

The complaint

A limited company, which I'll refer to as T, complains that Barclays Bank Plc trading as Barclaycard Payment Solutions ("BPS") has charged it unfairly for terminal hire in relation to merchant services.

What happened

In October 2022, T signed a contract to hire 25 Flex terminals from BPS and use BPS' merchant acquiring services.

When the terminals arrived, T said some of them did not work and none were fit-for-purpose for its fast-moving business. T informed BPS of this and did not use the terminals.

In January 2023, T complained. BPS closed the complaint two days later, even though T said it wasn't resolved. T continued to express dissatisfaction.

In March 2023, T cancelled its direct debit to BPS. BPS continued to send monthly invoices, which went unpaid.

There were several conversations about T switching to faster Smartpay Touch terminals. In May 2023, T agreed to do this in a phone call.

BPS asked T several times to sign a new direct debit mandate, but it did not.

Around mid- 2023, BPS say they delivered 18 Smartpay Touch terminals. T says these were not received. From June 2023, BPS invoiced T for 25 Flex terminals and 18 Smartpay terminals every month. None of the terminals were used.

T renewed its complaint and it took BPS six months to respond. When BPS responded, they upheld the complaint in part. They declined to refund any of the amounts paid by T, but they agreed to cancel £4,500 of invoices, representing Flex terminal rental from May 2023 to October 2023. They also credited £150 to T's merchant account for the inconvenience caused.

In early 2024, BPS sent T a letter terminating its contract, due to amounts unpaid. They said a total of £7,621 was due.

Later in 2024, T says one of its neighbouring businesses found two large boxes at their business premises with T's name on them. The neighbour delivered them to T. The boxes are thought to contain the Smartpay terminals.

T asked the Financial Ombudsman to look into what had happened. One of our investigators did so and concluded that T's contract with BPS should have been cancelled in January 2023, when it first complained. So he thought BPS should not charge any fees after this point.

BPS agreed that its complaint handler should have offered to close the account in January 2023. It therefore agreed to refund/cancel all amounts billed for the Flex terminals after this date, amounting to an additional £3,750, on top of the £4,500 of invoices already cancelled.

However, BPS thought that it was fair to charge for the Smartpay terminals, because T's director had agreed to those in May 2023. It therefore considered T still had an outstanding debt.

Our investigator felt that if BPS had cancelled the contract in January 2023, there would have been no further conversations and no Smartpay terminals for which to bill. So he thought the Smartpay terminal hire invoices should be cancelled as well.

BPS did not agree, so I now need to make a final decision.

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.

Having done so, I've reached the same conclusion as our investigator, for essentially the same reasons. I will explain my findings in more detail below.

I acknowledge T's director considers that the Flex terminals were effectively mis-sold from the start, as they weren't fit for purpose. I have therefore considered whether it would be fair to require BPS to refund all sums charged from the start of the contract in November 2022. But I agree with our investigator that T should bear some responsibility for failing to cancel the contract sooner, especially as I've seen evidence that BPS had given T the phone number to call to do this on 30 November 2022.

BPS has agreed that its complaint handler should have arranged to close T's merchant account in January 2023. I have listened to the complaint call and I agree that call should have left BPS in no doubt that T wanted to terminate the relationship. So I agree that BPS should cancel (or refund if paid) all amounts billed for the Flex terminals after this date. I also think BPS should cancel any other amounts billed on those invoices for other ancillary merchant services, since T was obviously not going to use these.

This leaves the question of the Smartpay terminals and whether it is fair for BPS to hold T liable for the costs for them.

I have listened to the recording of the May 2023 phone call in which T's director agrees to hire 18 terminals. I think it's clear that T's director was willing to try these, because the merchant acquiring charges were more advantageous than T's existing supplier. What he wanted to happen was for BPS to arrange to collect the Flex terminals and then deliver the Smartpay ones.

Where things seem to have gone wrong is after this call. BPS appear to have fulfilled the order and sent out the terminals, but T says it was never informed that the terminals were being (or had been) delivered and the Flex terminals remained uncollected. I haven't seen any evidence that BPS ever attempted any kind of follow-up, for example, asking T why it wasn't using the Smartpay terminals for which it was being billed.

T's director has explained that he expected to have to sign new paperwork for the new terminals. It seems that this was in fact not required, even though T didn't even have a current direct debit to BPS. Having read all the correspondence, I am not surprised T's director was expecting documentation, as BPS had told him as much more than once. For example, on 10 January 2023, BPS said "I have never had the documents returned to me to complete the application, if you can send those back to me asap we can sort the application...".

In the circumstances, I think it was reasonable for T to have expected to sign new documentation before any new terminals would be delivered. It follows that I think it was reasonable that it didn't chase up the new terminals, since it hadn't signed any paperwork. As it did not then receive the terminals, since they went to the wrong address, and it was still awaiting the resolution of its complaint, I don't think it would be reasonable to expect T to have taken any other action in mid-2023.

I am satisfied that T believed the continued invoices, under the same reference number, related to the Flex terminals and the original contract. BPS points out that T failed to notice that it was being invoiced for the new terminals. BPS' argument is essentially that T has failed to mitigate its loss and it is therefore fair for it to hold T liable. I don't think this is fair. T had cancelled the direct debit, so was not actually paying BPS's invoices. So I don't think it is surprising that it wasn't scrutinising them too closely. In addition, T knew it had an outstanding complaint about everything BPS had charged.

It seems to me that all parties understood that any new terminals were a replacement for the unsatisfactory originals, not an addition to them. So BPS should themselves have realised that their invoices, which included two sets of terminals from mid-2023, could not be correct.

BPS also argues that it was T's responsibility to make sure its account was closed. But I think T had made it extremely clear in the complaint outcome call in January 2023 that it wanted to end its relationship with BPS. I don't think it should have been required to make further phone calls to achieve this. I agree with our investigator that the conversation about the Smartpay terminals would never have happened, if BPS had properly dealt with matters in January 2023. And in relation to the Smartpay terminals, it's clear that T wasn't even aware that they had been delivered, so I don't think it could reasonably have cancelled them.

Putting things right

My aim here is to put T back in the position it would have been in, had BPS cancelled its contract at the time of its complaint in January 2023. In order to achieve this, BPS should:

- Arrange the collection of whichever terminals are still in T's possession.
- Refund to T any amounts paid for the Flex terminals, and other ancillary merchant services charged on the same invoices, after the date of the January 2023 complaint.
- If a refund is due, then BPS should add interest to the amount paid at 8% simple per annum pro rata from the date paid by T until the date refunded by BPS. This is as compensation for being deprived of the use of this money.
- Cancel all unpaid invoices, including charges for the hire of the Smartpay terminals, and cease to pursue T for these.
- Amend any adverse information added to T's credit file in relation to the non-payment of BPS's invoices relating to these events.

- Pay T £300 for the inconvenience caused by BPS' poor service and the emails and phone calls it caused, which took away T's director's time from other matters.

My final decision

I uphold this complaint and direct Barclays Bank Plc to take action as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 8 April 2025.

Louise Bardell
Ombudsman