigator thought BPF should compensate Miss G £100 for the way it handled the call where it misinformed her. Our investigator therefore thought the amount outstanding should be reduced to £502.92 and BPF should pay Miss G £100 compensation.

I can't see we received a response from Miss G. BPF agreed to pay £100 compensation. But it didn't think it should have to reduce the charge with the debt recovery company by £167. BPF said it's not fair to assume the damage wasn't present because the collection agent doesn't have all the photos that were available in 2017. It said on the balance of probabilities the damage was present.

As things weren't resolved, the complaint has been passed to me to decide.

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.

Miss G acquired the car using a regulated conditional sale agreement, and our service is able to consider complaints relating to these sorts of agreements.

BPF has shown us a screenshot of what it is reporting to the credit reference agencies, and there's no default showing, so I don't need to consider that further. Moreover, while the debt has been outstanding for a long time, BPF has shown us a record of notifying Miss G about the outstanding balance in March 2018. As it wasn't paid, I understand BPF sold the debt, which I think is broadly fair. While there was incorrect information given by a call handler in 2022 about the debt being waived, BPF has agreed to pay £100 compensation for this. I think that's broadly fair too. I think the main thing left in dispute is whether BPF needs to reduce the outstanding charge. So that's what I'll focus on. And I think our investigator's recommendation seems like a fair way to put things right. I'll explain why.

The terms and conditions of the conditional sale agreement that Miss G entered into set out:

TERMINATION: YOUR RIGHTS: You have a right to end this agreement. To do so, you should write to the person you make your payments to. They will then be entitled to the return of the goods and to half the total amount payable under this agreement, that is £6,291.48. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more.

The agreement also sets out:

If you or we terminate (end) this agreement for any of the reasons set out in this agreement you must pay us the following.

- *All repayments, interest and other amounts you owe on the date the agreement ends. We will tell you how much you must pay.*
- *The cost of all repairs that are needed to bring the vehicle to a good state of repair.*

...

- *All costs we must pay in repossessing, storing, insuring and selling the vehicle and delivering it to a buyer and any sales commission we must pay.*

You must also return the vehicle to us (including all keys, remote devices and alarm and immobilisation codes) and give us all licence certificates and other documents or items relating to the vehicle (including the V5C Registration Document, MOT certificate and service record). You must return the vehicle in a good state of repair and condition. If the vehicle is not in good condition when you return it, you must pay

our costs to bring it into a good condition or (if we choose) cover the reduction in its value.

From what I can see Miss G repaid half the total amount payable. And BPF was able to charge her for damage by way of repair costs or the reduction in resale value. It looks like Miss G agreed to have the car collected in November 2017 and BPF's notes say she was aware of the collection charges. BPF charged £206.40 to collect the car from Miss G; £84 to transport the car to auction; and £30 to valet it. Given it looks like Miss G was aware of the collection charge, and the terms of the agreement set out BPF can charge costs in relation to selling the car, I think these charges have been applied fairly.

With regards to the damage charges, the car was around a year old and had relatively low mileage when it was supplied to Miss G, so it was likely in decent condition. The damage recorded on the inspection when it was returned most likely happened while it was in Miss G's possession. Due to the time that's passed, the report doesn't contain images that can be enlarged. And the secondary photos that are normally linked to the report are no longer viewable.

The inspection report noted charges for dents to the bonnet (£185); the front left door (£48); and the front right door (£48). BPF said it considered the BVRLA guidance on fair wear and tear. This is industry guidance and I think it's relevant to consider given the age of the car when it was returned.

For dents, the BVRLA (at the relevant time) said dents of 10mm or less in diameter are acceptable providing there are no more than two per panel and the paint surface isn't broken. Even though the pictures are small on the report I've seen, I think they all show dents that are outside of fair wear and tear because they exceed 10mm. I think these are fairly chargeable, and I don't think the charges I've set out above are unreasonable.

With regards to wheels the guidance at the relevant time said scuffs totalling up to 50mm on the total circumference of the wheel trim and on alloy wheels is acceptable. I agree that even with the small photo supplied, it looks like the damage exceeds this on the front left alloy. The report noted a £60 charge for this which seems reasonable.

The report also notes a scratch to the front right mirror housing. The BVRLA guidance at the relevant time said scratches and abrasions up to 25mm are acceptable, relative to the vehicle's age and mileage, and provided the primer or bare metal isn't showing. The photo on the report shows a scratch larger than this. I therefore think that falls outside of fair wear and tear. The report notes a charge of £42 which seems reasonable.

The report also notes other areas of damage: dull paint on the front bumper, front left wing, boot, and rear quarter panel; soiled upholstery; and paint cracked on the rear bumper. But like our investigator pointed out the photos are too small to determine whether these areas of damage fall outside of fair wear and tear. While I appreciate BPF has said it shouldn't be penalised for this due to the time that's passed, I do need to be able to weigh up the evidence. I also take on board its point that on the balance of probabilities the damage was present. That might be true, but I can't weigh up whether the damage falls outside of fair wear and tear. In all the circumstances, I agree that instead of charging Miss G £550 for loss of resale value, a fairer figure is to add up the areas of damage I can see were likely outside of fair wear and tear. This totals £383. I therefore agree BPF should reduce the damage element to this amount.

For completeness' sake I should point out this decision focussed on Miss G's complaint against BPF. I understand the debt may have been sold to another firm. If she's unhappy with how that firm has acted, or what it is reporting on her credit file she will have to take it

up with that firm in the first instance and, if she's unhappy with its response, it may be something our service is able to consider.

Putting things right

For the reasons given above, if Miss G wishes to accept the decision, Clydesdale Financial Services Limited trading as Barclays Partner Finance should pay £100 compensation and reduce the damage element of the charges to £383. BPF will therefore need to arrange to reduce the amount outstanding to £502.92.

If required, BPF can either bring the debt back and reduce the amount outstanding or arrange to make the amendment with the firm that's recovering the debt.

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 Miss G to accept or reject my decision before 17 January 2024.

Simon Wingfield
Ombudsman